Circuit Court for Anne Arundel County
Case No. C-02-CV-22-000942

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1747

September Term, 2023

ANNE ARUNDEL COUNTY, MARYLAND

v.

DON MURRAY

Zic,
Tang,
Kehoe, S.,

JJ.

Opinion by Tang, J.

Filed: March 26, 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).

Appellee Don Murray ("Murray") filed a lawsuit against appellant Anne Arundel County ("the County") for negligence following injuries he sustained when he stepped on an unsecured water meter lid on June 7, 2019. The County moved for summary judgment, which the Circuit Court for Anne Arundel County denied. The case proceeded to a jury trial, where a jury returned a verdict in Murray's favor. The County noted an appeal, raising four issues that we have rephrased as follows:[1]

I. Did the circuit court err in denying the County's motion for summary judgment?

[1] The County presents the following issues in the "Questions Presented" section of its brief:

1. Did the circuit court err in denying [the County's] motion for summary judgment where there were no genuine disputes of material fact that [Murray] failed to present any evidence during discovery that [the County] created the dangerous condition and/or had notice of the dangerous condition that caused [Murray's] alleged fall?
2. Did the circuit court err in denying [the County's] motions for judgment during trial and post-trial motions for judgment notwithstanding the verdict, new trial and/or alter or amend judgment, where there was no evidence presented at trial that [the County] created the dangerous condition and/or had notice of the dangerous condition that caused [Murray's] fall?
3. Did the circuit court err in presenting a *res ipsa* [*loquitur*] jury instruction at trial when there was no evidence that an event would not occur without negligence, [the County] had exclusive control over the water meter cover lid that caused [Murray] to fall, and that [his] actions or omissions did not cause the event?
4. Did the circuit court err in allowing [Murray] to present to the jury, over [the County's] objections of irrelevance and unfair prejudice, evidence of other water meter cover lids that were noted as loose in surrounding areas by [Murray's] expert witness on dates 4 years subsequent to the date of [Murray's] fall?

II. Did the circuit court err in denying the County's motions for judgment during trial and judgment notwithstanding the verdict after trial?

III. Did the circuit court err in charging the jury with the *res ipsa loquitur* jury instruction?

IV. Did the circuit court err in admitting evidence concerning other water meter lids in the vicinity of the water meter lid where Murray fell?

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

FACTUAL BACKGROUND

The Water Meter Vault and Lid

This case involves a lid that covered a circular water meter vault located on residential property. The vault housed two water meters that serviced adjacent townhouses at 2511 and 2513 Dog Leg Court in Crofton, Maryland. It was in the small front yard of the properties, straddling the property line, and positioned about three feet from the sidewalk. The lid had a diameter of about 22 inches that fit into the vault's 24-inch frame. The vault itself was approximately two and a half feet deep.

The water meters servicing 2511 and 2513 Dog Leg Court were "touch-read" meters. When functioning properly, the touch-read meters could be read by scanning the lid covering the vault. However, the touch reader for 2513 Dog Leg Court had been broken since October 2018, making it a "manual-read" meter. This meant that physical removal of the vault's lid was required to read the meter inside the vault manually.

The lid was secured to the vault's frame using a cast-iron worm lock. A T-shaped "key," a pentagonal wrench, was the appropriate tool for opening and securing the lid to the frame of the vault. When the key is turned, the worm rotates, applying a screw-jack

action, which causes the lid to move up and down. The T-shaped key connects to a pentagonal bolt on the lid and acts as a lifting handle. Once the lid is locked, the key disengages from the lid. When properly secured, the lid should be flush with the frame of the vault.

Ownership, Maintenance, and Training Regarding the Lid

The County served as the water utility provider and was responsible for inspecting, servicing, and maintaining water meters throughout its jurisdiction. Additionally, the County owned and maintained the lids of the meter vaults, the County and its employees possessed the meter keys, and only County personnel were authorized to open the vaults.

The County read the water meters for the adjacent townhomes on a quarterly basis, and inspections of the lid were supposed to be conducted during these readings. According to the County, "each time the meter [wa]s read, the [meter technician] check[ed] to ensure that the meter cover lid [wa]s properly secured and not loos[en]ed."

The County trained its meter technicians to secure water meter lids using a four-step process. The first step involved clearing the frame of the vault to ensure that nothing obstructed the track where the lid fits. The second step was to place the lid back in its proper position. The third step was to tighten the worm lock, and the fourth step was to verify that the lid was secure by tapping or stepping on it.

While only County personnel were authorized to open water meter vaults, there had been instances where residents and others accessed water meter vaults without authorization. Generally, the County was notified of such unauthorized access when

customers or others reported that a lid had been tampered with or broken. Although the meter keys were needed to open the lids, anyone could obtain these keys or use tools like screwdrivers, pliers, or wrenches to force the lids open. Additionally, someone could strike a lid forcefully with equipment to fracture it to gain access to the water meter inside the vault.

Matthew Watson, a meter technician for the County, read water meters on Dog Leg Court in 2019. On April 23 of that year, he inspected the water meters for the adjacent townhouses. This was the last time those meters were read before the accident. Although he did not remember the specific lid or date in question, he confirmed that the touch reader for one of the meters was broken and required a manual read, which meant he had to open the lid. His standard practice after reading the meter was to tighten the lid and step on it.

The Accident

On June 7, 2019, Murray performed landscaping work for the tenants living at 2511 Dog Leg Court. Prior to that day, one of the tenants texted Murray a photograph showing the condition of the area that needed landscaping. The photograph depicted the small yard and flowerbed in front of the townhouse, as well as the water meter vault next to the flowerbed. According to Murray, the lid of the vault appeared to be secure and did not look loose, unsecure, or open.

After he arrived on the morning of June 7, Murray began cleaning the flowerbed and its surrounding area. Again, he did not notice anything hazardous in the yard, and the water meter lid still appeared secure. After he completed the cleaning, Murray stepped back

to retrieve the hedge cutters. As he backed up, he stepped on the water meter lid and his leg went into the vault. The lid flipped up, struck Murray in the groin, and caused him to fall to the ground. After his fall, he noticed that the lid of the vault was "halfway off." Murray suffered injuries as a result of the accident.

The County's Investigation

After the accident, Murray, the tenant, and a passerby put the lid back in place on the vault. Later that day, the County dispatched an emergency technician, Kenneth Burke ("Burke"), to investigate and properly secure the lid. Burke secured the lid into the vault's frame and marked the bolt with blue spray paint to show he had "been there." Subsequently, the County replaced the lid with one that had a single touch reader.

The tenant was not aware of any issues with the lid prior to the accident.[2] The County's meter services manager, Cecile Currier ("Currier"), testified during trial that there was no evidence suggesting that anyone other than the County's personnel tampered with or accessed the lid. Additionally, the County did not have any records of complaints, work orders, repair requests, or any communications indicating a need to tighten, secure, or reaffix the lid until the accident occurred.

[2] The tenant did not testify at trial, but the parties agreed to read into the record the County's response to an interrogatory in which the County stated that the tenant "did not know of any issues with the water meter cover lid prior to Mr. Murray stepping on it on June 7, 2019. [The tenant] further states he knew of no issues with the water meter cover lid and there was no one that contacted the [C]ounty prior to Mr. Murray's fall."

Expert Investigation and Report

On February 14, 2023, Murray's expert, James Schofield ("Schofield"), conducted a site inspection of the water meter vault in question. During trial, Schofield testified that the "essential component" of the meter lid that holds it in place is the "worm lifter lock." The lock engages with the sides of the vault, ensuring that the lid is tightened down and cannot be moved.

Schofield prepared a report documenting his investigation into the accident. The report provided an overview of the incident and summarized the materials he reviewed, including discovery responses, deposition transcripts, the manufacturer's catalog for the water meter vault, and technical notes about water meter box covers.

The report also included a summary of the site inspection Schofield conducted that day. Embedded within the text of the report were two photographs: "Image 2(a)" showed the lid on the day of the accident, after Burke had secured it and marked the bolt with blue spray paint, and "Image 2(b)" depicted the replacement lid.

During his site inspection, Schofield examined approximately fifteen other water meter lids at nearby townhomes to obtain a general overview of their arrangements. He observed that two of the fifteen lids were missing their worm lifter locks and several other lids were askew. Photographs of these lids were included in Appendix A of his report.

The report also detailed the brand of the meter vault, which was manufactured by Ford Meter Box Company. The report provided technical information regarding lid and valve keys, proper installation of the lid, and maintenance and safety guidelines.

Schofield opined that the standard of care for opening a water meter lid required it be returned to its position and secured after its removal. It was undisputed that if the lid was not properly secured, it created a hazardous condition.

