UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2249

September Term, 2013

JEFFREY JONES

v.

KENNEDY KRIEGER INSTITUTE, INC.

Graeff,
Berger,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: April 21, 2015

As a minor, appellant Jeffrey Jones participated in a lead reduction treatment study facilitated by appellee Kennedy Krieger Institute. Jones alleges that while enrolled in the study, and as a result of the tortious conduct of Kennedy Krieger Institute, he was exposed to harmful levels of lead that caused irreparable brain injuries. The trial court dismissed several of Jones's claims on motions and the jury rejected those that survived. On appeal from the Circuit Court for Baltimore City, Jones raises four issues that we have reworded as follows:

1. Whether the trial court erred in concluding that Jones cannot maintain an action for fraudulent or negligent misrepresentation because, as a minor at the time the misrepresentation was made, Jones cannot demonstrate that he relied on any alleged misrepresentation.

2. Whether the trial court erred by providing insufficient jury instructions regarding the duty of care owed by a research institution to a research subject.

3. Whether the trial court erred by providing an inaccurate instruction on the Maryland Consumer Protection Act, and by failing to adequately respond to the jury's questions regarding the instruction.

4. Whether the trial court abused its discretion when it excluded from evidence articles written after the conclusion of the lead reduction treatment study.

For the following reasons, we will affirm the judgments of the trial court.

INTRODUCTION

This case is one of several similar cases arising out of the same research study conducted by Appellee Kennedy Krieger Institute ("KKI") in Baltimore City in the 1990s. We recently issued an opinion in one such case, *White v. Kennedy Krieger Institute*, No.

1015, Sept. Term 2013, 2015 WL 808544 (Md. Ct. Spec. App. Feb. 26, 2015) (Feb. 26, 2015), that addressed several of the issues now raised by Jones in this appeal.

FACTUAL AND PROCEDURAL HISTORY

1. The Treatment of Lead-Exposed Children Study.

In *White*, we explained the Treatment of Lead-Exposed Children Study undertaken by the Kennedy Krieger Institute:

> This case arises out of a research study conducted by Kennedy Krieger Institute ("KKI") in Baltimore City in the 1990s called the Treatment of Lead-Exposed Children Study, which was known as the "TLC Study." The TLC Study originated as a partnership between the National Institute of Environmental Health Sciences ("NIEHS"), the Office of Research and Minority Health of the National Institutes of Health, and four separate Clinical Centers in separate cities managed by different entities. KKI oversaw and managed the TLC Study at the Baltimore City Clinical Center. The TLC Study was designed to study methods of addressing the high incidence of lead poisoning in inner cities. The TLC Study involved two components: (1) to evaluate the effects of the oral chelating agent, succimer,[1] on moderately lead poisoned children; and (2) to evaluate benefits of residential lead clean-up and nutritional supplementation for these children. For present purposes, there were two criteria for a child to be eligible to participate in the TLC Study: (1) the child, aged between 12 and 32 months, had to have a moderate existing blood lead level (between 20 and 44 micrograms per

[1] Succimer belongs to a family of drugs called "chelators" that bind to toxic metals such as lead in the bloodstream, and allow the body to expel the resulting compound through the urinary system. Succimer is regularly used to treat children with high blood lead levels. Chelation: Therapy or "Therapy"?, National Capital Poison Center, <http://perma.cc/FK5K-2TXK> (last visited Nov. 21, 2014).

deciliter);[2] and (2) the child had to reside in a home that was structurally sound and capable of being cleaned. The children were referred to the study by their pediatricians, or because they were already participating in the KKI Lead Clinic, which operated separately from the TLC Study. Prior to a child's participation in the TLC Study, KKI required parents[3] to give informed consent to participation both during pre-enrollment screening and at the enrollment stage.

Once a child was referred to the TLC Study, a KKI investigator would review the TLC Study pre-enrollment informed consent form ("pre-enrollment consent form") with the parents of the eligible child. The relevant sections of the pre-enrollment consent form are as follows:

> Your child has been exposed to a moderate amount of lead. . . We do not know if giving a child medicine to get rid of some of the lead in her/his body will keep the lead from harming her/him. . . .
>
> * * *
>
> Your child may be eligible for our study. . . We want to see whether a medicine prevents lead in children's bodies from harming them as they grow older. This medicine is called succimer, and it gets rid of some of the lead in children's bodies. It is now used for children who have more lead in their bodies than your child has.
>
> All children in the TLC Study will have their homes repaired and/or cleaned to get rid of lead dust and chipped paint. We will take a careful look at your home to see if it can be repaired and/or cleaned to reduce lead paint and

[2] Blood lead levels are measured in micrograms per deciliter, which are abbreviated as mcg/dL. *See Ross v. Housing Authority of Baltimore City*, 430 Md. 648, 653 n.4 (2013).

[3] For ease of reference, we use the term parents to also include guardians.

> dust hazards. The person that takes a look at your house may collect dust samples from your home to check for lead. All children will get vitamins and minerals, will get regular checkups and blood tests from a doctor, and will get tests of their thinking, learning and development. . . .
>
> * * *
>
> Every child will be in [the placebo] group or the [succimer group]. Unless there is a problem, you and the TLC doctor who takes care of your child will never know which group your child is in. There will be another doctor at the hospital who does know your child's group in case of problems.

The pre-enrollment consent also described what the pre-enrollment process entailed:

> **1. Clinic visits and blood tests**: Today we will do a blood test and check up of your child. . . We will measure the amount of lead [to determine eligibility]. . . .

Specifically, the pre-enrollment consent forms explained how KKI would conduct an initial assessment of the child's home at the pre-enrollment stage as part of the environmental component.

> **2. Home visits and Cleanup:** Trained workers will come to your home to look at painted surfaces, including porches, walls, floors, windows and trim; this is to find out whether your house can be cleaned or repaired to reduce lead hazards in paint and dust. . . .
>
> Some houses will qualify straightaway based on condition. If repairs are needed to qualify your house, the owner or landlord must give his/her permission for the repairs, with our help apply for a state loan and be approved for the loan for special repair funds. If your house

> does not qualify at all, the person checking your home will explain why and provide further information on "lead safe" housing. . . .
>
> * * *
>
> **3. Vitamins and minerals:** We will give you vitamins with minerals tablets[.]

