

IN THE COURT OF APPEALS OF MARYLAND

NO. 98

SEPTEMBER TERM, 1995

NORTH RIVER INSURANCE COMPANY
AND
UNITED STATES FIRE INSURANCE
COMPANY et al.

v.

MAYOR AND CITY COUNCIL OF BALTIMORE

Eldridge
Rodowsky
Chasanow
Karwacki
Bell
Raker
McAuliffe, John F. (Retired,
specially assigned)

JJ.

DISSENTING OPINION BY BELL, J.

FILED: August 1, 1996

Rather than the meaning and application of the Maryland discovery rules, at issue on this appeal are the facts of the case and the proper interpretation of the opinion filed by the Circuit Court for Baltimore City in conjunction with the default judgment it entered against the garnishees, North River Insurance Company and United States Fire Insurance Company. Although recognizing that "determining whether sanctions should be imposed, and if so, determining what sanction is appropriate involves a very broad discretion that is to be exercised by the trial courts, "which will be disturbed on appellate review only if there is an abuse of discretion," North River Insurance Co. v. United States Fire Insurance Company, ___ Md. ___, ___, ___ A.2d ___, ___ (1996) [slip op. at 13], the majority proceeds to construe the trial court's opinion strictly . Indeed, the only matters it considers as being properly available and usable in support of that decision are those that the opinion specifically mentions; it refuses to consider even those arguments the City made to the trial court in support of the default judgment on the theory that, to do otherwise would be to itself exercise the discretion reserved to the trial court. Id. I do not so narrowly view the trial court's opinion. In fact, I take the trial court at its word, as I believe the law requires appellate courts to do.

The reason the trial court granted the City's motion for default judgment is quite clear. It was because the court construed the garnishees' "failure of discovery [to amount] to a

`stall,'" to be the result of their effort to delay or avoid providing discovery. That is made obvious by the court's observations, under the "Discussion" section of its opinion, that the garnishees had, "to date failed to provide the City with some 18 answers to [the City's first set of] interrogatories" and that "[w]hen this court directed Garnishees to produce withheld documents for in camera review, a substantial number of documents were not included in the material produced." Confirmation is found in its comments concerning the garnishees' response to the City's second and third sets of discovery:

The City filed a second set of discovery to which Garnishees responded by moving for a protective order. Garnishees' motion was denied, as was their motion for reconsideration of that denial. Rather than answer interrogatories and produce documents requested, Garnishees informed hundreds of their policyholders that documents were being sought in the instant litigation; the effect of this was to invite further motions for protective orders. Additionally, several responses are still out-standing with respect to the Plaintiff's third request for production of documents.

If that were not enough, the court's concluding paragraph leaves absolutely no doubt:

It is clear that despite repeated efforts by this court to resolve disputes and facilitate discovery, Garnishees are more interested in slowing the proceedings than defending their case. Garnishees's recalcitrant behavior is typified by their soliciting the intervention of policyholders in an effort to forestall production of documents--after Garnishees' two failed attempts to obtain protective orders. Furthermore, Plaintiff's Motion for Sanctions has been held sub curia for well over a month without any further production by

Garnishees. (Emphasis added; footnote deleted).¹

While purporting to give the trial court the appropriate deference with respect to discovery rulings, its narrow interpretation of the opinion enables the majority to achieve a result it finds more acceptable. In so doing, however, it severely undercuts the trial court's ability definitively and effectively to administer and control discovery, as the Maryland Rules contemplate.

The rules governing discovery in civil cases in the circuit courts of this State are codified in Title 2, Chapter 400 of the Maryland Rules of Practice and Procedure. They are comprehensive and they are well-conceived, having been developed and refined over many years. It is well settled that one of the fundamental and principal objectives of the discovery rules is to require a party litigant fully to disclose all of the facts to all adversaries and, thereby, eliminate, as far as possible, the necessity of any party to litigation going to trial in a confused or muddled state of mind concerning the facts that gave rise to the litigation. See Berrain v. Katzen, 331 Md. 693, 697, 629 A.2d 707, 708 (1993); Androutsos v. Fairfax Hospital, 323 Md. 634, 638, 594 A.2d 574, 576 (1991);

¹ The footnote commented on a theme that the garnishees have consistently sounded throughout these proceedings-- that the trial court did not "order" the discovery for the failure of which they were sanctioned, rather it simply "directed" or "suggested" that certain steps be taken or information disclosed. Needless to say, I agree entirely, and I believe even a cursory reading of the record will confirm, that the court passed discovery "orders," which it expected the garnishees to obey.

