Circuit Court for Howard County
Case No. C-13-CV-21-000056

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1954

September Term, 2023

GLORY DAYS GRILL OF ELDERSBURG, LLC

v.

LISA FLETCHER

Kehoe, S.,
Albright,
Eyler, James R.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Kehoe, J.

Filed: March 10, 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).

Having been held liable for harm to plaintiff-appellee Lisa Fletcher as a result of her slipping and falling in the parking lot outside its restaurant, defendant-appellant Glory Days Grill of Eldersburg, LLC ("Glory Days") appeals, asserting that the trial court erred in denying its motions for judgment sounding in contributory negligence, assumption of the risk, and failure to establish a duty as well as granting Ms. Fletcher's motion *in limine* to exclude evidence of the settlement agreement between Ms. Fletcher and Simpsonville Mill East II, LLC ("Simpsonville"), the landlord who leased Glory Days the building it used for its restaurant. Ms. Fletcher disagrees and further contends that Glory Days, in failing to renew its motions for judgment on grounds of its affirmative defense at the close of evidence, did not preserve that issue for appeal.

BACKGROUND

On Friday, February 8, 2019, Lisa Fletcher and her husband Andrew Fletcher dined at Glory Days Grill of Eldersburg. They were leaving the restaurant when Ms. Fletcher stepped off of the curb into the parking lot onto some river rocks camouflaged under leaves and other debris which had migrated from their decorative beds into the walking path, causing her to fall and break her ankle, repair of which by screws and hardware put her out of work for several weeks and subsequently impoverished her quality of life.

Ms. Fletcher filed suit in the Circuit Court for Howard County against Glory Days and Simpsonville. Prior to trial, Ms. Fletcher and Simpsonville entered into a settlement agreement. Debated in motions before trial and in argument at trial was the propriety of excluding evidence of the Joint Tortfeasor Release executed between Ms. Fletcher and

Simpsonville. Ms. Fletcher moved *in limine* to exclude evidence of their agreement, arguing its admission would mislead the jury. Glory Days responded that the Joint Tortfeasor agreement constituted evidence of negligence and causation attributable to a non-party, which is relevant where the defendant asserts a complete denial of liability. The trial court granted Ms. Fletcher's motion, explaining that the jury would be instructed that although there is a landlord involved, the jury could not consider the negligence of any third parties and that any claim against any third parties is not part of the case. The parties agreed to the following stipulation, with Glory Days preserving its objection:

> Simpsonville Mill East II, LLC owns real property in Eldersburg. They agree they bear some portion of responsibility for the injuries to Ms. Fletcher and that the extent of their responsibility is not an issue. The issue for you, the jury, is to decide whether Defendant Glory Days Grill of Eldersburg, LLC shares any responsibility for Ms. Fletcher's injuries. Whether Ms. Fletcher is responsible for her injuries, it is up to you to decide the full measure of Ms. Fletcher's damages or loss.

Glory Days was permitted to argue and indeed it largely based its defense on the idea that Simpsonville was responsible for the parking lot rather than Glory Days. It asked its corporate designee Christopher Verdecchia, the Vice President of Development and former district manager and director of operations for Glory Days, *inter alia*, about Simpsonville's designation of parking spots in the parking lot. It contended that the lease showed that the Ms. Fletcher's fall occurred in a location outside of the premises leased to Glory Days, and that Simpsonville exercised its control over the parking lot by inspecting it and other common areas and notifying Glory Days of conditions needing rectification. The argument did not win the jury.

At the close of Ms. Fletcher's case, Glory Days moved for judgment arguing that Ms. Fletcher was contributorily negligent or assumed the risk of her injuries based on her testimony that she glanced down, saw "leaves" and "debris," and failed to make a point of not stepping on them. The trial court determined that the question was best left for the jury and denied the motion.

