

Circuit Court for Prince George's County  
Case No. CAL 17-22824

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 3471

September Term, 2018

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KENNETH BALTON, *et al.*

v.

SHERRICE WISE

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Berger,  
Leahy,  
Shaw Geter,

JJ.

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Opinion by Shaw Geter, J.

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Filed: July 1, 2020

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from a judgment entered by the Circuit Court for Prince George’s County, following a jury verdict that awarded appellee damages for a motor vehicle accident involving appellant, Kenneth Balton. Shortly thereafter, appellant filed a Motion for a New Trial and/or Remittitur averring the award was grossly excessive and against the weight of evidence. The court denied appellant’s motion and he noted this timely appeal.

Appellant presents the following questions for our review, which we have condensed:<sup>1</sup>

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<sup>1</sup> Appellant’s original issues are as follows:

1. Did the trial judge commit error prejudicial to the Defendants in precluding the defense from bringing to the jury’s attention that Plaintiff had pled guilty in 2012 to assaulting a resident of a mental health residential facility called Emerge while Plaintiff was employed at the facility as a residential counselor in View of the fact that records of Plaintiff’s mental health care provider, Crawford Consulting, confirmed that Plaintiff had acknowledged to the mental health care providers at Crawford Consulting after the November 4, 2015 accident that assault charges brought against her (to which she pled guilty) had traumatized her and has contributed to her depression and anxiety to the point that she feels it has ruined her life and that the assault charge on her record keeps her from getting a job, and also in view of the fact that Plaintiff falsely maintained in her trial testimony that by the time of the November 4, 2015 accident there had been no work incident at Emerge or any matters resulting from any work incident at Emerge that was contributing to any continuing depression or anxiety or that was in any way contributing to her being unable to find employment?
2. Did the trial judge commit error in abusing his discretion by failing to grant the Defendants’ Motion for New Trial and/or Remittitur in View of the fact that the amount of the jury’s award of \$250,000.00 for Plaintiff’s claimed non-economic damages was contrary to the evidence, grossly excessive and was likely the result of sympathy and prejudice for the Plaintiff and prejudice against the Defendant?
3. Alternatively, did the trial judge commit error in abusing his discretion by failing to at least reduce the jury’s award to an amount not deemed to be

1. Whether the trial court committed prejudicial error when it excluded evidence of appellee’s assault conviction?
2. Whether the trial court abused its discretion by failing to grant appellant’s motion for a new trial and/or remittitur?
3. Whether the trial court abused its discretion by failing to reduce the jury’s award to an amount not deemed excessive?

For the reasons set forth below, we shall affirm.

### **BACKGROUND**

On November 4, 2015, appellant, while operating a truck owned by Dilan Trucking and Construction, LLC., was involved in a motor vehicle accident. A piece of the truck’s drive shaft fell from the truck, bounced off the road, struck appellee, Sherrice Wise’s windshield and landed in her passenger seat. Appellee was treated for scratches and soft tissue sprain injuries. She was also treated for anxiety, depression, and other emotional issues related to the accident at Crawford Consulting and Mental Health Services.

Appellee filed a personal injury lawsuit in the Circuit Court for Prince George’s County, claiming emotional distress and mental anguish as well as pre-impact fright. She claimed that she had to seek psychological therapy due to having nightmares, flashbacks, increased anxiety, and depression as a result of the accident.

Prior to trial, the court heard arguments on appellant’s motion to strike one of appellee’s witnesses, Patrick Crawford, and appellee’s motion to exclude evidence of her

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excessive so as to allow the Plaintiff the alternative option of accepting a remittitur in an amount not deemed to be excessive?

domestic history and criminal record. Appellant sought to preclude Crawford, a clinical social worker and the owner of Crawford Consulting and Mental Health Service, from testifying as an expert witness concerning appellee’s treatment. He argued Crawford had no personal knowledge about Wise’s treatment. The court ultimately ruled that Crawford could testify, but his testimony was limited to three visits that occurred on December 15, 2015, January 9, 2016, and February 1, 2016.