Public Service Comm'n v. Patuxent Valley Conservation League, 300 Md. 200, 216, 477 A.2d 759, 767 (1984); Kelch v. Mass Transit Administration, 287 Md. 223, 229-30, 411 A.2d 449, 453 (1980); Klein v. Weiss, 284 Md. 36, 55, 395 A.2d 126, 137 (1978); Mason v. Wolfing, 265 Md. 234, 236, 288 A.2d 880, 881 (1972); Williams v. Moran, 248 Md. 279, 291, 236 A.2d 274, 281-82 (1967); Pfeiffer v. State Farm Mut. Auto. Ins. Co., 247 Md. 56, 60-61, 230 A.2d 87, 90 (1967); Caton Ridge, Inc. v. Bonnett, 245 Md. 268, 276, 225 A.2d 853, 857 (1967); Miller v. Talbott, 239 Md. 382, 387-88, 211 A.2d 741, 744-45 (1965); Guerriero v. Friendly Finance Corp., 230 Md. 217, 222-23, 186 A.2d 881, 884 (1962). It is not surprising, therefore, "that they are broad and comprehensive in scope, and were deliberately designed to be so." Balto. Transit v. Mezzanotti, 227 Md. 8, 13, 174 A.2d 768, 771 (1961). See Maryland Rule 2-402(a), which provides:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(a) Generally. - A party may obtain discovery regarding any matter, not privileged, including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter, if the matter sought is relevant to the subject matter involved in the action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. It is not ground for objection that the information sought is already known to or otherwise obtainable by the party seeking discovery or that the

information will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. An interrogatory or deposition question otherwise proper is not objectionable merely because the response involves an opinion or contention that relates to fact or the application of law to fact.

Pertinent to this case, subsection (b) makes specifically discoverable "any insurance agreement under which any person carrying on an insurance business might be liable to satisfy part or all of a judgment that might be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment."

Moreover, because "the sound and expeditious administration of justice" is served when all parties are aware of and acknowledge all "relevant, pertinent, and non-privileged facts, or the knowledge of the whereabouts of such facts" and are able thereby to prepare their cases properly and efficiently, the discovery rules are intended to be liberally construed. Mezzanotti, 227 Md. at 13, 174 A.2d at 771. But the existence of comprehensive discovery rules is essentially meaningless without some enforcement mechanism. Therefore, our discovery scheme has incorporated a rule, 2-433, prescribing sanctions for non-compliance. Providing, as relevant:

(a) For Certain Failures of Discovery. - Upon a motion filed under Rule 2-432 (a), the court, if it finds a failure of discovery, may enter such orders in regard to the failure as are just, including one or more of the following:

(1) An order that the matters sought to be discovered, or any other designated facts shall be taken to be established for the

purpose of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

(3) An order striking out pleadings or parts thereof, or staying further proceeding until the discovery is provided, or dismissing the action or any part thereof, or entering a judgment by default that includes a determination as to liability and all relief sought by the moving party against the failing party if the court is satisfied that it has personal jurisdiction over that party. If, in order to enable the court to enter default judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court may rely on affidavits, conduct hearings or order references as appropriate, and, if requested, shall preserve to the plaintiff the right of trial by jury.

Instead of any order or in addition thereto, the court, after opportunity for hearing, shall require the failing party or the attorney advising the failure to act or both of them to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(b) For Failure to Comply with Order Compelling Discovery. - If a person fails to obey an order compelling discovery, the court, upon motion of a party and reasonable notice to other parties and all persons affected, may enter such orders in regard to the failure as are just, including one or more of the orders set forth in section (a) of this Rule. If justice cannot otherwise be achieved, the court may enter an order in compliance with Rule P4 treating the failure to obey the order as a contempt,

this Court has commented, albeit referring to a predecessor rule,

that the prescribed sanctions are also comprehensive and adequate to insure that the parties to litigation comply with the discovery rules. See Kelch, 287 Md. at 229, 411 A.2d at 453 ; Klein, 284 Md. at 55, 395 A.2d at 137; Broadwater v. Arch, 267 Md. 329, 335-36, 297 A.2d 671, 674 (1972).

