Circuit Court for Anne Arundel County
Case No. C-02-CV-21-000294

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 234

September Term, 2023

JOSEPH SCHMITT, ET AL.

v.

USAA GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY

Nazarian,
Reed,
Shaw,

JJ.

Opinion by Reed, J.

Filed: October 29, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This *pro se* appeal involves an insurance coverage dispute between homeowners, Joseph and Brandi Schmitt (collectively, "appellants"), and their insurance carrier, USAA Garrison Property and Casualty Insurance Company ("appellee"). The dispute arose after a windstorm struck Anne Arundel County on March 2, 2018, and damaged appellants' house. On March 5th, appellants reported the damage to appellee, which in turn opened a claim. In a complaint filed in the Circuit Court for Anne Arundel County on October 14, 2019, however, appellants alleged that appellee breached the parties' insurance contract "by refusing or failing to pay for the losses" they sustained as a result of the storm.

On March 2, 2021, appellants filed a separate complaint against appellee, asserting a new cause of action. In that complaint, appellants claimed that appellee defrauded them by, *inter alia*, making "several charges/payouts . . . to third part[ies] . . . which were unrelated to [their insurance] claim" and executing unauthorized deposits into and withdrawals from their personal bank account. On motion by appellee, the circuit court subsequently consolidated the breach of contract and fraud cases.

A five-day jury trial commenced on February 28, 2023. After appellants presented their case-in-chief, appellee moved for judgment on the fraud count and the issue of punitive damages, which the court granted. At the close of the case, the court submitted the remaining breach of contract claim to the jury. After deliberating, the jury found in favor of appellants and awarded them damages in the amount of $48,680.

Dissatisfied with the jury's award, appellants moved for a new trial as to damages on March 18, 2023. While that post-judgment motion was pending, appellants noted the

present appeal.[1] In their informal brief, appellants present nine questions for our review, which we have rephrased and reordered as follows:[2]

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[1] The court ultimately denied appellants' motion for a new trial in an order dated April 17, 2023. Although appellants did not note another appeal after the court denied the motion, their notice of appeal is nevertheless timely as to that denial pursuant to Maryland Rule 8-202, which provides, in relevant part: "If a notice of appeal is filed and thereafter a party files a timely motion pursuant to Rule . . . 2-533 . . . , the notice of appeal shall be treated as filed on the same day as, but after, the entry of . . . an order disposing of it." Md. Rule 8-202(c).

[2] In their informal brief, appellants articulated the issues as follows:

1. Did the court err[] in rushing the trial, and violating [appellants'] constitutional rights?

2. Did the court err[] in denying [a] request for [a] new trial with reserved issues not being presented to the jury?

3. Did the court err[] in requesting joint exhibits?

4. Did the court err[] in consolidating the fraud and breach of contract [cases]?

5. Did the court err[] in not allowing evidence into trial when documents had previously been filed and [were] apart [sic] of the defendant's documents within the claim? Did the court err[] in not allowing special circumstances of deceased individual[']s documents when coming out of a national pandemic that caused a multitude of deaths?

6. Did the court err[] in granting summary [j]udgment on July 11, 2022?

7. Did the court err[] in the verdict and jury instructions, and reserved issues?

8. Did the court err[] in failing to perform the Daubert test on experts?

9. Is [sic] there so many different issues, and tremendous amount of new discovery withheld arising from the case that leaves it difficult for

(continued . . .)

1. Did the court abuse its discretion in consolidating the breach of contract and fraud cases or by limiting the scope of discovery?

2. Did the court err in granting partial summary judgment in favor of appellee?

3. Did the court abuse its discretion by "rushing the trial"?

4. Did the court commit reversible error by "requesting" that the parties submit joint exhibits?

5. Did the court abuse its discretion in allowing a general insurance adjustor called by appellee to testify as an expert witness?

6. Did the court err in excluding as inadmissible hearsay certain "vendor documentation" and written statements prepared by two deceased witnesses?

7. Did the court err when instructing the jury on damages or issuing the verdict sheet?

8. Did the court abuse its discretion in denying appellants' motion for a new trial on the issue of damages?

9. Did appellee's alleged misconduct below unfairly prejudice appellants at trial and on appeal?

For the reasons that follow, we will affirm the judgment of the circuit court.[3]

> appellants to address/brief all the issues, therefore prejudicing the [a]ppellants['] constitutional rights and other rights afforded to them by law?

[3] Because the parties are familiar with the record and in the interest of avoiding repetition, we will forgo a traditional recitation of the underlying facts and procedural history and instead incorporate them into our discussion of the issues.

DISCUSSION

I.

Appellants contend that the court erred both by consolidating the breach of contract and fraud cases and by limiting discovery on the fraud claim to (i) unauthorized bank transactions appellee allegedly made and (ii) an automobile insurance claim involving appellants' son. Appellants argue that by consolidating the cases and limiting discovery, the court prevented them from obtaining otherwise discoverable material necessary "to prove their case of fraud on the home issues." Appellee responds that because "[d]iscovery had been completed in the breach of contract action, . . . it was proper to limit discovery to only those new issues raised in the fraud complaint."

Appellants also assert that the court erred in vacating an order of default entered against appellee in the fraud case. According to appellants, in its motion to vacate the order, appellee attributed the default to its having been "unaware of [the] fraud case[.]" That explanation, appellants argue, is belied by the fact that appellee moved to consolidate the breach of contract and fraud cases "almost 30 days prior" to the filing of their request for a default order.

Standard of Review

Maryland Rule 2-503(a) governs the consolidation of civil actions and provides, in pertinent part: "When actions involve a common question of law or fact or a common subject matter, the court, on motion or on its own initiative, may order . . . consolidation of any or all of the claims, issues, or actions." Md. Rule 2-503(a). "A trial court's ruling on a

motion for consolidation is a ruling in respect to a procedural issue," and as such is "'given great deference.'" *Jenkins v. City of Coll. Park*, 379 Md. 142, 164 (2003) (quoting *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443 (2002)). Accordingly, "'only upon a clear abuse of discretion will a trial court's rulings in this arena be overturned.'" *Id.* (quoting *Schmerling*, 368 Md. at 444). A court abuses its discretion "where no reasonable person would take the view adopted by the trial court, when the court acts without reference to any guiding rules or principles, or when the court's ruling is clearly against the logic and effect of facts and inferences before the court." *State v. Alexander*, 467 Md. 600, 620 (2020) (cleaned up).

In addition to allowing circuit courts to consolidate "claims, issues, or actions[,]" Rule 2-503(a) authorizes them to "enter any order regulating the proceeding, including the filing and serving of papers, that will tend to avoid unnecessary costs or delay." Md. Rule 2-503(a). This Court holds that this authority includes the issuance of orders that impose reasonable restrictions on discovery and thereby curtail the expense and other burdens associated therewith. Maryland Rule 2-402(b), in turn, expressly requires a trial court to limit discovery if it determines that:

> (A) *the discovery sought is unreasonably cumulative or duplicative* or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the burden or cost of the proposed discovery outweighs its likely benefit, taking into account the complexity of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

Md. Rule 2-402(b)(1) (emphasis added). The nature and extent of such limitations are left to the sound discretion of the trial court and will not be disturbed on appeal absent a clear abuse thereof. *See Barrie Sch. v. Patch*, 401 Md. 497, 518 (2007) ("[T]rial judges are vested with broad discretion with respect to discovery matters, and . . . discovery rulings will not be disturbed in the absence of an abuse of discretion.").

Background

Appellants filed their original complaint in the fraud case on March 2, 2021—nearly six months after the discovery deadline in the breach of contract case had passed.[4] Although it failed to timely answer the fraud complaint, appellee moved to consolidate the breach of contract and fraud cases on July 15, 2021. In its motion, appellee argued that the allegations set forth in the fraud complaint arose "from the same set of operative facts that [we]re the subject of" the breach of contract case, which was set to proceed to trial on August 17, 2021. Appellee also accused appellants of attempting to make "an end-run around" the elapsed discovery deadline in the breach of contract case by filing a new complaint rather than amending their existing one to include a fraud claim.

