Circuit Court for Queen Anne's County
Case No. C-17-CV-21-000082

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1345

September Term, 2022

CHRISTOPHER GROSS

v.

JEFFREY SOUDER

Graeff,
Reed,
Taylor, Robert K., Jr.,
(Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: March 3, 2025

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

Christopher Gross, the Appellant, sued Jeffrey Souder, the Appellee, in the Circuit Court for Queen Anne's County for personal injuries arising out of an incident with the Appellee's log splitter on March 9, 2020. A jury trial was held on October 3 and October 4, 2022 only on the issues of liability. At the end of the presentation of evidence, the Appellant made a motion for judgment on the issues of contributory negligence and assumption of risk. The trial court denied both motions. The jury found the Appellee negligent. The jury also found that Appellant was contributorily negligent and that he assumed the risk of his injuries. The Appellant then filed this timely appeal.

In bringing his appeal, Appellant presents two questions for appellate review:

I. Did the trial court properly find that the issue of contributory negligence should go to the jury?

II. Did the trial court properly find that the issue of assumption of risk should go to the jury?[1]

For the following reasons, we affirm the ruling of the circuit court.

FACTUAL & PROCEDURAL BACKGROUND

For decades, the Appellant worked various jobs related to farming, landscaping, and other manual tasks. He began working with log splitters when he was fifteen or sixteen years old. By March of 2020, the Appellant was sixty years old. That month, his cousin gave him the contact information for the Appellee, who needed a large pile of wood cut.

[1] The Appellant phrased the questions as follows:

I. Was Christopher Gross contributorily negligent?
II. Did Christopher Gross assume the risk of this injures?

The Appellee provided a wood splitter for Appellant to use, and Appellant worked for multiple days without any issue splitting the Appellee's wood.

To use a log splitter, the operator would line up a piece of wood beneath the blade. The operator would then hit a lever and the blade would come out of a hood, push into the wood until it splits, then move back up into the hood. On Appellee's splitter, the handle did not need a lot of pressure to be activated and could even be activated by someone bumping the machine. The blade can descend at different speeds depending on how the handle is pushed. Appellee's attorney filmed a video showing that at the splitter's fastest speed it took approximately five seconds to travel eight-and-a-half inches. The log splitter was loud when it was operating, and the blade itself did not make any specific noises that could be heard over the log splitter. The log splitter had a warning next to the wedge that said "Warning, beware of wedge, keep hands away."

On March 9, 2020, Appellee showed Appellant a new wood splitter. Appellee had used this other splitter for a couple months and others had used it without a problem. Appellant had no concerns about using the new splitter and said he was familiar with this kind of splitter. Appellant began working around 8:00 a.m. When using the splitter, Appellant would grab wood from Appellee's trailer, place it under the splitter, then stand up, and pull the handle down. Appellant worked on the splitter without issue for the whole morning, splitting enough wood to fill up three pick-up trucks.

Around 11:30 a.m. Appellee came out of his shop and walked over to speak to Appellant. Appellee could not recall if Appellant asked him for help or if he just decided he wanted to try and help. Appellant stated they talked for five to ten minutes. While they

were talking, Appellant stopped splitting logs because the conversation would throw him off from splitting the wood.

After they finished talking, Appellant grabbed a larger log and moved it onto the wood splitter. The piece of wood had a larger knot in it, so Appellant had to readjust it. Appellant kneeled down on the left side of the splitter, on the opposite side of the handle. Appellant put his right hand on top of the log to readjust its position, and his right hand stayed on top of the log the entire time he was adjusting it. Appellant's right hand had a decades-old injury that prevented him from bending two of his fingers. Appellant said that no one had ever told him not to put his hand on top of the log.

Appellant indicated he was looking right in front of him at the wood splitter. He described how Appellee was standing on the right side of the splitter, not helping him with the log. Appellee said he was helping him hold the log in place by pushing it towards the splitter from the front. Appellee was not looking at Appellant. The parties were not talking right before this incident happened.

Somehow, the blade was activated on the splitter,[2] it descended, and tore into Appellant's hand. Appellant described this event as happening "so fast" and Appellee agreed with this characterization. Appellant never saw Appellee hit the handle. Appellant said he was paying attention to the log and never saw the blade as it was coming down. Appellee also did not see the blade come down from the hood. When asked why he put his hand beneath the blade, Appellant said it was "[b]ecause I wasn't paying attention."

[2] Neither party alleged that the splitter malfunctioned and caused the injury.

