Circuit Court for Prince George's County
Case No. CAL20-19946

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1117

September Term, 2023

MARTIN T. HAWKINS

v.

EMPIRE TODAY LLC, ET AL.

Arthur,
Tang,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: September 27, 2024

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

After Martin Hawkins hired a company to replace the flooring in his house, he tripped on a step that he knew was a tripping hazard. Mr. Hawkins sued the flooring company and the entities that performed work for the company, claiming that his injuries resulted from their negligence. The Circuit Court for Prince George's County granted the defendants' motions for summary judgment.

Mr. Hawkins appealed. We affirm.

BACKGROUND

The pertinent facts, viewed in the light most favorable to Mr. Hawkins, the party who opposed summary judgment, are as follows:

On February 1, 2020, Mr. Hawkins entered into a contract with Empire Today LLC to replace the flooring in his house with hardwood floors. Empire Today was responsible for replacing the flooring on the landing and staircases of Mr. Hawkins's split-level house, as well as in other areas of the house.

Empire Today assigned its responsibilities under the contract to Carpet Workshop, LLC. Carpet Workshop engaged Juniors Flooring LLC to do the work at Mr. Hawkins's house. Juniors installed the flooring on the landing and staircase on February 21 and February 22, 2020.

When the installation was finished, Mr. Hawkins observed that the risers on some of the steps were inconsistent in height. The Prince George's County Code allowed for variations of no more than three-eighths of an inch in the height of the risers, but the height of the risers at Mr. Hawkins's house ranged from seven and one-quarter inches to

nine inches—a variation of almost two inches. The Code prohibited risers from exceeding a maximum height of eight and one-quarter inches, but two steps on the lower half of the staircase and one on the upper half exceeded that limit. The Code required that "nosing projection[s]"—the portion of the stair that overhangs the riser—must be between three-quarters of an inch and one and one-quarter of an inch in length. The nosing projections for three steps failed to meet this requirement: one step on the lower half of the staircase and one step on the upper half of the staircase exceeded the nosing projection limit, while one step on the upper half of the staircase measured less than the minimum nosing projection requirement.

On February 22, 2020, the day when Juniors completed its installation of the flooring, Mr. Hawkins measured the steps and realized that some of the steps "[weren't] right" and violated the Code requirements. He informed the workers who completed the installation that the stairs were a "tripping hazard."

On February 26, 2020, during a telephone conversation with Empire Today, Mr. Hawkins told a representative that "if somebody trips and falls" on the stairs, Empire Today would be liable. Mr. Hawkins also told the representative that, after the steps were installed, he and his wife "both did understand that the steps were a tripping hazard[.]"

There are two means of entry into the main level of Mr. Hawkins's house. First, a person may use the garage door to enter the house through the basement. In that case, the person walks up six steps of the lower staircase to arrive at a landing, after which the person walks up another six steps of the upper staircase to arrive at the main level.

Alternatively, a person may proceed up a set of stairs at the exterior of the house, enter through the front door and arrive at the landing. In that case, the person walks up the six steps of the upper staircase to arrive at the main level. By entering through the front door, the person can reach the main level without using the lower staircase.

Although Mr. Hawkins was aware of the tripping hazard, he continued to enter his house through the garage, which required him to traverse all the steps on both the lower and upper staircases. The only precautions he took were to "walk[] as safely as possible" and to hold the handrail and avoid carrying heavy loads.

On February 24, 2020, Empire Today and Carpet Workshop sent Morales LLC to photograph the steps so that they could determine what repairs should be made. On February 29, 2020, Empire Today directed SOSA Floors LLC to correct the installation at the Hawkins house. When the SOSA employees arrived to perform the work, however, Mr. Hawkins declined the service.

On March 5, 2020, Mr. Hawkins returned home from work and entered his house through the garage level. As he began ascending the lower staircase to reach the upper level of the house, he tripped on the first step and landed on his knee, resulting in an injury that later required surgery. The step that Mr. Hawkins tripped over was one that he had previously measured and identified as a tripping hazard because the height of the riser was more than eight inches.

On December 28, 2020, Mr. Hawkins filed a complaint in the Circuit Court for Prince George's County against Empire Today, Carpet Workshop, and Juniors. Several

months later, Mr. Hawkins filed an amended complaint that added Morales and SOSA as defendants. In the amended complaint, Mr. Hawkins claimed that his injuries resulted from the defendants' negligence in installing the flooring. He alleged that the defendants were liable to him under theories of negligence, negligent "hiring, training, and supervision," and vicarious liability as the result of agency relationships.

