Circuit Court for Baltimore City
Case No. 24-C-19-003126

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 308

September Term, 2021

EARL D. POE

v.

STATE OF MARYLAND ET AL.

Kehoe,
Arthur,
Shaw,

JJ.

Opinion by Kehoe, J.

Filed: August 14, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

The Maryland Tort Claims Act[1] provides that, as a condition precedent to pursuing a tort claim against the State, the would-be plaintiff must either file a written notice of claim with the State Treasurer within one year of the date of the events giving rise to the claim, or failing that, demonstrate to the court in which the claim is pending that there is good cause for their failure to do so. Md. Code, State Gov't § 12-106.

Earl Dwayne Poe asserts that he suffered serious and permanent injuries on June 2, 2016, while he was incarcerated in the Baltimore City Detention Center (the "BCDC"). Thirteen months and four days later, his counsel filed a notice of his intention to file a negligence action against the State with the State Treasurer's Office. The Treasurer denied the claim as untimely filed. Mr. Poe subsequently brought a civil action in the Circuit Court for Baltimore City against the State of Maryland, the Maryland Department of Public Safety & Correctional Services, and the BCDC (collectively, the "State"). He alleged that his injuries were caused by the negligence of one or more of the defendants. After a procedural history that we will presently describe, the circuit court granted the State's motion to dismiss all claims with prejudice. The court concluded that Mr. Poe failed to demonstrate good cause to excuse his failure to timely file the requisite notice of claim.

Mr. Poe presents one issue, which we have reworded:

[1] The MTCA is codified as Md. Code, State Gov't §§ 12-101–110.

> Did the trial court err when it dismissed his civil action with prejudice because he had not shown good cause for failing to serve his written notice of claim to the State Treasurer within one year of the date of his injuries?

We conclude that, based upon the undisputed factual record before it, the circuit court abused its discretion when it dismissed Mr. Poe's case. We will reverse the judgment of the circuit court and remand this case for further proceedings.

BACKGROUND

On March 15, 2016, Mr. Poe was arrested and charged with various felonies related to an alleged assault on a high-ranking member of the Black Guerilla Family criminal organization. After his arrest, he was held in pre-trial detention in the Baltimore City Detention Center (the "BCDC"). On June 2, 2016, Mr. Poe was attacked by fellow inmates, resulting in a fractured skull, multiple stab wounds to his head, traumatic brain injury, coma, and hospitalization for six weeks. While he was hospitalized, the charges against Mr. Poe were nolle prossed.[2] After he was released from the hospital, he was transferred to a rehabilitative facility in the Jessup Correctional Institute. After a month at this facility, he was released and went to live with his mother, Carmen Flowers, while recuperating.

Both Mr. Poe and Ms. Flowers assert that, prior to the attack, they had warned BCDC personnel that Mr. Poe was under threat of attack from Black Guerilla Family members.

[2] In his complaint, Mr. Poe asserts that all of the charges against him arising out of the alleged assault were nolle prossed on June 7, 2016. The State does not challenge this.

Mr. Poe was initially confined by himself but was later placed in a general population dormitory. It was there that he was attacked and seriously injured.

In the middle of June 2017, a friend suggested to Mr. Poe that he should speak with a lawyer about a potential civil action to obtain compensation for his injuries. He obtained counsel in the first few days of July 2017. On July 6, 2017, Mr. Poe's counsel filed a notice of claim with the State Treasurer's office pursuant to the MTCA. The Treasurer rejected the claim because it was not filed within one year of the date of his injuries.

On May 31, 2019, Mr. Poe, acting through his counsel, filed the present action against the State, the BCDC, and the Maryland Department of Public Safety & Correctional Services (the "DPSCS"). At the same time, he filed a motion for the circuit court to entertain his action because there was good cause to allow the case to be decided on its merits ("the motion to entertain").[3] Before the circuit court ruled on this motion,

[3] At the time that the attack on Mr. Poe occurred, State Gov't 12-106 read in relevant part as follows:

> (b) Except as provided in subsection (c) of this section, a claimant may not institute an action under this subtitle unless:
> (1) the claimant submits a written claim to the Treasurer or a designee of the Treasurer within 1 year after the injury to person or property that is the basis of the claim;
> (2) the Treasurer or designee denies the claim finally; and
> (3) the action is filed within 3 years after the cause of action arises.
> (c) If a claimant fails to submit a written claim in accordance with subsection (b)(1) of this section, on motion by a claimant and for good cause shown, the court may entertain an action under this subtitle unless the

the State removed the case to the United States District Court for the District of Maryland. On October 18, 2019, the federal court, on motion of the State and with the consent of Mr. Poe, dismissed Mr. Poe's federal claims and remanded the case to the circuit court. The State then filed a motion to dismiss the complaint or, in the alternative, for summary judgment. The State also filed an opposition to Mr. Poe's motion for the court to entertain his action. It was the State's position in all of these filings that Mr. Poe had failed to show good cause for his failure to timely file his notice of claim.

The circuit court considered the motions in a hearing held on December 20, 2019. Noting that both parties had made factual allegations that were unsupported by affidavits or other documentary evidence, the court deferred ruling on the motions in order to give them an opportunity to supplement their filings with supporting affidavits. Mr. Poe filed affidavits executed by himself, Ms. Flowers, and his counsel.[4] (We will discuss these affidavits later in our analysis.) The State filed a response, objecting to, and moving to strike, several statements contained in the affidavits. The State did not file affidavits in

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State can affirmatively show that its defense has been prejudiced by the claimant's failure to submit the claim.

[4] Additionally, Mr. Poe attached an additional exhibit to his response, which consisted of excerpts of his medical records pertaining to his injuries suffered in the assault, subsequent medical treatment, and evaluations by treating physicians. In his brief, Mr. Poe asserts that the circuit court did not consider this material because his amended complaint mooted the State's motion to dismiss his initial complaint. But it is clear that the court's decision not to consider the medical records was based on the fact that the records were not authenticated.

support of the factual assertions that it had made in its initial response to Mr. Poe's motion to entertain.

Then, on February 5, 2020, Mr. Poe filed, without leave of court, a "Line of Submission" seeking to admit into evidence a report by Thomas T. Truss, Ph.D., identified as a medical expert as well as more than 200 pages of medical records. The State filed a motion to strike the Line of Submission.

Finally, on February 13, 2020, Mr. Poe filed an amended complaint.

In a memorandum and order entered on November 17, 2020, the circuit court: (1) struck the Line of Submission as well as Dr. Truss's report and the accompanying medical records, (2) denied Mr. Poe's motion to entertain, and (3) granted the State's motion to dismiss and/or for summary judgment. On the same day, the court signed a separate order dismissing Mr. Poe's amended complaint with prejudice.

