UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1867

September Term, 2015

MAURICE HAWKINS

v.

DAVID M. HARRIS, ET AL.

Meredith,
Berger,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: January 13, 2017

Following a hearing, the Circuit Court for Baltimore City granted a motion for summary judgment filed by, among others, David M. Harris and Four Partners #1, LLC, (collectively, "the appellees"), in litigation stemming from appellant Maurice Hawkins's alleged exposure to lead-based paint at 2332 Etting Street, property owned or managed by appellees. After resolution of the remaining issues in the circuit court, appellant noted this appeal and raises one question, which we have rephrased:[1]

Did the circuit court err in granting appellees' motion for summary judgment?

For the reasons that follow, we answer this question in the affirmative with respect to the negligence counts, reverse the judgment of the circuit court in part, and remand for further proceedings.

BACKGROUND

On April 16, 2014, appellant filed a complaint in the circuit court against multiple defendants, alleging injuries relating to exposure to lead-based paint at properties owned by the several defendants for the time period 1993-2003. Appellant alleged the defendants were negligent and also violated the Maryland Consumer Protection Act.

[1] Appellant's question presented, verbatim from his brief, reads:

> Whether the trial court erred in finding Appellant had not ruled out other reasonably probable lead exposure sources where the trial court either a) struck, *sua sponte*, an affidavit that only supplemented – and did not materially contradict – prior testimony, or b) improperly invaded the province of the fact-finder by judging the affidavit to be not credible?

We note, too, that this question is numbered "2" in appellant's brief, but there is no question numbered "1."

Appellant was born on December 15, 1993. Thereafter, during the relevant time periods, appellant and his mother, Cherise Hawkins ("Ms. Hawkins"), resided at the following locations, in chronological order, all in Baltimore City: 35 Catherine Street; 2571 West Fayette Street ("the West Fayette Property"); 820 Newington Avenue (" the Newington Avenue Property"); a return to the West Fayette Street Property (October 1994); 2332 Etting Street ("the Etting Street Property") (March 1995 to mid to late 1997); a return to the Newington Avenue Property (mid to late 1997); and 934 Brooks Lane (late 1997). The period of residence at the Etting Street Property, owned and/or managed by appellees, is the subject of this appeal.

On February 4, 2015, Ms. Hawkins was deposed. Appellees included portions of her deposition testimony in their motion for summary judgment. In opposition to appellees' motion for summary judgment, Ms. Hawkins included an affidavit dated July 15, 2015. On appeal, appellees argue that Ms. Hawkins, in her affidavit, contradicts her deposition testimony. Although appellees did not move to strike the affidavit, they imply that the affidavit should not be considered in addition to arguing that, even if considered, the proof is inadequate to survive summary judgment.

Ms. Hawkins testified to the following. The affidavit will be referenced when relevant. While living at 2332 Etting Street, Ms. Hawkins and appellant visited three other residences on a regular basis: 1) the home of appellant's paternal grandparents on Hillendale Road ("the Hillendale Road Property"); 2) the home of Carolyn Robinson, Ms. Hawkins's godmother, the West Fayette Street Property; and 3) the home of Ruth Payne, Ms. Hawkins's great aunt, the Newington Avenue Property. Ms. Hawkins also noted that

appellant would occasionally spend time at a neighboring house on Etting Street to play with a friend named Lequan.

In her deposition, Ms. Hawkins testified that she took appellant to the Hillendale Road Property for "[h]olidays and birthdays." In her affidavit, Ms. Hawkins stated that "[t]here was no chipping, peeling, or flaking paint in the Hillendale Rd. house."

Ms. Hawkins testified that she and appellant visited the West Fayette Street Property approximately twice a month and that there was no chipping or peeling paint at that property. In her later-filed affidavit, she again averred: "There was no chipping, peeling, or flaking paint in Carolyn Robinson's house."

Ms. Hawkins testified that she could not recall if there was any chipping or peeling paint at Lequan's house because it was "cluttered" to the point that she could not "remember what color [the] walls was [sic]."