On July 26, 2021, appellants filed an amended complaint in the fraud case, adding the following allegations:

> [Appellee] has . . . made several unauthorized deposits and withdraws into [appellants'] personal bank account, particularly deposits and withdraws made on March 2, 2021.
>
> * * *

[4] On March 6, 2020, the court entered a scheduling order in the breach of contract case, which established September 8, 2020, as the discovery deadline.

> Appellee[] still has not provided [appellants] with a certified copy of the insurance policy that [was] in existence at the time of the loss.
>
> [A]fter the vehicle incident, which was properly reported to the [appellee], [appellee] failed to notify [appellants] of a settlement in the matter, and nulled and voided the claim when [appellants] attempted to inquire.

On July 31, 2021, five days after filing their amended complaint, appellants submitted an opposition to appellee's motion to consolidate. Therein, appellants conceded that their "initial [f]raud [c]omplaint [arose] from the same set of operative facts that [we]re set for trial on August 17-18, 2021[.]" Appellants maintained, however, that their "amended complaint contain[ed] additional facts that [we]re not the subject of this pending civil matter[,]" including "allegations of fraudulent acts by [appellee] in a vehicle claim involving [their] child" and "the cancellation of [their] home insurance policy in September of 2019." Accordingly, appellants asked the court to deny the motion to consolidate or, in the alternative, to postpone trial. The court elected the latter course of action, and, in an order entered on August 13, 2021, consolidated the two cases and "cancel[led]" the breach of contract trial set for August 17th-18th.

On August 15, 2021, appellants requested an order of default against appellee "for failure to file a responsive pleading to" their original fraud complaint. The court granted appellants' request in an order entered on August 18th. Later that same day, however, appellee filed a motion to vacate the default order, as well as answers to the original and amended fraud complaints. The court granted appellee's motion and vacated the order of default the following day.

On August 16, 2021, while the request for default was still pending, appellants filed a "Motion to Revise Order to Consolidate or in the Alternative Motion for Separate Trials." Therein, appellants persisted in asserting that "not all issues in the . . . [f]raud matter [we]re related to the [b]reach of [c]ontract" claim. Specifically, appellants cited allegations, purportedly raised in their amended complaint, that appellee made unauthorized bank transactions and attempted to increase appellants' automobile insurance premiums following the above-referenced car accident despite the opposing party declining to seek "reimbursement for damages to [his] car."[5]

Appellee filed an opposition to appellants' motion on August 18, 2021, wherein it argued that appellants' "additional allegations against [it] [would] not add any significant additional time to that expected to try issues of breach of contract."[6] One week later, appellee moved to limit any further discovery to the alleged unauthorized bank transactions and the automobile insurance claim. In support of that motion, appellee argued that all other issues raised in appellants' amended fraud complaint had already been the subject of discovery in the breach of contract case. In an order dated September 1, 2021, the court denied appellants' motion to revise the consolidation order and mandated "that discovery of issues related to alleged unauthorized bank transactions and auto claim handling by [appellee] involving [appellants'] son only . . . proceed under [the consolidated case]."

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[5] Appellants' amended complaint does not appear to have included this latter allegation.

[6] Appellee elaborated upon this assertion in an amended opposition filed on August 19th.

Analysis

Here, the court acted well within its discretion by consolidating the breach of contract and fraud cases. As appellants themselves acknowledged in their opposition to appellee's motion to consolidate, the allegations in their original fraud complaint arose from the same set of operative facts as did the breach of contract case. It is of no moment that appellants amended their fraud complaint to allege additional facts ostensibly unrelated to the breach of contract claim.[7] Notwithstanding these additional allegations, the two cases were ripe for consolidation because they continued to involve common questions of fact. A party to two cases cannot defeat a motion to consolidate merely by injecting new allegations into one but not the other.

We are also unpersuaded by appellants' assertion that the court abused its discretion by limiting the permissible scope of discovery for the fraud claim. The court afforded appellants ample opportunity to "obtain discovery regarding any matter . . . relevant to the subject matter involved in the [breach of contract] action[.]" Md. Rule 2-402(a). Given the considerable overlap in subject matter between the breach of contract and fraud cases, moreover, it stands to reason that discovery in the latter action would have been largely duplicative of that sought in the former. By tailoring discovery in the fraud suit to the new issues raised in appellants' corresponding amended complaint (*i.e.*, appellee's alleged unauthorized bank transactions and the automobile insurance claim), the court properly

[7] It is noteworthy that appellants filed the amended complaint a mere eleven days after appellee moved to consolidate the cases and only five days before appellants submitted their opposition thereto.

prevented "unreasonably cumulative or duplicative" discovery and avoided the needless costs, delays, and other burdens associated therewith. Md. Rule 2-402(b)(1).

We turn now to appellants' sub-contention that the court erred in vacating the order of default against appellee. "Trial courts have broad discretion to determine whether to grant or deny a motion to vacate an order of default." *Att'y Grievance Comm'n v. Alston*, 428 Md. 650, 673 (2012) (quotation marks and citation omitted). "Maryland courts ordinarily exercise [that] discretion in favor of a defaulting party if the party establishes that there is a meritorious defense and shows that its fault was excusable." *Holly Hall Publ'ns, Inc. v. Cnty. Banking & Tr. Co.*, 147 Md. App. 251, 263, *cert. denied*, 371 Md. 614 (2002); *see also* Md. Rule 2-613(e) ("If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action and that it is equitable to excuse the failure to plead, the court *shall* vacate the order." (emphasis added)).

In its motion to vacate the default order, appellee did not claim that it "was unaware of [the] fraud case," as appellants suggest. It merely noted that although they "communicated regularly," opposing counsel had not informed appellee's attorney that she had filed appellants' fraud complaint. In fact, appellee's attorney acknowledged that he had, in fact, received that complaint. Counsel explained, however, that he "believed that no service of process had occurred" because the docket entries did not reflect that an affidavit of service for the complaint had ever been filed, as is required by Maryland Rule

2-126.[8] Appellee's counsel further attested that he filed the motion to consolidate on July 16, 2021, "planned to file an [a]nswer once [the cases were] consolidated[,]" and did so on August 18, 2021—five days after the court consolidated the cases. We find no fault in the court's discretionary determination that appellee's explanation was sufficient to excuse its failure to timely plead. *See Holly Hall Publ'ns, Inc.*, 147 Md. App. at 267 (holding that the court abused its discretion in declining to vacate an order of default where the defaulting parties explained "that counsel prepared responsive pleadings but 'inadvertently' failed to file them").

II.

Appellants also challenge an award of partial summary judgment entered against them in the fraud claim on the "vehicle . . . and banking issues[,]" as well as whether appellee provided them with a certified copy of the proper insurance policy.[9] From what

[8] Maryland Rule 2-126 provides, in relevant part: "An individual making service of process by delivery or mailing shall file proof of the service with the court promptly and in any event within the time during which the person served must respond to the process." Md. Rule 2-126(a).

[9] In support of this appellate challenge and intermittently throughout their brief, appellants cite and rely upon "newly discovered" evidence that was never presented to the circuit court. It is not, however, the role of an appellate court to consider new evidence or issues that were not presented below. *See* Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). Because the documents in question were never before the trial court, they are not included in the record and therefore do not exist for purposes of appellate review. *See, e.g., Burke v. Burke*, 204 Md. 637, 646 (1954) ("We have no power to inspect documents or consider evidence which was not offered below[.]"); *Cochran v. Griffith Energy Serv., Inc.*, 191 Md. App. 625, 663 ("[A]n appellate

(continued . . .)

we can glean from their brief, appellants seem to argue that the court erred in finding no genuine issue of material fact as to these issues.