THE STATUTORY FRAMEWORK

The MTCA is codified as Md. Code, State Gov't § 12-101–110. State Gov't § 12-104(a) contains a limited waiver of the State's sovereign immunity in tort actions. However, an injured party's right to maintain a tort action against the State is subject to a condition precedent that is codified in State Gov't § 12-106. Mr. Poe was injured on June 2, 2016. At that time, § 12-106 stated in relevant part (emphasis added):

> (b) Except as provided in subsection (c) of this section, a claimant may not institute an action under this subtitle unless:
> (1) the claimant submits a written claim to the Treasurer or a designee of the Treasurer within 1 year after the injury to person or property that is the basis of the claim;

> (2) the Treasurer or designee denies the claim finally; and
> (3) the action is filed within 3 years after the cause of action arises.
> (c) If a claimant fails to submit a written claim in accordance with subsection (b)(1) of this section, on motion by a claimant and *for good cause shown,* the court may entertain an action under this subtitle unless the State can affirmatively show that its defense has been prejudiced by the claimant's failure to submit the claim.[5]

In *Moore v. Norouzi*, and in the context of the LGTCA, the Supreme Court of Maryland[6] explained that the purpose of an almost identical notice requirement in the Local Government Tort Act is

> to protect the municipalities and counties of the State from meretricious claimants and exaggerated claims by providing a mechanism whereby the municipality or county would be apprised of its possible liability at a time when it could conduct its own investigation, *i.e.*, while the evidence was still fresh and the recollection of the witnesses was undiminished by time, sufficient to ascertain the character and extent of the injury and its responsibility in connection with it.

371 Md. 154, 167–68 (2002) ((cleaned up); *see also Williams v. Maryland Dep't of Hum. Res.*, 136 Md. App. 153, 177 (2000) ("The purpose of State Gov't § 12-106's notice

[5] State Gov't § 12-106 was amended by 2016 Md. Laws, Chap. 623, effective October 1, 2016; 2017 Md. Laws Chap. 12, effective October 1, 2017; 2017 Md. Laws, Chap. 656, effective October 1, 2017; and 2023 Md. Laws, Chap. 686, to become effective on October 1, 2023. The parties agree that none of these amendments apply to Mr. Poe's case.

[6] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

requirement is to give the State notice of claims against it. That early notice, in turn, affords the State the opportunity to investigate the claims while the facts are fresh and memories vivid, and, where appropriate, settle them at the earliest possible time." (cleaned up) (*citing Haupt v. State*, 340 Md. 462, 470 (1995), and *Johnson v. State*, 331 Md. 285, 296 (1993).

The Circuit Court's Decision

As we stated above, the circuit court denied Mr. Poe's motion to entertain and granted the State's motion to dismiss. In its memorandum opinion, the circuit court laid out its reasoning.

First, the circuit court observed that although the filing of an amended complaint would usually render moot the State's motion to dismiss the complaint, the contentions presented in the State's motion to dismiss and Mr. Poe's motion to entertain "both focus on [Mr. Poe]'s noncompliance with the claim-filing requirements of the Maryland Tort Claims Act." The circuit court concluded that there were no allegations in the amended complaint that "change the allegations concerning that jurisdictional requirement, and no party has asked the Court not to rule on this surviving issue." For these reasons, the circuit court proceeded to "consider the motion to dismiss and the Motion to Entertain Action as they apply to the Amended Complaint."

Next, the circuit court identified "what facts [were] properly before the Court" in connection with the motion to dismiss and the motion to entertain the action. The court correctly observed that the parties' initial filings were not in compliance with Md. Rule

2-311(d)[7] and that Mr. Poe "partially remedied this deficiency" by filing affidavits of Mr. Poe, Ms. Flowers, and Mr. Poe's counsel. The State objected to parts of Ms. Flowers' and Mr. Poe's affidavits as containing inadmissible hearsay. The court then meticulously, and in our view correctly, winnowed out the admissible evidence from the inadmissible hearsay contained in the two affidavits[8]

After assessing the evidence before it, the circuit court explained (emphasis added):

> [Mr. Poe] relies on two of the enumerated factors to show good cause—*the severity of his injuries*, which he alleges left him cognitively unable and/or so focused on healing and rehabilitation to provide timely notice and *his ignorance of the claim submission deadline in the [MTCA]*. The Court's exclusion of Dr. Truss's unsworn report and the unauthenticated medical records from consideration is not fatal to [Mr. Poe's] arguments about the severity of his injuries. He is competent to testify to the effect of his injuries, and he has now provided an affidavit with such testimony. His mother, *Ms. Flowers, who assisted him in his recovery, is also competent to testify on that issue. Indeed, she is a registered nurse and therefore has enhanced ability to make such observations. The Court credits this testimony that Mr. Poe was injured severely and that his injuries impaired his cognitive functioning substantially.* He was unconscious for a period of several weeks following the attack, and his rehabilitation was gradual. At least as of the date he signed his affidavit, [*i.e.*, (January 2, 2020)] he still experienced debilitating seizures as a result of the injuries and required

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[7] Md. Rule 2-311 states in pertinent part:

> A motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based.

[8] We will discuss the affidavits in detail later in the opinion. The affidavits, together with the court's redactions and explanatory commentary, are set out in the appendix to this opinion.

medication to control them. *There is no question that Mr. Poe's life was altered and impaired during the entire one-year period following the incident and beyond.*

Defendants aptly rely on *Madore v. Baltimore Cty*., 34 Md. App. 340 (1976). . . . Mr. Madore was seriously injured in a motor vehicle accident in Baltimore County. . . . He was unconscious for about one week after the accident and remained in the hospital for five to six weeks. When he was discharged to his parents' home, his left leg and left arm were in casts and his right leg was still injured. For at least three months he was confined either to bed or to a wheelchair. He rarely left the home. About five months after the accident he returned to the hospital for six days for the removal of wires and pins, and about seven months after the accident he was hospitalized again for more than one month for reconstructive surgery. He testified that initially "all he was worried about was getting his legs back." He acknowledged that "he was aware of what was going on around him, but had thoughts about his health on his mind." On these facts, the Circuit Court found that Mr. Madore had not shown good cause for failing to submit a claim to the County within 180 days, and the appellate court affirmed on the basis of no abuse of discretion.