With respect to the Newington Avenue Property, in her deposition, Ms. Hawkins noted that she and appellant visited there beginning in 1994 – shortly after appellant's birth – and continuing until 1999, with periods in 1994 and 1997 during which Ms. Hawkins and appellant resided at that property. While residing at the Etting Street Property, Ms. Hawkins testified that she and appellant visited the Newington Avenue Property "[n]ot every day[, b]ut most of the time[.]" When visiting the Newington Avenue Property during warmer weather, she and appellant would spend time outside on the front steps. During "colder weather," she and appellant would spend time in the bedrooms or dining room.

In her affidavit, Ms. Hawkins averred that during the time she and appellant resided at the Etting Street Property, they visited the Newington Avenue Property "only during fair

weather months." During those visits, she and appellant "never went inside the house . . . except when we went inside the house to use the restroom." She added that after she and appellant moved into the Newington Avenue Property in 1994, they "obviously spent our time inside" the house.

As to the condition of the Newington Avenue Property, Ms. Hawkins recalled seeing chipping paint "a little bit of everywhere" in the interior, and there was chipping paint on the exterior of the house, prompting a repainting in 1998 or 1999.

At her deposition, Ms. Hawkins testified that there was chipping paint around the inside of the front door of the Etting Street Property, and appellant "liked to play around the door" with his toy cars. She also recalled seeing chipping paint on the baseboards and windowsill in the living room, as well as the bathroom window and the upstairs hallway. Ms. Hawkins testified that appellant had paint chips underneath his fingernails and often put toy cars in his mouth.

In his opposition to appellees' motion for summary judgment, appellant included a written report from Dr. Eric D. Rubin, appellant's medical expert, in which Dr. Rubin concluded that "lead paint hazards at 2332 Etting Street, 934 Brooks Lane and 1940 Lemmon Street significantly contributed to Mr. Hawkins'[s] lead poisoning. The home at 820 Newington Street [sic] is a likely source of lead poisoning for Mr. Hawkins."

During his childhood, appellant frequently was tested for lead poisoning, and the results were as follows. Blood lead levels are indicated as micrograms per deciliter:

Date	Level
January 26, 1995	7 mcg/dl
March 7, 1996	7 mcg/dl
July 16, 1997	36 mcg/dl
August 27, 1997	29 mcg/dl
August 29, 1997	34 mcg/dl
November 12, 1997	26 mcg/dl
March 19, 1998	19 mcg/dl
September 1, 1998	19 mcg/dl
May 11, 1999	14 mcg/dl
July 14, 1999	15 mcg/dl
May 15, 2000	15 mcg/dl
May 23, 2006	4 mcg/dl

Hawkins's medical expert also noted an additional result of 32 mcg/dl, but there was no date given.

At the hearing on the motion for summary judgment, appellees argued that Ms. Hawkins's affidavit was inconsistent with her deposition testimony, observing that, in her deposition she said that, while residing at the Etting Street Property, she and appellant spent time indoors at the Newington Avenue Property but in her affidavit, she averred that they stayed outside, save for bathroom trips**.** Appellant responded that Ms. Hawkins's affidavit merely clarified her deposition testimony, and in any event, there was a dispute of material

fact as to whether the Etting Street Property was a reasonably likely source of appellant's lead exposure.

In its memorandum and order granting appellees' motion for summary judgment, the circuit court, noting that appellant had not provided direct evidence of the presence of lead-based paint at the Etting Street Property, stated that appellant had "failed to exclude other reasonably probable sources of lead-based paint exposure." The court commented on Dr. Rubin's report and Ms. Hawkins's deposition and affidavit as follows.

> In the deposition of Cherise Hawkins, Plaintiff's [Hawkins] mother, she testified that Plaintiff visited 820 Newington Avenue almost every day and stayed approximately four to five hours each time while residing on 2332 Etting Street. In an affidavit attached to Plaintiff's Response, M[s]. Hawkins testified that she saw chipping paint in house at 820 Newington, where she and Plaintiff moved at some time in 1997. In her affidavit, Ms. Hawkins stated that Plaintiff only spent time outside the house of the 820 Newington property, only in the summer months and never went inside the house except to use the bathroom. Ms. Hawkins[']s] deposition contradicts her later affidavit by acknowledging she spent time in the bedrooms and dining room of the Newington Avenue residence during the colder months during Plaintiff's residency at 2332 Etting Street.

