Circuit Court for Prince George's County
Case No. CAL 13-23403

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1672

September Term, 2015

KAYED HADDAD

v.

JORDAN ALEXANDER HESS

Arthur,
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Arthur, J.

Filed: January 3, 2018

In this auto tort case, the parties stipulated that the defendant was negligent, but left the issues of causation and damages for the jury to decide. The jury found in the defendant's favor. The plaintiff appealed. We affirm.

FACTUAL AND PROCEDURAL HISTORY

On the evening of August 19, 2010, Jordan Hess rear-ended Kayed Haddad while Mr. Haddad was stopped at a red light at an intersection in Laurel. The impact caused Mr. Haddad's car to collide with an SUV that was two or three feet in front of his, but his airbags did not deploy. Nor did his glasses come off. There was no damage to the SUV and no damage to Mr. Haddad's car other than a scratch on the rear bumper. Both Mr. Hess and Mr. Haddad were able to drive away from the accident scene. Mr. Hess was apparently uninjured.

Although Mr. Haddad later claimed that he had been thrown forward violently as a result of the collision, he had no scratches, marks, or bruises on his body. He remained on the scene for half an hour after the collision, told the investigating officer that he was not injured, and did not complain to anyone else that he had been injured. He felt no pain while he was at the accident scene.

Mr. Haddad had a passenger, who sustained no injuries in the collision. He drove the passenger to her residence, some 25 or 30 minutes away in Linthicum, after the police had completed their investigation. He felt no pain while he was driving the passenger home, and he noticed nothing wrong with his car.

After dropping off his passenger, Mr. Haddad drove another 45 minutes, to Washington Adventist Hospital in Takoma Park. At first, he intended to go only as a

precaution, but he started to feel a slight amount of pain in the right shoulder as he was driving to the hospital.[1]

Mr. Haddad spent 30 minutes at the emergency room at Washington Adventist and had an x-ray of his shoulder. He drove himself home. Although the emergency room personnel told him that he should take a day off from work, but could return to work in two days, Mr. Haddad took a week off to "really recover from the car accident."

On August 26, 2010, a week after the accident, Mr. Haddad first sought treatment from his primary care physician, Dr. Nossuli, who is also his partner in a flu vaccination business. Dr. Nossuli referred Mr. Haddad to Dr. Panagos, a physiatrist.[2] Mr. Haddad, however, did not actually see Dr. Panagos for another three months. During those three months, Mr. Haddad had no prescriptions for medications to treat any injuries that he may have sustained in the accident.

Dr. Panagos treated Mr. Haddad until the early part of 2013. During his two years under Dr. Panagos's care, Mr. Haddad went to physical therapy "seven or eight" times.

[1] It was not entirely clear how Mr. Haddad would have injured his right shoulder in the accident. His safety belt restrained his *left* shoulder. Hence, his left shoulder presumably would have absorbed much of the stress from the collision. According to Mr. Haddad, his right shoulder was driven forward by the impact, but he does not appear to say that the right shoulder collided with any part of the interior of his car, such as the dashboard or steering wheel.

[2] A physiatrist is as "[a] physician who specializes in the areas of physical medicine and rehabilitation." *Physiatrist*, MEDICAL DICTIONARY FOR THE HEALTH PROFESSIONS AND NURSING (2012), http://medical-dictionary.thefreedictionary.com/physiatrist (last visited Dec. 13, 2017).

For roughly the first two and a half years after the accident, Mr. Haddad described his pain as sporadic, saying that it "comes and goes," and that he had "good days and bad days." Indeed, from a "Pain Monitor Log" that Mr. Haddad began keeping immediately after the accident, it was apparent that he continued to engage in a range of strenuous physical activities despite his alleged injuries. For example, on September 4, 2010, less than a month after the accident, Mr. Haddad, who was 45 at the time, wrote that he injured himself while playing beach volleyball. Over the next several years, he bicycled, played soccer, lifted weights, swam, and ran on a treadmill. In addition, he did manual labor, such as installing flooring and painting a deck on a rental property that he owned. He testified that he felt no pain while installing the flooring.

