Circuit Court for Baltimore City
Case No. 24-C-09-003486

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 923

September Term, 2017

BRITTANY HAZELWOOD

v.

CITY HOMES, INC.

Nazarian,
Friedman,
Fader

JJ.

Opinion by Fader, J.

Filed: August 8, 2018

In 2013, this Court reversed a judgment in a lead-paint lawsuit in favor of appellant Brittany Hazelwood because, we concluded, the trial court had erred in allowing testimony from her designated expert on causation issues. *City Homes, Inc. v. Hazelwood*, 210 Md. App. 615 ("*Hazelwood I*"), *cert. denied*, 432 Md. 468 (2013). We also vacated an award of sanctions against appellee City Homes and its attorney and remanded the case for renewed consideration of sanctions against the attorney. Neither our mandate nor our opinion affirmatively stated whether our remand contemplated any further proceedings other than as to sanctions.

The core issue in this appeal is whether our prior decision in *Hazelwood I* precluded a new trial on remand. If it did not, a subsidiary question is whether our holding that Ms. Hazelwood's expert should not have been permitted to testify remains the law of the case. We hold that: (1) our initial mandate, read with the opinion and in light of all surrounding circumstances, did not preclude a new trial on remand; but (2) our holding in *Hazelwood I* remains the law of the case; and so (3) in deciding whether a new trial is appropriate, the circuit court will need to determine whether Ms. Hazelwood can possibly prevail without expert testimony on causation.

BACKGROUND

Ms. Hazelwood filed suit against City Homes in 2009. Her complaint alleged that she suffered permanent medical injuries caused by exposure to lead paint at 4 North Stockton Street, a City Homes property in Baltimore City where she resided from 1993 until 2000. Ms. Hazelwood designated Dr. Eric Sundel, a pediatrician, as an expert witness to testify that her exposure to lead at the Stockton Street property was a probable substantial

factor contributing to her elevated blood lead levels and that this exposure caused permanent medical injuries, including diminution in intellect and behavior-related deficits. The trial court accepted Dr. Sundel as an expert pediatrician with a concentration in childhood lead poisoning. Although Ms. Hazelwood had identified other potential expert witnesses during discovery, Dr. Sundel was the only expert to testify at trial as to causation.

In September 2011, a jury awarded Ms. Hazelwood $5.1 million in damages, which the trial court later reduced to $1.25 million. *Hazelwood I*, 210 Md. App. at 618. Two months later, the trial court imposed sanctions of $10,135.45 against City Homes and $10,000 against its counsel for, among other issues, failing to disclose a 1993 lead test report that showed the presence of lead at the property. *Id.* at 664.

This Court held that the trial court abused its discretion by admitting Dr. Sundel's testimony and so reversed. *Id.* at 691. We determined that: (1) pursuant to Rule 5-702(1), Dr. Sundel lacked the qualifications to testify; and (2) pursuant to Rule 5-702(3), he lacked a sufficient factual basis to testify that lead exposure from 4 North Stockton Street caused Ms. Hazelwood's injuries. *Id.* at 686, 690-91. We did not specify in that part of the opinion what this conclusion meant for proceedings on remand.

We also vacated the sanctions awards. We held that the award against City Homes violated due process because City Homes did not receive sufficient notice that Ms. Hazelwood sought sanctions against it. *Id*. at 693-94. We also vacated the award against City Homes's counsel and remanded for further proceedings regarding whether sanctions against the counsel were appropriate. *Id*. at 699-700.

The *Hazelwood I* mandate, issued April 22, 2013, reads as follows:

> Judgment of the Circuit Court for Baltimore City reversed. Sanctions against Appellant in the amount of $10,135.45 and against Appellant's counsel, William C. Parler, Jr., in the amount of $10,000 vacated. Case remanded for further proceedings consistent with this opinion. Costs to be paid 1/2 by Appellant and 1/2 by Appellee.

Id. at 700.