If KKI determined that a child was eligible for the study, the pre-enrollment consent form explained that KKI would arrange for trained workers to return to the child's house and "[v]acuum and wet-wash floors, window sills, window wells and other surfaces . . . to remove as much lead dust and loose chips of paint as possible, [m]ake some repairs, if the owner has special approval for a loan, [and p]rovide you with information on how you can reduce lead exposure in the home." Assessment guidelines were governed by the TLC Protocol. KKI used the same standardized home assessment forms that were used at all Clinical Centers. Depending on the results of the assessment, the home was either professionally cleaned to remove existing lead dust and paint chips, or parents were provided with information on relocating to "lead safe" housing.[4] After the cleaning and repairs, KKI provided parents with cleaning supplies and instructions on how to further reduce lead exposure in the home.

Upon completion of the pre-enrollment screening stage, KKI representatives would then provide parents with the TLC Study enrollment informed consent form ("enrollment consent form") to complete the child's enrollment in the study. For our purposes, the relevant portions are set out below.

> **2. Blood lead results:** You and the TLC doctor taking care of your child will not know the results of the blood lead tests done during the first six months after your child starts taking capsules, but another doctor will know in case there is a problem. . . You may have the blood

[4] Neither the TLC Study Protocol, nor any of the informed consent documents included a definition of the term "lead safe."

> lead results after these treatment periods if you want them. . . .
>
> * * *
>
> **5. Damage at home or moving to a different home:** It is important for you to tell us if you move, or if a plumbing leak or anything else damages the walls or ceilings in your home, because we will need to come out and inspect and clean up as we did at the beginning of the study. If the doctor who sees the results of the blood lead tests finds that the amount of lead in your child's blood has gone up too much, we may want to come and inspect or clean your home again. Very rarely, a child's blood lead level might go up so high during the study that they might receive additional treatment outside of the study.

The enrollment consent form also highlighted the various benefits that KKI expected all children participating in the TLC Study to receive. Specifically, KKI told parents that it would inspect the home for the presence of lead dust and chipped paint, "clean-up the lead dust in your home," provide the child with vitamins and minerals, provide regular medical check-ups for the child, check the child's blood lead levels "regularly and carefully," and test the child's thinking and development.

In the medical treatment component of the study, KKI sought to determine whether succimer, which had previously been used only for children with extremely elevated blood lead levels (in excess of 44 mcg/dL), could also be used to treat children with moderately elevated blood lead levels between 20 and 44 mcg/dL. All study participants received one to three rounds of either succimer or the placebo during the six-month treatment period, and their blood lead levels were measured two weeks after every round of treatment. The entire study period lasted three years. After completion of the six-month treatment period, participants continued to receive vitamins and mineral supplements, regular medical check-ups, blood testing, and various cognitive tests for the remainder of the study.

The medical treatment component of the TLC Study was "double blind," meaning that neither KKI nor the parents of the children knew whether the child was given the placebo or the succimer until the completion of the treatment period. To maintain the double blind nature of the TLC Study, blood test results were reviewed by a separate physician who did not have any contact with the parents during the treatment period. That physician did not report the results to KKI, but rather to the central TLC Data Coordinating Center run by the Harvard School of Public Health in Boston.

If, after the first round of succimer treatment, a participant child's blood lead level remained above 15 mcg/dL, the Data Coordinating Center was required to advise KKI to conduct a retreatment for both placebo and succimer recipients (to maintain the double blind nature of the study). According to the TLC Study Protocol, there were two circumstances where the Data Coordinating Center was required to notify KKI of an individual child's blood test result. First, if the child's blood lead level was 45 mcg/dL or higher, the Data Coordinating Center was required to direct KKI to retest the child's blood within three days. If the child's blood lead level measured 45 mcg/dL or higher after the retesting, the child's participation in the TLC Study treatment would have paused, and the child would have been treated in accordance with KKI's normal protocol for children with lead levels above 44 mcg/dL, including succimer treatment. Second, if the child's blood lead level measured above 60 mcg/dL, participation in the TLC Study would have ended immediately and the child would have been treated according to KKI's treatment protocols for children with lead levels above 60 mcg/dL.

Ultimately, in 2001 the results of the TLC study were published. The researchers found that:

> Treatment with succimer lowered blood lead levels but did not improve scores on tests of cognition, behavior, or neuropsychological function in children with blood lead levels below 45 mg per deciliter. [Because] succimer is as effective as any lead chelator currently available,

> chelation therapy is not indicated for children with these blood lead levels.
>
> Walter J. Rogan, MD et al., *The Effect of Chelation Therapy with Succimer on Neuropsychological Development in Children Exposed to Lead*, 344 New Eng. J. Med. No. 19, 1421 (2001). The researchers ultimately concluded that because "lead poisoning [is] entirely preventable, our inability to demonstrate effective treatment lends further impetus to efforts to protect children from exposure to lead in the first place." *Id*. at 1426.

White v. Kennedy Krieger Institute, No. 1015, Sept. Term 2013, 2015 WL 808544, at *1-*4.

2. Jeffrey Jones

On June 21, 1995, when Jeffrey Jones was one year old, his blood lead levels were tested at Union Memorial Hospital where it was determined that he had an elevated blood lead level of 25 mcg/dL. As a result of Jones's elevated blood lead levels, his primary care physician referred Jones's mother, Althea Green, to KKI's TLC Study. Ms. Green met with KKI research investigators on July 13, 1995 and signed the TLC pre-enrollment consent form.

At the time, Jones was living with his mother at 503 East 27th Street in Baltimore City. Ms. Green's signing of the pre-enrollment consent form prompted KKI to inspect Jones's home to determine if the home was structurally sound and cleanable. The inspection revealed that the property was not, and, as a result, Jones was ineligible for participation in the TLC Study.

On September 1, 1995, Ms. Green and her family relocated to 1614 Bradford Street. Ms. Green returned to KKI on September 18, where she met with TLC Study lead

investigator, Dr. Cecilia Davoli, and completed the enrollment consent process. On September 25, KKI sent housing inspectors to assess the Bradford Street property, and it was determined to be structurally sound and cleanable. The home was professionally cleaned—wet washed, wiped, and vacuumed with a HEPA filter—and Ms. Green was given a cleaning kit and instructions on how to conduct routine lead cleanings to maintain reduced lead dust levels in the home. After the professional cleaning, the surface conditions of the Bradford Street property were intact and there was no flaking or chipping paint.