Mr. Haddad, who worked primarily as a nurse, claimed that he aggravated the injury to his right shoulder when he accidentally dropped a patient in March 2013. Nonetheless, Mr. Haddad waited until the summer of 2013 to seek additional treatment. At that time, he saw Dr. Mess, an orthopedic surgeon, who specializes in shoulder injuries. In compliance with Dr. Mess's recommendation, he went to "23 or 24 sessions" of physical therapy within two months.

Mr. Haddad claimed that his alleged injuries limited his ability to work as a nurse, but he did not decide to leave nursing until shortly after he filed this lawsuit in August 2013. Mr. Haddad acknowledged that his injuries did not have "much" impact on his flu vaccination business.

After a five-day trial, in which Mr. Haddad requested $2 million in damages, the jury found that Mr. Haddad's injuries were not caused by the accident. The jury did not reach the question of damages. This appeal followed.

We shall discuss additional facts as they become relevant.

QUESTIONS PRESENTED

Mr. Haddad raises 10 questions, which we have revised and reorganized for clarity and concision:[3]

I. Did the trial court err in denying Mr. Haddad's motion for judgment on the issue of causation?

II. Did the trial court err in permitting Mr. Hess to use documents that Mr. Haddad contends are attorney work-product?

III. Did the trial court err or abuse its discretion in excluding some of the testimony of Mr. Haddad's corroborating witnesses?

IV. Did the trial court abuse its discretion in excluding Mr. Haddad's 1994 essay on his career path and in excluding records of the number of hours that he worked in 2005?

V. Did the trial court err or abuse its discretion in not giving Mr. Haddad's proposed jury instruction on causation?

VI. Did the trial court err or abuse its discretion in limiting Mr. Haddad's testimony about his ongoing medical treatment, in excluding expert testimony about future medical treatment, and in not including a line-item on the verdict sheet for future medical expenses?

VII. Did the trial court err or abuse its discretion in not including a line-item on the verdict sheet for categories of non-economic damages?

For the reasons we set forth below, we affirm the trial court's rulings.

[3] We have listed Mr. Haddad's questions in Appendix A to this opinion.

DISCUSSION

I. Motion for Judgment

At the close of all the evidence, Mr. Haddad moved for judgment on the issue of causation. *See* Md. Rule 2-519(a). In support of his motion, Mr. Haddad argued that because Mr. Hess's expert agreed that at least some of his medical treatment was attributable to the accident, the jury could not reasonably find otherwise. The circuit court denied the motion and submitted the issue of causation to the jury, which found in Mr. Hess's favor. Mr. Haddad claims error.

"Appellate courts reviewing the denial of a motion for judgment during a jury trial perform the same task as the trial court, affirming the denial of the motion 'if there is "any evidence, no matter how slight, that is legally sufficient to generate a jury question."'" *Prince George's Cnty. v. Morales*, 230 Md. App. 699, 711 (2016) (quoting *C & M Builders, LLC v. Strub*, 420 Md. 268, 291 (2011), *which quoted Tate v. Bd. of Educ.*, 155 Md. App. 536, 544-45 (2004)); *James v. Gen. Motors Corp.*, 74 Md. App. 479, 484-85 (1988). "We assume the truth of all credible evidence on the issue, and all fairly deducible inferences therefrom," and we view the evidence and those inferences "in the light most favorable to the party against whom the motion is made." *Orwick v. Moldawer*, 150 Md. App. 528, 531 (2003); *see also* Md. Rule 2-519(b) (in a jury trial, "the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made").

In a jury trial, when a motion for judgment is made by the party who bears the burden of proof on the issue, as Mr. Haddad did in this case, the court may grant the

motion only when "'the facts are *uncontroverted* (as opposed to merely *uncontradicted*) or the parties have agreed as to the facts and such facts and the circumstances surrounding them permit of only one inference with regard to any issue presented by the motion.'" *Smith v. Miller*, 71 Md. App. 273, 278-79 (1987) (quoting *C.S. Bowen Co. v. Md. Nat'l Bank*, 36 Md. App. 26, 33-34 (1977)) (emphasis added in *Smith v. Miller*); *accord Thodos v. Bland*, 75 Md. App. 700, 714-15 (1988). It is exceedingly rare that a court may take a case away from the jury on the premise that "the proponent's proof is so overwhelming and decisive that the [jury] will not even be permitted to doubt it." *See Starke v. Starke*, 134 Md. App. 663, 684 (2000).