The Court of Appeals denied Ms. Hazelwood's petition for certiorari, 432 Md. 468 (2013), and her motion for reconsideration of that denial. While the motion for reconsideration was pending, City Homes filed for bankruptcy protection. On remand, during what appears to have been a scheduling hearing, City Homes told the circuit court that the bankruptcy would not affect proceedings in this case because the only remaining issue was the imposition of sanctions against City Homes's attorney. Counsel for Ms. Hazelwood did not disagree, at least not on the record. Nonetheless, on June 3, 2014, the circuit court issued a stay "as to all claims against **Defendant City Homes, Inc.**" in light of the bankruptcy filing. (emphasis in original). Neither party objected or otherwise sought relief.[1]

Four days after the bankruptcy court lifted its stay, Ms. Hazelwood filed a motion seeking either a new trial or, in the alternative, for the court to revise the judgment and

[1] City Homes makes much of the silence of Ms. Hazelwood's counsel when its own counsel represented in open court that there were no claims that would be affected by the bankruptcy stay. We view City Homes's lengthy silence in the face of the court's entry of a stay that City Homes purportedly believed was wholly inappropriate as at least as telling.

reimpose the prior jury verdict. The circuit court's written order denying the motion reasoned: (1) contrary to Ms. Hazelwood's contention, subsequent caselaw had not repudiated *Hazelwood I*, which remained the law of the case; (2) the *Hazelwood I* mandate precluded a new trial; (3) Ms. Hazelwood's motion to amend the judgment was not timely; and (4) Ms. Hazelwood had not shown "fraud, mistake, and/or irregularity" as required to invoke Rule 2-535(b). Ms. Hazelwood appealed.

DISCUSSION

Ms. Hazelwood argues that neither the mandate nor the opinion in *Hazelwood I* precluded her from seeking a new trial on remand. Moreover, she asserts, our reasoning in *Hazelwood I* has been disavowed by the Court of Appeals in subsequent cases, which provides an exception to the law of the case doctrine. Thus, she concludes, she should be granted either a new trial in which Dr. Sundel or a different expert is permitted to testify or a reinstatement of the original jury verdict. City Homes responds that the *Hazelwood I* mandate's direction that the judgment of the circuit court was "reversed" precludes a new trial on remand. Even if it did not, City Homes contends, our holding in *Hazelwood I* has not been called into question, the law of the case is that Ms. Hazelwood's only testifying causation expert is precluded from testifying, and that means Ms. Hazelwood has no viable claim to pursue.

I. MS. HAZELWOOD MISIDENTIFIED HER REQUEST FOR A NEW TRIAL AS A POST-JUDGMENT MOTION.

Before delving into the merits of the parties' positions, we must determine what exactly is before us. Ms. Hazelwood appeals from the circuit court's denial of her motion for a new trial or to revise the judgment pursuant to Rules 2-534 and 2-535(b).[2] The theory on which Ms. Hazelwood believed these rules to apply here is not entirely clear to us. What is clear, however, is that they do not apply. Rules 2-534 and 2-535(b) allow parties to file post-judgment motions requesting that a circuit court alter, amend, or revise its own judgment. *See Kent Island, LLC v. DiNapoli*, 430 Md. 348, 366-67 (2013) ("As implied by Maryland Rule 2-535 . . . a circuit court may revise or modify only those final judgments entered by that circuit court."). Here, however, there was no circuit court judgment to alter, amend, or revise. Our decision in *Hazelwood I* reversed the judgment against City Homes. In doing so, that judgment became a nullity because "the effect of a general and unqualified reversal of a judgment . . . is to nullify it completely and to leave the case standing as if such judgment . . . had never been rendered, except as restricted by the opinion of the appellate court." *Carpenter Realty Corp. v. Imbesi*, 369 Md. 549, 562 (2002) (quoting

[2] Rule 2-534 provides, in pertinent part:

> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

Rule 2-535(b) provides, in pertinent part: "On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity."

Balducci v. Eberly, 304 Md. 664, 671 n.8 (1985)). Thus, to the extent that Ms. Hazelwood intended to ask the court to alter, amend, or revise the judgment the court had originally imposed, that judgment no longer existed.

If, instead, Ms. Hazelwood intended to ask the circuit court to alter, amend, or revise our judgment in *Hazelwood I*, her request was even more problematic. Rules 2-534 and 2-535(b) provide no authority for a circuit court to alter our rulings. On remand, "the decision of the appellate court establishes the law of the case, which *must* be followed by the trial court," *Tu v. State*, 336 Md. 406, 416 (1994) (quoting 1B J.W. Moore, J.D. Lucas, & T.S. Currier, *Moore's Federal Practice* ¶ 0.404[1], at II-3 (2d ed. 1993)). Thus, our "order of remand and the opinion upon which the order is based are conclusive as to the points decided." Rule 8-604(d)(1); *see also* Rule 8-606(e) ("Upon receipt of the mandate . . . the lower court shall proceed in accordance with its terms.").