Two weeks after KKI performed the professional cleaning, Jones's blood lead level rose to 26.3 mcg/dL. A month after the professional cleaning, Jones's blood lead levels had dropped to 21.4 mcg/dL. As Jones was in the double blind phase of the TLC Study, neither KKI nor Ms. Green was informed about Jones's blood lead level fluctuations.

During a home visit on February 21, 1996, Ms. Green notified KKI that there was flaking paint in the basement, and expressed concern because Jones was spending more time there. KKI staff advised Ms. Green to contact her landlord about repairs, and if the landlord refused, then to contact Baltimore City Health Department. Five days later, the Baltimore City Health Department visited the property and conducted an inspection. KKI also sent inspectors to the home on April 15, 1996, and confirmed the presence of flaking paint, but KKI did not perform any additional cleaning or repairs. Dust samples taken by KKI at this visit revealed that lead dust levels had risen in several areas of the home. Jones's blood lead level measured 28 mcg/dL on April 23, 1996, and it peaked by July 11, 1996 at 33 mcg/dL.

In September of 1996, Ms. Green decided to move her family to 2633 Barclay Street. Prior to Jones moving in, KKI inspected the property and determined that it needed a number of repairs. The landlord completed the repairs, and KKI again arranged to house to be professionally cleaned prior to Jones moving in. Lead dust samples taken after the professional cleaning showed that the property's lead dust levels were well below then-current Maryland lead clearance standards. KKI also recommended that the landlord replace the windows, and provided the landlord with information on how to apply to the State for a forgivable loan for the repairs. The landlord applied for the loan, and the windows were replaced a year later. In August of 1997, and while Jones was still living at the Barclay Street property, his blood lead level measured 28 mcg/dL. Jones resided at the Barclay Street property for the remainder of his participation in the TLC Study. Ms. Green passed away in 2004.

On February 16, 2012, Jones filed suit against numerous defendants, including KKI, alleging that he suffered significant brain injury as a result of toxic lead exposure. In his complaint against KKI, Jones alleged that he suffered toxic lead exposure resulting from KKI's tortious design and implementation of the TLC Study. Jones alleged that KKI negligently and intentionally misrepresented the lead-based paint hazards in his homes during the time that he was in the TLC Study, as well as the risk of harm to Jones as a result of participating in the study. Jones also alleged that KKI was negligent in failing to properly review and oversee the TLC Study. Lastly, Jones alleged that KKI was liable under the Maryland Consumer Protection Act ("CPA") for misrepresenting to Ms. Green

that it would "get rid of the lead dust and paint chips" in her home, and provide her with information on how to relocate to "lead safe" housing.

Prior to trial, the trial judge granted summary judgment in KKI's favor on all of Jones's misrepresentation claims. At the close of Jones's case, KKI moved for judgment pursuant to Md. Rule 2-519 for the remaining claims, which the court partially granted as to the negligence claim and the CPA claim that was specific to the Bradford Street property. On December 19, 2013, the jury rejected those claims that survived, finding that KKI did not act negligently in planning and implementing the TLC Study, nor did it violate the CPA. This appeal followed.

DISCUSSION

I. Fraudulent or Negligent Misrepresentation

Jones's first challenge concerns whether an infant can maintain an action in tort for fraudulent or negligent misrepresentation in the absence of direct, personal reliance on a false statement. Jones argues that, in the context of securing informed consent on behalf of an infant, parental reliance on a misrepresentation by the researcher may be imputed to the infant. As did the plaintiff in *White*, Jones complains that the trial court erred in ruling that he had failed to demonstrate the necessary element of reliance to sustain his misrepresentation actions.

In *White*, we addressed the concept of an infant's indirect reliance in the context of a claim for fraudulent misrepresentation, holding:

> The question before us then is whether parental reliance may be imputed to an infant in the context of misrepresentation claims. . . . For the reasons discussed below, we will conclude

> that parental reliance may be imputed to an infant as a form of indirect reliance.
>
> * * *
>
> We therefore follow the law to its logical conclusion, and hold that parental reliance can be imputed to the infant as a form of indirect reliance when the misrepresentation is designed to cause actions by, or on behalf of, the infant. In doing so, we conclude that White generated a jury question about whether he demonstrated reliance by virtue of his participation in the TLC Study, which was precipitated by the alleged misrepresentations made to his mother[.]

White, No. 1015 Sept. Term 2013, 2015 WL 808544, at *16,*19.

In the context of a claim for negligent misrepresentation, we held:

> Where a negligent misrepresentation is alleged to create a threat or risk of physical harm, Maryland courts appear to have adopted the position of Section 311 of the Restatement (Second) of Torts, which provides that:
>
> > (1) One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable *reliance* upon such information, where such harm results
> >
> > (a) to the other, or
> >
> > (b) *to such third persons as the actor should expect to be put in peril by the action taken.*
>
> Restatement (Second) of Torts § 311 (1965) (emphasis supplied). Thus, § 311 establishes that an actor may be liable in tort to a third party who neither hears, nor directly relies on any misrepresentation by the actor. Instead, the element of reliance necessary for a negligent misrepresentation claim can be satisfied indirectly by the reliance of the "other" who acts in reliance on the misrepresentation of the actor.

White, No. 1015 Sept. Term 2013, 2015 WL 808544, at *19.

Therefore, parental reliance may be imputed to the child when the fraudulent misrepresentation is made to the parent to secure the action of, or on behalf of, the infant. When a negligent misrepresentation causes the hearer to act to the detriment of a third party, the one making the negligent misrepresentation is liable to that third party for personal harm suffered by the third party so long as the harm was foreseeable. For these same reasons, as we articulated in *White*, we agree that the trial court erred in determining that Jones was unable to demonstrate the element of reliance to support his misrepresentation claims. However, we will affirm on the grounds that Jones failed to demonstrate the existence of a misrepresentation in the first place.

In the context of determining whether Jones is able to demonstrate that KKI made a misrepresentation to Ms. Green, we review the sufficiency of the evidence *de novo*, and in the light most favorable to Jones. *Gales v. Sunoco, Inc.*, 440 Md. 358, 102 A.3d 371 (2014). Evidence is legally sufficient if "reasonable jurors, applying the appropriate standard of proof, could find in favor of the plaintiff on the claims presented." *Hoffman*, 385 Md. at 16, 867 A.2d 276. Generally, "we do not review the issues that did not form the basis for the court's ruling, *unless the court would have had no discretion but to grant summary judgment on one of those bases*." *Middlebrook Tech, LLC v. Moore*, 157 Md. App. 40, 58 (2004) (citing Md. Rule 8-131(a)) (emphasis supplied). As we explain below, because the evidence presented by Jones was insufficient to support a misrepresentation claim, we conclude that the trial court had no discretion to determine otherwise.