The only substantially distinguishing factor between Madore and this case is that Mr. Madore appears to have suffered primarily orthopedic injuries to his limbs and Mr. Poe suffered significant head injuries. *Like Mr. Madore, Mr. Poe was justifiably focused on his recovery rather than on seeking legal remedies, but that understandable focus was not sufficient to excuse Mr. Madore's failure to file a claim within six months. Mr. Poe had additional time—up to one year.* The court in *Madore* placed emphasis on Mr. Madore's acknowledgement that he had the ability to use the telephone and to contact an attorney if he had been motivated to do so. *Despite the difference that Mr. Poe had to contend with the effects of his injuries on his cognitive ability, he has failed to show that those effects prevented him from either considering possible legal remedies or taking steps individually or with the assistance of his mother to protect those interests.* Indeed, Mr. Poe's and Ms. Flowers's Affidavits show that once Mr. Poe began to consider a possible lawsuit, they were able to move relatively quickly to consult first with Ivan Bates, Esquire, and then by referral with current counsel. Once consulted, Plaintiff's current counsel moved quickly to protect his rights.

What is missing here, as it was in Madore, is a showing that Plaintiff's admittedly severe and consequential injuries resulted in an inability during all or most of the claim-filing period to act to protect his rights.

First, although the Court credits Plaintiff's testimony that there were significant aspects of the incident that he did not remember, he does not contend that he lacked knowledge of the basic requisites of his potential cause of action. Plaintiff still may not know exactly who attacked him, but he believed early on that the attack was connected to the gang threats against him. Plaintiff similarly does not maintain that he lost memory of being aware of those threats during his detention before the attack and of allegedly communicating the existence of the threat both to his mother and to correctional officers. *Moreover, his injuries had no effect on the knowledge of his mother*. According to Plaintiff's allegations and Ms. Flowers's testimony, she was aware of the gang threats and of her own alleged communications to alert correctional officials to those threats so they could protect her son during his detention. Those are all ingredients of Plaintiff's claim that correctional officials were indifferent to his need for protection, and Plaintiff therefore cannot claim that he only discovered the basis for a possible claim too late to make the claim by the one-year deadline. *Second, as was the case in Madore, Plaintiff has not suggested that he lacked the ability to contact an attorney by telephone or email or in person or through someone else on his behalf.*

Plaintiff's additional reliance on his and his mother's ignorance of the one-year claim submission requirement adds little to the good cause consideration. The Court accepts the testimony of both of them that they were not actually aware of the requirement in State law that they submit a claim to the Treasurer within one year. The Court cannot find any instance, however, in which an appellate court has placed primary or even significant reliance on this factor in finding good cause in this context. To the contrary, even when the *Heron* Court first included it in the broad categories for consideration, it noted explicitly that "[t]he Court of Special Appeals has specifically rejected ignorance of the law requiring notice as good cause. *See Williams v. Montgomery County*, 123 Md. App. 119 (1998), [*aff'd*, 352

> Md. 310 (2000)]." *Heron*, 361 Md. at 272 n.13.[9] Both the Court of Appeals, *Rios* [*v. Montgomery County*], 386 Md. [194,] 141 n.18 [2005], and the Court of Special Appeals, *Wilbon* [v. *Hunsicker*], 172 Md. App. [181,] 206 n.15 [2006]; [and] *White* [*v. Prince George's County*], 163 Md. App. [129,] 157 (2005], subsequently noted that no Maryland appellate court has adopted the position that ignorance of the law would constitute good cause to waive the notice requirement. *Plaintiff's ignorance of the claim requirement therefore does not help him over the good cause threshold.*
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> Because Plaintiff has not shown good cause to excuse his untimely claim, the Court need not decide whether Defendants can make an affirmative showing of prejudice. The Court comments, however, that they have not made such a showing. . . . The absence of prejudice, however, does not affect the outcome because prejudice comes into play only if Plaintiff first established good cause.

(Some citations omitted).

The Parties' Contentions

In his brief, Mr. Poe asserts that the circuit court erred in dismissing his case for five distinct reasons.[10] For the purposes of this opinion, we will focus on the contention that is outcome-determinative.

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[9] In *Williams*, we held that "the trial court did not abuse its discretion when it found, in effect, that ignorance of the law is no excuse when a party, *represented by counsel*, fails to give notice *because [counsel] was unaware that notice was required*." 123 Md. App. at 134 (emphasis added). Maryland's highest court has not addressed the issue. *See, e.g., Rios v. Montgomery County*, 386 Md. 104, 142 n.18 (2005).

[10] The other issues Mr. Poe raises are: (1) Mr. Poe contends that "under the reasonable person standard, [his] failure to timely engage counsel or file a timely tort claims notice within one year of the attack comprises excusable neglect and mistake."; (2) Mr. Poe argues that the circuit court should have decided his claim on its merits instead of disposing of it on procedural grounds; (3) Mr. Poe asserts that the filing of his

Mr. Poe asserts that the record shows that his "sever[e]" injuries "substantially impaired his cognitive functioning, substantially impaired his ability to retain counsel, and file a timely tort claims notice." He states that the case primarily relied upon by the circuit court, *Madore v. Baltimore County*, is factually distinguishable and that the circuit court failed to give weight to evidence that he was unable to obtain a lawyer. Mr. Poe asserts that the circuit court erred when it "extended an additional burden upon [Ms. Flowers] to timely file the tort claims notice, due to his brain injury." He argues that Maryland law recognizes that a "serious physical or mental injury" can constitute good cause for failing to timely file a notice of claim. He asserts that the uncontroverted evidence before the circuit court showed that he suffered "devastating and debilitating cognitive injuries [that] substantially impaired his cognitive functioning." He notes that, in its memorandum opinion, the court stated that it "credit[ed]" the assertions on Mr. Poe's and Ms. Flowers' affidavits that he:

> was injured severely and that his injuries impaired his cognitive functioning substantially. He was unconscious for a period of several weeks following the attack, and his rehabilitation was gradual. At least as of the date he signed his affidavit, he was still experiencing debilitating seizures as a result of the injuries and required medication to control them. There is no

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amended complaint rendered moot the State's motion to dismiss his complaint; (4) Mr. Poe argues that the circuit court erred when it declined to admit into evidence Dr. Truss's medical report and his medical records; and (5) the circuit court improperly failed to consider his argument that his ignorance of the law constituted good cause for his failure to timely file his notice because the issue has not been addressed by the Supreme Court of Maryland.

> question that Mr. Poe's life was altered and impaired during the entire one-year period following the incident and beyond.

The State agrees with none of this. It contests each of Mr. Poe's contentions and asserts that the circuit court did not abuse its discretion when it concluded that Mr. Poe had failed to show good cause for his failure to timely file his notice of claim.

THE STANDARD OF REVIEW

A trial court's decision that good cause has, or has not, been shown to excuse the failure to provide a timely notice of claim is reviewed for abuse of discretion. *Heron*, 361 Md. at 271 (citing, among other cases, *Madore*, 34 Md. App. at 345). In applying this standard, we bear in mind that "[i]t is not our task on appellate review to decide 'good cause' afresh, but rather, to decide whether the trial court abused its discretion in its good cause determination." *Harris v. Housing Authority of Baltimore City*, 227 Md. App. 617, 636 (2016) (quoting *Housing Authority of Baltimore City v. Woodland*, 438 Md. 415, 434, 92 A.3d 379, 390 (2014)).