(Internal citations omitted).

Ultimately, the circuit court concluded that the "conflicting testimony of Cherise Hawkins and the medical opinion of Dr. Rubin, fail to exclude sources of lead-based paint that may have caused Plaintiff's documented elevated blood lead levels." The circuit court granted the appellees' motion. After resolution of the remaining counts and defendants, appellant noted this timely appeal.

STANDARD OF REVIEW

This Court has commented upon the "well-established" standard of review in reviewing a grant of a motion for summary judgment as follows: "'Summary judgment is appropriate where there is no genuine dispute as to any material fact and the party in whose favor judgment is entered is entitled to judgment as a matter of law.'" *Injured Workers' Ins. Fund v. Orient Express Delivery Serv., Inc.*, 190 Md. App. 438, 450 (2010) (quoting *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 294 (2007)). *See also* Rule 2-501. The reviewing court must first determine if there is a dispute of material fact, which is "'one that will alter the outcome of the case, depending upon how the fact-finder resolves the dispute.'" *James G. Davis Constr. Corp. v. Erie Ins. Exch.*, 226 Md. App. 25, 34 (2015) (quoting *Orient Express*, 190 Md. App. at 451), *cert. denied*, 446 Md. 705 (2016). "If there is no such dispute and if the nonmoving party has 'failed to make a sufficient showing on an essential element' of its claim . . . summary judgment is then appropriate in favor of the movant." *Crystal v. Midatlantic Cardiovascular Assocs., P.A.*, 227 Md. App. 213, 223 (2016) (quoting *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. 375, 386 (2010)).

Notably, we review a decision granting a motion for summary judgment for legal correctness, and our review is *de novo*. *See Hogans v. Hogans Agency, Inc.*, 224 Md. App. 563, 567-68 (2015). Furthermore, we "'review the record in the light most favorable to the non-moving party[,] and construe any reasonable inferences that may be drawn from the well-plead facts against the moving party.'" *Rowhouses, Inc. v. Smith*, 446 Md. 611, 631 (2016) (quoting *Hamilton v. Kirson*, 439 Md. 501, 522 (2014)). "'The purpose of the summary judgment procedure is not to try the case or to decide the factual disputes, but to

decide whether there is an issue of fact, which is sufficiently material to be tried.'" *Adkins v. Peninsula Reg'l Med. Ctr.*, 224 Md. App. 115, 130 (2015) (quoting *Jones v. Mid-Atl. Funding Co.*, 362 Md. 661, 675 (2001)), *aff'd*, 448 Md. 197 (2016).

DISCUSSION

On appeal, appellant contends that the court erred in granting appellees' motion for summary judgment because he had presented sufficient circumstantial evidence to establish a "fair likelihood" that there was lead-based paint at the Etting Street Property that was a substantial cause of his injuries. He argues that his case is similar to that of the plaintiff in *Rowhouses*, *supra*, and that he presented a sufficient evidentiary record to defeat appellees' motion for summary judgment. In addition, appellant contends that the circuit court either struck Ms. Hawkins's affidavit or ruled on her credibility, both of which were inappropriate at the summary judgment stage.

Appellees maintain that the circuit court was legally correct in granting their motion for summary judgment because appellant failed to exclude the Newington Avenue Property as a probable contributor of lead at the time he resided at the Etting Street Property. Appellees point to the statements by appellant's medical expert, Dr. Rubin, and the testimony of Ms. Hawkins in support of their position**.** Appellees distinguish this case from *Rowhouses*, maintaining that appellant merely has demonstrated that the Etting Street Property is a "possible" source of lead exposure. With respect to Ms. Hawkins's affidavit, appellees contend that the circuit court neither struck it, nor made a ruling on credibility.

The Affidavit

Rule 2-501(e)(1) provides that a "party may file a motion to strike an affidavit or other statement under oath to the extent that it contradicts any prior sworn statement of the person making the affidavit or statement." "If the court finds that the affidavit or other statement under oath materially contradicts the prior sworn statement, the court shall strike the contradictory part" with certain exceptions. Rule 2-501(e)(2).