In that regard, the primary focus of the discovery scheme-- the critical actor in the resolution of discovery disputes-- is the trial judge. Mezzanotti, 227 Md. at 13-14, 174 A.2d at 771. It is the trial judge to whom is entrusted the responsibility of administering the discovery rules and in whom is vested a large measure of discretion, to be exercised soundly and reasonably, in applying sanctions for failure to adhere to those rules. Id. The court's exercise of its discretion in that regard will not be disturbed on appeal in the absence of a clear showing that it was abused. This is true even when the court imposes the ultimate sanction, dismissal of the case or the entry of a default judgment. Broadwater, 267 Md. at 336, 297 A.2d at 674; Mason, 265 Md. at 236-37, 288 A.2d at 882; Evans v. Howard, 256 Md. 155, 161, 259 A.2d 528, 531 (1969); Lynch v. R. E. Tull & Sons, Inc., 251 Md. 260, 261, 247 A.2d 286, 287 (1967); Pappalardo v. Lloyd, 250 Md. 121, 124, 242 A.2d 145, 147 (1967); Pfeiffer v. State Farm, 247 Md. 56, 60-61, 230 A.2d 87, 90 (1966); Peck v. Toronto, 246 Md. 268, 270, 228 A.2d 252, 254 (1966), cert. denied, 389 U.S. 868, 88 S.Ct. 139, 19 L.Ed.2d 142 (1967); Miller, 239 Md. at 388, 211 A.2d at 745; Guerriero, 230 Md. at 221, 186 A.2d at 883; Mezzanotti, 227 Md. at

20-21, 174 A.2d at 775.

Historically, the rule had been that a default judgment was properly entered only when the failure of discovery was willful or contumacious. Lynch, 251 Md. at 261, 247 A.2d at 254 (citing Peck, 246 Md. at 270, 228 A.2d at 254)); Smith v. Potomac Electric, 236 Md. 51, 62, 202 A.2d 604, 610 (1963). That no longer is the case. It is now well-settled that, consistent with the notion that the decision to impose sanctions is within its sound discretion, the power of trial courts to impose sanctions is not dependent upon any requirement that they find that the defaulting party acted willfully or contumaciously. Lynch, 251 Md. at 261, 247 A.2d at 287; Billman v. State of Maryland Deposit Insurance Fund Corporation, et al., 86 Md. App. 1, 12, 585 A.2d 238, 243-44 (1991); State Farm Mutual Automobile Insurance Company v. Schlossberg, 82 Md. App. 45, 61, 570 A.2d 328, 336 (1990) cert. denied, 304 Md. 296, 498 A.2d 1183 (1985); Berkson v. Berryman, 63 Md. App. 134, 142, 492 A.2d 338, 342-43 (1985); Rubin v. Gray, 35 Md. App. 399, 400 370 A.2d 600, 601 (1977). A trial court that imposes the ultimate sanction does not necessarily abuse its discretion even though other, less severe or burdensome alternatives may have been available. As the Court Of Special Appeals observed in Rubin, supra, "[t]he authority to impose this 'gravest of sanctions' . . . is not limited to wilful or contemptuous failures to answer [interrogatories], but may be imposed for a deliberate attempt to hinder or prevent effective

presentation of defenses or counterclaims, or for stalling in revealing one's own weak claim or defense." 35 Md. App. at 400, 370 A.2d at 601.

Judicial discretion was defined in Saltzgaver v. Saltzgaver, 182 Md. 624, 635, 35 A.2d 810, 815 (1944) (quoting Bowers' Judicial Discretion of Trial Courts par. 10) as "that power of decision exercised to the necessary end of awarding justice and based upon reason and law, but for which decision there is no special governing statute or rule." Further commenting on its nature, the Court stated

"it is obvious that if a special statute prescribed a decision, there is, in all instances coming within its purview, a restraint upon the judge which precludes the exercise of a discretion by him; for the very word 'discretion' implies the absence of restraint. This statement is only apparently at variance with the oft-quoted statement of Lord Mansfield that: 'Discretion, when applied by a court of justice, means sound discretion guided by law.'"

Id.