The definitive explanation of an appellate court's role in reviewing a discretionary decision by a trial court is found in former Chief Judge Wilner's landmark opinion for this Court in *North v. North*, 102 Md. App. 1, 14 (1994):

> [A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically

> follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

The *North* analytical rubric applies in cases involving substantial compliance with the notice requirements of the LGTCA. *Moore v. Norouzi*, 371 Md. 154, 168 (2002); *Mayor & City Council of Baltimore v. Stokes*, 217 Md. App. 471, 478 (2014). We hold that it applies to MTCA cases as well.

ANALYSIS

The good cause provision in State Gov't § 12-106 was added to the statute in 2015.[11] Section 12-106 is very similar to the notice of claim provision in Maryland's Local Government Tort Claims Act, codified as Md. Code, Courts & Jud. Proc. §§ 5-301–305. Courts & Jud. Proc. § 5-304 states in pertinent part (emphasis added):

> (d) Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given.

Both the MTCA and the LGTCA "were designed to expand the individual's right to obtain remuneration for injury from the government, and the purpose of both conditions precedent were to provide notice to the government so that it may better predict liability and make appropriate budgetary decisions." *Rios v. Montgomery County*, 386 Md. 104, 131 (2005). Moreover, although the language in the two statutes are not identical, the

[11] *See* 2015 Md. Laws, Chap. 132, effective October 1, 2015.

differences are not substantive, at least in the context of this appeal. Under either statute, if a claimant fails to provide the requisite notice within one year of the injury giving rise to the claim, they may still proceed with their civil action if they convince the circuit court that there was "good cause" to excuse their failure to provide timely notice within the statutory deadlines unless the defendant demonstrates that it has been prejudiced by the failure to provide timely notice.[12] For this reason, appellate decisions analyzing the concept of "good cause" under both statutes guide our analysis.

Neither the MTCA nor the LGTCA contains a definition of good cause. In *Madore v. Baltimore County*, this Court stated:

> [T]he legislature made no attempt to define what constitute good cause, but clearly committed that determination to the discretion of the court. . . . When the legislature . . . prefers a flexible rule . . . it adopts good cause as the measure, and leaves it to the court to do the measuring.

34 Md. App. 340, 344 (1976).

In *Madore*, we equated "good cause" with "ordinary prudence, that is, whether the claimant prosecuted his claim with that degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances." *Id.* at 345 (quoting *Lee v. Houston Fire & Cas. Ins. Co.*, 530 S.W.2d 294, 296 (Tex.1975)).

[12] In the present case, the State did not attempt to show that it had been prejudiced by the delay in filing the notice of claim.

The Supreme Court of Maryland has enumerated the four "broad categories" of considerations that may constitute good cause, either independently or in combination: "[1] excusable neglect or mistake (generally determined in reference to a reasonably prudent person standard); [2] serious physical or mental injury and/or location out-of-state; [3] the inability to retain counsel in cases involving complex litigation; and [4] ignorance of the statutory notice requirement." *Heron v. Strader*, 361 Md. 258 (2000), *Id*. at 272 (footnotes and citations omitted).[13]

As we have discussed, in order to comply with the MTCA, a claimant must submit a written claim within one year from the date of injury that is the subject of the claim. However, strict compliance with the one-year notice requirement is not required when the claimant shows good cause as to why timely notice was not provided and the defendants were not prejudiced by the failure to do so. State Gov't § 12-106(c)(1).

As the circuit court correctly pointed out in its memorandum opinion, there are two steps in this analysis. First, the court must determine if good cause exists, and, if so, the burden shifts to the State to demonstrate that it has been prejudiced. In the present case, as the circuit court noted in its memorandum opinion, the State does not assert that it was prejudiced by the five-week delay in filing the notice of claim. Our Supreme Court has

[13] In the context of the Local Government Tort Claims Act, the Supreme Court of Maryland has recognized a fifth ground for good cause, namely, misleading representations to the claimant by representatives of the local government defendant. *Rios v. Montgomery County*, 386 Md. 104, 141 (2005).

made it clear that an absence of prejudice to the State by itself does not constitute good cause. *Johnson v. Maryland State Police*, 331 Md. 285, 291 (1993).

Turning to the dispositive issue in this appeal, we conclude that the circuit court erred when it concluded that Mr. Poe failed to demonstrate good cause for his failure to timely file his notice of claim. We reach this conclusion based on the undisputed facts presented to the court by the affidavits of Mr. Poe and Ms. Flowers.

We will start with Ms. Flowers' affidavit, which was dated January 3, 2020. In it, she averred that Mr. Poe was either in the hospital, in the JCI rehabilitative facility, or residing with her in her home from the date of his injury (June 2, 2016) until August 2017. As to his physical and cognitive condition, Ms. Flowers stated that Mr. Poe's "cognitive abilities have been severely compromised since he was attacked," and that "he has suffered a loss in memory, he cannot process information, his speech is slurred, he has difficulty understanding the written and spoken word, he suffers seizures, and he generally has difficulty with day to day life and functioning." She stated that "there is no question that [Mr. Poe] sustained extensive brain damage from the attack and that the effects are permanent." Moreover, she averred that:

> During the time [Mr. Poe] was living with me, he was unable to seek the assistance of an attorney. . . . [He] was not able to seek an attorney on his own given his limited cognitive ability due to the brain injury, and because of his lack of mobility.

Ms. Flowers also stated that, while Mr. Poe lived with her, her focus was on addressing his neurological, cognitive, and physical challenges. She related that neither

she nor Mr. Poe was aware that a notice on Mr. Poe's behalf "had to be served on the Comptroller of the Treasury [sic] in order to sue the State of Maryland" until Mr. Poe's counsel informed her of that fact in June 2017, and that Mr. Poe's counsel "served the tort claims notice almost immediately after I engaged him."

In his affidavit, Mr. Poe largely reiterated the averments made in Ms. Flowers's affidavit. In addition, he stated (emphasis added):

> I was unconscious from June 2, 2016 and regained consciousness at some time in the middle of July 2016.
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> From June 2, 2016 until July 2016, I do not remember anything
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> After I woke up in Bon Secours, I was sent back to Jessup Correctional Institute (JCI) and did rehab to learn how to walk, write, and speak again. I was in JCI until about August 2016 when I was released to my mother's care on a compassionate release.
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> * * *
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> "[When I was living with my mother,] I was not physically or mentally capable or competent to get a lawyer. During the first few months that I was home, I was not able to leave the house at all. I was able to work up to walking a few blocks to the store. For the year I lived with my mother until I was incarcerated in August 2017, I was totally dependent on my mother to care for me.
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> * * *
>
> My mother was concentrating on my recuperating and getting better.
>
> *Around the middle of June 2017*, I was talking to a friend [about] that I was not able to work, or help my mother pay her bills since I was living with her. My friend gave me Ivan Bates, Esq.'s card and said that given what happened to me, I should talk to a lawyer. He told me that there had been a lot of incidents at BCDC similar to mine where BCDC was responsible for failing to keep inmates safe and that I should talk to Mr. Bates.