Glory Days then began its defense. It recalled to the stand Mr. Verdecchia, who testified that Glory Days trained its employees "to pick up things outside of our leased land" to make the facility presentable. In service of that goal, he stated, if he saw that rocks had migrated from their beds, he would instruct a team member to sweep them back into the beds, and, on the couple occasions that he had seen rocks outside of the beds, he had ensured that they were returned. He admitted that it was Glory Days' understanding that it was leasing "the building, the outside of the building and the parking lot," agreed that if the Carroll County Code made Glory Days responsible for keeping common areas like the parking lot clean, safe and sanitary, that Glory Days would abide by that by correcting anything that was wrong, and conceded that Glory Days did its own landscaping, "to a degree." Ms. Fletcher's counsel presented statements from the deposition of the corporate designee for Glory Days, at that time a different designee, to the effect that he too would expect employees to inspect the parking lot and pick up debris found there.

Ms. Fletcher secured admission of the "Shift Readiness" instructions for Glory Days employees, which indicated that opening duties include watering flowers, plants, and shrubs and sweeping the front entryway and sidewalks, and of the "Host Closing Duties"

check list, which instructs employees to sweep the front entrance of the restaurant, including "the curb leading up to the restaurant."

The court admitted the lease between Glory Days and Simpsonville over Ms. Fletcher's motion *in limine*. The lease defined the "Leased Premises or Premises" as:

> The Free Standing Building located at the address set forth in Article I, Section (G) above containing approximately 5,916 square feet, located in the Eldersburg Plaza adjacent to Walmart and PNC Bank, such premises being shown on the plan attached hereto as exhibit A. The exterior patio does not increase the Minimum Annual Base Rent.

The lease permitted Glory Days to use the premises as a restaurant and to offer "carry-out service and pull up to-go service, including signage installed on the site designating such availability." It defined "common areas" as "[a]ny existing or future improvements, equipment, areas and/or spaces for the non-exclusive, common and joint use or benefit of Landlord, Tenant and other tenants, occupants and users of the shopping area." It specified that common areas include, "without limitation, sidewalks, gutters, all parking areas, access roads, driveways, landscaped areas, traffic islands, stairs, ramps and other similar areas and improvements," stated that "[s]ubject to Tenant's rights under this lease, the Leased Premises and Common Area (including the parking lot) shall be subject to the exclusive control and management of Landlord," and contemplated that the employees and guests of Glory Days should be permitted to park in the lots and that Glory Days would be responsible for repairing damage it caused to the Common Area. The lease allocated a portion certain maintenance costs of the common areas to Glory Days and the other tenants of the shopping center and mandated both that "all other exterior maintenance costs for the

grounds and around the Leased Premises, including, but not limited to, landscaping, trash removal, and power washing of the patio and sidewalks shall be the responsibility of Tenant to perform and to pay for" and that "Parking lot maintenance shall be the responsibility of the landlord . . . ."

At the close of their case, Glory Days moved for judgment on the grounds that it had no duty to prevent an injury that occurred outside of the scope of the leased premises based on the lease's purported limitations on where it occupied and its assignment of control and management of the parking lot, a designated common area, to the landlord. The court denied the motion, explaining that the testimony from Mr. Verdacchia indicating that Glory Days policed the parking lot, as well as the reasonable expectation that their customers parking in the lot may encounter an easily rectifiable dangerous situation combined with Glory Days' knowledge of the periodic nature of Simpsonville's parking lot inspections, was enough evidence to submit the question of whether Glory Days had a duty to the jury. Ms. Fletcher also moved for judgment on Glory Days' affirmative defenses; Glory Days argued that the issues were ones for the jury to decide, and the court agreed and denied the motion.

After jury instructions, Glory Days renewed only its objection to "the request for non-standard instruction about continuous inspection" and no others. The jury found that Glory Days was negligent and awarded Ms. Fletcher $66,390.05 in past medical bills, $38,185.31 for lost wages, and $500,000 in non-economic damages. The court reduced

the judgment under the Maryland Uniform Contribution Among Joint Tort-Feasors Act in light of Ms. Fletcher's agreement with Simpsonville.

Glory Days timely appealed, presented the following questions, which we have reformulated[1]:

I. Whether Glory Days failed to preserve its appeal of the motion for judgment on contributory negligence and assumption of the risk by failing to renew its motion for judgment on those grounds at the close of evidence.

II. Whether the circuit court erred in denying Glory Days' motion for judgment based on Ms. Fletcher's contributory negligence or assumption of the risk.