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court must confine its review to the evidence actually before the trial court when it reached its decision."), *cert. denied*, 415 Md. 115 (2010); *Douglas v. First Sec. Federal Sav. Bank, Inc.*, 101 Md. App. 170, 177 (1994) ("[W]e have no power to consider documents not considered by the trial court in reaching its decision when we review its decision."); *Young v. Cities Serv. Oil Co.*, 33 Md. App. 315, 317 n.3 (1976) (declining to consider a letter printed in an appendix to appellant's brief because the record did "not reflect that it was entered into evidence").

Appellants also complain that the court "did not gran[t] summary judgment on the issue of USAA and Garrison and believed that should be left up to the jury." Although it is not entirely clear from their brief, appellants seem to be referring to whether "USAA" and appellee are the same or different entities, as appellee raised this issue in a memorandum in support of its motion for summary judgment, arguing:

> [Appellants'] claims concerning the unauthorized transactions on March 2, 2021[,] are directed against "USAA" and not Garrison, which is evident given communications and actions ascribed only to "USAA" by [appellants] under oath and not Garrison. Furthermore, the bank statement produced by [appellants] references USAA only and not Garrison.
>
> The attached [a]ffidavit from Garrison shows that USAA and Garrison are two separate and distinct entities. Garrison is in the business of property and casualty insurance and performed no bank-related withdrawal and reversal transactions involving any personal bank information for [appellants]. USAA is a non-party to this civil suit.

Appellants responded to this argument during the motions hearing, claiming that "from the very first filing of this case, this has included USAA and Garrison, hasn't [sic] been one or the other." We need not—and decline to—address this issue, however, as it was not a basis upon which the court relied in ruling on the parties' respective summary judgment motions. *See Halliday v. Sturm, Ruger & Co., Inc.*, 138 Md. App. 136, 172 n.10 (2001) ("Although the parties have briefed this issue extensively, we do not address it because the trial court's grant of summary judgment was not based thereon."), *aff'd*, 368 Md. 186 (2002).

Standard of Review

Maryland Rule 2-501 governs summary judgment and provides, in pertinent part: "The court shall enter judgment in favor of . . . the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). When reviewing the entry of summary judgment, "we first determine whether a dispute of material fact exists, and if not, only then will we proceed to determine whether the movant is entitled to judgment as a matter of law." *Petty v. Mayor & City Council of Balt. City*, 232 Md. App. 116, 121 (2017). "For the purposes of summary judgment, a material fact is a fact the resolution of which will somehow affect the outcome of the case." *Romeka v. RadAmerica II, LLC*, 485 Md. 307, 330 (2023) (quotation marks and citation omitted).

Whether a trial court properly granted a motion for summary judgment is a question of law, which we review *de novo*. *CX Reinsurance Co. Ltd. v. Johnson*, 481 Md. 472, 484 (2022). "In conducting this *de novo* review, . . . we ordinarily are limited to considering the grounds relied upon by the circuit court[.]" *Asmussen v. CSX Transp., Inc.*, 247 Md. App. 529, 558-59 (2020). Accordingly, "[w]e look only to the evidence submitted in opposition to, and in support of, the motion for summary judgment[.]" *Coit v. Nappi*, 248 Md. App. 44, 51 (2020) (quotation marks and citation omitted). We view such evidence and any reasonable inferences drawn therefrom in the light most favorable to the non-moving party. *See Jones v. Mid-Atl. Funding Co.*, 362 Md. 661, 676 (2001).

The moving party bears the initial burden of "identify[ing] portions of the record that demonstrate absence of a genuine issue of material fact." *Nerenberg v. RICA of S. Md.*, 131 Md. App. 646, 660, *cert. denied*, 360 Md. 275 (2000). Once the movant has established a *prima facia* case for summary judgment, however, the burden shifts to the non-moving party to "show that there is a genuine dispute as to a material fact by proffering facts which would be admissible in evidence." *Hamilton v. Kirson*, 439 Md. 501, 522 (2014). "[G]eneral allegations which do not show facts in detail and with precision are insufficient" to satisfy that shifted burden. *Rogers v. Home Equity USA, Inc.*, 453 Md. 251, 263 (2017) (quotation marks and citation omitted). Rather, in responding to a motion for summary judgment, an opposing party "shall . . . identify with particularity each material fact as to which it is contended that there is a genuine dispute[.]" Md. Rule 2-501(b). "[A]s to each such fact," an opponent must also identify and produce "the relevant portion of the specific document, discovery response, transcript of testimony . . . , or other statement . . . that demonstrates the dispute." *Id.* Such supporting attestations should be made "under oath, based on the personal knowledge of the one swearing out an affidavit, giving a deposition, or answering interrogatories." *Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 179 (emphasis, quotation marks, and citation omitted), *cert. denied*, 444 Md. 641 (2015).

Background

On March 2, 2022, appellee filed a motion for partial summary judgment, in which it argued:

> After the close of discovery on the [a]mended [c]omplaint, there is no evidence sufficient to establish the existence of elements essential to [appellants'] cause of action in fraud based on:
>
> 1) unauthorized deposits and withdrawals by non-party USAA on March 2[,] 2021[,] because there is no material dispute that Garrison did not initiate any of the alleged banking transactions and [appellants] suffered "no specific damages since the transaction was reversed";[10] and
>
> 2) failure to notify [appellants] of the details of a settlement of a third party auto claim arising from the March 7, 2020[,] accident because there is no material dispute that "[appellants] were informed that the auto claim was settled" and per the auto policy [appellee] controls all aspects of third party claim settlement with no contractual duty to inform [appellants] of the details of a third party claim settlement; and
>
> 3) there is no material dispute that a certified copy [of appellants' insurance policy] was produced prior [to] the filing of the [a]mended [c]omplaint.
>
> There being no disputes of material fact and no evidence sufficient to establish the existence of elements essential to [appellants'] cause of action in fraud, [appellee] is entitled to partial summary judgment as a matter of law[.]

Appellants filed an opposition to appellee's summary judgment motion on March 21, 2022. With respect to the alleged unauthorized bank transactions, appellants summarily asserted that they "were damaged by the unauthorized transactions to their bank accounts and the extent of the damage . . . is currently disputed by the parties." As to the settlement of the automobile insurance claim, they claimed: "[Appellee] failed to properly investigate

[10] In an affidavit filed in support of appellee's summary judgment motion, its claims operation manager averred that appellee is, in fact, "a separate and independent business entity from United Services Automobile Association (USAA)." The affiant further attested that appellee "did not initiate or perform any of the six (6) bank transactions identified by [appellants.]"

an auto accident claim by [appellants], failed to notify [appellants] of changes to the auto accident claim, and settled the matter without informing [appellants] of the settlement details, while damaging [appellants'] auto insurance record[.]"

The court held a hearing on appellee's motion on July 11th. At that hearing, the court asked appellants to identify the false representations appellee allegedly made with respect to the above-challenged bases for their fraud claim. As to the allegedly unauthorized bank deposits and withdrawals, appellants answered that "USAA" deceitfully denied making the transactions during a telephone conversation with them. Appellants conceded, however, that they did not raise appellee's denial in their amended complaint and that the alleged conversation had not been recorded or otherwise memorialized. With respect to the automobile insurance claim, appellants identified appellee's misrepresentation as its alleged failure to notify them of the terms of a settlement before it was finalized. Appellants admitted, however, that their insurance policy did not require appellee to provide them with any such notice.[11] Finally, although appellants acknowledged that they had received a certified copy of their insurance policy from appellee, they claimed that it bore a different date from that on an *uncertified* copy of their policy they obtained in "a[] [Maryland Insurance Administration] case against USAA." For reasons we will discuss below, the court rejected appellants' arguments and granted partial summary judgment in appellee's favor.