In this case, the jury had any number of reasons to doubt Mr. Haddad's contention that Mr. Hess's negligence effectively ended his nursing career and caused him to suffer $2 million in damages. The accident itself was minor; the property damage was insignificant; neither Mr. Hess nor Mr. Haddad's passenger was injured; Mr. Haddad said that he was uninjured at the scene of the accident, he had no objective signs of any injury, and (in at least one of his accounts) he did not begin to experience any pain until more than an hour later; his initial course of treatment amounted to half an hour in the emergency room, where he was told that he could return to work in two days; he did not see a physician for another week, and even then the physician he consulted was his business partner; he did not consult another physician for several months; at that point, he underwent a brief and apparently sporadic course of physical therapy; he engaged in a fair amount of strenuous physical activity despite his alleged injury; and his pain did not seem to worsen greatly until several years after the accident. In short, this is not one of

those exceedingly rare cases in which no reasonable jury could doubt Mr. Haddad's contention that his alleged injuries were attributable to Mr. Hess's negligence.

It makes no difference that Mr. Hess's expert agreed that some of the injuries were attributable to the collision. The jury was not required to accept the expert's testimony. Indeed, the court correctly instructed the jury that it could believe all, part, or none of the testimony of any witness and that it was not required to accept any expert's opinion. The court, therefore, did not err in declining to grant a motion for judgment that was based on the testimony of Mr. Hess's expert.

II. Work-Product

In discovery, Mr. Haddad's vocational rehabilitation expert, Dr. Ronald Rosenberg, disclosed to the defense a number of documents that, Mr. Haddad says, are covered by the attorney work-product protection. The documents were: (1) Defendant's Exhibit 21, an email exchange between Dr. Rosenberg and Mr. Haddad, on the day before Mr. Haddad was scheduled to meet with the defense's vocational rehabilitation expert, in which the expert advised Mr. Haddad about how to address the defense contention that he was not mitigating his damages; (2) Defendant's Exhibit 22, an email exchange between Dr. Rosenberg and Mr. Haddad's attorney, in which the attorney advised the expert about how to avoid his obligation to produce documents to Mr. Hess's counsel; and (3) Defendant's Exhibit 23, an outline of Dr. Rosenberg's direct examination, which Mr. Haddad's counsel had sent to the expert in advance of his testimony.

Mr. Haddad apparently did not know that Dr. Rosenberg had turned over these documents until Mr. Hess informed the trial judge that he intended to use them in cross-examining the expert. Mr. Haddad objected. He argued that the expert had inadvertently disclosed his attorney's work-product and that the inadvertent disclosure did not necessarily result in a waiver. *See* Md. Rule 2-402(e)(3); *Elkton Care Ctr. Assocs. Ltd. P'ship v. Quality Care Mgmt., Inc.*, 145 Md. App. 532 (2002). He also argued that Mr. Hess had not made the requisite showing that he had a "substantial need" for the alleged work-product and that he was "unable without undue hardship to obtain the substantial equivalent of the materials by other means." Md. Rule 2-402(d). The court rejected Mr. Haddad's contentions and permitted Mr. Hess to introduce Exhibits 21 and 22 into evidence. The court did not permit Mr. Hess to introduce Exhibit 23, the outline of the expert's direct examination, but it did permit him to question the expert about its contents.

The work-product doctrine "protects from discovery the work of an attorney done in anticipation of litigation or in readiness for trial." *E.I. du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 407 (1998). "[E]ven though it is often referred to as a privilege, the work product doctrine is not a privilege at all, but is 'merely a requirement that very good cause be shown if the disclosure is made in the course of a lawyer's preparation of a case.'" *Id*. at 406 (quoting *City of Philadelphia v. Westinghouse Elec. Corp.*, 210 F. Supp. 483, 485 (E.D. Pa. 1962)).