We agree with appellees that the circuit court did not strike Ms. Hawkins's affidavit. There is no docket entry or language in the court's memorandum and order to that effect.[2]

Although the circuit court did not strike Ms. Hawkins's affidavit, the Court of Appeals' discussion of stricken affidavits in *Marcantonio v. Moen*, 406 Md. 395, 409-14 (2008), is instructive. The Court noted that Rule 2-501(e) does not define "material contradiction," and the Court interpreted the phrase to mean "a factual assertion that is **significantly** opposite to the affiant's previous sworn statement so that when examined together the statements are **irreconcilable**." *Marcantonio*, 406 Md. at 409-10 (emphasis added). For example, in *Pittman v. Atlantic Realty Co.*, 359 Md. 513, 519-24 (2000), the mother of a child who suffered injuries due to lead-paint exposure testified in her deposition that she and the child resided at a particular address for two months, but in a later-submitted affidavit stated that they lived at that address for five and a half months. The Court determined that this was a material contradiction because both the "affidavit and

[2] In their briefs, the parties address whether the circuit court had the authority to strike Ms. Hawkins's affidavit, given that appellees did not file a motion to strike it**.** As the circuit court did not strike Ms. Hawkins's affidavit, we will not address the circuit court's authority, or lack thereof.

[the mother's] prior statements could not have been true. [Mother and child] could not have both lived at the subject premises for five-and-a-half months and for a maximum of two months." *Marcantonio*, 406 Md. at 410-11. If an affidavit supplements or clarifies a prior statement, however, then they are not contradictory. *See id.* at 413-14 (noting that later-submitted affidavits of medical experts supplemented deposition testimony).

In this case, the time periods involved are unclear; thus, it is possible to reconcile Ms. Hawkins's affidavit and her deposition testimony. At her deposition, Ms. Hawkins testified:

> [APPELLEES' COUNSEL]: Okay. While you were on Etting – I think [appellant] said that Newington's around the corner?
>
> [CHERISE HAWKINS]: It is.
>
> Q: Would you go visit your aunt at Newington?
>
> A: Yes.
>
> Q: And he also said that the West Fayette was around the corner.
>
> A: No.
>
> Q: No?
>
> A: No.
>
> Q: So was Newington a house you could walk to?
>
> A: Yes.
>
> Q: Is that something you would do on a daily basis?
>
> A: Not every day. But most of the time, yes.
>
> Q: Okay. You would walk over to Newington?

A: Yes.

Q: Now, so [appellant] said that they were close. But you are saying West Fayette is not close [?]

A: No. It's not walking distance.

Q: Oh, okay. And you didn't have your license at the time?

A: No.

Q: Did Bruce [Ms. Hawkins's boyfriend] have his license?

A: Yes.

Q: Did you ever go over to Carolyn Robinson's on West Fayette when you were living on Etting?

A: Yes.

Q: How often?

A: Probably twice a month.

Q: Okay. And how would you get there?

A: Either a hack or Bruce.

Q: Okay. And you said that was only about twice a month?

A: Yes.

Q: How long would you stay?

A: Probably about four, five hours.

Q: Would you ever stay the night?

A: No. I had no reason to.

Q: Okay. When you went over to Newington, how long would you stay?

A: Probably about the same amount of time, four or five hours.

Q: Okay. Would you ever stay the night?

A: No.

Q: And did you continue to visit Newington on the weekends?

A: Yes.

* * *

Q: Now, I saw in some of the records, and [appellant] told me about a picture, where your aunt's house was being renovated.

A: Um-hum.

Q: Is that –

A: Yes.

Q: Okay. So what do you remember about that?

A: That was in '99 when that happened.

Q: Okay. What happened?

A: She was getting her house redone.

Q: Okay. What was she having redone?

A: Goodness. It still look the same, so I really don't know.

Q: Did she get new windows put in?

A: No, they still look the same. I think the wallpaper was coming down.

Q: Okay.

A: And the panel was coming down.

Q: Okay.

A: I'm not sure exactly what was being done. Because it still look the same.

Q: Okay.

A: I know she got a deck put out back.

* * *

Q: Okay. Do you remember whether the windows at Newington were the original windows, like wood windows?

A: They was [sic] wood.

Q: Okay. Were the doors average doors instead of like new steel doors?

A: They was [sic] wood.