[11] Appellants also admitted that appellee advised them of the settlement after it was reached.

Analysis

In announcing its rulings from the bench, the court first addressed the allegedly unauthorized bank transactions. At the outset, it acknowledged appellants' argument that appellee had misled them during "a conversation that . . . Ms. Schmitt[] had with . . . some person at USAA." The court noted, however, that neither party knew the name of that individual and that the "conversation, ostensibly, was not recorded[] and, therefore, . . . could not have been produced to [appellee] in discovery." The court found no genuine issue of material fact as to the alleged discussion, reasoning: "There's no way . . . a fact finder could reconcile a dispute . . . in favor of either side based on the paucity of evidence as it pertains to that supposed conversation."

We find no fault with the court's entry of summary judgment on the bank transactions issue. Appellants neither proffered nor presented any evidence of the alleged telephone conversation between Ms. Schmitt and "USAA." The court was, therefore, left with only appellants' assertion that a discussion took place during which the latter denied making the bank transactions at issue. Without more, that bald allegation was insufficient to generate a genuine dispute of material fact. *See Fox v. Fidelity First Home Mortg. Co.*, 223 Md. App. 492, 518 ("Bald, unsupported statements . . . do not generate a genuine dispute of material fact, and therefore, they cannot defeat a motion for summary judgment." (quotation marks and citation omitted)), *cert. denied*, 445 Md. 20 (2015). As this was the sole material misrepresentation that appellants alleged in relation to the bank transactions, appellants could not have prevailed in a fraud action arising therefrom. *See Lapides v.*

Trabbic, 134 Md. App. 51, 67 (2000) (enumerating the elements of fraud, including that "a material representation of a party was false" (quotation marks and citation omitted)). Accordingly, appellee was entitled to judgment as a matter of law on this issue.

After granting summary judgment on the bank transactions issue, the court turned to appellants' allegation that appellee had not afforded them advance notice of the automobile accident settlement. It found that appellee "had no contractual obligation to report the settlement in the manner . . . described in the amended complaint[.]" The court therefore concluded that appellants had not raised a genuine issue of material fact as to the settlement which "would give rise to a cause of action sounding in fraud."

Again, we perceive no error. The record does not reflect appellants ever having accused appellee of misrepresenting the terms of the automobile insurance settlement. Appellants conceded, moreover, that appellee advised them of the settlement once it was reached. Their sole complaint was that appellee did not consult them during settlement negotiations. Appellants expressly admitted, however, that "there is no specific part of the policy that require[d] [appellee] to do so." Appellants did not, moreover, advance any argument in support of their apparent position that appellee had an implied duty to advise them of the settlement terms. Absent a legal obligation to disclose those details, appellee's omission could not have been false or fraudulent. *See Homa v Friendly Mobile Manor, Inc.*, 93 Md. App. 337, 346 (1992) ("[T]he non-disclosure of a material fact can . . . constitute fraud where a duty of disclosure exists."), *cert. granted*, 329 Md. 168, *and cert. dismissed*, 330 Md. 318 (1993).

Finally, the court found that it was "uncontroverted" that appellee had provided appellants a certified copy of their insurance policy. The court determined that the parties' dispute was "really of a . . . separate nature" and concerned "whether there [w]as some degree of nefarious design" involving a different policy. The court observed, however, that this more elaborate allegation was not raised in appellants' amended fraud complaint. Instead, appellants' amended fraud complaint "simply" alleged that appellee had not provided them with a certified copy of the insurance policy in place at the time of the loss. Accordingly, the court concluded that there was no genuine dispute of material fact as to that matter. *See Mitchell v. Balt. Sun Co.*, 164 Md. App. 497, 518 (2005) ("The function of the pleadings in a summary judgment case is to 'frame the issues, with respect to which the court must determine materiality.'" (quoting *Vanhook v. Merchs. Mut. Ins. Co.,* 22 Md. App. 22, 27 (1974))), *cert. denied*, 390 Md. 501 (2006).

As noted above, appellants conceded that appellee had furnished them with a certified copy of their insurance policy. Appellants complained, however, that appellee never provided them with the same copy of an uncertified insurance policy that they had obtained in a separate Maryland Insurance Administration proceeding. According to appellants, they relied on that second, differently dated copy in alleging that appellee never provided them with a "copy of the insurance policy that [was] in existence at the time of the loss." Neither copy, however, was among the exhibits appellants submitted in support of their opposition to summary judgment. The court was, therefore, left with only their speculation and conjecture—neither of which is sufficient to defeat summary judgment.

See Carter v. Aramark Sports and Entm't Servs., Inc., 153 Md. App. 210, 225 (2003) ("[C]onclusory statements, conjecture, or speculation by the party resisting the motion will not defeat summary judgment and an opposing party's facts must be material and of a substantial nature, not fanciful, frivolous, gauzy, spurious, irrelevant, gossamer inferences, conjectural, speculative, nor merely suspicions." (quotation marks and citations omitted)), *cert. denied*, 380 Md. 231 (2004).

III.

Next, appellants contend that the court "rush[ed] the trial," thereby depriving them of the opportunity "to properly address the issues of damages . . . , fraud, and bodily injury." Appellee rejoins that because appellants raise this issue for the first time on appeal, they failed to preserve it for appellate review. Alternatively, appellee asserts that "the trial transcript is devoid of [the court] imposing any time limitation on [a]ppellants' long[,] drawn out[] case-in-chief." To the contrary, appellee argues, "the trial transcript reflects extreme patience by [the court] with an extremely slow and insufficient presentation of [a]ppellant[s'] case-in-chief." Rather than a "judicially imposed time limit," appellee attributes the dearth of evidence on damages to appellants' own failure to designate any expert witnesses to testify in that regard.

Standard of Review

"As a general proposition, trial judges have the widest discretion in the conduct of trials, and the exercise of that discretion should not be disturbed on appeal in the absence of clear abuse." *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 684 (2007) (cleaned up).

The exercise of that broad discretion includes determining "the number of days allotted for trial." *Id.* Consonant with that discretion, trial judges possess "the authority and obligation to move cases forward and to manage the court's docket." *Zdravkovich v. Siegert*, 151 Md. App. 295, 305 n.11, *cert. denied*, 377 Md. 114 (2003); *see also Landis v. North American Co.*, 299 U.S. 248, 254 (1936) (recognizing the "power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants"); *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 728 (2002) (explaining that trial courts have "inherent authority to manage [their] affairs and achieve an orderly and expeditious disposition of cases"); *In re Russell G.*, 108 Md. App. 366, 380 (1996) (noting that "it is not inappropriate, as a general rule, for a court to impose reasonable time limitations for the trial of a case, in order to avoid needlessly repetitious evidence or argument").

Background

On March 17, 2022, the circuit court entered an order setting a four-day trial for February 28 to March 3, 2023. The first day of trial was held, as scheduled, on February 28th, and consisted of jury selection, opening statements, and argument on pretrial motions. Appellants called Ms. Schmitt as their first witness the following morning (March 1st). During appellants' direct examination of Ms. Schmitt, the court called a recess for lunch. After the jury had been excused, the following occurred:

> THE COURT: . . . Now, how are we telling the time? Because I feel like we've lost a whole lot of time. I've already asked assignment to carry us through until Monday, but this was originally assigned for four days, and I'm

not sure they will give me any additional time. I just want to let you know. You should each have two days. You'll get two days[,] and he has two days.

[PLAINTIFF'S COUNSEL]: I'm good with my two days.

THE COURT: Huh?

[PLAINTIFF'S COUNSEL]: I'm good with my two days.

THE COURT: Okay. Are you?

[DEFENSE COUNSEL]: Well, I've got an expert that may have to be taken out of turn. I thought we'd get to him tomorrow if we can . . . . But he can't be like split between two days of -- and up one day --

THE COURT: Do you have any objection if we fit him in?