During trial, Schofield testified that he did not have personal knowledge regarding whether someone had tampered with the lid in question before the accident. However, based on his review of the case materials, he found no evidence to suggest that someone had unlocked, damaged, or tampered with the meter between April and June 2019. Schofield also mentioned that, given the location of the vault on private property, he would not expect someone walking on the sidewalk to step on the lid.

PROCEDURAL BACKGROUND

Murray filed a complaint for negligence against the County.[3] In relevant part, he alleged that the County owned, controlled, operated, maintained, managed, inspected, monitored, and serviced the water meter at issue; the County and its employees had a duty to exercise ordinary care in inspecting and maintaining the water meters on the property including the lid to the water meter vault; the County breached these duties; and Murray suffered injuries as a result.

The County moved for summary judgment on Murray's negligence claim, arguing that there was no dispute of material facts and that it was entitled to judgment as a matter

[3] Murray also named the City of Crofton, the tenants and owner of 2511 Dog Leg Court, and the owners of 2513 Dog Leg Court as defendants in the lawsuit. Ultimately, all parties were voluntarily dismissed from the lawsuit except for the County and the tenants. The tenants did not respond to the complaint, and after trial, the court entered default judgment against them.

of law.[4] On June 5, 2023, the circuit court summarily denied the County's motion "as there [wa]s a genuine dispute as to a material fact."

A two-day jury trial against the County began on October 12, 2023. The County filed a pre-trial motion *in limine* to exclude evidence of subsequent remedial measures, including photographs of the lid taken after it was secured by Burke. The court reserved ruling on the motion.

During trial, Murray, Schofield, Watson, and Currier testified on the issue of the County's liability, the testimony of which has been summarized above. Schofield's report, along with the accompanying photographs, was admitted over the County's objection.

At the conclusion of Murray's case-in-chief, the County moved for judgment. The County argued that Murray had not provided any evidence showing that the County or any of its employees loosened or failed to secure the lid. Additionally, the County suggested that the lid might have been tampered with by someone other than County personnel and reiterated that there was no evidence indicating that the County had left the lid unsecured.

The court denied the motion, stating that the jury could reasonably infer that a County employee had failed to secure the lid on the vault before the accident. After all

[4] In its motion, the County argued that it was entitled to governmental immunity. A local government or municipality may be immune from traditional common law liability if the government is performing a governmental function, such as maintaining public parks or swimming pools. *Anne Arundel Cnty. v. Fratantuono*, 239 Md. App. 126, 133 (2018). However, a local government is not immune if performing a proprietary or corporate function, such as maintaining its streets, sidewalks, footways, and areas contiguous to them. *Id.* at 133, 141 (concluding that the county did not have governmental immunity because the water meter lid that the plaintiff had stepped on was in a grassy area adjacent to the sidewalk). No issue of governmental immunity is presented in this appeal.

evidence had been presented, the County renewed its motion for judgment, incorporating its earlier arguments. The court again denied the motion without further explanation.

The parties requested various jury instructions, but the court did not give certain instructions requested by the County. Murray requested an instruction on *res ipsa loquitur*, which the court gave over the County's objection.

On October 13, the second day of trial, the case was submitted to the jury. Following deliberation, the jury found the County was negligent and awarded Murray $70,000 in damages. On October 19, the court entered a judgment on the verdict.

Within ten days, the County filed a Motion for Judgment Notwithstanding the Verdict ("JNOV"). The County argued, among other things, that Murray failed to demonstrate that the County created a dangerous condition or had actual or constructive notice of such a condition prior to the accident. Additionally, the County claimed that there was no evidence indicating that the lid was exclusively controlled by the County and could not be tampered with or manipulated by others without authorization.

The motion included separate arguments to support a motion to alter or amend the judgment and a motion for a new trial. In the section for the motion to alter or amend, the County challenged the $70,000 award, requesting that it be reduced to a lower amount based on the bills presented during trial. In the section for the motion for new trial, the County argued, among other things, that the court erred by giving the *res ipsa loquitur* jury instruction, failing to give the jury instructions requested by the County, admitting evidence

of subsequent remedial measures, admitting evidence related to other water meter lids, and admitting Schofield's report.

Within thirty days of the judgment and while awaiting a decision on the post-trial motions, the County filed its notice of appeal. After conducting a hearing, the court entered an order denying the post-trial motions.[5]

We shall include additional facts as necessary in the discussion.

OVERVIEW OF RELEVANT LAW

As mentioned, Murray claimed that the County was negligent in failing to secure or otherwise affix the lid to the water meter vault, causing him to fall and sustain injuries. A claim for negligence requires a plaintiff to prove "1) that the defendant was under a duty to protect the plaintiff from injury, 2) that the defendant breached that duty, 3) that the plaintiff suffered actual injury or loss, and 4) that the loss or injury proximately resulted from the defendant's breach of that duty." *Steamfitters Loc. Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 727 (2020) (citation omitted). A plaintiff "bears the burden of showing that it was the negligence of the defendant," and not "the intervention of any independent factor[,] that caused the harm." *Jones v. Balt. Transit Co.*, 211 Md. 423, 426 (1956).

Notice

"As a general rule, a municipality has a duty to maintain its public works in good condition." *Colbert v. Mayor of Balt.*, 235 Md. App. 581, 588 (2018) (citing *Smith v. City*

[5] Pursuant to Maryland Rule 8-202(c), a notice of appeal filed prior to disposition of a timely filed motion under Rule 2-532, 2-533, or 2-534 is effective. Processing of that appeal is delayed until the disposition of the motion. *Edsall v. Anne Arundel Cnty.*, 332 Md. 502, 508 (1993).

of Balt., 156 Md. App. 377, 383 (2004)). "That duty is not absolute, however, and the municipality is not an insurer." *Id.* "If an entity is injured because the municipality failed to maintain its public works and the municipality had actual or constructive notice of the bad condition that caused the damage, the municipality may be held liable in negligence." *Id.* Thus, for the municipality to be held liable for negligence, a plaintiff is required to show that the municipality had actual or constructive notice. *Id.*

Actual notice has been defined as "knowledge on the part of the corporation, acquired either by personal observation or by communication from third persons, of that condition of things which is alleged to constitute the defect." *Id.* (quoting 19 Eugene McQuillin, *The Law of Municipal Corporations* § 54:176 (3d ed., July 2017 update)). In contrast, constructive notice is notice that the law imputes based on the circumstances of the case. *Id.* "A municipality is charged with constructive notice when the evidence shows that—as a result of the 'nature' of a defective condition or the 'length of time it has existed'—the municipality would have learned of its existence by exercising reasonable care." *Id.* (citation omitted).

Act By Municipality That Causes or Creates a Dangerous Condition

Maryland courts have recognized situations in which actual or constructive notice is not an issue if a defendant created the dangerous condition. In *Keene v. Arlan's Department Store of Baltimore, Inc.*, 35 Md. App. 250, 256 (1977), we explained:

> There is a distinction to be made between those cases which occur as a result of some overt action by the owner or his employees (waxing or oiling of floors) and those which for convenience have been designated as foreign object, notice type of cases. *In the first type, notice is usually not an issue*

> *since the owner or his employees are alleged to have created the dangerous condition.*

(emphasis added).

In *Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 394 (1997), a customer sued a grocery store for injuries sustained when she slipped on a pile of cabbage or spinach leaves that had been swept into a "neat pile." *Id.* at 384. She took a step and tripped and fell over an empty box that protruded partially from under the cabbage case. *Id.* The circuit court granted summary judgment in the store's favor, and the customer appealed. *Id.* at 383.

On appeal, the issue was whether there was a material factual dispute about whether the employer negligently created a dangerous condition by placing a pile of leaves or a box in the produce aisle of the grocery store. *Id.* at 387. In addition to establishing the duty owed to the customer, "the burden [was also] upon the customer to show that the proprietor created the dangerous condition or had actual or constructive knowledge of its existence." *Id.* at 389 (quoting *Lexington Mkt. Auth. v. Zappala*, 233 Md. 444, 446 (1964)).

We explained that "the notice issue generally arises when the dangerous condition is created by a third party." *Id.* at 394. The issue at summary judgment was not notice of the dangerous condition. *Id.* The customer alleged affirmative acts by the store: (1) "sweeping refuse into a pile on the floor and leaving it there," and (2) "placing an empty box partially under, and in front of, a produce display case." *Id.* at 390. We explained that:

> Viewing the factual assertions in the light most favorable to [the customer], [the store] had actual or constructive knowledge of the dangers created by the leaves or the box; [the customer] claimed that the vegetable leaves were

> swept into a "neat pile," and the box was left under the produce display. It follows, at least by inference, that [the store's] own employee(s) knew what had been done in sweeping the refuse into a pile and leaving it, and in placing the empty box under the display case.
>
> * * *
>
> Based on the factual allegations present here, we conclude that it is for the jury to decide whether, in the first instance, [the store] created a dangerous situation, about which it knew or should have known.