Jones argues that KKI made two misrepresentations in the informed consent documents: (1) that KKI said it would "get rid of the lead dust and paint chips;" and (2)

that KKI provided information on how to relocate to properties that were "known to be lead safe." We addressed the exact same contentions in *White*, where we explained:

> The facts provided by White to support the aforementioned claims of misrepresentation are insufficient under the clear and convincing standard required in fraud claims, and also fail under the less stringent preponderance of the evidence standard for negligent misrepresentations. Even taken in the light most favorable to White, [White's mother] failed to demonstrate that KKI falsely represented to her that she and White would be provided with housing free from lead paint hazards by virtue of their participation in the TLC Study. In both the pre-enrollment consent and enrollment consent forms, KKI told parents that "[a]ll children in the TLC study will have their homes repaired and/or cleaned to get rid of lead dust and chipped paint." The pre-enrollment consent explained:
>
> > Trained workers will come to your home to . . . find out whether your house can be cleaned or repaired *to reduce lead hazards in paint and dust*. . . .
> >
> > * * *
> >
> > If your house does not qualify at all, the person checking your home will explain why and provide further information on lead safe housing. . . .
> >
> > * * *
> >
> > If you child is eligible to continue in the study, we will then make an appointment [to vacuum and wet-wash inside the home] *to reduce as much lead dust and loose chips of paint as possible.*
>
> (Emphasis supplied). The enrollment consent included similar language:

> We will look carefully at your home for lead dust and chipped paint and tell you about it. We will clean-up the lead dust in your home. . . .
>
> We believe that children in the study will get *equal or better care* than children outside the study, and that their homes will have *less lead* in them sooner than if they were not in the study.

White, 1015 Sept. Term 2013, 2015 WL 808544, at *22-*23. In the case at hand, the only alleged misrepresentations occurred within the confines of the informed consent documents—the same informed consent documents at issue in *White*--which we have excerpted above. Ms. Green died before she could provide any testimony about the enrollment process, and, as a result, we must look at the face of the consent forms alone to determine if misrepresentations were made. In our opinion, and consistent with what we held in *White*, there was no misrepresentation on the face of the informed consent documents.

On appeal, Jones has not provided any additional argument regarding the sufficiency of the evidence of a misrepresentation, but rather encourages this Court to reverse on legal error alone. We decline to do so. When KKI said that a property would be "lead safe," it did not mean, and Ms. Green could not reasonably have believed, that the property would be completely free from lead hazards. Rather, the informed consent documents explicitly stated that the goal of the lead remediations (repairs and professional cleaning) was to reduce lead in the home—not eliminate it. We conclude that no reasonable jury could find that KKI made a misrepresentation, either negligently or fraudulently, to Ms. Green. Because the informed consent documents, on their face, did not contain a

misrepresentation, the trial court did not have discretion to conclude otherwise. *Middlebrook Tech*, 157 Md. App. 58 (2004). Absent this *prima facie* element of both torts, Jones's fraudulent and negligent misrepresentation claims must fail.

II. Jury Instruction Based on *Grimes*

Jones also argues that the trial court erred in refusing to instruct the jury on the special duty of care owed by a researcher to a research subject under *Grimes v. Kennedy Krieger Inst., Inc*. 366 Md. 29 (2001).[5] Jones requested that the trial judge provide the following instruction to the jury on the duty of a researcher in a non-therapeutic study based on *Grimes*:

> A researcher may not conduct a research study that does not provide a medical benefit to the child if "there is any risk of injury or damage to the health of the subject." Any risk means the risk to which all children are usually exposed, and not a risk shared by only a group of the population. Put another way, [a] researcher conducting a research study not designed to treat or cure the child must ensure the safety [of] the child or not conduct the study.

The record does not disclose the basis of the trial court's refusal to provide the proposed instruction based on *Grimes*, and neither party has suggested what occurred.[6] But, we do

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[5] In *White*, we explained in detail the factual background of the *Grimes* case, the parameters of the Repair and Maintenance ("R&M") Study at issue in that case, and the ruling of the Court of Appeals. No. 1015 Sept. Term 2013, 2015 WL 808544, at *6.

[6] This lack of clarity is based, in part, on the lack of detailed exception to the proposed instruction based on *Grimes*. It appears from the record that the trial court encouraged the parties to make exceptions based on numerical reference to the proposed instruction number. Jones excepted only by reference to the proposed instruction number. Although not technically in compliance with Md. Rule 2-520(e), we will not hold that

know that rather than provide the instruction requested by Jones, the trial court instructed the jury as follows:

> [S]cientific research entities owe a duty of care to participants in scientific research studies. This duty requires the protection of the study participants from unreasonable harm and requires the researcher to completely and promptly inform the participants of potential hazards existing during the study. If you find that the Plaintiff, Mr. Jones, was a study participant in scientific research by Kennedy Krieger Institute then Kennedy Krieger Institute owed a duty of care to the Plaintiff as I have just described.

The trial court also provided the jury with pattern negligence instructions. The jury found that KKI was not negligent under this standard. We agree with the actions taken by the trial court, and hold that the jury instruction requested by Jones was not compelled by law or the facts of the case, and was otherwise fairly covered by the pattern negligence instructions.

In *White*, we evaluated another jury instruction request based on *Grimes*. 1015 Sept. Term 2013, 2015 WL 808544, at *11 (discussing Requested Jury Instruction 36). We held there that the plaintiff's requested jury instruction based on *Grimes* was (1) not a correct statement of the law; (2) not applicable to a therapeutic study like the TLC Study, and (3) fairly covered by the negligence instructions given by the trial court. *Id*. (relying on *Wood v. State*, 436 Md. 276, 293 (2013)). Although the instructions requested by Jones, and those requested by White are somewhat different, the same analysis nevertheless applies.

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against him here, as it appears to have been done at the suggestion and with the approval of the trial court.