Q: Okay. Do you remember, you referenced wallpaper and panels.

Were there any areas in the house that were painted?

A: Everywhere was paint.

Q: Okay. Do you ever remember seeing anyone paint the inside of the house when you were either living there or visiting?

A: Yes.

Q: When was that?

A: Oh, wow. It was like in '97.

Q: Okay.

A: '96, '97.

Q: Was there a particular reason it was being painted?

A: They was [sic] moving bedrooms from, switching it from girl to boy.

* * *

Q: Were you actually there when the painting was being done?

A: Yeah, I stopped in. But I didn't stay right there while he was doing it.

Q: Okay.

A: But I was there.

Q: And when you were there, that would mean [appellant] and [Ms. Hawkins's daughter] were with you, right?

A: No, not all the time. Let me think.

[Ms. Hawkins's daughter] was with me. [Appellant] wasn't.

Q: Where was [appellant]?

A: I'm thinking [appellant] had went to the store with one of my brothers. Because when we went upstairs, that's when I found out he was painting.

And then we had went back downstairs and I had got paint on [the daughter]'s jacket.

Q: Okay.

A: So we left.

* * *

Q: Was there a front yard at Newington Avenue?

A: No. Just steps.

Q: Okay. So no front porch?

A: No.

Q: Was there a back yard?

A: Yes.

Q: Where was it if you were outside that you would stay?

A: Well, we will sit on the front.

Q: On the front steps?

A: Um-hum.

Q: Is that a yes?

A: I'm sorry, or on the chairs out front. Yes.

Q: Okay. Did you ever hang out in the back yard?

A: No.

Q: Was there a basement?

A: Yes.

Q: Did you ever hang out there?

A: No.

Q: When it was colder weather, where would you hang out at Newington Avenue?

A: In the bedrooms.

Q: Okay.

A: Or in the dining room.

Q: Okay. When you were living on Etting Street, did [appellant] ever stay the night at any other house?

A: No.

Q: He would just visit Newington regularly?

A: Yes.

* * *

> Q: No. So you would just sit on the front and hang out at Newington?
>
> A: Yes.

In her later-submitted affidavit, Ms. Hawkins averred:

> 2. I lived at 2332 Etting St. from 1995 to 1997, with my son, Maurice Hawkins. During those years, Maurice and I visited 820 Newington Ave. not every day but most of the time. When I visited Newington Ave., it was only during fair weather months. Maurice, and friends and relatives his age, would play outside Newington Ave. during this time. During these visits, we never went inside the house on Newington, not even on the front steps, except when we went inside the house to use the restroom.
>
> * * *
>
> 6. As opposed to when Maurice and I were living at 2332 Etting St., and visiting, but not spending time inside, 820 Newington Ave., there came a time in 1997 when we moved in to 820 Newington Ave. During this time, Maurice and I obviously spent our time inside 820 Newington Ave. When I lived at 820 Newington Ave., I saw chipping paint in the house.

In the deposition, appellees' question and the response concerning visiting the Newington Avenue Property during "colder weather," the time period is unclear**.** Immediately prior to this question, appellees' counsel and Ms. Hawkins discussed redecorating projects completed in 1999 and 1996 or 1997. Later in the deposition, when appellees' counsel asked about appellant riding a bicycle, Ms. Hawkins stated that appellant started riding a bicycle when they moved into the Newington Avenue Property. Prior to that, when Ms. Hawkins and appellant visited the Newington Avenue Property while they were residing at the Etting Street Property, they would, "just sit on the front and hang out at Newington." Thus, it is possible to reconcile the deposition testimony and the

affidavit because it is unclear whether and to what extent the deposition testimony refers to the time during which appellant and Ms. Hawkins resided at the Etting Street Property as distinguished from the time they resided at the Newington Avenue Property.

Summary Judgment

Appellees maintain that even if we accept Ms. Hawkins's affidavit, they are still entitled to judgment as a matter of law because appellant failed to exclude the Newington Avenue Property as a probable source of lead exposure at the time he resided at the Etting Street Property.