[PLAINTIFFS' COUNSEL]: After [Ms. Schmitt's] testimony.

THE COURT: It just depends on when --

[DEFENSE COUNSEL]: Yeah. Tomorrow morning at some point. I don't think he'll be very long.

THE COURT: Okay. Hopefully we can work that out.

* * *

THE COURT: Because we'll need time to plan what the [j]ury [i]nstructions are. We'll need time for the jury instructions and the closings. I mean, that all needs to fit in.

[DEFENSE COUNSEL]: Sure.

THE COURT: So, I mean I would rather not go until Monday if we don't have to --

When the court reconvened after lunch, appellants resumed their direct examination of Ms. Schmitt.

Ms. Schmitt's direct testimony continued into March 2nd, and cross-examination commenced that same day, but was interrupted when the court, without objection, permitted appellee to call an expert witness "out of order." Once that witness had finished testifying on March 3rd, Ms. Schmitt returned to the stand to resume cross-examination. During another luncheon recess, and outside the presence of the jury, the court expressed concerns regarding the pace of the proceedings, saying:

> Can we talk about time, because I'm very concerned about time. Remember, that there needs to be -- we need to do the jury instructions, we need to have closing arguments, the jury needs to have time to deliberate. We told them we'd finish Monday. It's now noon on Friday. And, other than an hour yesterday, and an hour today, with his client, [defense counsel] hasn't started his case.

After appellants' attorney confirmed that he intended to call Mr. Schmitt as her second witness, the court asked counsel: "[W]hat's the path to finishing this on time?" The following colloquy ensued:

> [PLAINTIFFS' COUNSEL]: I need maybe 10 more minutes with her, and 2 hours with him, once we get back.
>
> [DEFENSE COUNSEL]: Your Honor, I have two contractors coming today. And I'm going to be very brief with them. And I would ask the Court's indulgence, that they be allowed to testify today. A lot of them coming from an hour and a half away. Plaintiff's case is going on. It's Friday, for God's sake. And, I know I took two hours. But two hours out of, you know, Tuesday, Wednesday, Thursday, Friday, I --
>
> [PLAINTIFFS' COUNSEL]: Tuesday, we didn't even begin so --
>
> THE COURT: Tuesday, we didn't have any witnesses. So that's not, doesn't count. But I had said, at the very beginning, you get two days each.
>
> [PLAINTIFFS' COUNSEL]: Yes, Your Honor.

THE COURT: So[,] your days were Wednesday and Thursday.

[DEFENSE COUNSEL]: Right.

THE COURT: He only took out of your time about an hour, from yesterday. So technically, today and Monday are his days.

* * *

THE COURT: All right. How long are your contractors expected to testify?

[DEFENSE COUNSEL]: Your Honor, I want to get this to the jury as fast as possible. I'll spend no more than -- I'll try to keep it -- 10, l5 minutes each. I'll do that, I'll do that. And it may be shorter --

THE COURT: Okay.

* * *

THE COURT: And . . . is your client also testifying?

[DEFENSE COUNSEL]: I would imagine so, yeah.

THE COURT: And how long would she be?

[DEFENSE COUNSEL]: Brief. Maybe 15 minutes, if that.

Following this colloquy, the court asked appellants' attorney to forecast the likely duration of Mr. Schmitt's trial testimony. Although counsel initially answered "[n]o more than two hours," she subsequently revised her estimate to "[p]robably an hour or less[.]" Based on that approximation, the court determined that appellants' counsel would "be done at 2:45." Appellee's counsel then assured the court that he would manage to present the defense case before the jury was excused for the weekend at 4:30 p.m. that afternoon.

Analysis

In this case, appellants did not object to the order setting trial for four days, and therefore failed to preserve any challenge thereto. Nor did appellants except when the court subsequently advised the parties that each would have two days to present their respective cases. To the contrary, appellants' attorney expressed unqualified satisfaction with the time constraints, saying: "I'm good with my two days." When, on the third day of trial, the court asked whether she had "any objection" to permitting appellee's expert witness to testify out of order, appellants' attorney answered only: "After [Ms. Schmitt's] testimony." After allowing appellee's expert to testify out of order, the court permitted appellants to resume their case-in-chief on March 3, 2023—the date on which appellee's rebuttal case had been scheduled to begin. Finally, when the court elicited a "path to finishing [the proceedings] on time" later that same day, appellants' attorney merely indicated that she required approximately an additional seventy minutes. After testifying freely, appellants rested without reservation.

Appellants did not challenge the court-imposed time limits prior to or during trial. To the contrary, appellants' attorney acquiesced in the imposition of those constraints by proclaiming "I'm good with my two days." Thus, appellants not only failed to preserve this issue for our review, but also affirmatively waived the right to raise it. *See Banks v. State*, 213 Md. App. 195, 203 (2013) (holding that "counsel's response of 'Okay' to the court's [ruling] constituted a waiver of the objection"). Even if this matter were properly before us, moreover, we would hold that imposition of the time limits in this case constituted a

perfectly reasonable exercise of the court's broad discretionary authority to manage trial proceedings.

IV.

Appellants also assert that the court committed reversible error by "requesting" that the parties file joint exhibits. From what we can discern from their brief, however, appellants' gripe seems to be less with the court's "request" and more with their own failure to sufficiently question the witnesses—particularly Susan Whale, a former employee of appellee—about those exhibits. They complain that appellee declined to ask Ms. Whale "questions . . . pertaining to the claim" during direct examination, thereby preventing appellants from posing such questions on cross-examination.

Appellee counters that appellants failed to object to the joint exhibits and in fact "agreed to proceeding with" them. It further responds that appellants "fail to recognize their own massive failures in presenting their case-in-chief at trial below, including when their attorney failed to call [Ms.] Whale . . . in their case-in-chief[.]"

During appellants' direct examination of Ms. Schmitt (their first witness), appellee's counsel advised the court: "I intend to introduce all the records from Mid[-]Atlantic. I don't know whether we could speed up the process by just taking and admit[ting] it, I mean, exhibits we can enter into evidence without objection." Turning to appellants' counsel, the court inquired: "Would you like to do that?" After appellants' counsel answered in the affirmative, the court took a recess, instructing the parties: "If you want to just stipulate to the exhibits and give them to the [c]lerk, that will be good." The court subsequently asked

the parties: "So[,] for the record, are the parties stipulating that all of the things marked as Joint Exhibits are admitted?" Appellee's counsel answered: "Yes, Your Honor. We previously stipulated that all the joint exhibits are in evidence."

Appellants did not object to designating the documents at issue as joint exhibits. In fact, when the court asked appellants' attorney whether she would like to enter the exhibits into evidence without objection, she answered in the affirmative. Appellants' counsel then evidently participated in selecting which exhibits would be designated as joint exhibits and stipulated to their admission in evidence. Appellants have therefore waived any challenge to the designation or admission of the joint exhibits at issue.

Appellants' remaining grievances concern opposing counsel's trial strategy—and not any error purportedly committed by the court. They therefore fall outside the ambit of appellate review. *See Walls v. State*, 228 Md. App. 646, 668 (2016) ("[O]ur function as an appellate court is to review the rulings of *the trial court* for error." (emphasis retained)); *DeLuca v. State*, 78 Md. App. 395, 397-98 ("Lawyers do not commit error. . . . Only the judge can commit error, either by failing to rule or by ruling erroneously when called upon, by counsel or occasionally by circumstances, to make a ruling."), *cert. denied*, 316 Md. 549 (1989); *Myers v. State*, 243 Md. App. 154, 184 n.2 (2019) ("[E]rror in a trial court may be committed only by a judge, and only when he [or she] rules, or, in rare instances, fails to rule, on a question raised before him [or her.]" (quotation marks, citation, and emphasis omitted)), *cert. denied*, 467 Md. 276 (2020); *see also* Guidelines for Informal Briefs (b)(2)

("In the Informal brief, the appellant must identify issues *that explain why the trial court erred* or made a mistake in deciding the case[.]" (emphasis added)).