First, as we said in *White*, *Grimes* was limited on reconsideration and therefore the prior "holdings" of the Court of Appeals in that case are *dicta*, and cannot be read as an accurate statement of the law. *Id*. at *11. Second, Jones's requested instruction is premised on the assertion that the TLC Study was a non-therapeutic study, which, as we explained in *White*, it was not. *White*, No. 1015 Sept. Term 2013, 2015 WL 808544, at *12. Third, Jones has failed to show how the instructions actually given were insufficient. As we said in *White*:

> [T]he trial court instructed the jury that if they found that White was a participant in a human research study, they *must* find that KKI owed White a duty. In our opinion, this goes beyond *Grimes*' pronouncement that a duty *may* arise in such circumstances where the researcher has a superior knowledge of the risks of the study. Therefore, the instructions actually provided were more beneficial to White than that required by the law.

Id. at *13. The same analysis applies here, as the instruction given in *White* and at the Jones trial were virtually identical. Therefore, because the proposed instruction is an incorrect statement of the law, inapplicable in the context of a therapeutic study, and was otherwise covered by the instructions actually given, we find no abuse of discretion in the trial court's refusal to give Jones's requested jury instruction.

III. Jury Instruction on the Maryland Consumer Protection Act

Jones makes three allegations of error pertaining to the trial court's jury instruction on KKI's potential liability under the Maryland Consumer Protection Act ("CPA"), Md. Code Ann., Com. Law ("CL") § 13-101 *et seq.*, and one allegation of error in how the trial court handled a note from the jury requesting more information on the CPA. The jury instruction provided at trial read as follows:

> [THE COURT]: Now the last claim the Plaintiff has brought is for a violation of the Consumer Protection Act. The Plaintiff, Mr. Jones, must show . . . that at the inception of the lease for 2633 Barclay Street, the owner and operator made material misstatements or omissions which either had the tendency to or did, in fact, mislead the Plaintiff in this case.

Regarding the instruction actually given, Jones first takes issue because the instruction stated that an entity could only be liable under the CPA if it was an "owner and operator." Second, Jones claims it was error for the trial court to describe unfair trade practices under the CPA as only misstatements or omissions, rather than other types of actions. Third, Jones claims that the trial court erred by not providing Jones's requested instruction on what constituted a material omission under Maryland law. Regarding the handling of the note from the jury, Jones argues that the trial court again abused its discretion by not properly responding to the jury's request for more information about the CPA during its deliberations.

We decline to reach the merits of Jones's arguments pertaining to the actual instructions as given. This is because the arguments have not been preserved for our review as he failed to make the required exceptions under Md. Rule 2-520(e). As to Jones's remaining, preserved claims of error regarding the lack of instruction on material omissions, we affirm the trial court. We explain.

Jones did not preserve his claims of error regarding the wording of the CPA instruction actually given because he failed to except to the CPA instruction at any point during the trial. Maryland Rule 2-520(e) explains:

> No 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.

"The purpose of the rule . . . is 'to enable the trial court to correct any inadvertent error or omission in the oral [or written] charge, as well as to limit the review on appeal to those errors which are brought to the trial court's attention.'" *Hoffman v. Stamper*, 385 Md. 1, 40 (2005) (quoting *Fisher v. Balto. Transit Co.*, 184 Md. 399, 402 (1945)).

In this case, not only did Jones fail to make any exception to the instruction as given, but Jones also specifically asked that the trial court use the language "owner-operator" in the first place.[7] Therefore, if Jones believed that it was error for the trial court to say "owner and operator" rather than "owner or operator," it was particularly necessary for Jones to point it out. Additionally, if Jones believed that liability extends beyond owner or operator—which it does, as we explained in *White*—he failed to make any exception. This issue was not preserved and is therefore waived.[8]

Jones's allegation that the trial court improperly instructed the jury as to what constituted an unfair or deceptive sales practice under the CPA was likewise not preserved.

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[7] When discussing the alterations that the trial court made to the CPA jury instruction, the trial court explained:

> [THE COURT] I mean, the only thing I think I changed was [KKI] had [requested the term] landlord, and I agreed with [Counsel for Jones] that it should be owner-operator.

[8] In *White* we explained that "Maryland law extends potential liability under the CPA to a party who is not the direct seller when that party plays an integral role in the transaction and the misrepresentation sufficiently infects the sale or offer for sale." *White*, No. 1015 Sept. Term 2013, 2015 WL 808544, at *24 (internal quotation marks omitted).

Jones's only exception about his requested CPA instructions was that the trial court did not provide Jones's proposed instruction that defined a material omission. Jones did not make any exception to the instruction actually given, and therefore Jones's second allegation of error was not preserved.

The only exception Jones did make, as we noted above, was with respect to the trial court's refusal to provide his requested instruction that defined material omissions. The entirety of Jones's argument on appeal to this point appears in one sentence in his brief where Jones alleges that "the trial court refused to offer worthwhile and necessary guidance by defining 'material omission' as requested by Plaintiff." That is insufficient.

Jones had requested that the trial court provide the following instruction:

> For the purposes of the Consumer Protection Act, a "material omission" is an act [that] a significant number of unsophisticated consumers would attach importance to the information in determining a choice of action. A jury could reasonably find that a hazardous condition in an apartment or a violation of the Baltimore City Housing Code would be a factor that a significant number of people would consider important when deciding to rent an apartment.

There are "three components that must be met to include a proposed jury instruction in the ultimate charge to the jury: '(1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in instructions actually given.'" *Wood v. State*, 436 Md. 276, 293 (2013) (*quoting Dickey v. State*, 404 Md. 187, 197–98 (2008)); *see also Gunning v. State*, 347 Md. 332, 348 (1997) (same). We review the denial of a proposed jury instruction

under the highly deferential abuse of discretion standard, and we hold that the trial court was within its discretion to exclude Jones's proposed instructions. *See id*. at 292.

Regarding the first two prongs of the *Wood* analysis, we hold that the requested instruction on material omissions was an accurate statement of the law, and that it was pertinent to the facts of the case. However, we hold that as to the third prong, Jones has failed to demonstrate that the content of the material omission instruction was not fairly covered by the instruction actually given.

From what we are able to gather from the transcript, the parties discussed the verdict sheet with the trial court in chambers and off the record. As a result, the record is devoid of any of Jones's arguments in favor of including the material omission instruction, or the particular reason for excepting to its exclusion. As such, the nature of Jones's argument on appeal is not clear from the record below, and he has made no attempt to elaborate further in his brief. Other than Jones's bare bones assertion on appeal that the trial court refused to offer "worthwhile and necessary guidance," we are not provided with any argument as to why the instruction actually given did not otherwise fairly cover the requested instruction. We decline now to invent an argument for Jones as to the third prong of the *Wood* analysis, and hold that he has failed to demonstrate that the instruction requested was not otherwise covered by the instruction given. We, therefore, perceive no abuse of discretion in the trial court's refusal to give Jones's requested instruction on material omissions.