Id. at 394–95.

Although no Maryland case has explicitly addressed the distinction between notice-type cases and overt-act-type cases in the context of municipal liability, McQuillin articulates it succinctly:

> In seeking a recovery against a city for injuries due to an allegedly defective public way, it is only where the negligence relied on is the failure of the city to remove an obstruction or to repair a defect in the street, not caused by its own act or neglect, that the question of notice of obstruction or defect is an essential element. *If the defective condition is due to the act of the municipality itself, or its act or negligence in connection with the acts of others, or to the acts of others as of its contractors or employees, no notice of any kind, either actual or constructive, is necessary*.

19 Eugene McQuillin, *The Law of Municipal Corporations* § 54:172, Westlaw (database updated July 2024) (emphasis added) (footnote omitted); *see also* 6 Anthony Z. Roisman, *Litigating Tort Cases* § 66:66, Westlaw (database updated Oct. 2024) (explaining that "[a] plaintiff who brings a negligence action against a governmental agency need not . . . establish notice of a dangerous condition if the government agency itself creates or causes the dangerous condition").

Courts in other jurisdictions have expressly acknowledged this distinction. *See, e.g.*, *Whatley v. City of Winnfield*, 802 So. 2d 983, 986 (La. Ct. App. 2001) ("The requirement of notice to the municipality is inapplicable to a case where the dangerous condition is attributable to negligent acts of the city or its employees."); *Isbell v. Maricopa Cnty.*, 9 P.3d 311, 314 (Ariz. 2000) (explaining that "[t]he plaintiffs' claim against the [c]ounty falls within those cases in which notice is not required, because [they] relied upon allegations that the [c]ounty itself was directly negligent"); *Sherman v. District of Columbia*, 653 A.2d 866, 870 (D.C. 1995) ("Proof that the District had notice of the defective condition is irrelevant here, where liability is premised on the primary negligence of the District's agent."); *Martinez v. City of New York*, 637 N.Y.S.2d 706, 707 (App. Div. 1996) ("Neither actual nor constructive notice need be proven when the defendant is responsible for causing or creating the defective condition responsible for the injuries to the plaintiff."); *Harding v. City of Highland Park*, 591 N.E.2d 952, 959 (Ill. App. Ct. 1992) (explaining that no actual or constructive notice is required where municipality's agent causes the hazardous condition); *Cardoza v. Town of Silver City*, 628 P.2d 1126, 1128 (N.M. Ct. App. 1981) (explaining that "[a]ctual or constructive notice loses its effectiveness when the city itself, which has full and complete charge of its streets, sidewalks, or systems, including the sewer system, creates or causes a defective or dangerous condition to exist"); *Larson v. Twp. of New Haven*, 165 N.W.2d 543, 547 (Minn. 1969) (stating actual or constructive notice of a defect is not required if a municipality created the defect); *Batten v. S. Seattle Water Co.*, 398 P.2d 719, 722 (Wash. 1965) ("[W]here a municipal corporation creates the dangerous

condition, no notice is required."); *Johnson v. City of Opelika*, 71 So. 2d 793, 797 (Ala. 1954) ("It is not required that notice of the condition causing the injury should be brought home to the municipality where the negligence charged is legally attributable to some officer or agent of the municipality."); *City of Rome v. Stone*, 167 S.E. 325, 328 (Ga. 1933) (explaining that the municipality was charged with implied notice of the act of its agent and neither constructive nor actual notice were necessary where the municipality's contractor created the hazard).

PRINCIPLES OF APPELLATE REVIEW

We note that certain issues and arguments raised by the County are not properly before us. Before proceeding to the discussion and to avoid repetition later, we summarize the pertinent principles of appellate review.

Preservation

Under Maryland Rule 8-131(a), we will ordinarily not decide an issue unless it plainly appears by the record to have been raised in or decided by the trial court.

The purpose of this rule is to "require counsel to bring the position of his client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings." *Chimes v. Michael*, 131 Md. App. 271, 288 (2000) (citation omitted). "The rule is effectively a form of estoppel—it curbs appeals that are inconsistent with the parties' positions at trial." *Id.*; *see also, e.g.*, *Halloran v. Montgomery Cnty. Dep't of Pub. Works*, 185 Md. App. 171, 202 (2009) ("[U]nless a [party] makes timely objections in the lower court or makes his feelings known to that court, he will be

considered to have waived them and he can not now raise such objections on appeal." (citation omitted)); *Chimes*, 131 Md. App. at 288 ("[Appellant] cannot argue now that the child support guidelines apply, because he did not preserve that issue."). If the argument is not preserved, we need not address it. *See, e.g.*, *In re K.L.*, 252 Md. App. 148, 188 n.36 (2021) (where party failed to argue the application of specific standard before magistrate and juvenile court, such argument was not preserved and would ordinarily not be addressed).

Questions Presented

Maryland Rule 8-504(a)(3) requires that the brief shall contain "[a] statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail."

An appellant can waive issues for appellate review by failing to mention them in the Questions Presented section of its brief. *Green v. N. Arundel Hosp. Ass'n*, 126 Md. App. 394, 426 (1999); *see Grebow v. Client Prot. Fund of the Bar of Md.*, 255 Md. App. 7, 33 (2022) (appellant's "substantial evidence" argument, presented within his appellate briefing, was waived because it was not raised in his question presented). The rationale for this principle is that "[c]onfining litigants to the issues set forth in the 'Questions Presented' segment of their brief ensures that the issues presented are obvious to all parties and the Court." *Green*, 126 Md. App. at 426.

Adequate Briefing

Maryland Rule 8-504(a)(6) requires that a brief shall contain "[a]rgument in support of the party's position on each issue."

Maryland appellate courts have made clear that "arguments not presented in a brief or not presented with particularity will not be considered on appeal." *Klauenberg v. State*, 355 Md. 528, 552 (1999); *DiPino v. Davis*, 354 Md. 18, 56 (1999) ("[I]f a point germane to the appeal is not adequately raised in a party's brief, the court may, and ordinarily should, decline to address it."). As this Court has explained, "[w]e cannot be expected to delve through the record to unearth factual support favorable to [an] appellant." *Van Meter v. State*, 30 Md. App. 406, 408 (1976). Nor is it our "responsibility to attempt to fashion coherent legal theories to support [an] appellant's sweeping claims." *Elecs. Store, Inc. v. Cellco P'ship*, 127 Md. App. 385, 405 (1999).

"[W]here a party initially raised an issue but then failed to provide supporting argument, this Court has declined to consider the merits of the question . . . ." *Fed. Land Bank of Balt., Inc. v. Esham*, 43 Md. App. 446, 457–58 (1979). Furthermore, a contention can be deemed waived if an appellant in its brief raises an argument but cites no authority for its position. *Conrad v. Gamble*, 183 Md. App. 539, 569 (2008) (declining to address issue because argument was "completely devoid of legal authority" (citation omitted)); *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1997) (failure to provide legal authority to support contention waived that contention). As we have advised, "[i]t is not our function

to seek out the law in support of a party's appellate contentions." *Anderson*, 115 Md. App. at 578.

DISCUSSION

I.

Motion for Summary Judgment

The County argues that Murray's negligence claim is based on mere speculation, as he failed to provide evidence showing that an act or omission by its employee created a dangerous condition or that the County had actual or constructive knowledge of such a condition. Specifically, the County contends that there was no direct evidence showing that its employee did not properly tighten or secure the water meter lid on April 23, 2019. Because there was no evidence that the County created a dangerous condition, Murray needed to demonstrate that the County had actual or constructive notice of a dangerous condition prior to June 7, 2019, and no such evidence was presented.

Additionally, the County argues that the court's failure to elaborate on its decision that there was a genuine dispute of material fact demonstrates that the court abused its discretion. It claims that had the court exercised its discretion properly, it would have granted summary judgment.

A.

Standard of Review

A motion for summary judgment may only be granted if there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. Md. Rule 2–

501(f); *Bowen v. Smith*, 342 Md. 449, 454 (1996). In deciding the motion, "all disputes of fact, as well as all inferences reasonably drawn from the evidence, must be resolved in favor of the non-moving party." *Tennant*, 115 Md. App. at 387.

"When a trial court grants a motion for summary judgment, we review its decision for legal correctness." *Lewin Realty III, Inc. v. Brooks*, 138 Md. App. 244, 299 (2001). "When, however, a trial court denies a motion for summary judgment on the ground that there are material facts in genuine dispute and the case proceeds to be determined on its merits, we review the court's denial of a summary judgment for an abuse of discretion." *Id.* "Generally, the standard is that absent a showing that a court acted in a harsh, unjust, capricious and arbitrary way, we will not find an abuse of discretion." *Dashiell v. Meeks*, 396 Md. 149, 178 (2006).