There are two types of work-product: fact and opinion. *Blair v. State*, 130 Md. App. 571, 607 (2000). "Fact work product generally consists of 'materials gathered by

counsel (or at counsel's instructions) in preparation of trial.'" *Id.* (quoting Joseph F. Murphy, Jr., *Maryland Evidence Handbook* § 904(A) (3d ed. 1999)). "Opinion work product concerns the attorney's mental processes." *Id.* "Neither fact nor opinion work product is ordinarily discoverable, but opinion work product, in particular, 'is almost always completely protected from disclosure.'" *Id.* at 608 (quoting *Forma-Pack*, 351 Md. at 408).

The proponent of the protection (here, Mr. Haddad) has the burden of showing that the materials in question satisfy the definition of work-product. *See Forma-Pack*, 351 Md. at 412. Once a trial court determines whether the materials do or do not fall within the definition, the appellate court reviews that determination for clear error. *See id*. at 414. If the determination was reasonable, the appellate court must affirm it. *Id.*

In this case, it was more than reasonable for the trial court to conclude that Defendant's Exhibits 21 through 23 did not fall within the definition of work-product.

Exhibit 21 consists of emails between the client and a testifying expert. They were not the work-product of Mr. Haddad's attorney, they were not prepared at the attorney's instruction or under his supervision, and they do not reveal his mental processes. The work-product protection did not extend to that document.[4]

[4] Although the work-product protection extends to work done by representatives of the party, such as a "consultant, surety, indemnitor, insurer, or agent" (Md. Rule 2-402(d)), this list does not include a testifying expert. The omission may be attributable to the expectation that the expert should deliver an objective yet persuasive opinion, rather than merely serve as a mouthpiece for the attorney.

Exhibit 22 consists of emails in which Mr. Haddad's attorney advises the expert about how to skirt his obligation to produce documents to defense counsel. Because the principal focus of the work-product protection is to "encourage[] careful and thorough preparation of the case by the attorney so that the adversarial process can elicit the truth" (Edna S. Epstein, *The Attorney-Client Privilege and the Work-Product Doctrine* 1039 (6th ed. 2017) (emphasis added)), it is inconceivable that the protection would allow the suppression of relevant evidence of an attorney assisting a testifying expert about how to defeat his discovery obligations. The work-product protection did not extend to Exhibit 22.

Exhibit 23 is the outline of the expert's proposed testimony, which Mr. Haddad's attorney sent to the expert, and the expert turned over to the defense. In *Musselman v. Phillips*, 176 F.R.D. 194, 199 (D. Md. 1997), Judge Paul W. Grimm held that, under the analogous federal work-product protection,[5] "when an attorney communicates otherwise protected work product to an expert witness retained for the purposes of providing opinion testimony at trial – whether factual in nature or containing the attorney's opinions or impressions – that information is discoverable if it is considered by the expert." According to Judge Grimm:

> This result must obtain either because the providing of work product to the retained, testifying expert constitutes one of the "very rare and extraordinary circumstances," when opinion work product is not absolute, and there is a concomitant substantial need for the opposing party to have this information; or, alternatively, because the disclosure of the work

[5] *See*, *e.g.*, *Forma-Pack*, 351 Md. at 408; *Shenk v. Berger*, 86 Md. App. 498, 501-02 (1991) (citing *Snowhite v. State, Use of Tennant*, 243 Md. 291, 308 (1965).

> product to the expert constitutes a waiver of the privilege as to that information.

Id. at 199 (footnote omitted).

In reaching this decision, Judge Grimm stressed the importance of cross-examination in exposing "any weaknesses in the [expert's] opinion and its supporting bases." *Id.* He observed that under Fed. R. Evid. 611(b), on which Md. Rule 5-611(b) is based, "cross-examination of an expert may focus not only on the subject matter of the expert's direct examination, but also on any matters affecting the credibility of that witness, and any of the factors which traditionally affect the credibility of a witness are accordingly fair game on cross–examination." *Id.* at 200. "Thus," he reasoned, "during pretrial discovery, it is essential that parties be able to discover not only what an opposing expert's opinions are, but also the manner in which they were arrived at, what was considered in doing so, and whether this was done as a result of an objective consideration of the facts, or directed by an attorney advocating a particular position." *Id.* He added: "It cannot seriously be denied that the fact that an attorney has interjected him or herself into the process by which a testifying expert forms the opinions to be testified to at trial affects the weight which the expert's testimony deserves." *Id.*