> After my friend gave me Mr. Bates' card, I gave it to my mother and asked her if we could make an appointment to go see Mr. Bates.[14]
>
> I did not know until I spoke with my friend in June 2017 that I might have a cause of action to sue the State of Maryland[.]
>
> *I was not able to obtain a lawyer on my own because of the effects of my brain injury and would not have been able to get a lawyer without my mother's assistance.*

Mr. Poe's affidavit was dated January 2, 2020.

The circuit court "credited" the assertions in Mr. Poe's and Ms. Flowers's affidavits that:

> Mr. Poe was injured severely and that his injuries impaired his cognitive functioning substantially. He was unconscious for a period of several weeks following the attack, and his rehabilitation was gradual. At least as of the date he signed his affidavit, [(January 2, 2020)] he still experienced debilitating seizures as a result of the injuries and required medication to control them. There is no question that Mr. Poe's life was altered and impaired during the entire one-year period following the incident and beyond.

Nonetheless, the court stated that even though "Mr. Poe had to contend with the effects of his injuries on his cognitive ability, he has failed to show that those effects prevented him from either considering possible legal remedies or taking steps individually or with the assistance of his mother to protect those interests."

[14] There are substantively similar assertions in Ms. Flowers's affidavit as to how Mr. Poe learned of his possible cause of action against the State. However, Mr. Poe's affidavit is more specific as to dates.

This conclusion is not consistent with the affidavits. What is dispositive in our view is Ms. Flowers' affidavit, which was dated January 3, 2020, that is 31 months after the deadline for filing the notice of claim had expired. As we have explained, the court had explained that Ms. Flowers, "who assisted [Mr. Poe] in his recovery, is . . . competent to testify on [the effect of his injuries]. Indeed, she is a registered nurse and therefore has enhanced ability to make such observations." Ms. Flowers averred (emphasis added):

> After the attack, Earl has not been the same. He *has serious physical, mental and emotional issues.* . . . His speech is slow and slurred, *his memory comes and goes . . ., his mental capacity has been diminished*, he suffers from severe depression, and *he is frequently confused.* . . . Now he can *barely recall the most rudimentary facts about his daily life*. Based on my personal observation and professional training, there is no question that *he sustained extensive brain damage from the attack and that the effects are permanent*.
>
> *During the time Earl lived with me, he was not physically or mentally capable or competent to get a lawyer*.[15]

In light of the significant neurological damage suffered by Mr. Poe and its resulting cognitive trauma, the court's conclusion that he nonetheless had the ability to realize that he was required to file a notice of claim and then to file it within a year of the date of his injury "[did] not logically follow from the findings upon which it supposedly rest[ed.]" *North*, 102 Md. App. at 14. The circuit court's conclusion that Mr. Poe "has not

[15] The circuit court had noted Ms. Flowers, "who assisted [Mr. Poe] in his recovery, is also competent to testify on [the effect of his injuries]. Indeed, she is a registered nurse and therefore has enhanced ability to make such observations."

suggested that he lacked the ability to contact an attorney by telephone or email or in person or through someone else on his behalf" is equally flawed for the same reason—Ms. Flowers stated in her affidavit that he "was not able to seek an attorney on his own given his limited cognitive ability due to the brain injury, and because of his lack of mobility.[16]

The circuit court's suggestion that Ms. Flowers bore some responsibility to investigate what was necessary to protect Mr. Poe's ability to file a civil action against the State is not consistent with Maryland law—the test is whether "the *claimant* prosecuted his claim with that degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances." *Condore*, 34 Md. App. at 345 (emphasis added). The State points to no Maryland decision suggesting that the obligation of prudence and diligence extends to the parent of an adult claimant, and we

[16] In light of the uncontested evidence before it, the circuit court's observation that "[t]he only substantially distinguishing factor between *Madore* and this case is that Mr. Madore appears to have suffered primarily orthopedic injuries to his limbs and Mr. Poe suffered significant head injuries" misses the point—the injuries were not merely to Mr. Poe's head, they were to his brain. There is nothing in *Madore* that suggests that Mr. Madore experienced any neurological or cognitive deficits as a result of his accident.

have found none.[17]

As we have explained, the MTCA and the LGTCA are designed to give persons who have been injured by negligence of State or local government units a right to redress. The notice requirements in the MTCA and the LGTCA are not intended as traps for the unwary to defeat otherwise meritorious claims but rather to:

> provid[e] a mechanism whereby [the State,] the municipality or county would be apprised of its possible liability at a time when it could conduct its own investigation, i.e., while the evidence was still fresh and the recollection of the witnesses was undiminished by time, sufficient to ascertain the character and extent of the injury and its responsibility in connection with it.

Moore v. Norouzi, 371 Md. 154, 167–68 (2002).

[17] In its brief, the State asserts that "'[i]n this case, as in any other, [circuit court, as] the factfinder decided which evidence to accept and which to reject.'" *Grimm v. State*, 447 Md. 482, 505 (2016) (quoting *Jones v. State*, 343 Md. 448, 460 (1996)). The State's reliance on *Grimm* and *Jones* is misplaced for several reasons.

The first is that the circuit court struck, i.e., "rejected," certain allegations from both affidavits. But the court did not strike the portions of Ms. Flowers' and Mr. Poe's affidavits that figure in our analysis.

Second, the issue in *Grimm* and *Jones* was the sufficiency of the evidence in cases tried on their merits. The case before us was decided on the basis of the affidavits submitted by and on behalf of Mr. Poe. The State presented no evidence to the circuit court to contradict the factual assertions in the affidavits. The State's failure to do so "constitutes an admission of those facts for purposes of summary judgment." *Mathis v. Hargrove*, 166 Md. App. 286, 306 (2005).

Finally, we review the factual record in summary judgment cases in the light most favorable to the non-moving party. *See Newell v. Runnels*, 407 Md. 578, 607 (2009); *Gourdine v. Crews*, 405 Md. 722, 735 (2008).