Based on its substance, we interpret Ms. Hazelwood's filing with the circuit court not as a motion to revise a judgment but as a request for further proceedings as permitted—she believed—on remand. *Hill v. Hill*, 118 Md. App. 36, 44 (1997) ("[W]hen motions and other pleadings are considered by a trial judge, it is the substance of the pleading that governs its outcome, and not its form. . . . [T]he nature of a motion is determined by the relief it seeks and not by its label or caption.") (emphasis removed). Although such a request would ordinarily follow shortly upon the conclusion of appellate proceedings, and would be subject to a challenge based on timeliness if it did not, City Homes had filed for bankruptcy by the time appellate proceedings concluded here. Thus, under these unique

circumstances, Ms. Hazelwood's April 2017 request for further proceedings against City Homes pursuant to our mandate was not untimely.[3] That, of course, does not mean that her request had merit. It is to that issue that we now turn.

II. OUR MANDATE IN *HAZELWOOD I* DID NOT PRECLUDE A NEW TRIAL ON REMAND.

The next question we must address is what, if anything, our mandate in *Hazelwood I* left for the circuit court to do with respect to the merits of Ms. Hazelwood's claims against City Homes. Ms. Hazelwood contends, in essence, that we returned the case to the circuit court agnostic as to whether there would be a new trial on remand. It was thus for the trial court to make that determination in the first instance. City Homes, by contrast, argues that the mandate, when read in conjunction with the full *Hazelwood I* opinion, remanded only on sanctions and thereby ended the merits portion of the case.

The circuit court agreed with City Homes, finding the *Hazelwood I* mandate clear in reversing the earlier judgment rather than vacating it. The circuit court also observed that the *Hazelwood I* opinion expressly remanded for consideration of the sanctions issues

[3] Contrary to Ms. Hazelwood's position, nothing prohibited the parties from asking the circuit court to take any and all appropriate action to move the case forward upon receipt of our mandate. The filing of Ms. Hazelwood's petition for certiorari did not automatically stay the issuance or effectiveness of our mandate, nor did she seek a stay of that mandate from either this Court or the Court of Appeals. *See* Rule 8-303(e) (allowing the Court of Appeals, in its discretion, to stay a mandate of this Court upon the filing or granting of a petition for certiorari). However, for good reason, parties frequently choose not to move forward in the circuit court until the Court of Appeals has decided whether or not to accept a case. For that reason, it would not necessarily be appropriate to penalize a party for choosing to await a decision on certiorari from the Court of Appeals before requesting a new trial on remand.

without mentioning anything about a new trial, consideration of new case law, or the introduction of new evidence. Thus, the circuit court held, our *Hazelwood I* judgment was "final, and is the law of the case."

To resolve this dispute, we turn first to the language of the *Hazelwood I* mandate:

> Judgment of the Circuit Court for Baltimore City reversed. Sanctions against Appellant in the amount of $10,135.45 and against Appellant's counsel, William C. Parler, Jr., in the amount of $10,000 vacated. Case remanded for further proceedings consistent with this opinion. Costs to be paid 1/2 by Appellant and 1/2 by Appellee.

210 Md. App. at 700. As a starting point, we observe that the Court of Appeals has determined that the words "judgment reversed," without more, do *not* conclusively preclude a new trial. In *Balducci*, we had reversed a circuit court's entry of a permanent injunction. 304 Md. at 668. Our mandate was: "Judgment Reversed. Orders of May 5, 1982 vacated. Appellees to pay the costs." *Id.* at 669. The Court of Appeals held that the mandate itself was ambiguous and so had to be construed in conjunction with "the opinion and surrounding circumstances to determine the intent of the court." *Id.* at 670.

Although the opinion to which the mandate was appended was also inconclusive, *id.* at 672, the Court of Appeals found more instructive a subsequent opinion we issued in the same case, which the Court concluded demonstrated that we had not intended to prohibit the plaintiffs from seeking a new injunction on remand. *Id.* at 673. Observing that this Court clearly had it within its power to order a new trial, and that "the determination of whether a new trial should be awarded after reversal is exclusively an

appellate one," the Court of Appeals deferred to this Court's later construction of the original "ambiguous mandate." *Id.* at 673-74.

The mandate here provides essentially the same information as did the mandate in *Balducci*: "Judgment . . . reversed." As there, the mandate here contains no indication "that a new trial was not to be awarded, except for the fact that the phrase 'new trial awarded' did not appear as part of the mandate." *Id.* at 672-73. As a result, *Balducci* instructs that this mandate, like that one, is ambiguous,[4] and that to resolve that ambiguity we should consider not only our opinion in *Hazelwood I* but also "the surrounding circumstances of the case as a whole." *Id.* at 672; *accord Carpenter*, 369 Md. at 561-62 (quoting *Balducci*).