III. Whether the circuit court erred in denying Glory Days' motion for judgment on grounds that Ms. Fletcher failed to establish that Glory Days had a duty to her.

[1] Glory Days presented the following questions:

I. Whether the Circuit Court erred in denying Glory Day' Motion for Judgment when Fletcher was contributorily negligent and/or assumed the risk of her injuries?
II. Whether the Circuit Court erred in denying Glory Days' Motion for Judgment when it did not owe Fletcher a duty.
III. Whether the Circuit Court abused its discretion in excluding evidence regarding Fletcher's settlement with Simpsonville?

Ms. Fletcher raised the question of preservation of the first question, and presented the questions as:

I. Did the Appellant preserve the issue of the denial of a Motion for Judgment on contributory negligence and/or assumption of the risk when the appellant failed to renew its Motion for Judgment on those grounds at the close of all evidence?
II. Did the trial court err in denying Appellant's Motion for Judgment when the evidence did not support that Appellee was contributorily negligent and/or assumed the risk of her injuries as a matter of law?
III. Did the trial court err in finding sufficient evidence of duty and denying Appellant's Motion for Judgment at the close of the evidence?
IV. Did the trial court abuse its discretion when it permitted evidence of Simpsonville's responsibility for Plaintiff's injuries but otherwise precluded evidence of its settlement with Appellee?

IV. Whether the circuit court abused its discretion in excluding evidence regarding Ms. Fletcher's settlement with Simpsonville.

We answer the first question in the affirmative, the second question was not preserved, and answer the third and fourth in the negative. We affirm the rulings of the trial court.

DISCUSSION

We will address the appropriate standard of review for each issue as it arises.

I. Failure to preserve for review motions for judgment on contributory negligence and assumption of the risk;

Ms. Fletcher contends that Glory Days failed to preserve for appellate review the trial court's denial of its motion for judgment on contributory negligence and assumption of the risk because although it moved for judgment following Ms. Fletcher's case in chief, by presenting evidence, it withdrew its motion, and in order to preserve the issue for appeal, it was required to have renewed its motion after the close of all evidence.

Maryland Rule 2-519(c) provides that a party whose motion for judgment made at the close of the other party's case is denied may offer their own evidence, but that by doing so, the party withdraws its motion. The party who is said to have withdrawn its motion may reassert it by renewing it, as long as the previous motion is identifiable "through a process analogous to incorporation by reference." *AXE Properties & Management*, *LLC v. Merriman*, 261 Md. App. 1, 26 (2024) (quoting *Sage Title Group, LLC v. Roman*, 455 Md. 188, 210 (2017)).

After the court denied Glory Days' motion for judgment on the grounds of its affirmative defenses, Glory Days' presentation of evidence effectively withdrew the

motion. Later, after presenting its own case, Glory Days moved for judgment on no other grounds than that it had no duty to Ms. Fletcher. At that time, the court also heard argument on Ms. Fletcher's motion for judgment on Glory Days' affirmative defenses, and Glory Days argued for denying that motion on the basis that what Ms. Fletcher saw and thought as she stepped off the curb were questions for the jury, stating, "[Ms. Fletcher] said, 'I see there's at least leaves here. I don't know what's underneath and I'm stepping down.' That's a jury question." The plain statement that evidence on a particular set of issues generates a jury question is insufficient to renew a previous motion for judgment as a matter of law on those issues. Glory Days' failure to renew its withdrawn motion for judgment on the grounds of contributory negligence and assumption of the risk renders it unpreserved.

In ruling on Ms. Fletcher's motion, the court stated:

> I think it's a jury question. I think it's a slim jury question, but you only need a slim amount of evidence for the jury. They are going to say that they should have seen and then it was a risk. She saw something and kept walking. I don't know how successful it will be, but I think there is some evidence for that which a juror could find that she assed a risk. So, I'll let that one go to the jury.