Appellant was able to pull his injured hand back from the blade and the Appellee turned the machine off.

Immediately after the incident, Appellant said that Appellee stated, "it was his fault". Appellant also indicated that Appellee specifically said "[h]e hit the lever." Appellee took Appellant to the hospital. At the hospital, Appellant's sister testified that Appellee stated he accidentally hit Appellant's wrist with the wood splitter and that it was his fault. Appellee denied saying he was at fault.

After this injury, Appellant sued Appellee in the Circuit Court for Queen Anne's County. Prior to trial, both sides agreed that the trial would be for liability only. If the jury found for Appellant, then Appellee would pay Appellant $200,000 plus costs. The trial lasted for two days, and both Appellant and Appellee testified. At the conclusion of the evidence, Appellant made a motion for judgment on the issues on contributory negligence and assumption of the risk. The trial court heard arguments from both sides and then determined that it was a jury question as to who pulled the lever and allowed the jury to consider both contributory negligence and assumption of the risk. After deliberations, the jury then found both parties negligent and that Appellant assumed the risk. Appellant did not renew his motion through a judgment notwithstanding the verdict and did not file any post-trial motions. Appellant timely appealed this case on October 7, 2022.

STANDARD OF REVIEW

Under Maryland Rule 2-519, "[a] party may move for judgment on any or all of the issues in . . . a jury trial at the close of all of the evidence. The moving party shall state with particularity all reasons why the motion should be granted." Md. Rule 2-519(a). When the

motion is made at the end of trial, "the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made." Md. Rule 2-519(b). Granting a motion for judgment under this rule will only be appropriate when the "facts and circumstances only permit one inference with regard to the issue presented" and otherwise it will be an issue of fact for the jury. *Thomas v. Panco Mgmt. of Md., LLC,* 423 Md. 387, 394 (2011) (quoting *Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. 496, 503 (2011)).

We review the trial court's decision to deny a motion for judgment *de novo*, "while viewing the evidence and the reasonable inferences to be drawn from it in the light most favorable to the non-moving party and determining whether the facts and circumstances only permit one inference with regard to the issue presented." *Scapa*, 418 Md. at 503 (internal quotations and citations omitted). "[A] challenge to the trial court's ruling on a motion for judgment notwithstanding the verdict is confined to whether the evidence rose above speculation, hypothesis, and conjecture in order to support the jury's verdict." *Willis v. Ford*, 211 Md. App. 708, 715 (2013) (citing *Scapa*, 418 Md. at 503). "If there is even a slight amount of evidence that would support a finding by the trier of fact in favor of the plaintiff," we must affirm the denial of the motion. *Sugarman v. Liles*, 234 Md. App. 442, 464 (2017) (quoting *Asphalt & Concrete Services, Inc. v. Perry*, 221 Md. App. 235, 271–72 (2015)).

DISCUSSION

Contributory Negligence

Appellant contends that he was not contributorily negligent. He also claims that he

had no duty to anticipate that Appellee would negligently move the handle on the log splitter. Even if he was negligent, Appellant claims that any negligence was not the proximate cause of the injury because he had been using the log splitter in this way without incident for years and the only change was Appellee's independent act. Therefore, he argues that this issue should have been decided by the trial judge as a matter of law instead of being sent to the jury.

Appellee argues that Appellant is trying to get this Court to substitute its judgment for the judgment of the jury. Appellee focuses on the high standard needed to show judgment as a matter of law. Appellee contends that Appellant was aware of the danger and actively took steps that placed him in greater danger for using the wood splitter. Appellee disputes Appellant's contentions that it was the only Appellee's independent negligent acts that led to this injury.

A plaintiff will be contributorily negligent when they fail to observe ordinary care for their own safety. *Menish v. Polinger Co.*, 277 Md. 553, 559 (1976). Contributory negligence "is the doing of something that a person of ordinary prudence would not do, or the failure to do something that a person of ordinary prudence would do, under the circumstances." *Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. 387, 417–18 (2011) (quoting *Baltimore Cnty. v. State, Use of Keenan*, 232 Md. 350, 362 (1963)). As the Supreme Court of Maryland has noted:

> [W]hen one who knows and appreciates, or in the exercise of ordinary care should know and appreciate, the existence of danger from which injury might reasonably be anticipated, he must exercise ordinary care to avoid such injury; when by his voluntary acts or omissions he exposes himself to danger of which he has actual or imputed knowledge, he may be guilty of

contributory negligence.

Id. at 362 (quoting *Menish*, 277 Md. at 560–61) (internal citations omitted).