This Court has noted that a plaintiff alleging negligence must establish: "'1) that the defendant was under a duty to protect the plaintiff from injury, 2) that the defendant breached that duty, 3) that the plaintiff suffered actual injury or loss, and 4) that the loss or injury proximately resulted from the defendant's breach of the duty.'" *Rogers v. Home Equity USA, Inc.*, 228 Md. App. 620, 639 (2016) (quoting *Rowhouses*, 446 Md. at 631). To establish causation in a lead paint case, "'the plaintiff must tender facts admissible in evidence that, if believed, establish two separate inferences: (1) that the property contained lead-based paint, and (2) that the lead-based paint at the subject property was a substantial contributor to the victim's exposure to lead.'" *Id.* at 640-41 (quoting *Hamilton*, 439 Md. at 529-30). Causation in a lead paint case is best thought of as a "'series of links: (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.'" *Id.* at 641 (quoting *Hamilton*, 439 Md. at 529).

"A plaintiff may show causation through either direct or circumstantial evidence." *Id.* (citing *Hamilton*, 439 Md. at 527). In *Rowhouses*, the Court of Appeals discussed the use of circumstantial evidence in lead paint cases from *Dow v. L&R Properties, Inc.*, 144 Md. App. 67 (2002), to *Hamilton, supra*. *Rowhouses*, 446 Md. at 633-53. The Court noted that the key inquiry in examining whether a plaintiff has met the causation test in a lead paint case "'is whether the particular circumstantial evidence permits an inference or inferences of the desired ultimate fact or facts as a reasonable likelihood or probability, and not a mere possibility.'" *Id.* at 652 (quoting *Hamilton*, 439 Md. at 542).

Importantly, the Court held that plaintiffs may use circumstantial evidence to not only establish that a certain property *was* a reasonably probable source of lead exposure, but also to demonstrate that a certain property *was not* a reasonably probable source of lead exposure. *Id.* at 660 ("[J]ust as circumstantial evidence may be used to rule in the subject property as a reasonable probable source of lead exposure, circumstantial evidence may also be used to rule out another property as a reasonable probable source of lead exposure."). "[W]e conclude that a plaintiff need only produce circumstantial evidence that, if believed, would rule out other reasonably probable sources of lead." *Id.* at 661.

For example, in *Rowhouses*, the plaintiff, Smith, resided and/or visited three properties that were all possible sources of her lead exposure in the years 1992 or 1993. *Id.* at 663. As to one property where Smith lived from birth until early 1992, Smith's mother testified that Smith was not crawling or walking at the time, and she did not come into contact with lead paint hazards while living there. *Id.* at 664. Moreover, Smith's mother stated that the property was in good condition, and Smith's first elevated blood lead

level test was conducted at least three months after Smith had moved from that property. *Id.* As to a property that Smith visited every other week, Smith's mother testified that there was no chipping or peeling paint there, and Smith spent a very small amount of time at the property. *Id.* at 664-65. Concerning environmental and other sources of lead exposure, Smith's mother stated that she did not take Smith to any playgrounds or parks, and she averred that Smith was not exposed to other possible sources of lead, such as old battery casings or lead figures. *Id.* at 665. Accordingly, the Court concluded that Smith had produced sufficient circumstantial evidence that, if believed, *ruled out* the other two properties and the environmental sources as reasonably probable sources of lead exposure. *Id.*

Furthermore, the Court determined that Smith had produced sufficient circumstantial evidence that *ruled in* the subject property. Smith demonstrated through her mother's deposition and affidavit that: 1) she resided at the subject property from early 1992 to early 1993; 2) that she spent "almost all of her time at" the subject property; 3) that there was chipping and peeling paint at the subject property; 4) that there was dust at the subject property; 5) that Smith started walking at the subject property; 6) that Smith played near areas where there was deteriorated paint and that Smith had hand-to-mouth activity; 7) that Smith was first tested for blood lead levels while residing at the subject property, which indicated an elevated blood lead level; and 8) that the subject property was built in the early 1900s. *Id.* at 666-67. Indeed, the Court concluded that Smith "demonstrated that [the subject property] contained lead-based paint while she resided there, and, given the circumstantial evidence that rules out other reasonably probable sources of lead, that the

[subject property] was the *only* reasonable probable source of Smith's lead exposure." *Id.* at 667 (emphasis added).