B.

Analysis

Having reviewed the summary judgment record, we discern no abuse of discretion by the court in denying the County's motion for summary judgment. Although the summary judgment record was devoid of direct evidence that the County caused the dangerous condition by not securing the unsecured water meter lid that led to Murray's injury, Murray was not required to prove all elements of negligence by direct evidence. The elements of negligence may be shown by circumstances from which they may be inferred. *See Todd v. Weikle*, 36 Md. App. 663, 670 (1977) ("A familiar Maryland rule is that a defendant's negligence may be shown by either direct or circumstantial evidence and may be inferred

from all of the facts of the case."); *Otis Elevator Co. v. LePore*, 229 Md. 52, 57–58 (1962) (causation does not need to be established with "direct and positive proof to an absolute certainty," as "circumstantial evidence or common knowledge may provide a basis from which the causal sequence may be inferred" (citation omitted)).

Based on the summary judgment record, it was undisputed that the County owned, controlled, and maintained the water meter in question; the vault housed a water meter that required a manual reading, necessitating a County employee to physically remove the lid; the last time a County employee opened the meter lid for a manual reading was on April 23, 2019, just a few weeks before Murray's accident; only County personnel were authorized to open the water meter lid; a water meter key was the appropriate tool for opening and securing the lids; and there was no evidence suggesting that the lid had been tampered with.

When considering the evidence in the light most favorable to Murray, the non-moving party, there was circumstantial evidence that the County employee who last removed the water meter lid weeks before Murray's fall failed to properly secure the lid. It was for the jury to decide whether the County created a dangerous condition. *See, e.g.*, *Tennant*, 115 Md. App. at 394–95.

Regarding the court's order summarily denying the motion, "we may presume that a circuit court judge acted with knowledge of the controlling law." *Davis v. Att'y Gen.*, 187 Md. App. 110, 130 (2009). "That presumption is not rebutted by mere silence" as a judge "is not required to articulate every step in his thought processes." *Wasyluszko v.*

Wasyluszko, 250 Md. App. 263, 282–83 (2021) (citation omitted). "Absent an indication from the record that the . . . judge misapplied or misstated the applicable legal principles, the presumption is sufficient for us to find no abuse of discretion." *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003). Here, there was no indication in the record that the court misapplied or misstated the applicable principles. For the reasons stated, the court did not err in denying the County's motion for summary judgment on the negligence count.

II.

Motions for Judgment and JNOV

The County argues that the circuit court erred in denying its motions for judgment and Motion for JNOV regarding the negligence claim. The County maintains, as it did below, that Murray did not provide any evidence at trial to establish that the County's employee left the lid unsecured after reading the meters in the vault on April 23, 2019. Nor did he show that the County had actual or constructive notice of the unsecured lid.

The County emphasizes that Murray presented evidence indicating that on June 6, the day before the accident, the lid appeared to be secured and fastened. The County also notes testimony suggesting that Murray "likely and/or possibly loosened or caused the water meter cover lid to become unsecured" on the day in question, just before he stepped

on it. Therefore, the County argues that the evidence overwhelmingly demonstrated that Murray failed to meet his burden of proof.[6]

A.

Standard of Review

"A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence." Md. Rule 2-519(a). Where the defendant moves for judgment on the grounds that the plaintiff's evidence is legally insufficient, "the trial judge must determine if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question." *Thomas v. Panco Mgmt. of Md., LLC*, 423 Md. 387, 394 (2011) (citation and quotations omitted).

In a jury trial for negligence, when the defendant argues that the plaintiff's "evidence is insufficient to create a triable issue, the court determines whether an inference of negligence is permissible; that is, whether the evidence demonstrates that it is more probable than not that the defendant was negligent." *District of Columbia v. Singleton*, 425 Md. 398, 407 (2012). "The court considers 'the evidence and reasonable inferences drawn from the evidence in the light most favorable to the non-moving party.'" *Id.* (quoting *Thomas*, 423 Md. at 393). "It is only when the facts and circumstances only permit one

[6] Although the County raised in its Questions Presented an error in the court's denial of its motion to alter or amend judgment and motion for a new trial, it did not address these issues in the Argument section of its brief. *See* Md. Rule 8-504(a)(6). Accordingly, we will not address the claim of error concerning these other motions.

inference with regard to the issue presented, that the issue is one of law for the court and not one of fact for the jury." *Thomas*, 423 Md. at 394 (citation and quotations omitted).

"We review the trial court's decision to grant or deny a motion for judgment in a civil case without deference." *Sugarman v. Liles*, 460 Md. 396, 413 (2018). Accordingly, "[w]e conduct the same analysis that [the] trial court should make when considering the motion for judgment." *Singleton*, 425 Md. at 406–07. We look at the evidence in the light most favorable to the non-moving party and evaluate "whether the evidence was sufficient as a matter of law to generate a jury question as to the cause of action at issue." *Webb v. Giant of Md., LLC*, 477 Md. 121, 137 (2021). If we determine "that the evidence permits only an inference in favor of the moving party regarding the issue presented, then that party is entitled to judgment as a matter of law." *Id.*

"The standard of review of a court's denial of a motion for JNOV is the same as the standard of review of a court's denial of a motion for judgment at the close of the evidence . . . ." *Univ. of Md. Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012). We determine whether the decision was legally correct while reviewing the evidence and all reasonable inferences from it "in the light most favorable to the non-moving party." *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 333 (2013) (citation omitted).

B.

Analysis

As noted, Murray's negligence claim was premised on the assertion that the County employee failed to secure the water meter lid after taking a reading on April 23, prior to

the accident. Therefore, the issue is whether the evidence presented was sufficient to generate a jury question as to whether the County's employee left the water meter lid unsecured after inspecting it on April 23.

The County suggests that we should view the evidence in the light most favorable to it. It claims that evidence showing that the lid appeared to be secured and fastened on June 6 indicated that Murray "likely and/or possibly loosened or caused the water meter cover lid to become unsecured" on June 7. However, as explained above, we must view the evidence in the light most favorable to Murray, the non-moving party.

The court viewed the evidence in the light most favorable to Murray and denied the County's motion for judgment. It explained:

> This particular meter, and we know this based upon the fact that the [C]ounty went out and actually repaired the meter. But even after that, it appears as if one of the meters was [sic] still required a manual read. If there's a requirement of a manual read, that means that someone had to open the lid. And once you open the lid, then it's the responsibility of that person to securely secure the lid. And there's even, from what the evidence shows, that there's a four step process or whatever, where that is done.
>
> And within, whenever the meter was read, of course the facts of [sic] what [Murray] testified in terms of what happened. But he stepped on the meter and it obviously wasn't secure. So, [Murray] is saying that is, at minimum, a reasonable inference that the [C]ounty employee failed to comply with the responsibility to secure the meter.

Based on our review of the record without deference, we hold that the court did not err in denying the motions for judgment. In applying the same standard to the court's ruling on the Motion for JNOV, we also hold that the court did not err in denying the Motion for JNOV. The evidence presented at trial, viewed in the light most favorable to Murray,

established that the County owned, controlled, and maintained the water meter in question; the water meter vault contained two meters, one of which required a manual read, necessitating that a County employee physically remove the lid; the last time a County employee opened the meter lid for a manual read before the accident was on April 23; only County personnel were authorized to open the water meter lid; a water meter key was the appropriate tool used to open and secure the lids; and there were no signs of tampering with the lid in question. There was legally sufficient evidence to generate a jury question as to whether the County's employee left the water meter, which caused Murray's fall, unsecured. Therefore, the court did not err in denying the motions for judgment or JNOV.

III.

Res Ipsa Loquitur Jury Instruction

The doctrine of *res ipsa loquitur* allows a plaintiff to establish a *prima facie* case of negligence where the plaintiff "could not otherwise satisfy the traditional requirements for proof of negligence." *Dover Elevator Co. v. Swann*, 334 Md. 231, 236 (1994) (citation omitted). "A plaintiff's reliance on *res ipsa loquitur* is generally necessitated, therefore, by the fact that direct evidence of negligence is either lacking or solely in the hands of the defendant." *Id.* at 237. The doctrine is "merely a short way of saying that the circumstances attendant upon an accident are themselves of such a character as to justify" an inference of negligence. *Id.* at 236 (citation omitted). The rule is not applied "except where the facts and the demands of justice make its application essential, depending upon the facts and circumstances in each particular case." *Id.* at 246 (citation omitted).