Maryland Rule 2-433 does "govern" the situation in which the trial court decides to sanction a party for failing to disclose discoverable information; however, it does not, nor does it purport to, do more than to provide the court with various options that are available to it. Indeed, when faced with the various alternative sanctions prescribed and the task of selecting the "appropriate" one, a trial court clearly is required to consider every aspect of the case before choosing a remedy. In other words, consideration

of the facts and circumstances unique to the case under review, along with the various available options, do not preordain a single required, or even permissible, result; there is no hard and fast rule. Discretion thus signifies choice and choice is the very antithesis of a hard and fast rule.

Necessarily, when there is no hard and fast rule governing the situation, in arriving at a decision, the trial judge must exercise his or her judicial discretion. The decision he or she makes, in turn, is reviewed for the soundness and reasonableness with which the discretion was exercised. In making that evaluation, the reviewing court must defer to the trial court. The necessity for doing so is inherent in the very nature of judicial discretion. The exercise of judicial discretion ordinarily involves making a series of judgment calls, not simply the ultimate one, but also those on which the ultimate one depends. Where it is alleged that there has been a failure of discovery, in exercising its discretion and as a predicate to determining the propriety of imposing a sanction and, if so, which one, the trial court must find facts. Until it has determined what the significance of the offending party's actions is and their impact under the circumstances, the court is not in a position to make any decision concerning sanctions. Because it will not have defined, and, so, will not have explored the available choices, the court simply could not exercise any discretion.

We have long recognized in this State, consistent with the

weight of authority throughout this country, see, e.g., Fletcher v. Fletcher, 526 N.W.2d 889, 897 n.11 (Mich. 1994); Nixon v. Blackwell, 626 A.2d 1366, 1378 (Del. 1993); People v. Cox, 809 P.2d 351, 364 (Cal. 3d 1991); Speed v. Delibero, 575 A.2d 1021, 1024 (Conn. 1990); Dixon v. U.S., 565 A.2d 72 (D.C. 1989), that the trial court is in the best position to make findings of fact. Therefore, this Court has consistently held that the findings of fact made by trial courts are entitled to great deference. E.g., Riddick v. State, 319 Md. 180, 183, 571 A.2d 1239, 1240 (1990); McAvoy v. State, 314 Md. 509, 514-15, 551 A.2d 875, 877 (1989); In Re Anthony F, 293 Md. 146, 152, 442 A.2d 975, 979 1982); Parker v. State, 6 Md. App. 1, 10-11, 502 A.2d 510, 515, cert. denied, 306 Md. 70, 507 A.2d 184 (1986). Not only will the trial court have seen and heard the testimony, where appropriate, or the arguments or explanations of counsel, as in this case, important considerations in fact-finding, certainly, see Maryland Rule 8-131(c)², but it will have lived with the case for a period of time, in the process getting to know the issues, counsel, and, sometimes,

² Maryland Rule 8-131(c) provides:

(c) Action Tried Without a Jury. - When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

the parties, up close and personal. Except that its focus is on whether the trial court in that case abused its discretion when it denied a motion for mistrial, what I said, in dissent, in Medical Mutual Liab. Ins. Soc'y v. Evans, 330 Md. 1, 34-35, 622 A.2d 103, 119 (1993) (Bell, J., dissenting), is most pertinent:

Additionally, a judge's presence at the trial, conducting it, with his or her "finger on the pulse" of the situation, Brooks [v. Daly], 242 Md. [185], 197, 218 A.2d [184], 191 [(1965)], renders him or her the logical and, indeed, the best person to evaluate the existence of prejudice. [State v. Hawkins, 326 Md. [270], 278, 604 A.2d [489], 493 [(1992)]]. Having lived with the case, the trial judge views the situation in three dimension, up close and personal, not from a cold record; thus, having closely observed the entire trial, he or she is able to appreciate "nuances, inflections and impressions never to be gained from a cold record," Buck v. Cam's Broadloom Rugs, Inc., 328 Md. 51, 59, 612 A.2d 1294, 1298 (1992), not to mention being able to assess, firsthand, the demeanor of the witnesses as well as the reaction of the jurors and counsel to those witnesses and to the evidence as it is adduced.

I recognize that in a discovery situation, it may be the court's assessment or perception of the circumstances, rather than, in a strict sense, its fact-finding that is critical. Nevertheless, as in a trial, with respect to fact finding, in the discovery situation where the court may not be required to make explicit findings of fact, the court's assessment or perception of the circumstances surrounding an alleged discovery violation is intimately intertwined with the court's exercise of discretion. Consequently, the same deference accorded the trial court's fact-findings in a trial must be given the trial court's assessment of the circumstance surrounding a discovery situation. Of course,

when the court makes findings of fact, implicitly or explicitly, concerning discovery, the situations are identical.