With the exception of Juniors, which never filed a responsive pleading or motion, each of the defendants answered Mr. Hawkins's complaint. Each of these defendants pleaded assumption of risk as an affirmative defense. In addition, several of the defendants filed cross-claims against each other. Specifically, Empire Today and Carpet Workshop filed cross-claims against Juniors, Morales, and SOSA, seeking contribution, indemnification, and damages for failing to obtain insurance coverage. SOSA filed a cross-claim against Empire Today, seeking indemnification or contribution. Morales filed a cross-claim against Empire Today and Carpet Workshop, likewise seeking indemnification or contribution. Morales also filed a cross-claim against Juniors, seeking indemnification or contribution.

After discovery, Empire Today, Carpet Workshop, SOSA, and Morales each moved for summary judgment against Mr. Hawkins. Mr. Hawkins agreed that Morales should be dismissed and did not oppose Morales's motion. Consequently, the court considered only the motions filed by Empire Today, Carpet Workshop, and SOSA.[1]

[1] Empire Today and Carpet Workshop also moved for summary judgment on their cross-claims against SOSA and Morales, but they withdrew these motions at the hearing.

Among other things, SOSA, Empire Today, and Carpet Workshop argued that the doctrine of assumption of the risk barred Mr. Hawkins's claims. They argued that assumption of risk was a complete bar to recovery and that all the elements of that defense—i.e., that the plaintiff knew of the risk of danger, appreciated the risk, and voluntarily confronted the risk—were met. They argued that Mr. Hawkins knew that the stairs created a hazardous condition; that he appreciated the risk, as demonstrated by his repeated communications to Empire Today that the stairs were a "tripping hazard"; and that, despite knowing of the risk and having a means of avoiding the steps in the lower staircase, he continued using them anyway. For similar reasons, they argued that Mr. Hawkins was contributorily negligent and that any recovery was completely barred on that ground as well.

Empire Today and Carpet Workshop also argued that they could not be held liable for negligent installation, because the allegedly negligent parties were independent contractors, not agents. And Empire Today and Carpet Workshop argued that they could not be held liable for negligent hiring because their hiring processes for retaining independent contractors aligned with industry standards.

For its part, SOSA argued that it could not be held liable for Mr. Hawkins's injury because it did not owe him a duty, as it had only performed an inspection and, at Mr. Hawkins's insistence, had not performed any work on the stairs.

After the hearing, the circuit court entered orders granting the motions for summary judgment. The circuit court did not identify which of the grounds it based its

ruling on; it stated only that it made its ruling based upon its consideration of the respective motions, Mr. Hawkins's opposition, and the arguments raised at the hearing.

Following the circuit court's entry of summary judgment, counsel for Empire Today and Carpet Workshop filed a document that they styled as a "Stipulation for Dismissal of Co-Defendant Morales Floor, LLC Without Prejudice." In this document, Empire Today and Carpet Workshop represented that they had agreed at the hearing to dismiss their remaining cross-claims against Morales and SOSA "without prejudice pending the Court's entry of final judgment and any appeal." Empire Today and Carpet Workshop stated that Morales and SOSA had also agreed at the same hearing to dismiss their cross-claims against Empire Today and Carpet Workshop, without prejudice. According to Empire Today and Carpet Workshop, the only remaining claims in the case were Mr. Hawkins's claims against Juniors. The "stipulation," however, appears to have been signed only by counsel for Empire Today and Carpet Workshop. In addition, although Empire Today and Carpet Workshop stated that the defendants had agreed at the hearing to dismiss their cross-claims, the transcript of that hearing only reflects the withdrawal of summary judgment motions.

On April 3, 2023, Mr. Hawkins moved for a default judgment against Juniors. The clerk of the circuit court issued a notice of default to Juniors. After a hearing, the circuit court entered a default judgment in favor of Mr. Hawkins and against Juniors on July 27, 2023.

Mr. Hawkins filed a notice of appeal on August 7, 2023.

QUESTIONS PRESENTED

Mr. Hawkins presented two questions for our review, which we have consolidated and reworded in the interest of concision: Did the circuit court err by entering summary judgment against Mr. Hawkins?[2]

For the reasons that follow, we shall affirm the judgment of the circuit court.