Notwithstanding the substance of Glory Days' motion, the trial court understand that contributory negligence and assumption of risk were at issue, and unmistakably stated that there was sufficient evidence to generate a question for the jury. The concepts of assumption of risk are intertwined with the analysis as to whether the hazard was open and obvious. The trial court appears to have understood the connection between these issues. We see no error in the trial court's findings that the existence of a duty by Glory Days, whether the hazard in the parking lot was open and obvious, and whether there was

assumption of risk or contributory negligence on the part of Ms. Fletcher were all questions for the jury to consider.

II. Failure to establish a duty; open and obvious

Glory Days contends that the trial court erred in denying its motion for judgment on the grounds that Ms. Fletcher failed to establish that Glory Days owed a duty to Ms. Fletcher. It asserts that the lease between it and Simpsonville dispositively showed Simpsonville rather that Glory Days possessed the land where Ms. Fletcher fell, and since Glory Days did not possess that land, it, as a matter of law, did not owe a duty to Ms. Fletcher at the time of her fall. Ms. Fletcher's view is that the lease does not excuse Glory Days' duty and that the evidence that Glory Days is responsible in part for maintaining the parking lot is sufficient to warrant submission of the question of possession to the jury.[2] Glory Days also contends that the open and obvious nature of the hazard precluded any duty it might have had to Ms. Fletcher.

A. Standard of Review of Motion for Judgment

When reviewing a trial court's ruling on a motion for judgment, we ask:

> whether on the evidence adduced, viewed in the light most favorable to the non-moving party, any reasonable trier of fact could find the elements of the tort by a preponderance of the evidence. . . . If there is even a slight amount of evidence that would support a finding by the trier of fact in favor of the plaintiff, the motion for judgment should be denied.

[2] Ms. Fletcher also argues that § 172.022 of the Carroll County Livability Code, which provides that tenants must keep common areas they use in clean, safe, and sanitary condition, establishes a duty on the part of Glory Days as a tenant who uses the parking lot designated as a common area in the lease. But the Carroll County Livability Code establishes the conditions for residential rental properties, not commercial ones, and is inapplicable to instant case.

Giant of Maryland LLC v. Webb, 249 Md. App. 545, 560-61 (2021) (quoting *Washington Metro. Area Transit Auth. v. Djan*, 187 Md. App. 487, 491-92 (2009)). Only when the "facts and circumstances only permit one inference with regard to the issue presented" is the issue one of law for the court and not one of fact for the jury. *Thomas v. Panco Management of Maryland, LLC*, 423 Md. 387, 394 (2011) (quoting *Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. 496, 503 (2011)).

B. Existence of a duty

To prevail on a claim of negligence, "a party must allege and prove facts demonstrating '(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 the duty.'" *Doe v. Pharmacia & Upjohn Co., Inc.*, 388 Md. 407, 414 (2005) (quoting *Dehn v. Edgecombe*, 384 Md. 606, 619 (2005)). "The existence of a legal duty is a question of law, to be decided by the court." *Doe*, 388 Md. at 414 (citing *Dehn*, 384 Md. at 619-20). "A property owner will be liable to an invitee in negligence if (1) the owner 'controlled the dangerous or defective condition;' (2) the owner knew or should have known of the dangerous or defective condition; and (3) 'the harm suffered was a foreseeable result of that condition.'" *Macias v. Summit Management, Inc.*, 243 Md. App. 294, 317 (2019) (quoting *Hansberger v. Smith*, 229 Md. App. 1, 21 (2016)).

"In every instance before negligence can be predicated of a given act, back of the act must be sought and found a duty to the individual complaining, the observance of which

duty would have averted or avoided the injury." *Doe*, 388 Md. at 414-15 (quoting *W. Va. Central R. Co. v. State ex rel. Fuller*, 96 Md. 652, 666 (1903). Legal duty arises from "the 'responsibility each of us bears to exercise due care to avoid unreasonable risks of harm to others.'" *Baltimore Gas & Elec. Co. v. Flippo*, 348 Md. 680, 700 (1998) (quoting *B.N. v. K.K.*, 312 Md. 135, 141 (1988)). "At its core, the determination of whether a duty exists represents a policy question of whether the plaintiff is entitled to protection from the defendant." *Doe*, 388 Md. at 415 (citing *Rosenblatt v. Exxon Co., U.S.A.*, 335 Md. 58, 77 (1994)). There is no set formula for determining duty, *Coates v. Southern Md. Electric*, 354 Md. 499, 509 (1999); the analysis permits consideration of the following factors, the first of which generally predominates in personal injury cases, though its presence alone is not sufficient:

> the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered the injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and the consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost and prevalence of insurance for the risk involved.