Contributory negligence is ordinarily a question of fact that the jury must resolve. *Woolridge v. Abrishami*, 233 Md. App. 278, 302 (2017). "A case may not be taken from a jury on the ground of contributory negligence unless the evidence demonstrates 'some prominent and decisive act which directly contributed to the . . . [incident] and which was of such a character as to leave no room for difference of opinion thereon by reasonable minds.'" *Campbell v. Montgomery Cnty. Bd. of Educ.*, 73 Md. App. 54, 64 (1987) (quoting *Balt. Transit Co. v. Castranda*, 194 Md. 421, 434 (1950)). If the defendant introduces "more than a mere scintilla of evidence . . . more than surmise, possibility, or conjecture that [plaintiff] has been guilty of negligence" then the case can go to the jury. *Woolridge*, 233 Md. App. at 302–03 (quoting *McQuay v. Schertle*, 126 Md. App. 556, 568–69 (1999)) (internal quotations omitted). As it relates to findings of facts, "we may not substitute our judgment for that of the fact finder, even if we might have reached a different result." *Porter v. Schaffer*, 126 Md. App. 237, 259 (1999) (quoting *Oliver v. Hays*, 121 Md. App. 292, 306 (1998)).

Turning to this case, Appellee argued at trial that Appellant himself was negligent because he placed his hand under the wedge, in direct violation of the warning on the log splitter that said "Warning, beware of wedge, keep your hands away." Appellant claimed that he had not seen this sign and that no one had ever told him not to put his hand on top of the log. However, the fact that Appellee established that Appellant had placed his hand beneath the wedge was "more than a mere scintilla of evidence" that Appellant had been

negligent and created sufficient evidence for this case to go to the jury. There is room for a reasonable difference of opinion that placing one's hand directly beneath the wedge is something "a person of ordinary prudence would not do" and therefore there is a jury question as to Appellant's contributory negligence. *Thomas*, 423 Md. at 417–18.

Despite this, Appellant makes multiple arguments that his actions were not negligent. Appellant's arguments focus on his lack of duty to anticipate that Appellee would be negligent in moving the handle on the log splitter. Had Appellee not moved the handle, according to Appellant, then there would be no harm. Appellant claims that he could have reasonably acted on the assumption that he would not be exposed to a dangerous circumstance that would only come from Appellee breaching a duty owed to him. For this point, he relies on *Sanders v. Williams*. 209 Md. 149, 151 (1956).

In *Sanders*, a customer at a mechanic's shop was standing in front of a car being serviced on by a mechanic. *Id.* at 151. The mechanic put his foot on the gas to adjust the carburetor, but the brake was not on, and the car moved and injured the customer. *Id.* There was ample evidence of the mechanic's negligence, but the issue was whether the customer was contributorily negligent by standing in front of the running automobile. *Id.* at 151–52. The court found as a matter of law that the customer was not contributorily negligent because the customer "was not bound to have anticipated, nor reasonably to have foreseen, that the mechanic, who in so doing would put himself in peril, would suddenly apply the gas so as to cause the car to lurch forward." *Id.* at 152. The court said "[a]bsent actual or constructive knowledge to the contrary, one may act on the assumption that he will not be exposed to danger that will come only by the breach of duty which another owes him." *Id.*

However, this anticipation of negligent acts does not apply if "an ordinarily prudent person would know, or should know, that it was not safe to make the assumption of due care on the part of the other person." *Id.* (citations omitted). The court said that since the customer was "merely standing there minding his own business" he did not do anything an ordinarily prudent person would not have done. *Id.* at 153.

Appellant relies on *Sanders* to argue that Appellant had no duty to anticipate that Appellee would negligently move the handle.[3] However, *Sanders* does not fully apply to Appellant's case because Appellant was not "merely standing there minding his own business" like a customer at a mechanic's shop but was instead actively in the process of operating the log splitter, trying to adjust a new piece of wood to be split. *Sanders*, 209 Md. at 153. Unlike the customer who could not have "reasonably . . . foreseen" the dangers, it was a jury question whether Appellant may have understood that placing his hand beneath the wedge was unsafe, or whether it was not safe to make the assumption of due care on the part of Appellee since the possibility always remained that the lever could be activated. *Id.* Appellant's desire to not use the splitter when others were around could have shown this understanding, as Appellant was concerned with getting distracted and being injured as a result. Therefore, *Sanders* holding of no contributory negligence as a matter of

[3] As it relates to Appellant's arguments that Appellee was the person who negligently hit the handle, Appellee claims he did not touch the handle. When analyzing the motion for judgment, we must view the evidence in the light most favorable to the non-moving party. *Scapa*, 418 Md. at 503. Therefore, viewing the evidence in the light most favorable to Appellee, he did not touch the handle and it remains unclear how the wedge started. Based on this standard, we will not rely on Appellant's assertions that his injuries were the result of Appellee's negligence in moving the handle when Appellee contests this fact.

law will not apply to this case.