We turn first to our opinion, which, as in *Balducci*, does not itself resolve the ambiguity. We held that Dr. Sundel should not have been permitted to testify as an expert. 210 Md. App. at 684-91. Our conclusion to the relevant section of the opinion stated that "the circuit court abused its discretion in permitting Dr. Sundel to testify as an expert . . .," *id.* at 691, but did not specifically identify a consequence beyond reversal of the original judgment.

"Ordinarily, a reversal and remand after trial for error in the trial or decision results in a retrial, unless the appellate opinion or mandate specifically limits the proceedings on

[4] The circuit court construed the mandate here as unambiguous by virtue of the absence of any mention of a new trial. It does not appear that either of the parties provided the circuit court with a citation to *Balducci* or other relevant authority on this point.

remand." *Powell v. Md. Aviation Admin.*, 336 Md. 210, 222 (1994). We included no such specific limitation here. Instead, the closest the opinion in *Hazelwood I* came to precluding a new trial is by negative implication. In vacating the original award of sanctions, we stated expressly that we were remanding the case for a new determination of sanctions; but we made no mention of remand in the portion of our opinion discussing the substantive claim. *Compare* 210 Md. App. at 691 (concluding section addressing Dr. Sundel's testimony without reference to remand) *with id.* at 700 ("We remand the case with instructions to the circuit court to determine whether sanctions pursuant to Maryland Rule 2-433 in the form of an award of expenses and/or attorney's fees against Parler are appropriate."). Although that negative implication is admittedly more than was present in *Balducci*, it is still scant evidence of an intent *to preclude* a new trial.

There are more compelling indicators that favor a conclusion that we did not intend to preclude a new trial on remand. First, after addressing the issues concerning Dr. Sundel, we addressed a separate evidentiary issue "for guidance." *Id.* at 691. Although our opinion does not say whether it is for the guidance of these parties on remand or for the general guidance of other parties in future cases, the guidance provided is more directed to the former, as its focus is on aspects of the specific testimony at issue that we found "veered dangerously close to fact testimony." *Id.*

Second, and even more compelling, the same new trial that City Homes now contends was not even contemplated by this Court is precisely the relief it repeatedly requested from this Court in its appellate briefs:

- City Homes's statement of the case in its *Hazelwood I* opening brief concluded with a request that this Court "award a new trial with the instructions necessary to allow [City Homes] to receive a fair trial."

- After making its case that Dr. Sundel was unqualified, City Homes argued that, "[a]s such, the trial court's decision must be overturned and a new trial be awarded."

- After next making its case that Dr. Sundel's testimony lacked a factual basis for his opinions, City Homes yet again argued that "[a]s such, the trial court's ruling must be reversed as an error of law and/or an abuse of discretion and a new trial be ordered."

- The conclusions to both its opening brief and its reply brief asked that this "Court reverse the trial court's findings and remand this case for a new trial."

City Homes did not even suggest in any briefing to this Court that a reversal on the Dr. Sundel issues would entitle it to judgment without a remand and an opportunity for a new trial, nor did it request that this Court enter such a judgment.

A party's request for relief is, of course, not binding on this Court. However, when (1) City Homes unambiguously argued, in at least five separate places in its briefs, that the relief to which it would be entitled if it prevailed on this issue would be a remand for a new trial, and (2) this Court's opinion does not indicate any intent to award more relief than what City Homes requested, those "surrounding circumstances" suggest that this Court did not intend to preclude the possibility of a new trial on remand. *Cf. Taylor v. Mandel*, 402 Md. 109, 126 (2007) (when a court order is "ambiguous, the court must discern its meaning by looking at the circumstances surrounding the order to shed light on the ambiguity, including the motion in response to which it was made"). In the absence of any more

definitive indication of the intent behind our *Hazelwood I* mandate, we hold that Ms. Hazelwood was not precluded from seeking a new trial on remand.

That is not, of course, to suggest that Ms. Hazelwood will ultimately be entitled to a new trial. Our holding is intentionally narrow and cautious, as there are barriers other than our mandate in *Hazelwood I* that must be overcome. Perhaps most significantly, this Court has previously held that proving medical causation in a lead paint claim "requires the testimony of an expert." *Johnson v. Rowhouses, Inc*., 120 Md. App. 579, 594 (1998). Application of the law of the case doctrine means that Ms. Hazelwood will not have a causation expert on remand. That, without more, may entitle City Homes to judgment. However, the parties did not brief that issue in this Court, other than in passing, and it would be precipitous for us to make that decision here without the benefit of full briefing.[5] In any event, given our conclusion with respect to the intent of the initial mandate, that issue is most appropriately decided in the first instance by the circuit court.