EXISTENCE OF FINAL JUDGMENT

Before considering the merits of the appeal, we must ascertain whether we have jurisdiction to decide it.

The cross-claims asserted by SOSA and Morales are still pending in the circuit court. The cross-claims asserted by Empire Today and Carpet Workshop have been dismissed without prejudice, but may be revived if this Court reverses the judgment below. The continued existence of those cross-claims raises the question of whether this Court has appellate jurisdiction.

In general, a party in a civil case may appeal only from a final judgment. Md. Code (1974, 2020 Repl. Vol), § 12-301 of the Courts and Judicial Proceedings Article ("CJP"). "One of the necessary elements of a final judgment is that the order must adjudicate or complete the adjudication of all claims against all parties." *Zilichikhis v.*

[2] Mr. Hawkins formulated his questions as follows:

1. Did the lower court err by granting Defendant Empire Today and Carpet Workshop's Motion for Summary Judgment?

2. Did the lower court err by granting Defendant SOSA Floors [sic] Motion for Summary Judgment?

Montgomery County, 223 Md. App. 158, 171 (2015). "Because the absence of a final judgment may deprive a court of appellate jurisdiction, we can raise the issue of finality on our own motion." *Id.* at 172 (citing *Waterkeeper Alliance, Inc. v. Maryland Dep't of Agric.*, 439 Md. 262, 276 n.11 (2014)).

"An order that adjudicates the rights of fewer than all of the parties"—including rights asserted in cross-claims—"is not an appealable final judgment." *Zilichikhis v. Montgomery County*, 223 Md. App. at 172. "If the court has not adjudicated a defendant's cross-claims or third-party claims, the judgment is not final, and is not appealable, even if those claims have become 'groundless' because of the entry of judgment against the plaintiff." *Id.* (citing *Estep v. Georgetown Leather Design*, 320 Md. 277, 286 (1990)).

However, in an exception to the final judgment rule, a court may direct "the entry of a final judgment . . . as to one or more but fewer than all of the claims or parties" if it "expressly determines in a written order that there is no just reason for delay[.]" Md. Rule 2-602(b). If a party has filed a notice of appeal before the entry of final judgment, but the circuit court would have had discretion to enter a judgment under Rule 2-602(b), this Court has discretion to enter a final judgment on its own initiative. *See* Md. Rule 8-602(g)(1)(C).

In this case, the circuit court did not enter an appealable final judgment because it did not formally adjudicate the cross-claims. If, however, any of the parties had requested the entry of judgment under Rule 2-602(b), the circuit court could have

reasonably concluded that it had no just reason to delay the entry of a final judgment as to Mr. Hawkins's claims against the defendants alone. *See* Md. Rule 2-602(b)(1). Otherwise, the appeal could not have proceeded until Empire Today and Carpet Workshop, SOSA, and Morales had somehow resolved their cross-claims without prejudicing their rights. *See Zilichikhis v. Montgomery County*, 223 Md. App. at 173.

Had the cross-claimants attempted to resolve their cross-claims by dismissing them with prejudice, they "risked losing the ability to reassert the cross-claims against one another" in the event that an appellate court reversed the entry of summary judgment against Mr. Hawkins. *Zilichikhis v. Montgomery County*, 223 Md. App. at 173. But if the cross-claimants had attempted to resolve their cross-claims as Empire Today and Carpet Workshop did, by dismissing them without prejudice and "with the express or implicit understanding that they could reassert the cross-claims if an appellate court reversed the entry of summary judgment[,]" they could leave themselves open to the argument that the appeal should be dismissed for improper circumvention of the final judgment rule. *Id.* (citing *Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 252-53 (2010)).

Here, because the circuit court could have exercised its discretion under Rule 2-602(b) to enter a final judgment as to Mr. Hawkins, we hereby enter final judgments as to Mr. Hawkins's claims against Empire Today and Carpet Workshop, SOSA, and Morales, but not as to the unadjudicated cross-claims. *See Zilichikhis v. Montgomery County*, 223 Md. App. at 174; *Shofer v. Stuart Hack Co.*, 324 Md. 92, 98 (1991).

STANDARD OF REVIEW

When a party moves for summary judgment, the court "shall enter judgment in favor of or against 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). In an appeal from the grant of summary judgment, this Court conducts a de novo review to determine whether the circuit court's conclusions were legally correct. *D'Aoust v. Diamond*, 424 Md. 549, 574 (2012).

> When reviewing a grant of summary judgment, we determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. This Court considers the record in the light most favorable to the nonmoving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party.

Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 107-08 (2014) (citations and quotation marks omitted).

Generally, we limit our review to the grounds on which the circuit court relied in making its ruling. *See State Center, LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 498 (2014). If the trial court did not specify the grounds upon which it granted summary judgment, "'[we] assume that the trial court carefully considered all of the asserted grounds [ ] and determined that all or at least enough of them . . . were meritorious.'" *Fox v. Fidelity First Home Mortg. Co.*, 223 Md. App. 492, 508 (2015) (quoting *Fischbach v. Fischbach*, 187 Md. App. 61, 77 (2009)) (further citation omitted). When a circuit court has granted summary judgment on multiple grounds, an appellate court may

affirm the judgment on any one of them that the appellate court determines to be a "separate and independent basis" for the ruling. *600 N. Frederick Rd., LLC v. Burlington Coat Factory of Maryland, LLC*, 419 Md. 413, 433-34 (2011).

DISCUSSION

In this case, the circuit court did not specify the grounds upon which it granted summary judgment. Consequently, we may assume that the circuit court granted summary judgment based on any or all of the grounds raised in the summary judgment motions. Because we may affirm the grant of summary judgment on any one of those grounds, we therefore need not review each distinct ground on which the circuit court could possibly have relied in reaching its decision.

SOSA, Empire Today, and Carpet Workshop requested the entry of summary judgment against Mr. Hawkins based on the doctrine of assumption of risk. "In Maryland, assumption of the risk is an affirmative defense that completely bars a plaintiff's recovery." *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 639 (2009). "Assumption of the risk is a doctrine whereby [] plaintiff[s] who intentionally and voluntarily expose [themselves] to a known risk, effectively, consent[] to relieve the defendant of liability for those risks[.]" *American Powerlifting Ass'n v. Cotillo*, 401 Md. 658, 668 (2007); *accord Poole v. Coakley & Williams Constr., Inc.*, 423 Md. 91, 110 (2011); *Crews v. Hollenbach*, 358 Md. 627, 640-41 (2000). If established by the evidence, assumption of the risk functions as a complete bar to recovery because "'it is a previous abandonment of the right to complain if an accident occurs.'" *Poole v. Coakley*

& Williams Constr., Inc., 423 Md. at 110 (quoting *Warner v. Markoe*, 171 Md. 351, 360 (1937)).

To establish the defense of assumption of risk, a defendant must "'show that the plaintiff: (1) had knowledge of the risk of the danger; (2) appreciated that risk; and (3) voluntarily confronted the risk of danger.'" *Poole v. Coakley & Williams Constr., Inc.*, 423 Md. at 110-11 (quoting *ADM P'ship v. Martin*, 348 Md. 84, 90-91 (1997)).

1. Knowledge and Appreciation of Risk

"[T]he doctrine of assumption of risk will not be applied [as a matter of law] unless the undisputed evidence and all permissible inferences therefrom *clearly* establish that the risk of danger was *fully* known to and *understood* by the plaintiff." *Poole v. Coakley & Williams Constr., Inc.*, 423 Md. at 123 (quoting *Schroyer v. McNeal*, 323 Md. 275, 283 (1991)) (emphasis added in *Poole*). "Actual knowledge can be proven, for example, by evidence of the particular plaintiff's subjective knowledge of a risk, e.g. previous experience with or sensory perception of the danger, or objective knowledge of a risk that the law deems 'so obvious that it could not have been encountered unwittingly.'" *Id.* at 121 (quoting *C & M Builders, LLC v. Strub*, 420 Md. 268, 295 (2011)).

In this case, the undisputed facts demonstrate that Mr. Hawkins, on a subjective level, fully knew and understood the risks associated with using the stairs. Mr. Hawkins communicated with Empire Today on multiple occasions about the uneven steps. Mr. Hawkins measured the steps and realized that some of the steps "[weren't] right." He

informed the workers who completed the installation that he believed the stairs were a "tripping hazard." During a telephone conversation with Empire Today, Mr. Hawkins told a representative that "if somebody trips and falls" on the stairs, Empire Today would be liable. Mr. Hawkins acknowledged that, after the steps were installed, he and his wife "both did understand that the steps were a tripping hazard." But despite his knowledge and appreciation that the steps were uneven and presented a tripping hazard, Mr. Hawkins continued to use them.