Appellant next argues that even if he was negligent, any negligence was not the proximate cause of his injuries. He relies on *Rosenthal v. Mueller* for this argument. 124 Md. App. 171 (1998). In *Rosenthal*, the plaintiff attempted to use the right shoulder of the road to pass a stopped truck. *Id.* at 172–73. As a result, the defendant struck the plaintiff's car while coming around a blind curve after braking and moving into the shoulder to try and stop. *Id.* at 173. In analyzing the plaintiff's negligence, the court found that moving onto the shoulder was "merely passive and potential negligence" and therefore was non-contributory as a matter of law. *Id.* at 181. The only connection between the plaintiff's actions and the collision was that it placed her "at the wrong place at the wrong time." *Id.* at 181.

Rosenthal is not on point to the situation here. In *Rosenthal*, the defendant failed to show any evidence of how the plaintiff's actions contributed to the accident, other than her car happening to be behind the truck at the time of the accident. *Id.* at 178–79. Here, Appellee was able to show evidence of how Appellant contributed to the accident, as Appellant placed his hand directly beneath the wedge, going against the sign explicitly warning about the dangers of those actions.[4] Further, Appellee presented evidence that the

[4] Similarly, Appellant cites to *Schwarz v. Hathaway*, which involved a motorcyclist struck by a truck when he was pushing his bike by the side of the highway. 82 Md. App. 87, 88–89 (1990). The court found that the motorcyclist's actions were at best "merely passive and potential" and therefore the issue of his negligence should not have gone to the jury. *Id.* at 95–96. The court reasserted its definition of proximate cause to mean "that negligence is not actionable unless it, without the intervention of any independent factor,

blade did not move quickly, with the video taken by Appellee's counsel taking approximately five seconds to travel eight-and-a-half inches. This evidence would put into contention whether Appellant should have had time to see that the blade was moving and then have had time to move his hand from beneath the blade's path. Together these issues show there was enough evidence for a jury to decide whether it was reasonable for Appellant to place his hand beneath the blade in the first place and to then leave his hand there for a long enough time for the blade to come into contact with it.

Appellee presented sufficient evidence at trial to create factual disputes that needed to be resolved by the jury. Therefore, we will hold that the trial court properly allowed the jury to decide the issue of contributory negligence.

Assumption of the Risk

Appellant argues that he did not assume the risk and the issue should not have gone to the jury. He claims that Appellant took a "risk of rare casualties" that the wedge may move since someone would have to activate the wedge. Appellant did not have a reason to appreciate the "nature, character, and extent" of the unreasonable danger of the wedge

causes the harm complained of." *Id.* at 93 (quoting Vann v. Willie, 284 Md. 182, 186 (1978)).

Appellant used this case to argue that it was not until the intervention of the independent factor of Appellee being negligent in activating the splitter that there was harm. Similar to the *Rosenthal* case above, *Schwarz* is still different in the injured party's actions. The motorcyclist in *Schwarz* happened to be in the wrong place at the wrong time and it was the negligence of the truck driver that was the effective cause of the incident. 82 Md. App. at 95–96. By contrast, Appellant chose to place his hand on top of the log, directly beneath the wedge. This was not a potential danger, but one that was explicitly warned against for use of this machine. The jury needed to decide whether Appellant's actions were a proximate cause of his injuries.

descending and therefore there was no assumption of the risk.

Appellee responds that this injury was not an unusual risk of using the log splitter given the warning present on the machine. As a result, Appellee argues that Appellant had knowledge of the risk, appreciated that risk, and yet still confronted the risk through his hand placement. Therefore, there was sufficient evidence presented on the assumption of the risk and the jury should have decided the issue.