V.

Appellants next contend that the court erred by permitting William Zynel, a general insurance adjustor called by appellee, to testify as an expert witness without first conducting a *Daubert* analysis of Mr. Zynel to assess his qualifications and the reliability of his expert opinion.[12] Appellee responds that appellants neither "filed a motion in limine seeking to exclude [Mr. Zynel] at trial" nor "requested a hearing that might have triggered . . . a 'Daubert hearing.'" Accordingly, appellee argues that appellants failed to preserve this issue for our review. We agree with appellee.

On July 17, 2020, appellee filed an expert witness designation, which named Mr. Zynel as a prospective expert witness and set forth the matters on which he was expected to express an opinion as such. The record does not reflect, however, that appellants ever moved *in limine* to exclude Mr. Zynel's expert testimony or requested that the court conduct a *Daubert* hearing or analysis. In fact, after a *voir dire* of Mr. Zynel's qualifications at trial, appellants' counsel expressly stated that she had no objection to his qualification as an expert. Because appellants neither requested that the court conduct a *Daubert* analysis nor objected to Mr. Zynel testifying as an expert witness, they failed to preserve this issue for appellate review. *See Howard v. State*, 232 Md. App. 125, 168 ("The burden was on

[12] *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579 (1993).

the defense to request a *Frye-Reed* hearing. Having failed to do so, [appellant] cannot complain on appeal that the trial court erred by not holding such a hearing."), *cert. denied*, 453 Md. 366 (2017); *Addison v. State*, 188 Md. App. 165, 181 (2009) ("[F]ailure to request a *Frye/Reed* hearing waives the right to appellate review."), *cert. denied*, 412 Md. 255 (2010);[13] *see also Abruquah v. State*, 471 Md. 249, 252 (2020) (Watts, J. dissenting) ("Any issue as to whether the circuit court was required to conduct a *Daubert* hearing, and/or engage in a *Daubert* analysis, is not preserved for appellate review because it was neither raised in nor decided by the circuit court[.]" (cleaned up)).

VI.

Appellants also assert that the court erred in excluding as hearsay certain "vendor documentation" and written statements prepared by two deceased witnesses. They argue that the court should have admitted these documents into evidence because they had previously been submitted to appellee and were therefore included in appellants' insurance claim file. Appellants also assert that the court ought to have admitted the deceased witnesses' statements given the "national pandemic," which "caused a multitude of deaths[.]"

Appellants do not specify which documents the court purportedly erred in excluding. Moreover, appellants neither dispute that these unidentified written statements

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[13] In *Rochkind v. Stevenson*, 471 Md. 1 (2020), the Supreme Court of Maryland abandoned the *Frye-Reed* framework for assessing the admissibility of expert witness testimony in favor of the standard set forth in *Daubert, supra*.

were hearsay, nor identify any applicable exception to the rule against hearsay. For these reasons alone, their contention fails.

It is not our role "to delve through the record to unearth factual support favorable to . . . appellant." *Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 201, *cert. denied*, 406 Md. 746 (2008) (quotation marks and citation omitted); *see also Fed. Land Bank of Balt., Inc. v. Esham*, 43 Md. App. 446, 457 (1979) ("[O]ur function is not to scour the record for error once a party notes an appeal and files a brief."). Nor is it our function "to attempt to fashion coherent legal theories to support appellant's . . . claims." *Konover Prop. Tr., Inc. v. WHE Assocs., Inc.*, 142 Md. App. 476, 494 (2002); *see also State Roads Com. v. Halle*, 228 Md. 24, 32 (1962) ("[I]t is not incumbent upon this Court, merely because a point is mentioned as being objectionable at some point in a party's brief, to scan the entire record and ascertain if there be any ground, or grounds, to sustain the objectionable feature suggested."). Rather, these responsibilities rest squarely on appellant. *See Fed. Land Bank of Balt., Inc.*, 43 Md. App. at 458 ("It is the appellant's primary obligation . . . to pinpoint the errors raised on appeal and to support their contentions with well-reasoned legal argument.").

While we are mindful of and sympathetic to their *pro se* status, it does not excuse appellants' failure to specifically identify the excluded documents at issue or otherwise direct us to the challenged rulings. *See Lisy Corp. v. McCormick & Co.*, 445 Md. 213, 225 (2015) ("Attorneys and parties, which may include self-represented litigants, are all held to the same standard and are required to comply with the Maryland Rules."). Nor does it

absolve them of the requirement that they present their arguments with particularity. As appellants do not challenge the court's determination that the statements at issue were hearsay not subject to a recognized exception, we affirm the court's ruling to that effect.

VII.

In scattershot fashion and without supporting argument, appellants claim that the court committed various errors in instructing and submitting the issues to the jury. Appellee responds, and we agree, that appellants failed to preserve these issues for appellate review because they "made no objections to the verdict sheet and jury instructions[.]"

Maryland Rule 2-520 governs jury instructions in civil cases and provides, in pertinent part: "No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." Md. Rule 2-520(e). The purpose of Rule 2-520(e) is "to enable the trial court to correct any inadvertent error or omission in the oral or written charge, as well as to limit the review on appeal to those errors which are brought to the trial court's attention." *Hoffman v. Stamper*, 385 Md. 1, 40 (2005) (cleaned up).

Maryland Rule 2-522 addresses jury verdicts and reads, in relevant part: "No party may assign as error the submission of issues to the jury . . . or the refusal of the court to submit a requested issue unless the party objects on the record before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection." Md. Rule 2-522(b)(5). Thus, "[i]n civil cases, when the case is sent to

the jury on issues, an objection to the verdict sheet is required for preservation." *Sequeira v. State*, 250 Md. App. 161, 200 n.19 (2021); *see also Ver Brycke v. Ver Brycke*, 379 Md. 669, 701-02 n.15 (2004) ("It is counsel's responsibility to assure that all critical issues are submitted to the jury. If counsel does not do so, his or her objections are waived." (quotation marks and citation omitted)).

After the close of evidence but before closing argument, the trial court afforded counsel an opportunity to review the jury instructions and verdict sheet, inviting them to make any objections thereto. As counsel perused the jury instructions and verdict sheet, the court, on its own initiative, proposed a minor modification to the latter. After appellants' counsel assented to the change, the court asked: "[Are] there any other corrections for either . . . the instructions or the verdict sheet?" Counsel for both parties answered in the negative.

Following a recess, the court asked counsel: "Are there any objections to the verdict sheet?" The following ensued:

> [PLAINTIFF'S COUNSEL]: Well, Your Honor, I realize . . . it might be too late to do this, but I did realize . . . I left off of this my request for attorney's fees. So[,] I realize it is way towards the end and --
>
> THE COURT: Yeah. Because we've closed all the evidence.
>
> [PLAINTIFF'S COUNSEL]: Exactly. Then *no objections*.

(Emphasis added). After instructing the jury, the court again asked counsel whether there were "any corrections to [its] reading of the instructions[.]" Both attorneys answered: "No, Your Honor." Following closing arguments, the jury retired to deliberate.

Appellants did not object to either the jury instructions or the verdict sheet. These issues are not, therefore, preserved for appellate review. Moreover, appellants have not requested—and we decline to grant—plain error review of their unpreserved claims. Consequently, "there is nothing for us to consider[.]" *Bittinger v. CSX Transp. Inc.*, 176 Md. App. 262, 280 (quotation marks and citation omitted), *cert. denied*, 402 Md. 356 (2007).

VIII.