A plaintiff seeking to rely on *res ipsa loquitur* must establish three elements. First, a plaintiff must establish that the accident was "of a kind that does not ordinarily occur absent negligence." *Singleton*, 425 Md. at 408 (citation omitted). In general, "the facts and surrounding circumstances [must] tend to show that the injury was the result of some condition or act which ordinarily does not happen if those who have the control or management thereof exercise proper care." *Greeley v. Balt. Transit Co.*, 180 Md. 10, 12 (1941). However, the simple fact that an injury occurred in the absence of context cannot justify an inference of negligence. *Benedick v. Potts*, 88 Md. 52, 55 (1898). Further, this first element is not met if it can be shown that another act apart from the defendant's negligence was "equally likely" to have caused the injury. *See Holzhauer v. Saks & Co.*, 346 Md. 328, 336–37 (1997).

Second, a plaintiff must show that the accident "was caused by an instrumentality exclusively in the defendant's control." *Singleton*, 425 Md. at 408. "[A] res ipsa inference of the defendant's negligence is not permissible where an intervening force may have precipitated the accident." *Id.* This is because the potentiality's existence "weakens the probability that the injury is attributable to the defendant's [negligent] act or omission." *Id.* (quoting *Holzhauer*, 346 Md. at 337).

The "[p]assage of time between the act of negligence and the subsequent injury is a factor to be considered, for it increases the possibility that there was an intervening independent act of a third party which would make the doctrine inapplicable." *Leidenfrost*

v. Atl. Masonry, Inc., 235 Md. 244, 250 (1964). As such, the plaintiff "must show the condition of the instrumentality has not changed or been altered in the interim." *Id*.

However, in proving the absence of other, more-probable causes of the accident, the plaintiff "is not required to exclude every possible cause for [his] injuries other than that of negligence; [he] is only required to show a greater likelihood that [his] injury was caused by the defendant's negligence than by some other cause." *Norris v. Ross Stores, Inc.*, 159 Md. App. 323, 330–31 (2004) (emphasis and citation omitted); *see Singleton*, 425 Md. at 408 ("To satisfy the exclusive-control requirement, the evidence adduced must demonstrate that no third-party or other intervening force contributed *more probably than not* to the accident." (emphasis added)). As we have explained, "'[c]ontrol,' if it is not to be pernicious and misleading, must be a very flexible term." *Norris*, 272 Md. App. at 332 (citation omitted). In this regard, the Maryland Supreme Court has explained:

> [E]vidence of complete control is not required. [Exclusive control] may be established by evidence sufficient to warrant an inference of its existence, and circumstantial evidence may suffice. The plaintiff is not required in his proof to exclude remotely possible causes and reduce the question of control to a scientific certainty.

Leidenfrost, 235 Md. at 250 (where employee of general contractor sued masonry subcontractor after pile of slag blocks to be used by subcontractor fell on him, question of exclusive control of slag blocks was one for the jury). The requirement of exclusive control

> as it is generally applied is more accurately stated as one that the evidence must afford a rational basis for concluding that the cause of the accident was *probably* such that the defendant would be responsible for any negligence connected with it. That does not mean that the possibility of other causes must be altogether eliminated, but only that their likelihood must be so reduced that the greater possibility lies at the defendant's door.

Norris, 159 Md. App. at 333 (emphasis added) (citation and quotations omitted). "In sum, res ipsa loquitur requires the conclusion that, 'by relying on common sense and experience, the incident *more probably* resulted from the defendant's negligence rather than from some other cause.'" *Singleton*, 425 Md. at 409 (emphasis added) (citation omitted).

Third, a plaintiff must show that an act or omission of the plaintiff did not cause the accident. *Id.* at 408.

A.

Proceedings Below

After the presentation of the case and before the lunch recess, the court discussed jury instructions. Murray's counsel mentioned that they had emailed additional proposed instructions to the court; however, the County indicated that it had not received them. Murray's counsel stated they would provide the County with a copy of the proposed instructions. The court advised that, after reviewing the instructions during the lunch break, if the County had any issues with them, it should inform the court. Prior to lunch, the court proceeded to give the jury "all the basic standard instructions."

After excusing the jury for lunch, the court indicated that it would address Murray's request for the *res ipsa loquitur* instruction and the instructions requested by the County. The court stated it would consider these matters after the lunch break.

When the parties reconvened after the lunch break, the court resumed the discussion about additional jury instructions that the parties requested. Murray's counsel indicated that they had sent Murray's requested additional instructions, which apparently included the *res*

ipsa loquitur instruction, to the County. The County "object[ed] to [Murray's] proposed non-pattern jury instructions that were presented to us."

Regarding the *res ipsa loquitur* instruction, Murray's counsel explained that the instruction was necessary because there was no direct evidence that the County's technician failed to secure the lid after reading the meter. Counsel also explained that the evidence satisfied the three elements of the doctrine.

After commenting that the element at issue was "exclusive control," the court proceeded to hear arguments about other instructions requested by the County.[7] After hearing arguments and objections about the County's requested instructions, the court brought the jury in. The court indicated that there would be another opportunity for objections later.

The court proceeded to instruct the jury on *res ipsa loquitur*:

> Let me instruct you that the fact that an event happened does not mean that it was caused by negligence. However, if the Plaintiff has proven each of the following circumstances, then you may conclude that there was negligence. One, the event would not ordinarily happen without negligence. Two, the

[7] The County requested the following jury instructions: MPJI-CV 10:11 (nominal damages), MPJI-CV 19:3 (foreseeable circumstances), MPJI-CV 19:11 (intervening/superseding cause), MPJI-CV 19:12 (contributory negligence), MPJI-CV 24:4 (duty to a social guest or licensee by invitation), MPJI-CV 24:6 (landlord's duty with respect to property—common areas or reserved facilities), MPJI-CV 24:8 (landlord's notice of defect), and proposed jury instruction "No. 2" about the required showing that the County had actual or constructive notice of a dangerous condition.

Ultimately, the court declined to give these requested instructions. In the Argument section of its brief, the County argues that the court erred in declining to give these instructions. However, the issue does not appear in the County's Questions Presented section of its brief. *See* n.1, *supra*. Accordingly, we decline to consider the issue. *See* Md. Rule 8-504(a)(3); *Green*, 126 Md. App. at 426.

> cause of the event was in the Defendant's exclusive control. And three, no action or omission of the Plaintiff was a cause of the event.

After the instruction was given, the court asked if there were any exceptions to it. The County objected to the instruction because the County did not have "exclusive control" over the water meter lid:

> [The instruction] gives exclusive control of the water meter cover. The water meter cover was--the title resident of the property, in which case there w[ere] other people that have access, and no exclusive control to the County. It's an improper instruction.

The court noted the County's exception.

B.

Standard of Review

"A requested jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate." *Jarrett v. State*, 220 Md. App. 571, 585 (2014) (citation omitted). Our appellate courts review the propriety of a jury instruction under an abuse of discretion standard. *Wietzke v. Chesapeake Conf. Ass'n*, 421 Md. 355, 371 (2011). This is because "[a] trial judge exercises discretion by assessing whether the evidence produced at trial warrants a particular instruction on legal principles applicable to that evidence and to the theories of the parties." *Collins v. Nat'l R.R. Passenger Corp.*, 417 Md. 217, 228 (2010).

Substantial deference is due to the trial court in this regard, and its decision "will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Gunning v. State*, 347 Md. 332, 351–52 (1997) (citation omitted). "A proper

exercise of discretion involves consideration of the particular circumstances of each case." *Id*. at 352.

C.

Analysis

The County argues that the circuit court erred in giving the jury instruction for *res ipsa loquitur*. In its brief, the County challenges the first two elements of this doctrine. Regarding the first element, it argues that there was no evidence that the event (Murray's fall) would not ordinarily happen absent negligence. It claims that the lid could have been loosened without any negligence on the part of the County as someone could have done so without its knowledge, causing someone like Murray to step on the unsecured lid and fall.

However, the County's argument regarding the first element is not properly before us for two reasons. First, the argument is not preserved because the County did not challenge the applicability of the first *res ipsa loquitur* element when it objected to the instruction. Under Maryland Rule 2-520(e), "[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, *stating distinctly the matter to which the party objects and the grounds of the objection*." (emphasis added).

During oral argument before this Court, the County claimed it made a general objection to the instruction, which was sufficient to preserve its argument regarding the first element now presented on appeal. However, "a general objection [under Rule 2-520(e)], without specification as to the particular parts will not suffice." *Nesbitt v. Bethesda*

Country Club, Inc., 20 Md. App. 226, 231 (1974). As the Maryland Supreme Court explained:

> If the party objecting does not clearly state, at the time of the objectionable instruction, the nature of the objection and the reasoning and law on which the objection is grounded, an appellate court can hardly find error, at that same party's request, in a trial judge's failure to correct a mistake in the charge.