The undisputed evidence before the circuit court was that Mr. Poe suffered significant and permanent neurological injuries that left him with an only partially-controlled seizure disorder and significantly affected his memory, his emotional state, and his cognitive abilities. In *Heron*, the Court explained that "serious physical or mental injury" could constitute good cause for a failure to timely file a notice of claim. 361 Md. at 272.[18] To repurpose a phrase from Justice Elena Kagan, if Mr. Poe's neurological and

[18] We believe that Mr. Poe's case fits comfortably within the facts of the six appellate decisions cited by the *Heron* Court to support its conclusion serious physical or mental injury could constitute good cause: *Silva v. New York*, 246 A.D.2d 465, 465–66, 668 N.Y.S.2d 189 (1998) (holding that fractures to plaintiff's lower back requiring hospitalization of 20 days and subsequent physical therapy constituted good cause for failure to file a notice of claim within 90 days)); *Butler v. Ramapo*, 242 A.D.2d 570, 571, 662 N.Y.S.2d 93, 94 (1997) (holding that good cause was shown by evidence that, because of a mental illness, the plaintiff's lacked "an overall ability to function in society" during the 90-day period for filing a notice of claim); *Hilda B. v. Housing Auth*., 224 A.D.2d 304, 638 N.Y.S.2d 36 (1996) (holding that good cause was shown by evidence that plaintiff was the victim of an extremely violent and traumatic assault that left her with "enduring psychological symptoms, chronic distress and. . . additionally interfered with her ability to perform routine, daily tasks" constituted good cause for failure to file within 90 days); *S.E.W. Friel Co. v. New Jersey Turnpike Auth*., 73 N.J. 107, 119–20, 373 A.2d 364, 370 (1977) (good cause demonstrated by evidence that plaintiff was "totally incapacitated" during the 90 day period for filing notice of claim by "multiple fractures of the arms, ribs and skull and removal of his spleen"); and *Kleinke v. Ocean City*, 147 N.J. Super. 575, 578, 371 A.2d 785, 786–87 (App. Div. 1977) (good cause shown by plaintiff, a practicing lawyer, by evidence that a broken leg with subsequent complications required him to remain in the hospital for six weeks of the 90-day notice period).

What separates these cases from Mr. Poe's is that he had a year to file a notice of claim. But the undisputed evidence before the circuit court was that his neurological and

cognitive deficits do "not count as [good cause under former State Gov't § 12-106(b)], we are hard pressed to know what would." *Chaidez v. United States*, 568 U.S. 342, 353, 133 S.Ct. 1103, 185 L.Ed.2d 149 (2013).

We are aware that we review the circuit court's decision for abuse of discretion and that our standard of review is a deferential one. But this standard of review "does not preclude reversal of an order denying relief where adequate cause for such relief is shown by uncontradicted evidence or affidavits of the petitioner." *Viles v. State*, 66 Cal.2d 24, 56 Cal. Rptr. 666, 423 P.2d 818 (1967). This is such a case. For these reasons, we hold that the circuit court erred when it concluded that Mr. Poe had failed to satisfy the good cause requirement of State Gov't § 12-106(c) as the statute existed at the time of his injuries. The circuit court's conclusion to the contrary falls outside of the very wide scope of the discretion that trial courts exercise in cases of this nature.

The judgment of the circuit court is reversed, and this case is remanded for proceedings on the merits of Mr. Poe's claim.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS REVERSED AND THIS CASE IS REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

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cognitive deficits persisted throughout and beyond the one-year period. We see no basis to distinguish Mr. Poe's case from those cited in *Heron*.

Appendix

Affidavits submitted by Mr. Poe in support of his motion to entertain action as redacted by the circuit court.[19]

Affidavit of Michael Glass

1. I am over eighteen years old and am competent to testify.

2. I have met and interviewed Plaintiff, Earl Poe, on a few different occasions, and spoken with him on the phone several times.

3. Based on my personal experiences and observations with Mr. Poe, his cognitive abilities appear to be impaired and compromised. He has inordinate difficulty understanding things when spoken too, particularly on the phone. By way of example, a few weeks ago, I attempted to give Mr. Poe my fax number over the telephone. I had to repeat the numbers multiple times, ultimately giving him the numbers one at a time, and then having him repeat the numbers back to me. He was supposed to give the phone number to his mother, Carmen Flowers, however he never gave it to her (according to Ms. Flowers).

4. Mr. Poe walks with a limp. His gait is slow. He appears to be dazed and confused when spoken to.

5. Based on my experience as an attorney representing injured plaintiffs including plaintiffs with traumatic brain injuries, Mr. Poe presents with the same attributes of a person with a brain injury.

6. Mr. Poe's mother has scheduled Mr. Poe for a doctor's appointment to assess his current condition on January 17, 2020, which was the soonest available date he could be seen.

Affidavit of Carmen Flowers

1. I am over eighteen years old and am competent to testify.

[19] Passages redacted by the circuit court are ~~stricken through~~. Explanatory comments by the circuit court are in *italic*s.

2. I am a Registered Nurse and work as a Nurse Supervisor at University of Maryland Rehabilitation and Orthopedic Center. I have been a registered nurse for 17 years.

3. When Earl was incarcerated, around March 2016, he called me and told me that he had spoken to a friend of his who had advised him that the black Guerilla Family gang was planning a hit on him while he was incarcerated.

4. On or around April or May 2016, I called and spoke with a someone (I believe "Lt. White") at the Baltimore City Detention Center and informed her that I had been informed that my son, Earl Poe -who was incarcerated at the Baltimore City Detention Center was in fear and in danger of being attacked by the Black Guerilla Family, and that he was worried about being placed in the general population. She referred me to an office on Reisterstown Road, and I called and spoke with someone at that office as well, and informed that person that my son was in danger.

5. Despite my warning, Earl was placed in the general population, where he was attacked on June 2, 2016.

6. Earl was severely injured and suffered a traumatic brain injury.

7. After he was attacked, I did not receive any voice messages on my cell phone nor did I receive any cards or notes from anyone investigating Earl's attack.

8. After Earl was attacked, he was in the hospital from around June 2, 2016 until around the middle of July 2016.

9. He was released from incarceration to my care around August 2016.

10. Earl then underwent rehabilitation which included him learning how to walk again.

11. Earl's cognitive abilities have been severely compromised since he was attacked.

12. He has suffered a loss in memory, he cannot process information, his speech is slurred, he has difficulty understanding the written and spoken word, he suffers seizures, and he generally has difficulty with day to day life and functioning.

13. Earl lived with me at my home in Randallstown from August 2016 until he was reincarcerated in August 2017. During that time, I had to care for him because he was not capable of living on his own or caring for himself.

14. During the time Earl was living with me, he was unable to seek the assistance of an attorney. ~~He found out that he might have a cause of action against the State when he spoke with a friend in June 2017 who gave him Ivan Bates' business card.~~ Earl was not able to seek an attorney on his own given his limited cognitive ability due to the brain injury, and because of his lack of mobility.