These undisputed facts are sufficient to demonstrate that, as a matter of law, Mr. Hawkins knew of and appreciated the risk inherent in using the steps. No reasonable juror could have concluded otherwise.

2. Voluntary Confrontation of Risk

Knowledge and appreciation of the risk, in themselves, will not suffice to establish assumption of the risk as a matter of law: the plaintiff must also have voluntarily confronted the risk.

"The voluntariness of the plaintiff's conduct in an assumption of the risk analysis is measured by an objective standard." *Morgan State Univ. v. Walker*, 397 Md. 509, 511 (2007). A plaintiff's "actions would be considered involuntary only if [the plaintiff] lacked the free will to avoid the situation." *Id*. at 520. On the other hand:

> "The plaintiff's acceptance of a risk is not voluntary if the defendant's tortious conduct has left [the plaintiff] no reasonable alternative course of conduct in order to
>
> (a) avert harm to [the plaintiff] or another, or

> (b) exercise or protect a right or privilege of which the defendant has no right to deprive [the plaintiff]."

ADM P'ship v. Martin, 348 Md. at 93 (quoting Restatement (Second) of Torts § 496E (1965)); *accord Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. 387, 414 (2011).

Maryland's appellate courts have taken a narrow view of the circumstances in which a plaintiff can be deemed not to have voluntarily confronted a risk that the plaintiff knew of and appreciated. In *Morgan State University v. Walker*, 397 Md. at 519, the Court held that the plaintiff had voluntarily confronted the risk of walking across an icy parking lot to visit her daughter, because "[n]othing in the record suggests that [she] was forced against her will to confront the risk of danger of walking on the snow and ice, such that her behavior could be classified as involuntar[y]." In *ADM Partnership v. Martin*, 348 Md. at 94-95, the Court held that an employee voluntarily confronted the risk of walking across an icy path to make a delivery even though she was afraid that she would lose her job if she did not do so. Similarly, in *Schroyer v. McNeal*, 323 Md. at 288, the Court held that the plaintiff "took an informed chance" when, for reasons relating to "her convenience in unloading her belongings," she chose to cross an ice- and snow-covered parking lot rather than take a safer route. By contrast, the Court has held that a tenant did not the assume the risk of injury as a matter of law by venturing out across an icy path when there was no other "reasonably safe alternative *course of action*." *Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. at 413 (emphasis in original).

In this case, Mr. Hawkins acknowledged that he had a "reasonably safe alternative course of action" and did not need to use the lower staircase to enter and exit his house or

to use his garage. He acknowledged that he could enter and exit the house through the front entrance, avoiding the use of the lower staircase. Despite having an alternate route that would have eliminated the need to walk up the dangerous lower staircase, Mr. Hawkins continued to walk up and down that staircase "every[]day." Even though the safer, alternative route was perhaps less convenient than using the lower staircase, its existence was enough to present Mr. Hawkins with a choice of risks. In these circumstances, therefore, the circuit court did not err in concluding that, as a matter of law, Mr. Hawkins assumed the risk of his injuries.[3]

Although Mr. Hawkins states that he took extra precautions when using the stairs, such as holding the railing and avoiding carrying heavy loads, these precautions are irrelevant to the issue of assumption of the risk. His precautions may bear on the related defense of contributory negligence, but not on assumption of the risk:

> Contributory negligence, of course, means negligence which contributes to cause a particular accident which occurs, while assumption of risk of accident means voluntary incurring that of an accident which may not occur, and which the person assuming the risk may be careful to avoid after starting.

Schroyer v. McNeal, 323 Md. at 281 (quoting *Warner v. Markoe*, 171 Md. at 359-60); *accord Poole v. Coakley & Williams Constr., Inc.*, 423 Md. at 111.

[3] Mr. Hawkins apparently had no choice but to use the upper staircase to reach the main level of his house. The result in this case might have been different had he tripped on those stairs.

For purposes of assumption of the risk, it makes no difference whether Mr. Hawkins exercised due care after he chose to forego a safer route into the house and to ascend the stairs that he knew were a tripping hazard.

In summary, because Mr. Hawkins knew of and appreciated the risk of tripping on the steps, but voluntarily elected to continue using the steps even though there was an alternative, safer route that would have avoided the danger, he assumed the risk of injury as a matter of law. Consequently, we affirm the judgment of the circuit court on this ground. Because assumption of risk is a complete bar to recovery, we need not address any of the other alternative grounds on which the circuit court may have based its ruling.

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

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1117s23cn.pdf