Judge Grimm went on to explain why it would not endanger the policies underlying the work-product protection to permit the discovery of communications between an attorney and a testifying expert. The protection is designed to deter litigants from taking a free ride on the thought processes of their opposing counsel, but when "an attorney communicates opinion work product to an expert witness specifically intended

to testify at trial for the purpose of shaping the testimony which will be offered, he or she unavoidably foresees the likelihood that those opinions will be communicated to the fact finder, through the expert." *Id.* at 201. The protection is also designed to foster privacy in the development of theories, opinions, and strategies, but "this interest is hardly served when the attorney discloses them to a retained expert in order to shape opinion testimony to be offered at trial." *Id.* (citation omitted). Finally, the protection is designed to "protect the integrity of the adversary system," but this interest too "is not served by depriving an opposing attorney of the means to expose the weaknesses in the opinion testimony of an adverse party's expert witness." *Id.*

We agree with Judge Grimm's analysis. It would further none of the policies underlying the work-product protection to hold that it applies when an attorney sends the script of an expert's direct examination to the expert. The work-product protection, therefore, did not extend to Exhibit 23.[6]

[6] As Mr. Haddad correctly pointed out at trial, the version of Rule 26 on which *Musselman* was decided has since been revised. In 2010 "Rule 26(b)(4)(B) [was] added to provide work-product protection under Rule 26(b)(3)(A) and (B) for drafts of expert reports or disclosures." Fed. R. Civ. P. 26 advisory committee's notes. In addition, Rule 26(b)(4)(C) was added to state that the protection applies to certain attorney-expert communications "regardless of the form of the communications, whether oral, written, electronic, or otherwise." Even under the amended rule, however, the protection does not apply "to the extent that the communications . . . identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed[.]" Fed. R. Civ. P. 26(b)(4)(C)(ii). Hence, it is, at the very least, open to question whether the amended rule would protect an attorney-drafted script of the expert's direct examination. In any event, Maryland's expression of the work-product protection does not contain any of the express limitations of amended Rule 26(b).

In summary, the court did not err in permitting Mr. Hess's attorney to cross-examine Mr. Haddad's expert about his communications with Mr. Haddad about how to counter the contention that he had failed to mitigate his damages; about his communications with Mr. Haddad's attorney about avoiding his obligation to produce documents; and about the outline of his direct examination that he had received from Mr. Haddad's attorney.

III. Testimony of Messrs. Madi and Saadipour

To corroborate his claims of injury, Mr. Haddad introduced the *de bene esse* deposition of an acquaintance, Sam Madi, and the live testimony of another acquaintance, Sohrab Saadipour. On the basis of objections by Mr. Hess's counsel, the court struck parts of Mr. Madi's testimony and sustained objections to a number of questions that were posed to Mr. Saadipour. Mr. Haddad seems to tacitly assume that the testimony in question was hearsay – i.e., "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). He contends, however, that the court erroneously excluded it because, he says, it was admissible under Md. Rule 5-803(b)(3), the exception for statements of a then-existing mental or emotional condition. We disagree.

A trial court "'has no discretion to admit hearsay in the absence of a provision providing for its admissibility.'" *Gordon v. State*, 431 Md. 527, 536 (2013) (quoting *Bernadyn v. State*, 390 Md. 1, 8 (2005)). We thus conduct a de novo review of whether the evidence at issue was hearsay. *Gordon v. State*, 431 Md. at 533 ("[w]hether evidence

is hearsay is an issue of law reviewed *de novo*'") (quoting *Bernadyn v. State*, 390 Md. at 8).

"But not all aspects of a hearsay ruling need be purely legal[,]" because "[a] hearsay ruling may involve several layers of analysis." *Gordon v. State*, 431 Md. at 536. In particular, when a party contends that a hearsay assertion falls within some exception to the general prohibition against hearsay, the trial court may need "to make both factual and legal findings." *Id.* An appellate court reviews the "preliminary factual determination" (*id*. at 550) under the deferential standard for clear error. *See id*. at 548, 550.