Jones also asserts that the trial court provided insufficient supplemental instructions to the jury after it sent a note during deliberations requesting more information on the CPA.

Jones argues that by only providing the jury with a copy of the written instructions in response to the jury's request for more information, the trial court failed to provide correct and effective guidance on the applicable law.

As the timeline of this issue is somewhat confusing, we will lay it out in detail. Early on the second day of its deliberations, the jury sent back a note requesting "more information on the Consumer Protection Act if possible." The trial court advised counsel of the note thirty minutes after it was received. Over the course of the next hour, there was discussion amongst the parties and the trial court about what, if any, additional information to send back to the jury regarding the CPA. Jones requested that the trial court provide the jury with a written copy of the CPA instruction actually given, along with the four additional CPA instructions that Jones had previously requested but that had been rejected. The following dialogue took place:

> [COUNSEL FOR JONES]: Your Honor, I would just renew my request to give [the jury] the entire jury instruction. I think it will alleviate a lot of problems. . . .
>
> [THE COURT]: Well, the portion on the Consumer Protection Act actually I believe in the instructions is basically one sentence. . . .
>
> Now just so I think we can put this record correctly, I mean, that was what was offered. I know the plaintiffs offered other things – well, one, you wanted, it originally was landlord, so we changed it to owner-operator. And then my understanding was there was a request . . . for some instructions

as to the Baltimore City Code, which are covered. . . . So what else do you want me to instruct them on?

* * *

[COUNSEL FOR JONES]: I would ask you also to reinstruct them on the Baltimore City Code . . . And then we had other instructions that I've objected to on the record,[9] they were, I think, 27 through 31, the [proposed] supplemental instructions[10]. . . .

* * *

[THE COURT]: But when you say instruct them, these are not instructions. They may be cites to a case for a statute[.]. . . So you want me to read what?

[COUNSEL FOR JONES]: [S]upplemental jury instruction[s] 26, 27, 28, and 29. . . .

* * *

Yeah, or provide the written instruction to the jury, because obviously this is the one they're having the most problem with

---

[9] On appeal Jones acknowledges that the only part of the instruction to which he took exception was with respect to material omissions, and our review of the record confirms as much.

[10] The proposed supplemental instructions referred to by Jones read as follows:

> No. 27: Under the [CPA], a landlord does not have to have actual knowledge of the violation. At the time the lease is entered into, a landlord has superior knowledge as to the condition of the premises.
>
> No. 28: A landlord is charged with knowledge of the condition of the premises that a reasonable inspection would disclose. If a jury finds that deteriorated paint existed, the landlord's failure to warn the tenant of the existence of that condition could be found to be a material omission by the jury. . .

The law presumes the existence of a condition that a reasonable inspection, had it been conducted, would have uncovered. The landlord does not have to conduct an inspection before leasing the premises, but, because of the implied representation that accompanies the making of the lease, he or she fails to do so at his or her own risk.

No. 29: Implicit in the rental of an apartment is the representation that the rental is lawful and that the apartment is in good repair, in safe condition and fit for human habitation . . .; an apartment with flaking, loose and peeling paint has not been maintained in good repair and safe condition, and therefore, is in violation of the Housing Code. . . .

Put another way, by renting a property in Baltimore City to tenants, the landlord is impliedly warranting that the property is in compliance with the Baltimore City Housing Code. This implied warranty remains in effect throughout the entire period of the tenancy.

No. 30: To prove a violation of the [CPA] based on the breach of the implied warrant of habitability, it must be shown that at the inception of the lease, the landlord made material misstatements or omissions which either had the tendency to or, in fact, did, mislead the tenant. . . .

[The CPA does] not require an intent to deceive by a landlord, only that a false or deceptive statement that has the capacity to mislead the consumer tenant is made.

No. 31: For the purposes of the [CPA], a "material omission" is an act which a "significant number of unsophisticated consumers would attach importance to the information in determining a choice of action. A jury could reasonably find that a hazardous condition in an apartment or a violation of the Baltimore City Housing Code would be a factor that a significant number of people would consider important when deciding to rent an apartment.

> and they specifically asked for help, so they may not be able to grasp it right from one reading.
>
> [THE COURT]: [L]isten, you could just throw the consumer law article at me and say, give it to the jury because it may help them. . . . I'm not here to confuse them. . . . And in the discussions, as I said, defense offered this. . .straight forward instruction; your objection to that . . . was that landlord was not a legally appropriate limitation.
>
> And so I agreed, and I made it owner-operator, okay?
>
> * * *
>
> I can't –this [the supplemental instructions] isn't an instruction. This is kind of just clips from statutes. . . . I'm dealing with a jury of laypersons . . . I don't just start reading statutes. I mean, there's got to be some sort of context for these people[.]

The trial court, concerned with providing additional information that would confuse the jury, ultimately decided to provide the jury with just a written copy of the instruction as they were originally given. At this point, Jones objected to the trial court's refusal to provide a supplemental instruction that "if you find that the house did not comply with the Baltimore City Code, . . . you must find a violation of the [CPA]" – an instruction that was not originally requested by Jones. Fifteen minutes later, and before the trial judge had an opportunity to respond to Jones's new request pertaining to a violation of the Baltimore City Code, the jury returned a verdict for the defense.

We review a trial court's response to a jury note or re-instruction of the jury under an abuse of discretion standard. *Hall v. State*, 69 Md. App. 37, 57 (1986). We note that the issue to which Jones objected was the trial court's apparent refusal to provide the instruction regarding the Baltimore City Code quoted above. Jones did not object to the

trial court's submission of the written instructions, and indeed requested the trial court do so on several occasions. Although Jones did not specifically object to the allegations of error that he now raises on appeal, given the lengthy discussion on the record we will assume the issue has been preserved for our review.