In contrast, in *Rogers*, the claimant failed to produce sufficient circumstantial evidence to demonstrate that the subject property was a reasonably probable source of his lead exposure.[3] 228 Md. App. at 644-45. We declined to decide whether the claimant had demonstrated that the subject property contained lead-based paint in 1996-1997 because, even if he made that showing, "we conclude that the circuit court properly granted summary judgment on the ground that [the claimant] has not adequately demonstrated 'that the [subject property] was the source of both lead exposure and the elevated levels measured in 1997.'" *Id.* at 644. The claimant demonstrated that prior to moving in to the subject property, he had an elevated blood lead level. *Id.* at 644-45. He argued that because of his continued exposure to lead-based paint at the subject property, his blood lead levels increased while residing at the subject property. *Id.* at 644.

We noted that the claimant's medical expert identified the property that he lived in prior to his residency at the subject property as a source of lead exposure. *Id.* at 645. The expert, however, stated that because no blood tests were conducted in the period immediately prior to the claimant's residency at the subject property, it was possible that a blood lead level recorded some three months after moving in reflected a decrease in blood

[3] This Court also rejected the claimant's contention that he had produced direct evidence of lead paint at the subject property, based on a lead abatement card issued by the Baltimore City Health Department in 1976. 228 Md. App. at 624, 642-43.

lead level from what it was. *Id.* We concluded that the record did not reflect an increase in his blood lead levels at the subject property. *Id.*

In this case, we are persuaded that, for purposes of summary judgment, appellant produced sufficient circumstantial evidence to rule out as reasonably probable sources of lead exposure the Hillendale Property, the West Fayette Property, Lequan's house, and environmental factors. Ms. Hawkins testified that she took appellant to the Hillendale Property on "[h]olidays and birthdays." Furthermore, in her affidavit, she stated that there was no paint deterioration at this property. As to the West Fayette Property, Ms. Hawkins testified that there was no chipping paint**.** Addressing Lequan's house, Ms. Hawkins stated that the house was "cluttered," with "stuff everywhere," to the point that she could not recall what color the walls were. As to environmental factors, Ms. Hawkins testified that she never took appellant to a playground.

Regarding the Newington Avenue Property, Ms. Hawkins stated that she and appellant resided at this property shortly after appellant's birth in 1994 and again in 1997, after moving out of the Etting Street Property. As to the first period of residency, they lived there for a brief period of time, and appellant was somewhat mobile, taking steps when they moved to the West Fayette Property. With respect to visits to that property while residing at the Etting Street Property, Ms. Hawkins stated that they did not spend time indoors, save for brief restroom trips. Appellees point out that Ms. Hawkins described deteriorating paint on the exterior of the Newington Avenue Property, such that it was repainted in 1999. Ms. Hawkins did not state, however, that appellant played around the deteriorating exterior areas, nor did she describe the exterior paint as chipping in the period

from 1995 to 1997. Although Dr. Rubin concluded that the Newington Avenue Property was a "likely source" of lead poisoning, he also noted that appellant's blood lead levels "rose precipitously" after moving into the Etting Street Property.

For the period from 1995 to 1997, appellant produced sufficient circumstantial evidence that the Newington Avenue Property was not a reasonably probable source of his lead exposure.

As to the Etting Street Property, appellant produced sufficient circumstantial evidence that, if believed, it was a reasonably probable source of his lead exposure from 1995 to 1997. Ms. Hawkins testified that the Etting Street Property contained deteriorated paint, and she observed appellant playing near those areas. She testified that she saw paint chips underneath appellant's fingernails and saw him put toy cars in his mouth after playing with them in paint-damaged areas. Furthermore, appellant's blood test results reflect a spike after a continued period of residency at the Etting Street Property. Appellant's blood lead levels hovered at 7 mcg/dl until the July 16, 1997 test reflected a blood lead level of 36 mcg/dl. Dr. Rubin also noted a Baltimore City Health Department report indicating that there was deteriorated paint when appellant lived at the Etting Street Property, and that the house was constructed in 1920.

We conclude that the court erred in granting appellees' motion for summary judgment with respect to the negligence counts. Appellant presents no argument in support

of the Consumer Protection Act counts. Thus, we affirm the judgment with respect to those counts.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED IN PART AND AFFIRMED IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.