15. I was more focused on helping him recover as best I could.

16. Earl gave me Ivan Bates' business card in June 2016, he asked me to help him get a lawyer. I went to the offices of Bates and Garcia, LLC in June to inquire as to whether Earl had a case against the detention center for putting his life at risk by placing him in the general population after I called to warn the detention center that I had been informed by Earl that his life had been threatened by the Black Guerilla Family gang, ~~and after Earl had also warned the Detention Center that he thought his life was at risk~~.

17 Ivan Bates of Bates and Garcia put me in touch with Michael Glass of the Michael Glass Law Firm. I engaged Michael Glass in early July 2016, who promptly served a tort claims notice on the Comptroller of the Treasury.

18. I did not know -nor did Earl know-- that a notice had to be served on the Comptroller of the Treasury in order to sue the State of Maryland until Mr. Glass informed me. Mr. Glass served the tort claims notice almost immediately after I engaged him.

19. Since the attack and since Earl regained consciousness, in my experience as a Registered Nurse, it is clear that Earl has suffered significant brain damage. He is scheduled to go back to the doctor on January 17, 2020, which is the first available date that he could be seen, to assess his current condition.

20. Most recently within the past few days, Earl had a seizure, fell, and cut his leg, which required three stitches to close. He has undergone and continues to undergo frequent seizures where he loses consciousness and his body convulses and shakes uncontrollably. He currently takes medication to control his seizures but still has 2 to 3 seizures a week. If he

does not take his medication, he will constantly have seizures several times a day.

21. Prior to being incarcerated in March 2016, Earl worked as a driver for All My Sons Moving Company. ~~Since the attack and his release, he is not able to hold a job given his compromised health and brain injury due to the attack. He can no longer lift over 50 pounds. He is no longer able to drive a car~~.

22. For the first four months that Earl was living with me after his hospitalization and after he was released from the medical unit at [Jessup Correctional Institute], I gave him rehabbing exercises to help rebuild the muscles in his arms and legs. I helped him practice walking, walking up and down stairs, with writing exercises, with working in coloring books and tracing pictures to work on his hand dexterity. I also would do exercises with him, asking him questions, to help restore his memory and sharpen his mental and cognitive skills. For about four months after he was released from the hospital, he had to use a walker in order to walk.

23. When Earl was living with me, he did not have insurance to cover the costs for being in a rehab program. He had to rely on me to give him exercises like lifting light weights and doing other exercises to regain his physical strength and stamina.

24. After the attack, Earl has not been the same. He has serious physical, mental and emotional issues. His gait is now unsteady, and he walks with a limp. He falls down frequently. He can no longer do many day to day activities. His speech is slow and slurred, his memory comes and goes, you have to constantly tell him the same thing over and over before he comprehends, his mental capacity has been diminished, he suffers from severe depression, and he is frequently confused. He used to be a history buff and could recite facts and events with ease. Now he can barely recall the most rudimentary facts about his daily life. Based on my personal observation and professional training, there is no question that he sustained extensive brain damage from the attack and that the effects are permanent.

25. During the time Earl lived with me, he was not physically or mentally capable or competent to get a lawyer. During the first few months that he was home, he was not able to leave the house at all. He ultimately was able to work up to walking a few blocks to the store. For the year he lived with me, he was totally dependent on me to care for him.

26. After Earl was released from jail in August 2016, he applied for SSI disability benefits, which he was awarded.

27. I was concentrating on helping Earl recuperate and get better. After Earl's friend gave him Mr. Bate's business card, Earl gave it to me and asked me if I could help him find a lawyer, and could we could make an appointment to go see Mr. Bates. I then went to Mr. Bates office without Earl, and met with Mr. Bates and was then introduced me to Michael Glass. At the time given Earl's condition, I felt it was better for me to see the attorney without Earl.

28. ~~Earl did not know until he spoke with his friend in June 2017 that he might have a cause of action to sue the State of Maryland for failing to protect Earl and safeguard him from being attacked after the detention center was put on notice by both Earl and me that he was in potential jeopardy of being attacked~~.

29. ~~Earl was not able to obtain a lawyer on his own because of the effects of his brain injury and would not have been able to get a lawyer without my assistance.~~

30. ~~Earl did not know of any requirement to file a Tort Claims Notice and was only informed of that requirement after I had met with Mr. Glass.~~

The statements in ¶¶ 28-30 almost all are conclusory statements of what was in Mr. Poe's mind. Although Ms. Flowers could testify to his own statements about his state of mind, these are impermissible conclusions and the Court disregards them except to the extent the Court accepts Ms. Flowers's more generalized statements from her own observations of her son's cognitive abilities during this period.

31. I also did not know of the requirement to file a Tort Claims Notice within a year until I met with Mr. Glass, which was shortly after one year had passed from the date of the attack. Mr. Glass then promptly filed a Tort Claims Notice on July 7, 2017.

32. Earl currently lives with his younger sister (28) and younger brother (21). He has been living there since September 11, 2019 since his release from the Central Maryland Correctional Facility (CMCF). They both work; Earl, however, is still unable to work.

33. Based on my personal knowledge and observation, as well as my training and experience as a Registered Nurse, Earl continues to suffer significant physical and mental injuries and limitations directly resulting from the attack on June 2, 2016, which are permanent.

Affidavit of Earl Dwayne Poe

1. I am over eighteen years old and am competent to testify.

2. I was falsely charged with stabbing Mikal Rahman who was a prominent figure in the Black Guerrilla Family gang (herein "BGF") and was incarcerated at the Baltimore City Detention Center ("BCDC") while I awaited trial.

3. I later found out that the BGF thought that I had been involved in stabbing Rahman, and that they had me charged so that I would be incarcerated where I was told that the BGF intended to kill me.

4. When I was incarcerated, I notified a "Lieutenant White" of the BGF's plans to kill me and asked that I not be placed in the general population at the BCDC. I told my mother, Carmen Flowers, that I had been told that the BGF intended to kill me and my mother then also called and spoke with Lt. White and told her of the BGF's plans to kill me.

5. I initially incarcerated in a single cell but was later placed in the general population in the dormitories.

6. The last memory I had was going to take a nap on June 2, 2016 before lunch~~. I have since been told by a friend who personally witnessed the attack that I was attacked on the stairwell in the Annex that leads down to the chow hall, initially by a wave of about 15 people, and then by a second way of 10 to 15 additional people. I was told that my head was slammed against a pole and that I was stabbed multiple times.1 I have no memory of the attack, and no memory of being in the stairwell when the attack occurred.2~~ [*"The Court considers [the stricken material] only as an explanation by [Mr. Poe] of the discrepancy between his initial allegations that the attack occurred while he was napping and his current allegations that it occurred in the stairwell."*]

7. I was admitted to the hospital due to the injuries I suffered as a result of the attack.

8. I was unconscious from June 2, 2016 and regained consciousness at some time in the middle of July 2016.

9. From June 2, 2016 until July 2016, I do not remember anything.

10. After I woke up in Bon Secours [Hospital], I was sent back The when I was released to my mother's care on a compassionate release.