With respect to appellee’s motion, appellant argued that the introduction of appellee’s 2012 assault conviction was necessary to establish that it was the source of emotional distress for which she sought counseling after the motor vehicle accident. Appellee argued the conviction was not admissible under Maryland Rule 5-609, which allows impeachment through the admission of prior infamous crime convictions, because assault was not in that category. Further she argued it was not relevant to witness credibility. The trial court noted that “once you put your mental health at issue you have to deal with all of the things that come out of that.” The judge ruled that appellant could cross-examine appellee and her witnesses about other causes of her emotional distress that pre-existed the auto accident but could not specifically refer to her conviction. The attorneys were to use the term “work incident.”

At trial, Crawford testified to appellee’s treatment on the dates limited by the court’s ruling. On cross-examination, Crawford was asked about treatment records unrelated to the accident, including appellee finding out that her boyfriend at the time had a baby with

another woman, becoming depressed after the break-up, and the “work incident” that resulted in the assault conviction.

Appellee’s boyfriend, Jaared Hunley, testified that prior to the accident, appellee was “a happy person, enthusiastic about life,” but since the accident, she had become “more so the introvert now. It is almost like a complete shift in the opposite direction compared to before to now.” Hunley also testified about his observations of her pain following the accident and that she continued to complain about her injuries. He was cross-examined about his knowledge of the prior work incident and domestic history, but he denied any knowledge of either.

On direct examination, appellee described the accident and the injuries she sustained, both physically and emotionally. During cross-examination, appellant attempted to ask questions about entries in the therapy records regarding the assault circumstances and appellee objected. Appellee argued that the prejudicial effect of asking about the criminal case outweighed any probative value, the court then stated, “And that is why I didn’t allow him to get into her being convicted.”

Following deliberations, the jury awarded appellee \$250,000.00 for non-economic damages and the court entered judgment against appellant in that amount. Appellant filed a Motion for a New Trial and/or Remittitur, which was denied by the court.

Appellant noted this timely appeal.

## **DISCUSSION**

### **I. The trial court did not err when it excluded evidence of appellee’s conviction for assault.**

Appellant argues the trial court committed prejudicial error by precluding evidence of appellee’s assault conviction. He claims the introduction of the conviction was relevant to challenging appellee’s credibility that the accident was the sole source of her anxiety, depression, and emotional issues and he was precluded from effectively cross-examining appellee and her witnesses. He contends the trial court provided no analysis as to how appellee would have been “unfairly” prejudiced or how the probative value of such evidence was outweighed by “unfair” prejudice. Conversely, appellee argues the court properly excluded the conviction.

“Whether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court’ and reviewed under an abuse of discretion standard.” *Perry v. Asphalt & Concrete Servs., Inc.*, 447 Md. 31, 48 (2016) (quoting *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 619 (2011)).

An abuse of discretion occurs where “no reasonable person would share the view taken by the trial judge.” *Brown v. Daniel Realty Co.*, 409 Md. 565, 583 (2009).

To be sure, “. . . all relevant evidence is admissible. Evidence that is not relevant is not admissible.” Md. Rule 5-402. Further, “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. . . .” Md. Rule 5-403.

Appellant relies on two cases to support his argument that evidence of appellee’s conviction was improperly excluded, *Brohawn v. TransAmerica Insurance Company*, 276 Md. 396 (1975) and *Crane v. Dunn*, 382 Md. 83 (2004). In *Brohawn*, Transamerica sought

a declaratory judgment that it would not be required to indemnify under an insurance policy for any damages Brohawn might become liable for in a tort lawsuit for assault. *Brohawn*, 276 Md. 396 at 403. Transamerica contended that Brohawn’s guilty plea was dispositive of the issue of intent. *Id.* The Court of Appeals, while acknowledging that a plea of guilty may be introduced in a subsequent civil proceeding as an admission, stated that such admission did not conclusively establish liability and that Brohawn should be given an opportunity to explain her plea of guilty in the tort action. *Id.* In *Dunn*, the Court of Appeals reversed a lower court’s decision holding that Dunn’s guilty plea to negligent driving was not admissible as substantive evidence in a later civil liability proceeding. 382 Md. 83 at 101. In reversing that decision, the Court held that while the admission in traffic court was not conclusive as to negligence, it was substantive evidence and it was prejudicial error to exclude it. *Id.*

Both cases, however, are dissimilar to the case at bar. The assault conviction here does not arise out of the same occurrence, nor did appellant seek admission of the prior conviction as substantive evidence. Rather, he contended the conviction was relevant to appellee’s credibility regarding the source of her depression. Appellant argued, that the treatment was focused on problems that preceded the accident:

. . . several years before this accident [she] got involved in an altercation with somebody at a residential home and pled guilty to assault. And she said this traumatic event has ruined my life. It keeps me from getting a job. It is contributing to my financial problems which is contributing to my depression. So how we keep that out is just beyond me. Of course, it is prejudicial and the reason it is prejudicial because it shows she was not in there because of an incident that took place on a highway when a rock or an object crashed through her window.