Appellants penultimately assert that the court abused its discretion in denying their motion for a new trial on damages, wherein they challenged: (1) the exclusion of a 2019 "appraisal estimate" ("the Estimate") from evidence, (2) the adequacy of the damages award, and (3) the court's failure to present the issue of "stacking"[14] to the jury in either its instructions or the verdict sheet.[15] We will address each of these grounds in turn,

Standard of Review

"The decision whether to grant a motion for a new trial is within the sound discretion of the trial court." *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 349 (2013) (quotation

[14] "Stacking" refers to "[t]he aggregation of benefits from one or more insurance policies on the same insured subject; esp., the application of two or more policies' limits to a single occurrence or claim." *Stacking*, Black's Law Dictionary (12th ed. 2024).

[15] Appellants also attempt to challenge the court's refusal to grant a new trial based on additional grounds (e.g., newly discovered evidence) that they did not raise in their motion. Because appellants omitted these arguments below, we will not address them on appeal. *See* Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

marks and citations omitted). Thus, we review the denial of such a motion for abuse of discretion. *See Univ. of Md. Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 ("The standard of review of the denial of a motion for [a] new trial is abuse of discretion."), *cert. denied*, 427 Md. 65 (2012). The Supreme Court of Maryland has repeatedly emphasized, however, that "the breadth of a trial [court's] discretion to grant or deny a new trial is not fixed or immutable[.]" *Washington v. State*, 424 Md. 632, 668 (2012) (quoting *Campbell v. State*, 373 Md. 637, 666 (2003) (in turn quoting *Wernsing v. Gen. Motors Corp.*, 298 Md. 406, 420 (1984))). "[R]ather, it will expand or contract depending upon the nature of the factors being considered, and the extent to which the exercise of that discretion depends upon the opportunity the trial judge had to feel the pulse of the trial and to rely on his own impressions in determining questions of fairness and justice." *Washington*, 424 Md. at 668 (quotation marks and citations omitted). Accordingly, a trial court's discretion is "at its highest when the motion for a new trial '[does] not deal with the admissibility or quality of newly discovered evidence, nor with technical matters,' but instead ask[s] the trial court to draw upon its view of the weight of the evidence." *Kleban v. Eghrari-Sabet*, 174 Md. App. 60, 102 (2007) (quoting *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 59 (1992)).

Analysis

Exclusion of the Estimate

In their brief, appellants lament the court's decision to exclude, among other things, the Estimate from evidence, complaining that without it they "were unable to properly

show the jury how [appellee's] delay in repairing the property caused further damage and more expense[.]" They do not meaningfully argue, however, that the court abused its discretion in denying their motion for a new trial on this ground or even assert that the court erred in failing to receive such evidence. Nor do they so much as specify the adverse evidentiary ruling at issue.

We are, of course, mindful that the guidelines for informal briefs relax the requirements otherwise imposed by Maryland Rules 8-501 to 8-504. Subsection (b)(2) of those guidelines, however, requires that informal briefs "identify issues that *explain why the trial court erred* or made a mistake in deciding the case and why the decision should be reversed or modified." (Emphasis added). That subsection also mandates that informal briefs include "a description of the facts surrounding the issue and *an argument supporting the resolution of the issue*." (Emphasis added). *See also Anne Arundel Cnty. v. Harwood Civic Ass'n, Inc.*, 442 Md. 595, 614 (2015) ("'[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.'" (quoting *Klauenberg v. State*, 355 Md. 528, 552 (1999))). Here, and throughout their informal brief, appellants have stretched these guidelines beyond their breaking point. As discussed above, it is not our role to scour the record in search of error or to fashion for appellants arguments they do not make for themselves, and we decline to do either here.

Adequacy of the Award

As recounted above, the jury found appellee liable for breach of contract and awarded appellants damages in the aggregate amount of $48,680—$41,480 for the cost of

repairs and $7,200 for additional living expenses. In their motion for a new trial, appellants alleged that the award was "woefully inadequate." Observing that the cost-of-repair damages were "exactly forty cents ($0.40) lower than [appellee]'s November 18, 2018, interior repair estimate of [their] home[,]" appellants inferred that "the . . . award was based on the 2018 repair estimate." Operating on that assumption, appellants argued that the jury clearly disregarded evidence indicating that "the longer it takes to restore the property to its pre-loss condition[], the more damage will accrue and the more expensive the repairs will be." Appellants also complained that the cost-of-living damages were insufficient "due to the fact that the [appellee] continued to breach the policy throughout the last five years[.]"

In its opposition to appellants' motion, appellee rejoined that appellants' challenge to the cost-of-repair damages ignored, *inter alia*, Mr. Zynel's testimony that their "multiple failures to notify [appellee] of interior water leaks and failure to protect the property damage . . . were reasons for any water/mold damage experienced and which were not covered under the homeowner's policy." In other words, appellee countered that the jury had been presented with sufficient evidence from which it could have reasonably found that the consequential damages to appellants' property were the result of their own inaction and were not therefore covered. As to appellants' claim that the jury awarded inadequate cost-of-living damages, appellee argued that they "ignore[d] the fact that no evidence of incurred expenses beyond hotel stays was presented at trial."

"[A]lthough a trial court may set aside a verdict on the ground that it is against the weight of the evidence, we do not know of any case that has been reversed for an inadequate verdict." *Abrishamian v. Barbely*, 188 Md. App. 334, 347 (2009), *cert. denied*, 412 Md. 255 (2010). "This is most likely because the trier of fact may accredit or disregard any evidence introduced, and a reviewing court may not decide how much weight should have been given to each item of evidence." *Id.* at 347-48 (footnote omitted); *see also* Santiago *v. State*, 458 Md. 140, 156-57 (2018) ("[T]he fact finder 'may believe or disbelieve, credit or disregard, any evidence introduced, and a reviewing court may not decide on appeal how much weight must be given to each item of evidence[.]'" (quoting *Great Coastal Express, Inc. v. Schruefer*, 34 Md. App. 706, 725, *cert. denied*, 280 Md. 730 (1977))).

As a preliminary matter, although appellants raised the adequacy of the jury award in their motion for a new trial, they once again fail to offer any argument in support of this point. In any event, the jury, as the finder of fact, was entitled to rely upon or to disregard any competent evidence presented at trial in determining what, if any, damages appellants were due. Thus, we are not persuaded that the court abused its discretion by denying appellants' motion for a new trial on the basis of an inadequate damages award.

The Jury Instructions & Verdict Sheet, Redux

As their third and final ground for a new trial, appellants complained in their motion that "neither the verdict sheet nor the [jury] instructions . . . included the matter[s] of stacking[,]" "damages toward [appellants'] personal property protection," or appellants' "requested attorney's fees[.]" Of these, in their appellate brief, appellants address only the

matter of stacking. They have therefore waived the omission of the latter two issues from the jury instructions and verdict sheet. *See DeGroft v. Lancaster Silo Co., Inc.*, 72 Md. App. 154, 159 (1987) ("[W]hen an issue, although raised below, is not raised on appeal, 'we are as completely denied the right to review such question as if the appeal . . . had not been taken at all.'" (quoting *Pride Mark Realty v. Mullins*, 30 Md. App. 497, 511, *cert. denied*, 278 Md. 730 (1976))); *accord Albertson v. State*, 212 Md. App. 531, 570-01, *cert. denied*, 435 Md. 267 (2013); *see also State v. Chaney*, 375 Md. 168, 174 n.2 (2003) ("A party may abandon some of the issues raised below and stand on appeal on a narrower ground.").

On February 9, 2023, appellants filed a "Motion in Limine," which might more aptly be characterized as a motion for declaratory judgment. In that motion, appellants argued that each of their successive annual insurance policies with appellee (collectively spanning from 2018 to 2024) were implicated by the continuous deterioration of their home, which commenced on March 2, 2018. Specifically, appellants seemed to assert that the damage to their home "continued to accumulate" over this six-year period in the form of "both water damage and the increase of non-visible mold spores in the interior of the home." Appellants seem to have been seeking a declaratory judgment that their insurance "policies . . . mean that each separate policy is implicated by a continuing occurrence." In other words, they appear to have been requesting that the court rule that they could recover under multiple annual policies for the damage that accumulated each year since the storm struck on March 2, 2018.