III. SUBSEQUENT CASELAW HAS NOT REPUDIATED THE HOLDING IN *HAZELWOOD I* THAT DR. SUNDEL IS EXCLUDED FROM TESTIFYING.

Ms. Hazelwood argues that our holding in *Hazelwood I* should not be treated as the law of the case because it has been repudiated by two subsequent decisions of the Court of

[5] In light of *Ross v. Hous. Auth. of Balt. City*, 430 Md. 648, 671 (2013), Ms. Hazelwood will not necessarily need an expert on "source," the first of the three required "links" she must demonstrate. She argues that the Court of Appeals's statement in *Ross* that an expert witness may "*sometimes* be essential in proving" the other two links ("source causation" and "medical causation"), *id.* at 668 (emphasis added), means that even as to those an expert may not always be essential. As the parties did not brief the issue before us, we express no opinion on it here.

Appeals and undermined by even more decisions of that Court and this Court. The circuit court concluded that our holding in *Hazelwood I* had not been repudiated and remains the law of the case. The circuit court was correct.

When an appellate court "has ruled upon a question properly presented on an appeal . . . such a ruling becomes the 'law of the case' and is binding on the litigants and [courts] alike . . . and neither the questions decided [nor] the ones that could have been raised and decided are available to be raised in a subsequent appeal." *Kearney v. Berger*, 416 Md. 628, 641 (2010) (quoting *Reier v. Dep't of Assessments & Taxation*, 397 Md. 2, 21 (2007)) (alterations added in *Kearney*). However, the law of the case doctrine is a "judicial creation" and so is not "an inflexible rule of law." *French v. Hines*, 182 Md. App. 201, 256 (2008) (quoting *Corby v. McCarthy*, 154 Md. App. 446, 479 (2003)). One example of "exceptional circumstances" that may warrant departing from the doctrine occurs when "controlling authority has since made a contrary decision on the law applicable to [the] issues." *French*, 182 Md. App. at 256-57 (quoting *Corby*, 154 Md. App. at 479).

Ms. Hazelwood argues that this is such a situation. She relies primarily on two decisions of the Court of Appeals that she claims have repudiated our holding in *Hazelwood I*, thus depriving that decision of having the status of the law of the case. Before we get there, we pause to clarify terminology. Dr. Sundel's testimony covered all three of the "links" the Court of Appeals has identified as necessary for a plaintiff to prevail in a lead paint case: "(1) the link between the defendant's property and the plaintiff's exposure to lead; (2) the link between specific exposure to lead and the elevated blood lead levels[;]

and (3) the link between those blood lead levels and the injuries allegedly suffered by the plaintiff." *Rogers v. Home Equity USA, Inc.*, 453 Md. 251, 265 (2017) (quoting *Ross v. Hous. Auth. of Balt. City*, 430 Md. 648, 668 (2013)). In *Rogers*, the Court identified these links by the shorthand terms "(1) source, (2) source causation, and (3) medical causation." 453 Md. at 265. We employ this same terminology here, although we recognize that appellate decisions have not always been consistent or precise regarding the use of these terms, particularly with respect to the difference between "source" and "source causation."

A. The Court of Appeals Did Not Repudiate *Hazelwood I* in *Roy v. Dackman*.

The first case on which Ms. Hazelwood relies is *Roy v. Dackman*, 445 Md. 23 (2015). In *Roy*, the Court of Appeals decided a different challenge to Dr. Sundel's qualifications as an expert witness. Notably, the record with respect to Dr. Sundel's qualifications in *Roy* was not the same as it had been in *Hazelwood I*, a point the Court of Appeals emphasized in distinguishing the cases: "In an effort to rehabilitate Dr. Sundel in light of *Hazelwood*, Roy filed an affidavit of the doctor wherein he endeavored to respond to the specific criticisms in *Hazelwood* of his qualifications and to advance a more specific foundation than perhaps had been demonstrated in *Hazelwood* for his relevant bases to testify in Roy's case." *Id.* at 37. Based largely on that different and more specific foundation, the Court of Appeals held that the circuit court erred in excluding Dr. Sundel's testimony as to medical causation (but not as to source causation). *Id.* at 43-44.