The exception for statements of then-existing mental or emotional conditions appears in Md. Rule 5-803(b)(3). That rule permits the introduction of :

> A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), offered to prove the declarant's then existing condition or the declarant's future action, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

Statements of then-existing states of mind are admissible only if they "relate to the declarant's *present* condition." Joseph F. Murphy Jr., *Maryland Evidence Handbook* § 803(E)(1) (4th ed. 2010) (emphasis added). "Special reliability is provided by the spontaneous quality of the declarations, assured by the requirement that the declaration purport to describe a condition presently existing at the time of the statement." George E. Dix et al., 2 *McCormick on Evid*. § 273 (7th ed. 2013). While a complaint is "admissible even if it is in response to a question" (Joseph F. Murphy Jr*., Maryland*

Evidence Handbook, *supra*, § 803(E)(1)), "[t]he exception . . . excludes description of past pain or symptoms, as well as accounts of the events furnishing the cause of the condition." *McCormick on Evid.*, *supra*, § 273.

In this case, it is more than a minor challenge to evaluate Mr. Haddad's contentions, because his brief does not include any of the actual excerpts from the witness's testimony. Consequently, we were repeatedly required to explore the two-volume record extract in order to examine each of the more than 10 instances in which, Mr. Haddad says, the court erroneously excluded his witness's testimony. Our examination of the record disclosed that in most of the instances the court's ruling had nothing to do with the exception to the hearsay rule for statements of a then-existing mental or emotional condition.

During Mr. Saadipour's testimony, the court repeatedly sustained objections to the form of the questions that he was asked, including objections that the questions were vague or overly broad (particularly as to the time frame in question), that they called for speculation, or that they were leading. On one occasion, the court sustained objections to questions concerning whether Mr. Haddad had "ever" spoken to the witness about his "shoulder pain" and whether the witness had "ever" had any conversations with Mr. Haddad about his shoulder, but the court's subsequent comment indicates that it based its rulings on the "broad" nature of the questions, not on the basis that the response would include inadmissible hearsay. In any event, it is difficult to see how a broad question about Mr. Haddad's reported "shoulder pain" or (more generally) about his shoulder would have elicited statements of his then-existing state of mind; it is far more

likely that they would have elicited statements about past pain or symptoms, which do not fall within the exception. *McCormick on Evid.*, *supra*, § 273.

At a bench conference, near the end of Mr. Saadipour's testimony, Mr. Haddad's counsel did raise the issue of statements of then-existing mental or emotional states. He proffered that Mr. Saadipour would say that he tapped Mr. Haddad on the shoulder; that Mr. Haddad recoiled; and that Mr. Haddad said that his shoulder hurt, or perhaps that his shoulder hurt because of the accident. The court ruled that the witness could testify that he tapped Mr. Haddad on his shoulder and that Mr. Haddad said that his shoulder hurt, but could not testify that Mr. Haddad attributed the pain to the accident. Because the attribution of the pain to the accident (years before) does not involve a spontaneous exclamation but rather the exercise of memory (associating the pain with a past event), the court did not abuse its discretion in concluding that that aspect of the proffered testimony would not satisfy the exception for then-existing mental or emotional states. *McCormick on Evid.*, *supra*, § 273 ("The exception is . . . limited to descriptions of present condition, and therefore it excludes . . . accounts of the events furnishing the cause of the condition.").[7]

The court struck two excerpts of Mr. Madi's deposition testimony. The first piece of stricken testimony reads as follows:

> Q. Okay. And what did – at that time, in 2013, what did Mr. Haddad say to you with regard to his right shoulder problem?

[7] After the court ruled that Mr. Saadipour could testify that he tapped Mr. Haddad on the shoulder and that Mr. Haddad complained that his shoulder hurt, Mr. Haddad posed additional questions to the witness, but did not ask about the shoulder-tapping incident.

MR. KOHL: Objection. Please answer.

MR. RIVERA: You may answer.

A. He just told me that he has a problem in his shoulder. He can't do a lot of stuff and he is doing physical therapy from time to time and still have the pain on his shoulder. That's . . .