Doe, 388 Md. at 416 (quoting *Patton v. USA Rugby*, 381 Md. 627, 637 (2004)); *cf. Fulton Bldg. Co. v. Stichel*, 135 Md. 542, 545 (1920) ("The true ground of liability is the proprietor's superior knowledge of the perilous instrumentality and the danger therefrom to persons going upon the property. It is when the perilous instrumentality is known to the owner or occupant, and not known to the person injured, that a recovery is permitted.") (citations omitted).

A possessor of property owes a duty to a person who comes into contact with his property; the extent of the duty depends on the person's status while on the property. *Baltimore Gas & Elec. Co. v. Lane*, 338 Md. 34, 44 (1995) (citations omitted). We explained that the "highest duty is owed to an invitee"[3]:

> An invitee is "invited or permitted to enter or remain on another's property for purposes connected with or related to the owner's business." *Bramble* [*v. Thompson*, 264 Md. 518, 521 (1972)]. Just like the social guest, an invitee has an invitation to use the landowner's premises, but an invitee is "entitled to expect that [her] host will make far greater preparation to secure the safety of his patrons than a householder will make for his social or even his business visitors. . . . A property owner does not owe a social guest a duty to "inspect the land to discover possible or even probable dangers," Restatement (Second) of Torts, § 342, cmt. D (1965); whereas, a property owner must use reasonable care to inspect and make the premises safe for invitees. *Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 388 (1997). Still, an invitee plaintiff must show that the landowner had actual knowledge of the defect or "by the exercise of reasonable care would discover the condition." Restatement (Second) of Torts § 343 (1965) . . . .

Macias v. Summit Management, Inc., 243 Md. App. 294, 317 (2019). "The status of an entrant, and the legal duty owed thereto, are questions of law informed by the historical facts of the case." *Id.* at 315.

This duty flows not from ownership but possession. *Dyer v. Criegler*, 142 Md. App. 109, 118 (2002) (citation omitted); *Rowley v. Mayor and City Council of Baltimore*, 305 Md. 456, 464 (1986) ("The liability of a landowner for injuries received on the land is dependent upon whether the device which caused the injury is in his possession and

[3] There is no dispute that if Glory Days owes any duty to Ms. Fletcher, it is that owed to an invitee, but there are several classes of duty, which include subclasses, including "invitee, social guest (or licensee by invitation), and trespasser (or bare licensee)." *See Macias*, 243 Md. App. at 317.

control."). A possessor for tort law purposes is distinct from that in property law. *Wagner v. Doehring*, 315 Md. 97, 104 (1989). "Possession involves both the present intent to control the object and some ability to control it." *Lane*, 338 Md. at 46 (citing Restatement (Second) of Torts §§ 216, 328E). Maryland has adopted the definition of a possessor of land provided in the Restatement (Second) of Torts:

> (a) a person who is in occupation of the land with the intent to control it or
>
> (b) a person who has been in occupation of the land with intent to control it, if no other person has subsequently occupied it with intent to control it, or
>
> (c) a person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) and (b).

Wagner, 315 Md. at 104-05. Occupation "denotes whatever acts are done on the land to manifest a claim of exclusive control and to indicate to the public that the actor has appropriated the land." Black's Law Dictionary (9th ed. 2009).

Whether a duty exists is a question of law. *Doe, supra*. But whether Glory Days exercised control over the parking lot, which would give rise to a duty, is a question for the jury. *See Wagner*, 315 Md. at 106. The lease between Glory Days and Simpsonville does not, as Glory Days suggests, clearly indicate that Glory Days does not possess the parking lot. Rather, it allocates responsibilities regarding the parking lot, that prompt one to interpret the degree to which Glory Days controlled the parking lot. The lease designates certain maintenance of the parking lot to Simpsonville, but also clearly contemplates Glory Days' use of the parking lot for its employees, and more importantly, its business guests, and goes so far as to allow Glory Days to post signage claiming certain spaces, which Glory

Days has done. Glory Days rests the heft of their argument here on the second clause of the following provision:

> Subject to Tenant's rights under this lease, the Leased Premises and Common Area (including the parking lot) shall be subject to the exclusive control and management of Landlord . . .