Ms. Hazelwood makes two arguments based on *Roy*. The first follows this basic logic: (1) the Court of Appeals found that Dr. Sundel was qualified to testify as an expert as to medical causation in *Roy*; (2) Dr. Sundel was no more qualified to testify as an expert at the time his testimony was proffered in *Roy* than he was when his testimony was proffered in this case; and so (3) this Court reached the wrong result in *Hazelwood I*. This argument both misapprehends the relevant inquiry and misinterprets *Roy*.

The question for a court assessing an expert's qualifications is whether the proponent laid a sufficient foundation for determining that the expert was qualified, not whether the proponent could theoretically have done so. The world's foremost expert on childhood lead poisoning would properly be excluded from testifying if the party proffering the testimony failed to establish his or her qualifications. We concluded in *Hazelwood I* that Ms. Hazelwood failed to do just that with respect to Dr. Sundel. Not only does nothing in *Roy* contradict that conclusion, but the Court of Appeals, on no fewer than five occasions in that opinion, expressly distinguishes the record in *Roy* from the record here on that very point. *Id.* at 37 (discussing the 14-page affidavit); *id.* at 43 (observing that the information provided in *Roy* "create[d] a better foundation than was available in the record in *Hazelwood*"); *id* at 49 (noting the "material differences . . . between the records in the two cases as to [Dr. Sundel's] qualifications"); *id.* at 50 (discussing a "major difference between the factual record" in the two cases regarding "Dr. Sundel's respective preparation for rendering an opinion"); *id.* (observing that in the affidavit submitted in *Roy* but not in *Hazelwood*, "Dr. Sundel endeavored to be more specific and shore-up the supposed

deficiencies in his qualifications"). In short, while holding that the plaintiff in *Roy* had demonstrated Dr. Sundel's qualifications to be an expert, the Court of Appeals confirmed that Ms. Hazelwood had not.[6]

Ms. Hazelwood's second argument based on *Roy* is focused on that Court's criticism of one particular phrase that appears in *Hazelwood I*. Specifically, the Court of Appeals found "overly demanding" this Court's reasoning "that Dr. Sundel lacked 'specialized knowledge concerning childhood lead poisoning, and specifically, the determination of the source of a child's lead exposure and causation.'" *Id.* at 49 (quoting *Hazelwood I*, 210 Md. App. at 686). That is because "the standard set forth in Md. Rule 5-702 is not that an expert

[6] Ms. Hazelwood argues that the Court of Appeals was wrong in its determination that the record in *Roy* was substantially different from the record here. She even goes so far as to accuse the panel of this Court in *Hazelwood I* of misrepresenting the record before it regarding Dr. Sundel's qualifications and, as a result, of "lulling the Court of Appeals into believing" that the records were different. We find no support for that accusation. Moreover, we note that in his briefing before the Court of Appeals, the appellant in *Roy*, who was represented by some of the same counsel who have represented Ms. Hazelwood, repeatedly emphasized the very same distinctions between the records in the cases that Ms. Hazelwood now claims do not exist. For example, Mr. Roy's brief to the Court of Appeals emphasized the 14-page affidavit authored "in specific response to the *Hazelwood* criticisms," Brief for Petitioner, *Roy v. Dackman*, 445 Md. 23 (2015) (No. 6, Sept. Term 2015), 2015 WL 1757739, at *12, which he claimed "addressed certain factual record shortcomings that rendered [Dr. Sundel's] opinion excludable in *Hazelwood*," *id.* at *4. Mr. Roy also faulted the circuit court in his case for "fail[ing] to credit Dr. Sundel with several key, material facts . . . that did not exist in the record when Dr. Sundel's opinion on source exposure and injury was disallowed by the CSA in *Hazelwood*." *Id.* at *14. Mr. Roy even claimed outright that Dr. Sundel's "qualifications and factual bases were thus substantially different and the record was far more extensive than had been presented to the CSA in *Hazelwood*," *id.* at 13, and that Dr. Sundel's "entire factual background is different and far more extensive than existed at the time of *Hazelwood* []," *id.* at *16.

have 'specialized knowledge,'" *id.* at 49-50, but that she or he be "qualified as an expert by knowledge, skill, experience, training, or education," *id.* at 50 (quoting Rule 5-702).

In treating this criticism as a repudiation of all of *Hazelwood I*, Ms. Hazelwood again misinterprets *Roy*. There, the Court of Appeals never indicates any disagreement with our holding in *Hazelwood I*.[7] Although the Court in *Roy* criticized one particular aspect of this Court's reasoning in *Hazelwood I*, it did not in any sense repudiate its holding. It is that holding that is now the law of this case.