11. I lived with my mother from August 2016 until August 2017. I got another charge and was incarcerated, and while I was incarcerated, I was then charged with violating my probation. For that violation, I was incarcerated from August 2017 and released in September 2019.

12. Since the attack and since I regained consciousness, I have suffered brain damage. My sense of normalcy has completed changed. I undergo frequent seizures where my body locks up. I lose consciousness during seizing and when I regain consciousness, I can remember what happened immediately before the seizure, but cannot remember what has happened during the seizure. I am usually unconscious for several minutes during a seizure and my body convulses and shakes. I am taking medication to control the seizures, but even with the medication, I have 2 to 3 seizures a week. If I do not take my medication, I will constantly have seizures several times a day.

13. When I have a seizure, my body will start twitching and jerking uncontrollably. I have woken up from a seizure while smoking a cigarette only to find that I dropped the cigarette and burned a hole in my pants.

14. Prior to being incarcerated in March 2016, I worked as a driver for All My Sons Moving Company. Since the attack and my release, I am not able to hold a job given my compromised health condition due to the attack. I can no longer lift over 50 pounds. I am no longer able to drive a car.

15. My mother is a registered nurse. When I was living with my mother, for the first four months I was trying to get myself back together by doing rehabbing exercises including building the muscles back up in my arms and legs, practicing walking, practicing walking up and down stairs, writing exercises, working in coloring books and tracing pictures to work on hand dexterity; my mother would work with me to ask me questions that what was my name, where did I live, what were the names of family members, etc. to help me regain my memory and to sharpen my mental skills. For

about four months after I was released from the hospital, I had to use a walker in order to walk.

16. When I was living with my mother, I did not have insurance to cover the costs for being in a rehab program. My mother gave me other exercises like lifting light weights and doing other exercises to regain my physical strength and stamina.

17. During this time, I was not physically or mentally capable or competent to get a lawyer. During the first few months that I was home, I was not able to leave the house at all. I was able to work up to walking a few blocks to the store. For the year I lived with my mother until I was incarcerated in August 2017, I was totally dependent on my mother to care for me.

18. After I was released from jail in August 2016, I applied for SSI disability benefits, which were awarded to me and which I received until I was incarcerated in August 2017.

19. My mother was concentrating on my recuperating and getting better.

20. Around the middle of June 2017, I was talking to a friend that I was not able to work, or help my mother pay her bills since I was living with her. My friend gave me Ivan Bates, Esq.'s card and said that given what happened to me, I should talk to a lawyer. He told me that there had been a lot of incidents at BCDC similar to mine where BCDC was responsible for failing to keep inmates safe and that I should talk to Mr. Bates.

21. After my friend gave me Mr. Bates' card, I gave it to my mother and asked her if we could make an appointment to go see Mr. Bates. ~~My mother then went to Mr. Bates' office without me, and met with Mr. Bates and was then introduced to my current attorney, Michael Glass. My mother felt more comfortable given my condition to see the attorney herself.~~

22. I did not know until I spoke with my friend in June 2017 that I might have a cause of action to sue the State of Maryland for failing to protect me and safeguard me from being attacked after I had advised Lt. White of the threat I was under from the BGF.

23. I was not able to obtain a lawyer on my own because of the effects of my brain injury and would not have been able to get a lawyer without my mother's assistance.

24. I did not know of any requirement to file a Tort Claims Notice and was only informed o that requirement after my mother met with Mr. Glass.

25. ~~My mother also did not know of the requirement to file a Tort Claims Notice within a year until she met with Mr. Glass after one year had passed from the date of the attack (although she met with Mr. Glass within a few weeks of June 2, 2017 and the Tort Claims Notice was then promptly filed after that on July 7, 2017).~~

26. I currently live with my younger sister (28) and younger brother (21). I have been living there since September 11, 2019 since my release from Central Maryland Correctional Facility (CMCF). They both work. There has been additional strain on the household because I am no longer able to pull my weight and contribute to the chores and functioning of the household.

27. I continue to suffer significant physical and mental injuries and limitations directly resulting from the attack on June 2, 2016.

28. The facts as alleged in the First Amended Complaint (as corrected herein) are true.

29. The facts as alleged in the Motion For this Court to Entertain Action and the Amended Motion for This Court to Entertain Action are true.

The Report of Dr. Truss

The Court will not consider Plaintiff's Line of Submission with Dr. Truss's unsworn report for three reasons. First, it was untimely. The Court gave Plaintiff until January 3, 2020 to correct deficiencies in the papers filed before the December 20, 2019 hearing. Although Plaintiff had referred to his medical condition in those papers, nowhere did Plaintiff offer the opinion of an expert, and the Court did not grant Plaintiff additional time so he could then seek to develop expert testimony. The Court also did not give Plaintiff an opportunity to reply to Defendants' response to his supplemental submission.

Second, the opinion of Dr. Truss that Plaintiff offers is unsworn. Plaintiff defends the submission by arguing first that an opinion of an expert that "will assist the trier of fact" is admissible "in the form of an opinion or otherwise." Md. Rule 5-702. Plaintiff ignores the plain language of Rule 5-

702, which governs the admissibility of "[e]xpert *testimony*." *Id*. (emphasis added). "Before *testifying*, a witness shall be required to declare that the witness will testify truthfully." Md. Rule 5-603 (emphasis added). Dr. Truss could not walk into the trial and simply talk to the jury about his opinions, and counsel cannot present those same opinions as evidentiary support for a motion by informal letter or report. *See Skanska USA Bldg., Inc. v. J.D. Long Masonry, Inc*., 2019 WL 3323210, at *7 (D. Md. July 24, 2019) ("Unsworn expert reports . . . cannot be considered on a motion for summary judgment.").

Plaintiff also argues that Dr. Truss's unsworn letter is permissible because an expert is permitted to rely on information that is not otherwise admissible if it is the type of information that experts in this field reasonably rely on. Md. Rule 5-703(a). The proposition is correct, but inapplicable here. If Dr. Truss were testifying under oath, he could base his opinions both on pathologically germane statements made to him by Plaintiff and on Plaintiff's medical records, but here Dr. Truss has not crossed the essential threshold of testifying because his report is unsworn.

Third, even if Dr. Truss's opinions were given by affidavit, the Court would give them little weight because Dr. Truss betrays a willingness to cross the line from professional evaluation of Plaintiff's cognitive condition to characterizations and conclusions that are not within his expertise.

* * *

For these reasons — primarily its untimely submission and the fact that it is not sworn —the Court will strike Dr. Truss's letter opinion and the medical records submitted with it.