It is clear from the record that the trial court was concerned that the supplemental instructions requested by Jones would tend to confuse the jury without additional context. We perceive no error in this concern. Additionally, we note that Jones specifically requested that the trial court provide the supplemental instructions, *or* send back a written copy of the instructions actually provided. We perceive no abuse of discretion by the trial court in doing what Jones specifically requested it do, namely provide the jury with a written copy of the jury instructions. Additionally, we note that before the trial court had an opportunity to rule on Jones's final request, the jury returned a verdict for KKI. There can be no claim of error where the trial court did not have enough time to fully respond to the request. For these reasons, we will affirm the actions of the trial court as to the handling of the CPA jury instruction.

IV. Exclusion of Post-TLC Study Articles

Jones argues that the trial court erred by excluding research articles written three years after the TLC Study, which generally tended to show that the cleaning measures used in the TLC Study were ineffective as a long-term fix for reducing lead contamination in the home. *See* Mark Farfel, et al., *An Extended Study of Interim Lead Hazard Reduction Measures Employed in the Baltimore Clinical Center of the Treatment of Lead-Exposed Children Clinical Trial*, (Apr. 2000), available at http://perma.cc/S9KJ-F5D6; Adrienne S.

Ettinger, et al., *Assessment of Cleaning to Control Lead Dust in Homes of Children with Moderate Lead Poisoning: Treatment of Lead-Exposed Children Trial*, (Dec. 2002), available at http://perma.cc/E7ES-UH6A. Jones argues that these post-study articles were relevant to show: (1) that Jones likely suffered lead poisoning as a result of inadequate remediation measures; (2) that Jones received no benefit as a result of participating in the study; (3) and the experimental nature of the TLC Study's environmental component.

The post-study articles detailed the cumulative results of KKI's research on the effectiveness of the cleaning and repair interventions undertaken by KKI in the TLC Study participant's homes. Overall, the researchers concluded that, while effective in the short term, homes that received only minor repairs and the professional cleaning provided by KKI were more likely to re-accumulate high levels of lead dust in two years. The articles further concluded that professional cleaning and minor repairs provided by KKI were inadequate to meet U.S. EPA clearance standards promulgated in 2001. Finally, the articles noted that the researchers were unable to account for certain variables in the study participants' homes, such as whether the parents of the study participants were continuing to clean their homes as they were taught by KKI.

The trial court granted KKI's motion *in limine* to exclude the post-study articles, and later prohibited Jones from cross-examining a KKI expert witness with the articles even though Jones claimed that the witness "opened the door" during direct examination. Jones alleges these decisions were in error, and we review each in turn.

1. Exclusion of Post-TLC Study Articles

KKI argued that the post-study articles were irrelevant to Jones's case as the articles did not reflect the researcher's knowledge at the time Jones was in the TLC Study. The trial court, while sharing the same concern as KKI, was also particularly concerned with using aggregate data from over 200 study homes as probative of whether the cleaning and repair measures were inadequate in Jones's home.

> [COUNSEL FOR JONES]: [T]he conclusions they reach are . . . that the cleaning didn't work. It didn't keep the children safe. And they say that single cleaning does not work. . . .
>
> [THE COURT]: Well how about if it's proven in this particular case that the cleanings did work? . . . I mean I agree, the cleaning had to work. So I don't think it's a question of whether they knew the cleaning was going to work or not work. It's a question of whether it did work.
>
> * * *
>
> [COUNSEL FOR JONES]: [T]hey also had a duty to warn that it was experimental and they didn't do that. . . .
>
> [THE COURT]: Well . . . if that were the case then I think they violated their standard of care under *Grimes*.
>
> [COUNSEL FOR JONES]: I think that's proof of it and it's also proof that . . . what they did in this particular child's case in both properties, where they acknowledged major repairs were needed but they did not provide them. . . .
>
> [THE COURT]: Yeah, but if they did, my understanding [is] . . . that they did whatever cleaning, took some sort of abatement activity and then they took tests and it met some sort of standard that's going to be determined was it a safe standard in 1995. They did the test, they did these cleanings, and that test only, if you have testimony that that test only lasts for three days and everyone knew that –

* * *

> [COUNSEL FOR JONES]: We have a published study on that from Kennedy Krieger in 1983, yes.
>
> * * *
>
> [THE COURT]: Well that's not, this isn't a post study article.
>
> [COUNSEL FOR JONES]: No, . . . you're asking me if we had evidence of that and I said we do have that. . . .[The post-study articles] shows it still, in 1998 when we rounded up all the data from the TLC [Study], it still doesn't work. . . .
>
> [THE COURT]: [B]ut if it worked in this house, then they meet the standard of care.
>
> * * *
>
> [W]hatever was within Kennedy Krieger's knowledge as of the date, as of the time that their abatement activity occurred in this case, that may be relevant. But certainly some conclusions of studies three years later, I'm not going to find that that's relevant and I'm not going to admit that.

We agree with the trial court that the post-study articles were irrelevant to show: (1) that Jones was injured as a result of inadequate cleaning measures; (2) that the cleaning was not a benefit to Jones; (3) and the scope of KKI's duty to Jones based on their knowledge of the experimental nature of the TLC Study's environmental component.

When a relevancy decision turns on a question of law, we review the trial court's determination *de novo*. *Ruffin Hotel Corp. of Maryland v. Gasper*, 418 Md. 594, 619-20 (2011). If the relevancy determination instead hinges on whether the evidence tends to establish the fact it is offered to prove, we review under an abuse of discretion standard. *Id*. ("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") (internal quotation marks omitted). A relevancy assessment in this situation "is not susceptible to precise definition," but "it has been suggested that the answer must lie in the judge's own experience, his general knowledge, and his understanding of human conduct or motivation. Evidence which is thus not probative of the proposition at which it is directed is deemed irrelevant." Joseph F. Murphy, Maryland Evidence Handbook 177 (4th ed. 2010). Therefore, when the relevancy determination centers on the interrelationship between a fact and the principle that it seeks to establish, we give deference to the trial court to judge the facts and evidence in light of the matter before them.