Furthermore, in context, the criticism that the Court of Appeals made of the use of the phrase "specialized knowledge" did not go to the substantive conclusion reached in *Hazelwood I*. The Court's criticism was that the term itself does not appear in Rule 5-702, and that the Rule provides that an expert's qualifications may come from "knowledge, skill, experience, training, or education." 445 Md. at 49-50 (quoting Rule 5-702(1)). In context, however, the use of the term "specialized knowledge" in *Hazelwood I* appears not to have been intended to limit the bases on which an expert might be qualified. Instead, the term was derived—albeit in slightly altered form—from *Radman v. Harold*, 279 Md. 167 (1977), in which the Court of Appeals stated that:

> [A] witness may be competent to express an expert opinion if he is reasonably familiar with the subject under investigation, regardless of

[7] Indeed, the Court in *Roy* twice cites *Hazelwood I* approvingly on points related to the standard for expert witness testimony. *Roy*, 445 Md. at 41 (citing *Hazelwood I* for the proposition that a doctor need not have performed the surgery in question to qualify as a medical expert); *id.* at 42 (quoting *Hazelwood I* for the proposition that an expert does not need to rely only on first-hand experience to be qualified).

> whether this *special knowledge* is based upon professional training, observation, actual experience, or any combination of these factors.

Id. at 169 (emphasis added); *see also id.* ("[T]o qualify as an expert, [the witness] should have such *special knowledge* of the subject on which he is to testify that he can give the jury assistance in solving a problem for which their equipment of average knowledge is inadequate.") (quotation omitted) (emphasis added).

As *Radman* used the phrase "special knowledge" as equivalent to being "reasonably familiar with the subject under investigation," regardless of the source of that familiarity, *id.*, our opinion in *Hazelwood I* appears to have applied the same standard, *e.g.*, 210 Md. App. at 686 (reciting the familiar standard from *Radman*, 279 Md. at 170, that an expert witness's qualifications could come from "observation or experience, standard books, . . . or any other reliable sources"). We therefore concluded that Ms. Hazelwood had not demonstrated that Dr. Sundel had any "greater basis than any person would have had to determine the nature and extent of appellee's alleged lead exposure at 4 North Stockton." *Id.* at 687.

Although *Roy* disclaimed "specialized knowledge" as a requirement for admitting an expert, it did not disavow *Radman* or its use of the term "special knowledge." To the contrary, *Roy* continued to quote *Radman* favorably for the proposition that an expert may be sufficiently qualified to testify if she or he possesses "*special and sufficient knowledge* regardless of whether such knowledge was obtained from study, observation or experience . . . ." *Roy*, 445 Md. at 42 (quoting *Radman*, 279 Md. at 171) (emphasis added). We thus

do not interpret the Court of Appeals's criticism of the use of the term "specialized knowledge" in *Hazelwood I* as a rebuke of the notion that an expert witness must bring to the table some greater knowledge or experience than an average juror would possess. Regardless, the criticism, especially in the context of the broader discussion and analysis, does not repudiate this Court's holding in *Hazelwood I*.

B. The Court of Appeals Did Not Repudiate *Hazelwood I* in *Levitas v. Christian*.

Ms. Hazelwood also argues that the Court of Appeals repudiated *Hazelwood I* in *Levitas v. Christian*, 454 Md. 233 (2017). There, as in *Roy*, the Court of Appeals overturned a circuit court's exclusion of an expert witness. For largely the same reasons discussed in connection with *Roy*, we conclude that the Court of Appeals did not repudiate *Hazelwood I* in *Levitas*.

As in *Roy*, nowhere in *Levitas* does the Court of Appeals implicitly or explicitly identify any disagreement with the holding in *Hazelwood I*. The Court of Appeals only mentioned that decision in two footnotes. In footnote 19, the Court of Appeals emphasized precisely the point we made above, which is that its decision in *Roy* "distinguished the record in [*Hazelwood I*] from the record in *Roy*." *Levitas*, 454 Md. at 252 n.19.

In footnote 15, the Court distinguished the record in *Hazelwood I* from the record before it specifically with respect to expert testimony regarding source causation. *Id.* at 247 n.15. The Court specifically highlighted a critical difference in the records regarding the information made available to the expert witnesses by plaintiffs' counsel in the two

cases. *Id.* Then, at the conclusion of the footnote, the Court stated that it had "never held that an expert witness cannot rely on information obtained from other sources," but only that an expert must have "an adequate supply of data and a reliable methodology for assessing that data. To the extent that *Hazelwood* is inconsistent with this proposition, we disagree with that aspect of its analysis." *Id.* (internal citations omitted).