Fearnow v. Chesapeake & Potomac Tel. Co. of Md., 342 Md. 363, 378 (1996). For the reasons stated, the County's challenge to the first element of *res ipsa loquitur* is not preserved.[8]

Second, the County's argument regarding the first element is not properly before us, as it failed to cite any legal authority to support its claims on this point. *See* Md. Rule 8-504(a)(6). Accordingly, we decline to address the argument.

As for the second *res ipsa loquitur* element, the County argues that the water meter lid was not in its exclusive control. It explains that there is a distinction between exclusive authority and exclusive control. While the County had the exclusive authority to manage the lids, it could not prevent individuals from violating rules and regulations. Additionally,

[8] During oral argument, the County suggested that it did not receive Murray's proposed jury instructions in a timely manner at trial, which hindered its ability to adequately argue the first element of the *res ipsa loquitur* doctrine. However, the timing of receiving the proposed instruction did not serve as a basis for the County's objection to the *res ipsa loquitur* instruction. Although the County indicated that it had not received Murray's additional proposed instructions, the record reflects that Murray shared the proposed instructions with the County right before recessing or during the lunch break. After returning from the recess and discussing the *res ipsa loquitur* instruction, the County made no objection regarding the timing of receiving this proposed *res ipsa loquitur* instruction.

the County's exclusive authority over the lid in question did not stop unauthorized access to it; the lid was on private property and could have been accessed by anyone without the County's knowledge.

The County cites a series of out-of-state cases for the purported proposition that *res ipsa loquitur* universally does not apply to water meter covers and manhole lids: *Hansen v. City of Pocatello*, 184 P.3d 206 (Idaho 2008); *Larison v. Public Water Supply District #1 of Andrew County*, 998 S.W.2d 192 (Mo. Ct. App. 1999); two cases from the District of Columbia, *Martin v. United States*, 225 F.2d 945 (D.C. Cir. 1955) and *Porter v. Kavakos*, 267 A.2d 353 (D.C. 1970); and two cases from Ohio, *City of Cleveland v. Amato*, 176 N.E. 227 (Ohio 1931) and *Renneckar v. Canton Terminal Restaurant*, 73 N.E.2d 498 (Ohio 1947).[9]

[9] The County also cited *Cooperrider v. City of Ocean Shores*, No. 35497–7–II, 2007 WL 3257163 (Wash. Ct. App. Nov. 6, 2007), an unreported opinion filed by the Washington Court of Appeals. Maryland Rule 1-104(b) provides that an unreported opinion issued by a court in a jurisdiction other than Maryland "may be cited as persuasive authority if the jurisdiction in which the opinion was issued would permit it to be cited as persuasive authority or as precedent." Washington State General Rule 14.1, however, does not permit an unreported opinion issued by the Washington Court of Appeals filed before March 1, 2013, to be cited as nonbinding authority. *See* Wash. GR 14.1(a) ("Unpublished opinions of the [Washington] Court of Appeals have no precedential value and are not binding upon any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as non-binding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate."). Because *Cooperrider* is an unreported opinion filed before 2013, the County is not permitted to cite the opinion under GR 14.1 and, by extension, is not permitted to cite it under Maryland Rule 1-104(b). At oral argument, the County withdrew *Cooperrider* from consideration. Accordingly, we will not consider this opinion in our analysis.

The County did not discuss these cases in any depth. However, we will take the initiative to analyze them. Based on our review, these cases do not impose a blanket prohibition on the application of the *res ipsa loquitur* doctrine to water meter lids (or manhole lids). Although these cases may share some factual similarities to the instant case, the application of the doctrine in those cases depended on whether the evidence demonstrated a greater likelihood that a plaintiff's injury was caused the defendant's negligence than by some other cause.

In *Hansen v. City of Pocatello*, the plaintiff was injured when she stepped on an unsecured water meter lid on a public sidewalk. 184 P.3d at 207. In her complaint, the plaintiff alleged that the city was liable to her under a theory of *res ipsa loquitur*. *Id.* at 208. The city operated a water utility and had a duty to keep its water meters in reasonably safe condition. *Id.* at 209. Nine days before the plaintiff's fall, a city employee had opened the lid to read the meter. *Id.* at 207, 209. The city employee did not note any problems with the meter in his work log. *Id.* at 209. He did not remember securing the lid on the day he read the meter, but his normal practice was to secure the meter covers after meter readings. *Id.* A supervisor explained that the lid sat within a metal frame that was recessed in the sidewalk and that a lid could not flip up unless it was sitting askew on the frame. *Id.* The supervisor could not find any records indicating a problem with the lid or any citizen complaint about the lid. *Id.* He stated it was possible for third persons to remove the lid to get into the water meter. *Id.*

The trial court granted the city's motion for summary judgment on the plaintiff's claim of negligence. *Id.* at 207. The court rejected the plaintiff's *res ipsa loquitur* argument because the city did not have exclusive control over the water meter lid, which was located on a public sidewalk. *Id.* The Idaho Supreme Court affirmed, adding that the evidence disclosed that the lids can "be readily removed" by third parties. *Id.* at 208. The court explained:

> [The plaintiff] had the obligation of showing that her injuries were caused by the negligence of the City. Under the facts of this case, she would be required to prove that the city employee negligently left the lid of the water meter askew when he read the water meter nine days before her accident. Although there was no direct evidence that he did so, [the plaintiff] argues that the happening of the accident itself gives rise to an inference that he left it askew. Another explanation is that someone else left the lid askew, since *the water meter was located on a public sidewalk and its lid was not difficult to remove*. *[The plaintiff] cannot point to any evidence indicating that one explanation is more plausible than the other. Because [the plaintiff] presented no evidence that would remove this issue from the realm of speculation*, we conclude that the [trial] court properly granted summary judgment.

Id. at 209–10 (emphases added); *see Krinitt v. Idaho Dept. of Fish & Game*, 357 P.3d 850, 855 (Idaho 2015) (explaining that exclusive control "does not mean that the possibility of other causes must be altogether eliminated, but only that their *likelihood must be so reduced that the greater probability lies at the defendant's door*" (emphasis added) (citation omitted)).

In *Larison v. Public Water Supply District #1 of Andrew County*, the plaintiff mowed the lawn in her backyard and stepped onto a water meter lid that slipped off, causing her to fall. 998 S.W.2d. at 194. The plaintiff and her husband filed a complaint alleging that the water district was negligent in failing to properly secure the water meter lid. *Id.* They

alleged that the water district was alternatively liable under the doctrine of *res ipsa loquitur*. *Id.* The Missouri Court of Appeals affirmed the grant of summary judgment in favor of the water district on the issue of *res ipsa loquitur*. *Id.* at 198.

The summary judgment record established that the water operator had a routine that he followed when he read water meters, but he did not specifically remember reading the meter at issue, and he was not aware of anyone in the public tampering with water meters generally. *Id.* at 193–94, 196. The evidence also established that there were only nine days between the water operator's last visit to the plaintiffs' yard and the date of injury, that the plaintiffs lived in a low-traffic area, and there was no evidence that anyone else removed or tampered with the lid since the date of the operator's last visit. *Id.* at 196.

Regarding exclusive control, the plaintiffs argued that they had set forth a valid claim that the water district had the right to control the water meter lid. *Id.* at 197. The water district, however, argued that the plaintiffs could not produce sufficient evidence to establish that the lid was under its control. *Id.* at 198. The Missouri Court of Appeals agreed with the water district and affirmed summary judgment on the theory of *res ipsa loquitur*, explaining:

> The [plaintiffs] have failed to produce evidence to rebut the Water District's motion for summary judgment on the issue of *res ipsa loquitur*. The [plaintiffs] have not established that they have or would be able to produce evidence that the Water District was in control of the water meter lid. Even though the [plaintiffs] assert the Water District should be found to have exclusive control over the meter because it is the owner and operator of the water meter systems, the evidence does not support such a finding. Here, the instrumentality causing the injury, the water meter lid, was not in a location where the Water District could control or oversee it at all times. The Water District merely sent one of its employees to the [plaintiffs'] meter one time

> each month in order to perform a reading of the meter. At all other times, the water meter lid was accessible to tampering from extraneous forces. In such a situation, we cannot conclude the Water District was in exclusive control or had the right or ability to control the condition of the water meter lid. Thus, the doctrine of *res ipsa loquitur* cannot be applied.

Id.; *see Parlow v. Dan Hamm Drayage Co.*, 391 S.W.2d 315, 321 (Mo. 1965) ("The essential meaning of this requirement for res ipsa is that the evidence must afford a rational basis for concluding that the cause of the accident was *probably* such that the defendant would be responsible for any negligence connected with it. That does not mean that the possibility of other causes must be altogether eliminated, but only that their *likelihood must be so reduced that the greater probability lies at defendant's door*." (emphasis added) (citations and quotations omitted)).