The antecedent phrase reveals that Simpsonville's control and management of the parking lot is not absolute, since it is "subject to Glory Days' rights" under the lease. Moreover, the testimony of Chris Verdecchia that Glory Days at one point believed the parking lot of be within its lease, that it posted signage in the parking lot, and that it directed its employees to clear the parking lot of hazards is sufficient to permit a jury to find Glory Days possessed the parking lot, in which case it would owe a duty Ms. Fletcher.

Furthermore, "[w]hen a person elects to do or keep something on his or her property that exposes neighboring property to danger, that person has a duty to make the condition reasonably safe." *La Belle Epoque, LLC v. Old Europe Antique Manor, LLC*, 406 Md. 194, 219 (2008) (citing *Toy v. Atlantic Gulf & Pacific Co.*, 176 Md. 197, 213 (1939)). "A person who negligently fails to make the condition reasonably safe can be liable for harm that the condition causes to neighboring premises." *Id.* at 219; *see also Frenkil v. Johnson*, 175 Md. 592, 600 (1939) ("[O]ne must use his own rights and property so as to do no injury to those of others."). It is not a necessary condition for finding a duty owed to Ms. Fletcher by Glory Days that the incident occurred on premises Glory Days possessed, because if the condition that caused the injury was controlled by Glory Days, even if the incident occurred on neighboring premises, Glory Days would still be liable had they failed

to make the condition reasonably safe. Here, Glory Days does not contend that the landscaping beds and rocks themselves were not possessed by them, and, in any event, we think Glory Days had a duty to make stones which they possessed reasonably safe, i.e., to maintain the stones in such a manner that they did not pose a hazard of slipping and falling in the adjacent parking lot.

C. Open and obvious

The rule governing premises liability between a landowner and a business invitee with respect to a hazardous condition is:

> The landowner is subject to liability for harm caused by a natural or artificial condition on his land if (a) he knows or by the exercise of reasonable care could discover the condition, (b) *he should expect that invitees will not discover the danger, or will fail to protect themselves against it*, (c) he invites entry upon the land without (1) making the condition safe, or (2) giving a warning.

Gellerman v. Shawan Road Hotel Ltd. P'ship, 5 F. Supp. 2d 351, 353 (D. Md. 1998) (quoting *Mondawmin Corp. v. Kres*, 258 Md. 307, 313 (1970)); *see also Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 388 (1997) ("The occupier must not only use care not to injure the visitor by negligent activities, and warn him of hidden dangers known to the occupier, but he must also act reasonably to inspect the premises to discover possible dangerous conditions of which he does not know, and take reasonable precautions to protect the invitee from dangers which are foreseeable from the arrangement or use of the property.") (citations omitted). "An important corollary of these rules is that 'the owner or occupier of land ordinary has no duty to warn an invitee of an open, obvious, and present danger.'" *Gellerman*, 5 F. Supp. 2d at 353 (quoting *Tennant*, 115 Md. App.

381, 389 (1997)). Whether a condition is open and obvious such that a plaintiff must be charged with appreciating its risk, and the defendant excused from its duty regarding that risk, is not determined according to set characteristics, rather, it depends on the instant facts and circumstances. *Id.* "But no matter what the situation is the care and caution of the prudent man is the accustomed and proper measure of duty, and the Court, will not, except in rare cases, deny to the plaintiff the right to have the question of his failure of duty passed upon by the jury." *Heinz v. Baltimore & O.R. Co.*, 113 Md. 582, 590 (1910) (citing *Geiselman v. Schmidt*, 106 Md. 580, 585 (1907)).