The court, after hearing from both sides, ruled that appellant would be allowed to examine appellee regarding how the “work incident” affected her mental health, but he would not be allowed to impeach her by asking questions about her assault conviction. The court stated, “All I am saying to you is in terms of any cross-examination of the Plaintiff on this issue, it has to be in the context of her mental health. It just cannot be you were convicted of assault before.”

In our view, the court’s ruling was not an abuse of discretion. Clearly, the assault conviction in and of itself was not admissible for impeachment purposes. The court, recognizing that credibility was an issue, carefully crafted a solution by permitting appellant to bring out the prior diagnosis of depression and related symptoms regarding the “work incident” that became the basis for the conviction. Appellant was therefore, able to discredit or contradict appellee’s assertions that the accident was the sole source of her emotional issues. He was able to cross-examine appellant, her boyfriend, and Crawford about these issues.

An abuse of discretion occurs when “the decision under consideration is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 48 (2019). Here, appellant was merely limited in referencing the conviction itself or presenting evidence to that effect. The failure of the trial judge to fully articulate his reasoning is not dispositive. “A judge is presumed to know the law and is presumed to



have performed his duties properly.” *Comptroller of the Treasury v. Clise Coal, Inc.*, 173 Md. App. 689, 707 (2007).

Even if we were to assume *arguendo*, the judge erred, we hold, nevertheless, it was harmless. Under Maryland Rule 5-103(a), “[e]rror may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling.” “It is not the possibility, but the probability, of prejudice which is the object of the appellate inquiry.” *Dunn*, 382 Md. 83 at 91. (internal quotations omitted). “The party maintaining that error occurred has the burden of showing that the error complained of likely affected the verdict below.” *Brown*, 409 Md. 565 at 584 (internal quotations and citations omitted). Here, there was no prejudice as appellant was fully able to explore the issue of appellee’s credibility regarding the source of her emotional issues.

**II. The trial court did not abuse its discretion by denying appellant’s motion for a new trial and/or remittitur.**

Whether to grant or deny a motion for new trial is within the discretion of the trial court. *Tierco Maryland, Inc. v. Williams*, 381 Md. 378, 413 (2004). Ordinarily, a trial court’s order denying a motion for a new trial will be reviewed on appeal if it is claimed that the trial court abused its discretion. *Id.* (quoting *Buck v. Cam’s Broadloom Rugs, Inc.*, 328 Md. 51, 57 (1992)). An appellate court should not interfere with the trial court’s discretion unless (1) the trial court has not fairly exercised its discretion, or (2) the most “extraordinary or compelling circumstances” exist. *Holden v. Blevins*, 154 Md. App. 1, 8 n.9 (2003) (quoting *Thodos v. Bland*, 75 Md. App. 700, 706 (1988)).

The case at bar consisted of three witnesses, appellee, her boyfriend, and Patrick Crawford, all of whom testified about appellee’s emotional condition. The jury was, thus in a position to judge and assess the witnesses’ demeanor and credibility and make its determination. In reviewing the record, we hold there was substantial evidence to support the jury’s verdict and no compelling circumstances exist. As such, the trial court did not abuse its discretion by failing to grant appellant’s Motion for New Trial and/or Remittitur.

**III. The trial court did not abuse its discretion by failing to reduce the jury’s award to an amount not deemed excessive.**

Appellant argues that because the award of \$250,000.00 was contrary to the evidence, the trial court abused its discretion in failing to reduce the jury’s award. However, as stated above, the record fully supports the jury’s determination.

We affirm.

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
AFFIRMED; COSTS TO BE PAID BY  
APPELLANT.**