The circuit court heard argument on appellants' motion on February 18, 2023, the first day of trial. Elaborating upon its motion, appellants' counsel explained that her clients had been "reissue[d] a different new policy" each year for the preceding five years. When the court asked what she meant when asserting that appellants "should be able to stack this policy," appellants' counsel answered:

> So[,] it means that it will add the 2018 coverage to the 2019 coverage. It will treat it as its own separate coverage. So[,] the damages suffered in 2018 are its own damages, and the clients are limited to that recovery from those damages in 2018. Then in 2019, it's its own policy. They can also recover on that. They can also recover in 2020, 2021, 2022.

Appellants' counsel relied on *United Services Automobile Association v. Riley*, 393 Md. 55 (2006), in support of the proposition that the policies could be stacked such that appellants could recover damages in the amount of the policy limits *for each year of coverage*. After hearing from appellee's counsel, the court reserved ruling on appellants' motion.

The court returned to the stacking issue on the last day of trial, stating:

> [T]he language of the instructions tells the jury how to interpret contract language and the like. And I believe that the other motions, as to cash value and as to stacking, are similar questions where you argue the contract language to the jury and . . . they decide.
>
> So[,] I'm not ruling on any of those three motions because they'll be . . . facts that will be addressed as part of the contract interpretation.

After the court announced its ruling, the following occurred:

> [PLAINTIFF'S COUNSEL]: Okay. No objection to that, Your Honor.
>
> THE CLERK: Would you like me to put on there moot as it is question for the jury, or just, um, reserve for --

THE COURT: Yeah, moot is okay.

THE CLERK: Okay.

THE COURT: It's not reserved.

THE CLERK: Okay. Reserved for jury deliberation.

THE COURT: And do you have any objections to that?

[DEFENSE COUNSEL]: No objections at all.

With the stacking issue ostensibly settled, the court distributed copies of the verdict sheet and jury instructions to the parties for their review and asked whether they proposed any corrections to either. Appellants' counsel responded: "No objections, Your Honor." Appellants did not object when the court subsequently asked whether "there [were] any objections to the verdict sheet[,]" or after it instructed the jury. Md. Rule 2-520(e). Thus, as we concluded *supra*, they failed to preserve any challenge to the jury instructions or the verdict sheet.

Admittedly, "[a] trial court may grant a new trial on the basis of an issue that could have been, but was not, raised at trial." *Anderson v. Litzenberg*, 115 Md. App. 549, 579 (1997); *see also Buck*, 328 Md. at 61 ("[T]here is nothing in Md. Rule 2-533 which precludes a judge from granting a new trial on the basis of an issue that could have been, but was not, raised during trial." (quotation marks and citation omitted)); *Cunningham v. Balt. Cnty.*, 246 Md. App. 630, 700 ("A trial court has discretion whether to address an unpreserved issue in considering a motion for new trial."), *cert. denied*, 471 Md. 268 (2020). Where, as here, "a trial court denies such a motion, however, the [Supreme Court

of Maryland] has indicated that the movant is precluded from raising those substantive issues on appeal." *Anderson*, 115 Md. App. at 579; *see also Buck*, 328 Md. at 61 ("[I]f [the trial court] had denied [the motion for new trial] in this case, Buck would not have been permitted to argue those matters on appeal."); *Isley v. State,* 129 Md. App. 611, 623 (2000) ("If . . . alleged [trial] errors were not preserved for appellate review by timely objection at trial, raising them in a Motion for a New Trial and then appealing the denial of that motion is not a way of outflanking the preservation requirement."), *overruled on other grounds, Merritt v. State*, 367 Md. 17, 24 (2001); *Torres v. State*, 95 Md. App. 126, 134 (1993) ("A post-trial motion cannot be permitted to serve as a device by which a defendant may avoid the sanction for nonpreservation."). In any event, "non-preservation is . . . an unassailable reason for the trial judge to deny the New Trial Motion, should he, in his discretion, choose to do so." *Isley*, 128 Md. App. at 623; *see also Buck*, 328 Md. at 62 ("The failure of the moving party to object to an alleged error or impropriety at trial is a significant factor to be considered by the trial judge when that error is later argued in support of a motion for new trial."). Thus, even if these grounds for a new trial were properly before us, we would find no abuse of discretion in the court's denial of appellants' motion.

IX.

Finally, appellants present several conclusory complaints regarding appellee's conduct throughout the proceedings, including claims that it withheld discovery and committed "[f]raud upon the courts." Although they allege misconduct on the part of appellee, appellants do not assert any corresponding error committed by the court. As we

noted above, "our function as an appellate court is to review the rulings of *the trial court* for error." *Walls*, 228 Md. App. at 668 (emphasis retained). It is not our role, however, "to review conduct of counsel, the parties, or witnesses[,]" as their "conduct can do no more than serve as the predicate for possible judicial error." *Id.* (quotation marks and citation omitted). As appellants do not here allege any error committed by the circuit court, this final contention is a nonstarter.

For the foregoing reasons, we affirm the judgment of the circuit court.[16]

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[16] As a final matter, we address a motion filed by appellants in this Court, which they captioned "Motion for Acceptance of Exhibit List [B]ooks" ("Motion for Acceptance"). On February 29, 2024, we entered an order granting appellants an extension on the 20-day deadline for filing a reply brief. The order provided "that . . . appellant's reply brief shall be filed on or before March 8, 2024." Appellants submitted a fifteen-page informal reply brief on March 11th, which we struck in an order entered on April 5th, citing their failure to comply with the five-page limit prescribed by subsection (b)(2) of the Guidelines for Informal Briefs ("Guidelines"). In that order, however, we granted appellants until April 26, 2024, to file a reply brief that complied with the Guidelines, adding: "The Court will not grant any further extensions of this deadline."

Appellants filed a second informal reply brief on April 26, 2024. The brief itself comported with the Guidelines' five-page limit. Appended to it, however, were thirty-one additional pages, which included four pages of "case law," ten pages of articles concerning water and mold damage, and seventeen pages of Mrs. Schmitt's answers to interrogatories, which had been highlighted and underlined. On May 8 and 10, appellants also filed appendices, to which they referred as "exhibit list books." Those appendices totaled 672 pages and included both supplemental argument and material not contained in the record. In the Motion for Acceptance, which was also filed on May 10th, appellants attested that they had submitted the "exhibit list books" "as a courteous[y] to the [C]ourt[] due to the massive amount[] of documents in this case."

Appellee opposed the Motion for Acceptance and moved to strike both the "exhibit list books" and the thirty-one pages appended to appellants' second reply brief. In opposing the Motion for Acceptance and moving to strike the "exhibit list books," appellee argued:

(continued . . .)

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"All of this amounts to documents and argument untimely submitted, not referenced in any reply brief, not part of the record below, records that are irrelevant, and which contain additional argument by [a]ppellants, effectively extending their reply brief beyond the 5-page limit." In requesting that we strike the thirty-one pages that accompanied appellants' second reply brief, appellee argued that the "case law" primarily consisted of "[a]ppellants' interpretation of case law" and therefore "amount[ed] to additional argument[,]" while the articles on water and mold damage were "not part of the record below."

We hereby deny appellants' Motion for Acceptance and strike the "exhibit list books," which we construe as untimely attempts by appellants to supplement their briefs and the record without leave of the Court. *See Cochran v. Griffith Energy Service, Inc.*, 191 Md. App. 625, 662-63 (2010) ("Parties to an appeal are not entitled to supplement the record by inserting into . . . the appendix to a reply brief such foreign matter as they may deem advisable." (quotation marks and citation omitted)). With the exception of Ms. Schmitt's response to appellee's interrogatories, we also strike the documents accompanying appellants' reply brief, as they were not included in the record before the circuit court.