First, we review the trial court's determination that the post-study articles lacked probative value to show that Jones suffered lead-poisoning as a result of inadequate cleaning measures under the abuse of discretion standard. Jones needed to demonstrate that the cleanings did not work in *his* home to establish causation. *See*, *e.g.*, *Hamilton v. Kirson*, 439 Md. 501, 529-30 (2014), *reconsideration denied* (Aug. 27, 2014) ("To connect the dots between a defendant's property and a plaintiff's exposure to lead, the plaintiff must tender facts admissible in evidence that, if believed, establish two separate inferences: (1) that the property contained lead-based paint, and (2) that the lead-based paint at the subject property was a substantial contributor to the victim's exposure to lead"). We agree with the trial court that aggregate data is not probative of showing that failed cleaning measures in Jones's home caused his lead-related injuries. In fact, evidence introduced at

trial demonstrated that after KKI performed the clean of Jones's Barclay Street property, the lead levels were below Maryland abatement clearance levels in effect at that time. Additionally, the articles were unable to account for whether or not the parents were adequately providing the recommended, ongoing cleaning interventions. We perceive no error in the trial court's conclusion that the post-study documents were not probative of causation in Jones's specific case.

Second, we review the trial court's determination that the articles were not probative to show whether the cleaning was a benefit to Jones for abuse of discretion. We hold that the trial court properly determined that Jones needed to demonstrate that the KKI's professional cleaning measures were ineffective in his home. The aggregate conclusions detailed in the post-study articles are inconclusive to determine whether the cleanings worked in Jones's home, and accordingly whether he received a benefit from them. Additionally, even if we were to review under the more stringent *de novo* standard, we would still affirm. As we explained in *White*, we have held as a matter of law that the TLC Study provided several salient benefits to all participants, and was therefore therapeutic in nature. *White*, No. 1015 Sept. Term 2013, 2015 WL 808544, at *12. Therefore, to the extent that the question of whether the TLC Study provided a benefit to Jones is a legal one, we hold that it did. Therefore, we hold that on this basis, the articles were legally irrelevant.

Third, we review the trial court's legal conclusion that the post-study articles were irrelevant to establish the scope of the researcher's duty under Grimes *de novo*, as it pertains to a conclusion of law, and affirm. The "experimental" environmental component of the

TLC Study was to determine if measures less than full abatement would be efficient in lowering lead dust levels in low-income housing stock. As we explained in *White*, the duty to warn as outlined in *Grimes* is not as absolute as Jones suggests. In *White* we explained that:

> The duty to warn identified by White . . . is discussed by the principal *Grimes* opinion in *dicta*, and within the limited context of a factual finding that a special duty may be created when a researcher is in a superior position to identify risks. To this point, the *Grimes* court explained:
>
> > A special relationship giving rise to duties, the breach of which might constitute negligence, *might also arise* because generally, the investigators are in a better position to anticipate, discover, and understand the potential risks to the health of their subjects....
> >
> > This duty requires the protection of the research subjects from unreasonable harm and requires the researcher to completely and promptly inform the subjects of potential hazards existing from time to time.
>
> *Grimes*, 366 Md. at 102, 782 A.2d 807 (emphasis supplied). Thus, at most, pre-reconsideration *Grimes* stood for the proposition that in certain circumstances, a duty *may* exist between the researcher and research subject.

White, No. 1015 Sept. Term 2013, 2015 WL 808544, at *11. Jones sought to introduce the post-study articles to establish that the environmental component of the TLC Study was experimental, and therefore KKI owed a duty to warn of any foreseeable risks. However, the experimental nature of the environmental component was not contested by the parties, and was even referenced in the informed consent documents. KKI expressly told parents that "We *believe* [that study participants'] homes will have *less lead* in them sooner than if

they were not in the study." To the extent that Jones wanted to use the post-study articles to prove that the environmental component of the TLC Study was an experiment, it was irrelevant because that was not at issue. To the extent that Jones wanted to use the post-study articles to establish KKI's duty under *Grimes*, he could not because *Grimes* did not define what that duty is. We hold that the post-study articles were irrelevant as pertaining to establish KKI's duty to warn and, thus, affirm their exclusion. For all these reasons, the trial court did not abuse its discretion by excluding the post-study articles.

2. Scope of Cross-Examination

Lastly, Jones argues that the trial court erred when it did not permit Jones to cross-examine KKI expert witness, Dr. Jacobs, on the conclusions of the post-study articles. Dr. Jacobs testified on behalf of KKI that the professional cleanings performed by KKI at both of Jones's homes reduced the lead dust levels to below Maryland lead clearance standards. On direct examination, Dr. Jacobs was referred to pre-study articles introduced by Jones and admitted by the trial court:

> [COUNSEL FOR KKI]: Did you review the articles that Dr. Seibert [expert witness for Jones] testified about in terms of the effectiveness of the cleaning?
>
> [DR. JACOBS]: Yes, I did.
>
> [COUNSEL FOR KKI]: Okay. Do you have an opinion to a reasonable degree of scientific certainty based on your training and experience as to the effectiveness of cleaning?

> [DR. JACOBS]: Yes, I've known about these articles for quite some time. The first one, the 1983 article . . . showed that blood lead levels in children whose houses were cleaned went down. So it worked. The 1994 article . . . showed that with cleaning dust lead levels would stay low for six to nine months. . . .
>
> * * *
>
> [COUNSEL FOR KKI]: So in the 1995 to 1999 time frame was cleaning an effective way to reduce lead dust levels?
>
> [DR. JACOBS]: Yes, it still is. Cleaning works, the evidence clearly shows that cleaning does reduce lead dust levels dramatically. As long as it's done properly.

On cross-examination, Jones attempted to impeach Dr. Jacobs with the conclusions of the post-study documents that demonstrated that professional cleaning alone was not a long-term solution for permanently reducing lead exposure in the home. The trial court found that Dr. Jacob's testimony was limited to the pre-study articles, and therefore did not allow cross-examination based on the post-study articles.

We review a trial court's supervision of cross-examination for abuse of discretion. *Ware v. State*, 360 Md. 650, 684 (2000). Our review of the record indicates that the scope of the direct examination was limited to the articles that were published before the TLC Study—articles that were already admitted into evidence. Indeed, this is what the trial court also concluded:

> [THE COURT]: Well, as I said, the way I interpreted Dr. Jacob's testimony is he's talking about in 1995 what was the state of knowledge about these particular things. [Counsel for Jones] introduced. . . . I think it's perfectly probative, perfectly relevant, you can go into it. But when you start talking about . . . what they learned three years later, I don't think that . . . is relevant.

We agree with the trial court, the scope of the direct examination was limited to pre-study articles, and we perceive no abuse of discretion in the trial court's determination that Dr. Jacobs did not open the door for the post-study articles. Therefore, we affirm.

CONCLUSION

For the foregoing reasons, the judgments of the Circuit Court for Baltimore City are affirmed.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.