In *Martin v. United States*, the plaintiff was tossing a ball with others on the Washington Monument grounds when, stepping backward onto a manhole cover, she fell into the manhole after the cover tilted. 225 F.2d at 947. The manhole cover was bolted in place in 1945, and the accident occurred five years later, but there was no evidence as to when and how the cover became loosened. *See id.* at 947 n.1. The plaintiff did not claim active negligence on the part of the United States. *Id.* at 948.

The court dismissed the complaint because it did not find any evidence that proved the cover was loose long enough before the accident to charge the government with constructive notice of its condition and so, as a fact, the court found it had no such notice. *Id.* It also concluded that *res ipsa loquitur* did not apply. *See id.* The Court of Appeals for the District of Columbia Circuit affirmed, explaining there was serious doubt as to whether

the doctrine applied because some unauthorized person may have removed the bolt that secured the lid of the manhole. *Id.* at 948 n.3; *see Slaughter v. D. C. Transit System, Inc.*, 261 F.2d 741, 742 (D.C. Cir. 1958) (explaining that *res ipsa loquitur* "requires that there be no probable explanation for the occurrence except the negligence of the defendant").

In *Porter v. Kavakos*, the plaintiff was injured when he stepped on a manhole or coalhole cover on a public sidewalk, which broke under his weight. 267 A.2d at 354. The action was brought against the District of Columbia, the abutting property owner, and the tenant who occupied the building thereon, which was served by the vault underneath the cover. *Id.* The evidence showed that the District of Columbia regularly inspected the cover to ensure it was flush, but the vault was also used privately for deliveries and trash disposal. *Id.* The plaintiff could not show that the District of Columbia made or was required to make an inspection to determine the metal cover's structural condition. *Id.* The plaintiff did not offer any evidence of the condition of the cover immediately after the incident, but he did testify that he had earlier noticed nothing was wrong with it. *Id.*

At trial, the trial court entered a directed verdict in favor of the defendants after concluding that the doctrine of *res ipsa loquitur* was inapplicable. *Id.* The District of Columbia Court of Appeals affirmed. *Id.* at 356. It explained that "as to public space the opportunity for intervening causes is too great to conclude that the District of Columbia had exclusive control" and that the "same observations apply with equal force on the facts of this case to the liability of the abutting private parties." *Id.* at 355 (quotations omitted); *see Nixon v. Ippolito*, 320 A.3d 1059, 1070 (D.C. 2024) ("An intervening factor, such as

third-party interference or an external condition, that contributed *'more probably'* to the injury prevents a finding that the defendant had exclusive control." (quoting *Singleton*, 425 Md. at 408 (emphasis added))).

In *City of Cleveland v. Amato*, the plaintiff sued the city for personal injuries arising from the city's failure to keep a certain sidewalk in a reasonably safe condition where a metal disk covered a manhole in which a water meter was located. 176 N.E. at 228. The theory on which the plaintiff relied was *res ipsa loquitur*. *Id.* The evidence established that five days before her claimed injury, an employee of the city's water department removed the metal disk from the manhole to read the water meter. *Id.* "[T]he employee testified that he had properly replaced the disk, but further testified that its mechanical construction was such that it could not tilt if properly located on the manhole." *Id.* A jury returned a verdict in favor of the plaintiff. *See id.*

The Supreme Court of Ohio reversed the judgment, explaining that *res ipsa loquitur* did not apply to the case because,

> The portion of the sidewalk occupied by this manhole was no more in the exclusive control of the city than any other portion of that walk or any other public walk of the city. Other persons could remove that cover, just as they might cause obstructions or make an opening or excavation in any portion of such walk.

Id.; *see Schafer v. Wells*, 172 N.E.2d 708, 712 (Ohio 1961) (explaining that exclusive control "does not mean that the possibility of other causes must be altogether eliminated, but only that their *likelihood must be so reduced that the greater probability lies at defendant's door*." (emphasis added)).

In *Renneckar v. Canton Terminal Restaurant*, the plaintiff stepped into a manhole on a public sidewalk and sued the restaurant. 73 N.E.2d at 498–99. The evidence at trial established that the manhole opened through the sidewalk into a room or compartment underneath. *Id.* at 499. When the lid to the manhole was in place, it was flush with the sidewalk. *Id.* The restaurant leased a portion of the premises, including the room under the manhole. *Id.* The restaurant used the room partly for storage and a dressing room, which was kept locked. *Id.* At some point, holes in the manhole cover had to be made to allow additional air for a furnace. *Id.* At that time, the cover was sealed with "black pitch." *Id.* There was no evidence as to how or when the manhole cover became displaced, or as to the length of time it had been displaced before the plaintiff's fall, no evidence of any defect in the apparatus, no evidence that anyone had notice or knowledge of the displacement, and no evidence that the manhole had been used by anyone for any purpose from the time the premises were leased, except the modifications above. *Id.*

The Supreme Court of Ohio, relying on *Amato*, held that *res ipsa loquitur* was not applicable in this case. *Id.* at 500. It explained:

> In the instant case the defendant did not construct the manhole and, so far as the evidence shows, made no use of it, nor was it under any duty to maintain it. The only proved connection between the defendant and the manhole was that the defendant was the sublessee of the space beneath it. The manhole cover was in the public sidewalk and was not in the exclusive control of the defendant. Such manhole cover was traversed by the public and was subject to the contingencies of that use. It was liable to become displaced in different ways, without the fault or knowledge of the defendant. The character of plaintiff's misfortune and the circumstances attending it *point as much if not more* to its being the result of the intervention of an outside force or of a third person as to any negligence of the defendant.

Id. (emphasis added).

Unlike in the above cases, Murray adduced evidence to show "a greater likelihood" that his injury was caused by the County's negligence in failing to secure the lid "than by some other cause." *Norris*, 159 Md. App. at 331–33. The evidence established that the County owned and maintained the meter lid and was responsible for inspecting it during quarterly readings. *See, e.g.*, *Martin v. Bd. of Cnty. Comm'rs*, 848 P.2d 1000, 1003, 1008 (Kan. Ct. App. 1993) (evidence establishing that the district was responsible for the upkeep and maintenance of the manhole that collapsed under plaintiff was sufficient to go to the jury on the theory of *res ipsa loquitur*).

Significantly, the likelihood that the lid became unsecured before the accident due to an intervening independent act of a third party was reduced by a confluence of other facts. Schofield testified without objection that the lid was on private property where the public would not be expected to walk, the tenant living at 2511 Dog Leg Court was unaware of any issues with the lid, there were no prior complaints about the lid, and there were no signs that the lid had been tampered with.

Additionally, evidence of the lid's locking mechanism established that the lid could not easily be removed when properly closed. Schofield testified that the worm lock was the "essential component" securing the lid into the vault's frame. A T-shaped "key," a pentagonal wrench, was the proper tool to open and close the lid. The key connected to the pentagonal bolt on the lid and acted as a lifting handle. When the key was turned, the worm rotated, which created a screw-jack action that raised and lowered the lid. Once the lid was

locked, the key disengaged from it. *See, e.g.*, *Uberti v. District of Columbia*, 215 A.2d 766, 767 (D.C. 1966) (applying *res ipsa loquitur* in case where temporary plate that caused accident was under the control of District's contractor, as it owned and placed the manhole cover in the street for its work; while plate was laid in a public street without constant supervision by contractor, only contractor's employees had right to tamper with the plate, and given its size and weight, there was little reason for anyone else to do so (citing *Leidenfrost*, 235 Md. 244)).

The County does not address the "greater likelihood" standard. Instead, it claims that someone other than County personnel could have tampered with the lid. While it was possible that a third party tampered with the lid and opened it before the accident, the mere possibility of other reasons for the lid becoming unsecured is not enough to bar the application of *res ipsa loquitur* doctrine. *See Norris*, 159 Md. App. at 332–33 (explaining that the possibility of other causes need not be eliminated "but only that their likelihood must be so reduced that the greater possibility lies at the defendant's door" (citation omitted)). In this case, sufficient evidence was adduced at trial to permit the jury to find that the County had exclusive control over the lid. Accordingly, the court did not err in giving the jury instruction for *res ipsa loquitur*.

IV.

Evidence of Other Water Meter Lids

The County argues that the circuit court erred in allowing Schofield to testify that, during his investigation on February 14, 2023, he found that two out of fifteen other water meter lids in the vicinity were unsecured. Additionally, the County contends that the court

erred in admitting Schofield's expert report, which included information about these other lids. The County claims that the error in admitting this evidence was prejudicial because it allowed the jury to infer that, since other lids were unsecured, the County failed to secure the one in question in April 2019.[10]

A.