In *Six Flags America, L.P. v. Gonzalez-Perdomo*, we affirmed the trial court's ruling that a wet footbridge at Six Flags did not present a hazardous condition which was open and obvious as a matter of law. 248 Md. App. 569, 581-586 (2020). There, although witnesses for both parties testified that the wet condition on the bridge was visible, we explained that "[i]t does not necessarily follow . . . that the slippery condition of the bridge was obvious." *Id.* at 583. We found it "reasonably conceivable that a visitor to the amusement park may have perceived the water on the wooden walkway without appreciating the danger created by the wet surface" and that the jury might believe a visitor who concluded that the bridge was unlikely to be slippery though wet. *Id.* at 583. Likewise, although Ms. Fletcher testified that she saw the leaves that concealed what ultimately caused her fall, we do not find it unreasonable that a jury might believe her testimony that she did not appreciate that some peril lurking under the leaves might pose a danger were she to step on them and conclude that she acted with reasonable care for her

own safety even as to a condition which was open. *See Ensor v. Ortman*, 243 Md. 81, 92 (1966) ("Whether a reasonably prudent person, under similar circumstances, would have 'stepped slowly' or somehow tested the [area] before entry . . . were matters properly left for the jury's determination.").

III. Grant of motion *in limine* as to evidence of settlement

Glory Days contends that the trial court abused its discretion by granting Ms. Fletcher's motion *in limine* to exclude evidence of her settlement with Simpsonville. It argues that the evidence constituted proof of third-party fault, that such evidence is relevant when asserting a complete denial of liability, and that it was prejudiced by the trial court's decision because the jury could not hear evidence that tended to show that Simpsonville rather than Glory Days was liable. Ms. Fletcher argues that the mere fact that she settled with Simpsonville does not prove the negligence *vel non* of Simpsonville or of Glory Days and that the trial court correctly determined that evidence of the settlement could mislead the jury. Furthermore, she argues, Glory Days was not prejudiced: the jury heard evidence showing that Simpsonville and not Glory Days owned and controlled the location of the incident as well as the stipulation that Simpsonville was in part responsible for the harm.

A. Standard of Review of Exclusion of Evidence

Evidence admission "is committed to the considerable and sound discretion of the trial court," which we will not disturb but for abuse. *Bittinger v. CSX Transp. Inc.*, 176 Md. App. 262, 273 (2007) (quoting *Dupree v. State*, 352 Md. 314, 324 (1998)). "The trial court's consideration of prejudice or confusion of the issues 'will be accorded every

reasonable presumption of correctness,'" and an abuse of discretion exists only where no reasonable person would share the view taken by the trial judge. *Martinez ex rel. Fielding v. The Johns Hopkins Hosp.*, 212 Md. App. 634, 657 (2013) (citations omitted).

B. Analysis

It is true that "a defendant *generally denying liability* may present evidence of a non-party's negligence and causation as an affirmative defense." *Browne v. State Farm Mutual Automobile Insurance Company*, 258 Md. App. 452, 507 (2023) (quoting *Copsey v. Park*, 453 Md. 141, 160 (2017)). This is because a "void of evidence concerning the [non-party]'s conduct would leave a logical hiatus in the story presented to the jury," who "would be left to wonder whether anyone other than the defendant *could* have caused [the] plaintiff's injuries." *Martinez*, 212 Md. App. at 665 (quoting *Archambault v. Soneco/Northeastern, Inc.*, 287 Conn. 20, 37 (2008)). In other words, preclusion of evidence of non-party negligence and causation may result in the jury receiving a materially incomplete picture of the facts and deny the defendant a fair trial. *Id.* at 666.

We detour to address Ms. Fletcher's assertion that the rule quoted from *Browne* applies only in the medical malpractice negligence context based on the following language from *American Radiology Servs., LLC v. Reiss*:

> the holdings in *Martinez* and *Copsey* establish the following: A defendant in a medical malpractice case generally may introduce evidence of a non-party's medical negligence to prove that he or she was not negligent, or that his or her negligence did not cause the plaintiff's injuries.