"In Maryland, it is well settled that in order to establish the defense of assumption of risk, the 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." *S & S Oil, Inc. v. Jackson*, 428 Md. 621, 643 (2012) (quoting *ADM P'ship v. Martin*, 348 Md. 84, 90–91 (1997)). Assumption of the risk and contributory negligence "are closely related and often overlapping defenses" so "the same conduct of a plaintiff can amount to both" defenses. *Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. 387, 418 (2011) (quoting *Schroyer v. McNeal*, 323 Md. 275, 280 (1991)). Knowledge of and appreciation of the risk in a case is ordinarily a jury question "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." *Id.* at 395 (quoting *Schroyer v. McNeal*, 323 Md. 275, 283 (1991)) (emphasis in original). "Where there is a dispute whether the risk is assumed or not, that question is usually left to the jury." *Bull S.S. Lines v. Fisher*, 196 Md. 519, 526 (1950).

To start, Appellee presented sufficient evidence to allow this issue to go to the jury. First, there was a material issue of fact as to the knowledge of the risk of the danger.

Appellant claimed that he was not aware of the risk of placing his hand beneath the blade and argued that the warning sign itself only meant to keep one's hand away from the blade, not the area beneath it. Appellee argued that Appellant should have been aware of this risk through his years of experience and the sign itself. Appellee provided evidence to show that Appellant could have appreciated the risk of the wedge causing injuries and subsequently voluntarily confronted the danger by placing his hand on top of the log. As a result, the case should have gone to the jury to allow the jury to figure out whether they believed Appellant had knowledge of the risk. There was not enough undisputed evidence to allow the trial court to decide this issue.

In *Hilton Quarries, Inc. v. Hall*, the plaintiff was standing on top of his truck at the defendant's quarry while it was being loaded with stones. 161 Md. 518, 521 (1932). One of the boxes was over the truck when the operator stopped it, and the box continued to swing, hit the plaintiff and knocked him off the truck. *Id.* at 522. The box dropping in that manner was something the derrick operator said had never happened in his experience. *Id.* at 523. When discussing the defense of assumption of the risk, the court wrote that the plaintiff "might be held bound to anticipate and so to assume dangers from operation in ordinary course, yet not to anticipate and assume the risk of rare casualties" like those described in this case "unless he occupies his position without the permission and contrary to the directors of the proprietor of the premises and the work." *Id.* at 524.

Appellant relies on this "risk of rare casualties" language to argue that the wedge on the splitter would not move absent someone turning it on, and someone turning it on was a rare casualty. The testimony in *Hilton Quarries* supported that the specific incident was

a "rare casualty" but there was no similar testimony elicited in this case that the splitter turning on as intended was "rare." Even if Appellee turned on the wedge, that does not mean Appellant did not assume the risk of that possibility when he placed his hand beneath the wedge. *Hilton Quarries* is not enough to establish as a matter of law that this case involves a rare casualty and that Appellant did not assume the risk of being injured from the wedge.

Appellant similarly claims that someone working a dangerous task only assumes "those risks which might reasonably be expected to exist." *Bull S.S. Lines v. Fisher*, 196 Md. 519, 526 (1950). Appellant argues that the negligent act by Appellee was not that kind of risk. However, the risk of someone accidentally hitting the activation lever could reasonably be expected to exist, hence why Appellee emphasized the warning on the machine at trial. At the very least, it is a question of fact as to whether the danger of accidentally starting the machine could be reasonably expected.

Lastly, Appellant points to *Imbraguglio v. Great Atl. & Pac. Tea Co.* for its citation of the Restatement (Second) of Torts. 358 Md. 194, 217 (2000). The Restatement says that a plaintiff "must not only be aware of the facts which create the danger, but must also appreciate the danger itself and the nature, character, and extent which make it unreasonable." Restatement (Second) of Torts § 496D cmt. b (1965). Appellant therefore claims that he did not have any reason to appreciate the "nature, character, and extent" of the unreasonable danger of the wedge being activated. However, this creates the precise dispute over what knowledge Appellant had and whether it was reasonable or not for him to have that knowledge that must be resolved by a jury. It is not for the court to determine

whether Appellant properly appreciated the nature, character, or extent of a danger, but instead for the jury to decide.

As a result, there were sufficient factual disputes for the issue of assumption of the risk to go to the jury. The jury, as the finder of fact, was in the proper position to determine whether Appellant should have had knowledge of the risk of danger from placing his hand beneath the wedge on the splitter and subsequently whether he appreciated and voluntarily confronted that risk. We will also hold that the trial court properly allowed the issue of assumption of the risk to be decided by the jury.

CONCLUSION

The trial court properly denied the motion for judgment on both affirmative defenses in order to allow the jury to decide the issues of contributory negligence and assumption of the risk. Accordingly, we affirm the judgment of the Circuit Court for Queen Anne's County.

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