Proceedings Below

During the trial, Schofield was questioned about his observations from the inspection he conducted on February 14, 2023. The County objected, anticipating that the expert would discuss his inspection of other water meter lids in the neighborhood. The County argued that it was improper for the expert to testify about other lids he observed years after the accident. Murray's counsel proffered that the expert would testify about the condition of other water meter covers, specifically noting that some were missing worm locks. Counsel contended that this evidence was relevant to counter the County's claim that

[10] In a passing remark in the Argument section of its brief, the County appears to suggest that the court erred in allowing Schofield to testify on matters in his report that went beyond the standard of care applicable to securing water meter lids for which he was designated to testify. Because the issue does not appear in the County's Questions Presented section of its brief and the Argument section lacks articulation and citation to legal authority on this point, we decline to consider it. *See* Md. Rule 8-504(a)(3), (6).

Separately, the County argues that the court erred in admitting other photographs of the lid at issue taken after the accident and after the County secured it. It argues that these photographs should have been excluded as evidence of subsequent remedial measures under Maryland Rule 5-407. Because the issue does not appear in the County's Questions Presented section of its brief, we decline to consider it. *See* Md. Rule 8-504(a)(3); *Green*, 126 Md. App. at 426.

the meter technicians always secured these locks by tightening and stepping on them as part of their standard practice. The court overruled the County's objection.

Schofield testified that the lid in question had already been replaced when he conducted his inspection. He walked around the neighborhood to understand the arrangement of other water meters. He stated that he looked at about fifteen other meter vaults nearby. He observed that the worm lifter lock was the common component holding the lids in place. Just as he was about to discuss the condition of the fifteen other meter lids in the neighborhood, the County objected again on the same basis, arguing that this testimony was not relevant to the lid in question. Once more, the court overruled the objection.

Schofield testified that two of the fifteen lids he examined were missing locks. Murray attempted to introduce photographs of the lids that were missing locks. The County objected, arguing that the photographs were not of the specific lid in question, were highly prejudicial, and could confuse the jury. Murray's counsel responded that the photographs were relevant because they aimed to counter the County's claim that it always ensured that the meter lids were tightened.

The court remarked that Schofield had already testified about the substance of what was depicted in these photographs. Thereafter, Murray sought to admit Schofield's report instead. As noted, the report included an appendix with photographs of other water meters. It also included a photograph of the lid in question that was marked with blue paint (Image 2(a)) and a photograph of the replacement lid (Image 2(b)), both embedded within the text

of the report. Murray focused on the admission of Images 2(a) and (b), explaining that admitting the report containing these images would aid the jury in understanding the expert's opinion.

The County objected to the admission of the report on various grounds. In relevant part, it objected because the report contained Schofield's personal opinions based on other lids he inspected during his investigation. The County reiterated that such evidence was highly prejudicial and would confuse the issues for the jury.

The court indicated the issue was whether the report was a "duplication" of Schofield's earlier admitted testimony. Apparently, the court decided that the report was not needlessly cumulative and overruled the objection.

As Murray prepared to admit the report, the County objected again, this time citing grounds under Rule 5-703(b).[11] The County specifically objected to specific facts or data referenced in the report related to risk management, a residential property agreement, and the proper installation of a water meter box. The County claimed these facts were inadmissible, prejudicial, and constituted an improper use of the expert report. The County explained that while the expert could rely on the report for his testimony, the report itself should not be admitted. Finally, the County objected to the admission of the report because

[11] Rule 5-703(b) provides, "[i]f the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury over objection only if the court finds on the record that their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect." The County's reliance on this rule was not an issue raised in this appeal.

the expert had already "testified to everything necessary." The court reserved ruling on whether the report would be admitted.

Murray proceeded to ask Schofield about Images 2(a) and (b) but noted the "problem" with trying to admit these photographs that were embedded in the text of the report without first admitting the report, on which the court had reserved its ruling. After confirming that the expert had relied on these images, the court admitted the report, which, as noted, also contained photographs of other lids in the appendix. The County objected to the admission of the report, which the court noted.

B.

Standard of Review

"[W]e review a trial court's decision to admit evidence for abuse of discretion, but we conduct an independent analysis of whether evidence is relevant." *Francis v. Johnson*, 219 Md. App. 531, 551 (2014). Maryland Rule 5-401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

> It is frequently stated that the issue of whether a particular item of evidence should be admitted or excluded "is committed to the considerable and sound discretion of the trial court," and that the "abuse of discretion" standard of review is applicable to "the trial court's determination of relevancy." Maryland Rule 5-402, however, makes it clear that the trial court does not have discretion to admit irrelevant evidence. While the "clearly erroneous" standard of review is applicable to the trial judge's factual finding that an item of evidence does or does not have "probative value," the "de novo" standard of review is applicable to the trial judge's conclusion of law that the

> evidence at issue is or is not "of consequence to the determination of the action."

Ruffin Hotel Corp. of Md., Inc. v. Gasper, 418 Md. 594, 619–20 (2011) (footnote and citations omitted).

"Although a trial court does not have discretion to admit irrelevant evidence, a trial court does have discretion to exclude relevant evidence 'on grounds of [unfair] prejudice, confusion, or waste of time'" under Maryland Rule 5-403. *Id.* at 620 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.").

> When the trial judge's ruling involves a weighing [of both the probative value of a particular item of evidence, and of the danger of unfair prejudice that would result from the admission of that evidence], we apply the more deferential abuse of discretion standard [of review].

Id. (citation omitted).

"When weighing the probative value of proffered evidence against its potentially prejudicial nature, an abuse of discretion in the ruling may be found 'where no reasonable person would share the view taken by the trial judge.'" *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 219 (2011) (citation omitted). An abuse of discretion occurs when a decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *King v. State*, 407 Md. 682, 711 (2009) (citation omitted). Thus, "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." *Id.* (citation omitted). "Whether there has been an abuse of discretion depends on the particular circumstances of each individual case." *Pantazes v. State*, 376 Md. 661, 681 (2003).

C.

Analysis

We conclude that the testimony and photographs regarding the condition of other lids were relevant to rebut the County's position that "each time the meter is read," the meter technician "checks to ensure that the meter cover lid is properly secured and not loose" and that Watson's practice was to tighten the lids after reading the meters. *See, e.g.*, *Espina v. Prince George's Cnty.*, 215 Md. App. 611, 651, 653 (2013) (evidence of two other incidents where the defendant officer was involved in violent encounters with members of the public was relevant to rebut officer's testimony regarding his use of force in instant case); *Francis*, 219 Md. App. at 552 (evidence of minor's similar encounter with same defendant officers was relevant to refute defense theory that plaintiff, also a minor, consented to officers' actions); *Ippolito v. Hosp. Mgmt. Assocs.*, 575 S.E.2d 562, 563, 566 (S.C. Ct. App. 2003) (evidence regarding unrelated peephole incidents was relevant to rebut security expert's testimony that level of security at hotel was "extremely good," in action brought by hotel guests against hotel for loss of property taken from room).

"Once we conclude that the evidence was relevant, we next address whether the circuit court properly determined that the probative value substantially outweighed the danger of unfair prejudice." *Francis*, 219 Md. App. at 552; *see* Md. Rule 5-403.

"[E]vidence [that] prejudices one party or the other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in Rule 5-403." *Odum v. State*, 412 Md. 593, 615 (2010) (quoting Lynn McLain, *Maryland Evidence: State and Federal* § 403:1(b) (2d ed. 2001)). Instead, evidence is considered unfairly prejudicial when it might influence the jury to disregard the evidence or lack of evidence regarding the cause of action or charge the jury is tasked to decide. *See Francis*, 219 Md. App. at 552–53.

Other than citing Rule 5-403, the County does not cite any legal authority to support its argument that the court abused its discretion. Nor does it articulate, based on the record, exactly how the challenged evidence was likely to lead the jury to infer that, since other lids were unsecured, the County failed to secure the one in question in April 2019; rather, the County merely makes a bald assertion that it did. *See* Md. Rule 8-504(a)(6); *Van Meter*, 30 Md. App. at 408; *Elecs. Store, Inc.*, 127 Md. App. at 405. We cannot say that the admission of the expert's testimony and photographs of other lids in the appendix was an abuse of discretion.[12]

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[12] As mentioned, the court had earlier considered and apparently ruled that the photographs depicting the condition of other lids were not needlessly cumulative of the expert's testimony on the same subject. To the extent that this earlier ruling factored into the court's later decision to admit the report with the photographs of other lids, we discern no abuse of discretion. *See State v. Broberg*, 342 Md. 544, 565 (1996) (although photographs may often be cumulative in the sense that they provide the factfinder with an alternative form of information, the trial court has "discretion to determine whether this alternative form of information . . . was 'wholly needless under the circumstances'" (citation omitted)).