470 Md. 555, 578 (2020). The *Martinez* Court was presented with the first opportunity to address broadly "whether a party may defend itself with evidence of a non-party's

negligence." 212 Md. App. at 663. Those facts presented third-party negligence as an issue in a medical malpractice action, but the Court did not restrict itself to medical malpractice precedent: the reasoning it found most apt, and reproduced at length, was penned in Connecticut in a dispute over who caused a construction accident. *Id.* at 665 (quoting *Archambault*, 287 Conn. at 32-33). The rule our Court formulated contained no contextual restriction, and that it was reiterated later in a more localized manner does not here mean that those limitations clothe the original proposition.

This assessment appears to be complicated by our observation in *Browne* that "[a]pplication of the defense [of generally denying liability] was limited by the Court's subsequent decision in *American Radiology Services*." 258 Md. App. at 507. But the limitation of *American Radiology Services* was not on the context in which the defense may be raised, or what evidence could support it, but rather on when a defendant could submit the question of medical negligence to the jury. We explained that the submission of such a question to the jury is improper when, "without the requisite expert medical testimony, 'the record [is] devoid of admissible evidence sufficient to generate a triable issue of non-party physician negligence.'" *Browne*, 258 Md. at 507 (quoting *American Radiology Servs.*, 270 Md. at 562)). The limitation pertained not to submitting evidence, but to jury instructions, and was based on "the burden of pleading and production . . . when the defendant asserts that subsequent negligent medical treatment was a superseding cause of a plaintiff's injuries." *Id.* at 508. The short of the rule is that the defendant must assert at least "a general denial of liability in the defendant's answer to the plaintiff's complaint,"

and then "must put the ball into play" by producing evidence legally sufficient to find the third party negligent in order to justify jury instructions on the affirmative defense. *Id.* at 508-09. Yet the conclusion that evidence of non-party negligence may be admissible when generally denying liability does not serve in every case to permit the evidence to reach the jury.

Our courts exclude evidence whose "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." Md. Rule 5-403. The "propriety of admitting evidence of previous claims and actions depends on the facts, in each case and generally turns on whether the evidence, if irrelevant or immaterial, is prejudicial." *Bittinger*, 176 Md. App. at 274 (quoting *Maged v. Yellow Cab Co.*, 237 Md. 340, 347 (1965)).

As an example, in *Brooks v. Daley*, our Supreme Court affirmed the trial court's exclusion of a "joint tort-feasor release" based on the probability of prejudice. 242 Md. 185, 194 (1965). After the plaintiff's separate suits against the defendants were consolidated, but prior to trial, the plaintiff settled one of the claims and dismissed the suit against that defendant. *Id.* The non-settling defendant sought admission of the settlement, but the trial court refused on the basis that admission of the agreement might confuse the jury, mislead them in their deliberations, or be construed as an admission of liability by the agreeing defendant. *Id.*; *see also Auto Village, Inc. v. Sipe*, 63 Md. App. 280, 285-88 (affirming trial court's exclusion of settlement agreement between plaintiff and dismissed

defendant). The Joint Tortfeasor Release executed by Ms. Fletcher and Simpsonville is not fundamentally different from the agreement in *Brooks*. Though a defendant may present evidence of a non-party's negligence and causation as an affirmative defense, admission of a settlement agreement between the plaintiff and the non-party or of claims against the non-party yields minute probative value for establishing that negligence and causation and, as the trial court in the case at bar noted, it poses a significant risk of the hazards named in Rule 5-403. Further, the court did not exclude other evidence offered by Glory Days to prove Simpsonville's negligence. The Rule 5-403 risks were not present in the causation evidence that the court did allow, namely the lease that Glory Days argued established Simpsonville's exclusive control of the location of the incident, and the stipulation entered acknowledged that Simpsonville bore some responsibility for Ms. Fletcher's injuries. Accordingly, we find no error in the trial court's exclusion of the evidence of the settlement with and claims against Simpsonville.

IV. Conclusion

The trial court did not err in granting Ms. Fletcher's motion *in limine* to exclude the Joint Tortfeasor Settlement Agreement with Simpsonville. The evidence was also sufficient to establish that Glory Days owed a duty of care to Ms. Fletcher, and the issue of Glory Days' negligence was properly submitted to the jury. For those reasons, we affirm the judgment of the Circuit Court for Howard County.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.