This comment does not repudiate the holding in *Hazelwood I*. Instead, the Court of Appeals took issue with an aspect of the reasoning in that case that the Court interpreted as suggesting that an expert could not rely on other sources for his or her opinion about source causation. Notably, however, the decision in *Hazelwood I* also expressly acknowledged and applied the governing standard "that a witness need not be personally involved in the activity about which he or she is to testify, and that a witness may become qualified through 'observation or experience, standard books, . . . or any other reliable sources.'" *Hazelwood I*, 210 Md. App. at 686 (quoting *Radman*, 279 Md. at 170). Regardless, the Court's discussion in *Levitas* limits its disagreement to only that one "aspect of [*Hazelwood I*'s] analysis," not to any aspect of this Court's conclusions or its holding in that case.[8] *Levitas*, 454 Md. at 247 n.15.

[8] While the Court of Appeals's decision in *Levitas* reiterates its statement in *Roy* that an expert is not required to possess "specialized knowledge" or be a "specialist," it continues to treat *Radman* as controlling law, citing it for the proposition that "[a]n expert's testimony is admitted 'because it is based on his *special knowledge* derived not only from his own experience, but also from the experiments and reasoning of others, communicated by personal association or through books or other sources.'" *Levitas*, 454 Md. at 245-46 (quoting *Radman*, 279 Md. at 170) (emphasis added).

In sum, although *Roy* and *Levitas* each are critical of one aspect of this Court's reasoning in *Hazelwood I*, neither repudiates our holding that Dr. Sundel should not have been permitted to testify on the foundation established in this case. That holding thus remains the law of the case and must be followed in the proceedings on remand.

C. Neither the Court of Appeals Nor This Court Has Repudiated *Hazelwood I* in Other Cases.

Ms. Hazelwood also argues that other cases decided since *Hazelwood I* undermine its holding even if they do not repudiate it. Even if that were true, we do not see how that would alter whether the decision in *Hazelwood I* must be followed as the law of this case. Although a change in governing law or an express repudiation of an earlier decision might constitute extraordinary circumstances calling for a departure from the law of the case, the fact that an appellate court reaches a different decision in a different case based on a different record does not. None of the cases on which Ms. Hazelwood relies reject any legal propositions on which our determination in *Hazelwood I* depended or reach a different decision based on the same record. *See Rogers*, 453 Md. at 265-66, 273 (discussing how a plaintiff may establish a property as a reasonably probable source of lead exposure either by "ruling in" the property or "ruling out" other reasonably probable sources); *Rowhouses, Inc. v. Smith*, 446 Md. 611, 617, 660-61 (2016) (determining that circumstantial evidence is sufficient to find that a property contained lead-based paint and that expert testimony is not required to rule out other reasonably probable sources of lead exposure); *Ross*, 430 Md. at 669 (holding that source may be established without expert opinion testimony);

Rochkind v. Stevenson, 229 Md. App. 422, 467-70 (2016) (analyzing an expert's testimony on IQ loss, in part, by (1) specifically discussing how *Roy* distinguished the *Hazelwood I* record, and (2) determining that "[u]nlike Dr. Sundel's vague and variable IQ loss opinion in *Hazelwood*, [Ms. Stevenson's expert's] IQ loss opinion was supported by an adequate factual basis"), *rev'd on other grounds*, 454 Md. 277 (2017); and *Sugarman v. Liles*, 234 Md. App. 442, 469-70 (2017) (affirming the plaintiff's expert's use of certain epidemiological studies and medical records as a sufficient factual basis to show that lead exposure caused plaintiff's attention deficits and IQ loss), *aff'd* __ Md. __, No. 80, Sept. Term 2017, slip op. (July 31, 2018).

In conclusion, our decision in *Hazelwood I* did not preclude Ms. Hazelwood from seeking a new trial on remand. However, our holding in that opinion that Ms. Hazelwood's only causation expert should not have been permitted to testify remains the law of this case and is therefore binding on the court and the parties on remand. As a result, if Ms. Hazelwood seeks a new trial on remand, the circuit court will need to decide whether she can prevail without expert testimony as to causation. If she can, and if there are no other impediments, a new trial may be in order. If not, City Homes will be entitled to judgment.

ORDER VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE SPLIT EVENLY.