The court excluded this statement in response to Mr. Hess's argument that it did not describe Mr. Haddad's state of mind at a discrete or specific moment. Indeed, a few lines before, the witness had said that the statement occurred in the three-month period comprising the "fall of 2013" and the question itself was directed to "that time, in 2013." We agree that a statement of a declarant's then-present state of mind cannot legitimately encompass a declarant's alleged state of mind during an unfocused period over the course of an entire season of the year. If it did, there would be little guarantee that the statement did not include an inadmissible "statement of memory or belief." Md. Rule 5-803(b)(3).

The next portion of stricken testimony is as follows:

Q. Okay. Has Mr. Haddad ever told you about physical pain he experiences while trying to sleep?

MR. KOHL: Objection to form and substance.

MR. RIVERA: You may answer.

A. Actually, yes. And one other we were sitting in Starbucks or – and sometimes I pay attention, like he is always rubbing his right shoulder and moving up and down. So – and sometimes he's told me that he has difficulty sleeping on his – on the right side.

BY MR. RIVERA:

Q. Has Mr. Haddad ever complained to you about pain he experiences while driving?

MR. KOHL: Objection to form and substance.

A. Actually, not very much, because most of the time I see him either in Panera or something and we will talk on that, but sometimes I ride with him so I was driving.

Q. Okay. You were driving. How about have you ever known him to complain about feeling pain while working on the computer?

MR. KOHL: Objection to form and substance.

A. It happens, yes, when we met that during the fall of – fall of 2013 in Starbucks, I used to meet him more there because I was living near the Starbucks on Layhill so we used to meet there. So we – he used to do some work on his computer, and he always say, yeah, and he can stop and he start moving his back and he put his hand like that.

Contrary to Mr. Haddad's argument, the court did not exclude this testimony on the ground that it was inadmissible hearsay; the court excluded it in response to Mr. Hess's objection that the time frame in the question ("ever") was too general. Mr. Haddad raised the issue of statements of then-existing states of mind only after the court had excluded the excerpt because of a defect in the form of the questions. Because Mr. Haddad does not challenge the actual basis for this discretionary evidentiary ruling, we have no reason to consider it further.[8]

[8] Most of the statements in this excerpt are not hearsay at all, but are observations of Mr. Haddad's behavior (rubbing his shoulder, pausing while working on his computer, and doing something with his hand) during that unfocused period of time. Only one statement is clearly hearsay – "sometimes he's told me that he has difficulty sleeping on his – on the right side." But that statement could not possibly be a statement of a then-existing state of mind, unless Mr. Haddad made it while he was lying in bed trying to sleep, which does not appear to be the case.

IV. The 1994 Essay and the Billing Records from 2005

Mr. Haddad sought to testify about an essay, written in 1994, in which he expressed his commitment to the nursing profession. He also sought to introduce the essay into evidence. According to Mr. Haddad, this evidence demonstrated his passion for and commitment to nursing.

Additionally, Mr. Haddad sought to introduce billing records that reflected the number of hours that he worked in 2005. He sought to contrast the amount of work that he had previously been able to do with the amount that he said he could do after the accident.

The court excluded the evidence on grounds of relevance. Mr. Haddad challenges those evidentiary rulings.

Evidence is relevant if it has "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." Md. Rule 5-401. A trial court, however, may properly exclude relevant evidence "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." Md. Rule 5-403. We review the exclusion of relevant evidence under Rule 5-403 for abuse of discretion. *See*, *e.g.*, *Dehn v. Edgecombe*, 384 Md. 606, 628 (2005).

We see no abuse of discretion. The relevance of the 20-year-old essay was minimal at best, as were the decade-old billing records. The court could reasonably conclude that it would be a waste of time to focus on dated evidence of tenuous relevance

– especially given the inordinate amount of time (five days) that it was taking to try what should have been a simple motor-tort case in which liability was not in dispute.

V. Causation Instruction

Mr. Haddad argues that the trial court abused its discretion in using its own instruction for causation, because, he says, his proposed instruction was clearer than the court's. He did not, however, object to the failure to give his proposed instruction after the court had instructed the jury. Consequently, he has not preserved that objection for appellate review. Md. Rule 2-520(e).

In any event, even if Mr. Haddad had preserved his objection, his brief includes neither the court's instruction nor his own.[9] Nor does he explain why his proposed instruction was clearer than the court's, or why the court's error (if any) was prejudicial. *See Barksdale v. Wilkowsky*, 419 Md. 649, 669 (2011) (stating that "a party challenging an erroneous jury instruction in a civil case must demonstrate to the court why the error was prejudicial"); *accord CSX Transp., Inc. v. Pitts*, 203 Md. App. 343, 472-73 (2012), *aff'd*, 430 Md. 431 (2013). In short, Mr. Haddad has given no reason to suspect that the instruction was erroneous in any way.

[9] A review of the record reveals that the court's instruction read as follows:

> For the plaintiff to recover the damages, the defendant's negligence must be a cause of the plaintiff's injury. There may be more than one cause of any injury, that is[,] several negligent acts may work together. Each person whose negligent act is a cause of an injury is responsible.

The instruction comes directly from Maryland Civil Pattern Jury Instruction 19:10 (4th ed. 2002). "[A] trial court is strongly encouraged to use the pattern jury instructions." *Johnson v. State*, 223 Md. App. 128, 152 (2015).

VI. Ongoing and Future Medical Expenses

The court excluded expert testimony about future medical treatment and future medical expenses, because Mr. Haddad did not disclose that evidence in discovery. In addition, the court declined to instruct the jury about future medical expenses and to include a line-item for future medical expenses on the verdict sheet. Finally, the court limited some of Mr. Haddad's proof about the treatment that he had received between the date of his expert's *de bene esse* deposition and the trial.

Although Mr. Haddad challenges those rulings on appeal, the issues are moot. Because the jury was unpersuaded that Mr. Hess's negligence had caused Mr. Haddad to suffer any damages at all, it makes no difference that the court declined to permit the jury to hear evidence of a category of damages, or to instruct the jury about those damages, or to include a line-item on the verdict sheet about those damages.

VII. Line Item for Noneconomic Damages

Mr. Haddad contends that trial court erred in refusing to include line items for various forms of noneconomic damages on the verdict sheet. But although Mr. Haddad mentions this point in the heading of his argument, he fails to make any specific argument about it in his brief. Consequently, we decline to address it. *DiPino v. Davis*, 354 Md. 18, 56 (1999) (stating that "if a point germane to the appeal is not adequately raised in a party's brief, the [appellate] court may, and ordinarily should, decline to address it"); *accord Moosavi v. State*, 355 Md. 651, 660 (1999); *see also Abbott v. State*, 190 Md. App. 595, 631 n.14 (2010) (declining to address an issue that was listed among the questions presented, but not otherwise argued in the appellant's brief).

Even if we did address it, however, the issue would be moot. Because the jury was unpersuaded that Mr. Haddad suffered any injuries at all as a result of the accident, it makes no difference that the judge declined to allow the jury to itemize certain classes of damages.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY ALL COSTS.

APPENDIX A

In his brief, Mr. Haddad set forth the following questions:

1. Did the trial court err in denying Plaintiff's Rule 2-519 motion for judgment on the issue of his injuries being caused by the motor vehicle accident?

2. Did the trial court err in ordering the disclosure of Plaintiff's counsel's work-product materials to Defendant, and further by receiving Plaintiff's counsel's work-product materials into evidence for the jury's consideration?

3. Did the trial court err in striking Plaintiff's medical expert's testimony on future medical expenses?

4. Did the trial court err in denying Plaintiff's request to instruct the jury as to Plaintiff's future medical expenses, and in excluding a line for future medical expenses on the jury verdict sheet?

5. Did the trial court err in denying Plaintiff's request for causation question and line items itemizing non-economic damage components on the jury verdict form?

6. Did the trial court err in allow[ing] testimony of Plaintiff's past and ongoing medical treatment received for his injuries?

7. Did the trial court err in excluding testimony of Plaintiff's corroborating witness, Sam Madi, regarding observations and/or statements of his physical condition and sensation?

8. Did the trial court err in excluding testimony of Plaintiff's corroborating witness, Sohrab Saadipour, regarding observations and/or statements of his physical condition and sensation?

9. Did the trial court err in failing to admit into evidence Plaintiff's testimony and personal essay on his chosen career path?

10. Did the trial court err in failing to admit into evidence Plaintiff's testimony and historical documentation of Plaintiff's earnings and hours worked as a nurse?