Moreover, as is the case with respect to the conduct of a trial, including admission of evidence, Crawford v. State, 285 Md. 431, 451, 404 A.2d 244, 254 (1979), the conduct of discovery proceedings, including holding hearings on motions to compel discovery or to sanction discovery violations, is directed to the considerable discretion of the trial court. In that regard, and clearly relevant to whether there has been an abuse of discretion is a proposition that is of some considerable significance in our jurisprudence, State v. Babb, 258 Md. 547, 550, 267 A.2d 190, 192 (1970), that judges are presumed to be "men [and women] of discernment, learned and experienced in the law and capable of evaluating the materiality of evidence." Id. They are presumed, furthermore, to know the law and lawfully and correctly to apply it. Smith v. State, 306 Md. 1, 7-8, 506 A.2d 1165, 1168 (1986) (citing Hebb v. State, 31 Md. App. 493, 499, 356 A.2d 583, 587 (1976)).

In this case, we are not left to speculate with regard to how the trial court assessed or perceived the circumstances surrounding the various failures of discovery that the City alleged. The record is quite clear in that regard-- the court believed and, therefore, found that the garnishees were engaged in a stall, that they were intent upon avoiding, or, if that were not possible, in delaying as long as possible the disclosure of requested

information. That is the sum and substance of the court's opinion. Indeed, in that opinion, there is a statement that says almost precisely that. As we have seen, the court wrote: "It is clear that despite repeated efforts to resolve disputes and facilitate discovery, Garnishees are more interested in slowing the proceedings than defending their case." Moreover, the court cited Rubin v. Gray, supra, for the proposition that a default judgment is an appropriate sanction for stalling discovery. At the same time, the court did not purport to enumerate exhaustively the bases for that conclusion; it simply sought to provide examples. Thus, the court spoke of conduct that "typified" the "recalcitrant behavior". There simply is nothing in the trial court's opinion to suggest, or that could be read as indicating, that only that conduct of the garnishees to which the opinion explicitly referred, constituted the sole basis for its decision. What comes through clearly and forcefully when the opinion is read objectively, even if not deferentially, is that the court found the garnishees to be engaging in dilatory conduct for the purpose of "stalling" discovery.

Significantly, the court's opinion does not rely on any particular failure of discovery as being dispositive of the City's entitlement to a default judgment. That no particular failure of discovery was relied upon is confirmed by the record. The transcript of each of the proceedings at which the issue of the garnishees' failure or delay of discovery was raised, the City

detailed, and urged the court to consider, as a basis for granting the requested relief, each and every instance in which such a failure or delay had occurred. The City relied on instances when the discovery was supplied late; arguing that it was not enough that discovery had eventually been made late, its timing, the City argued, was also important. Timing was also important to the court, as is evident from the manner in which it viewed the "61 missing pages." Although it is clear that they were eventually supplied,³ when they were supplied was critical to the court's

³ The majority states that its tracing of the 61 missing documents revealed that some of them, including the McHugh memorandum of November 7, 1983, upon which the City placed heavy reliance as critically affecting the garnishees' defenses, had been timely submitted--that it "was in the box of claimed privileged documents delivered ... in July 1994 and was erroneously considered to be a 'missing' document, leading to the delivery of a second copy by OKG&S's paralegal in September 1994, with the result that the City introduced both copies into evidence in January 1995." ___ Md. ___, ___, ___ A.2d ___, ___(1996)[slip op.at 28-29]. My review of the parts of the record on which the majority relies leads me to conclude that the only thing clear about those parts of the record is that they are at best ambiguous. The trial judge, on the other hand, clearly and unambiguously stated that he found those pages missing. I believe that we must infer from his statement that he reviewed the documents submitted to him. Furthermore, that the documents were missing was confirmed by a law clerk, who, it seems logically also would have checked. Under these circumstances, it simply is not appropriate to disbelieve the trial judge, on the basis of an ambiguous record. Moreover, to do so is to fail to give the trial judge the deference to which he is entitled.

Nor am I persuaded by the majority's observation that the trial court "made no finding that the description [of those pages of which the McHugh memorandum was a part] in the privilege log, considered in and of itself, was intended to deceive," id., or its explanation as to why the description was not misleading. First, the trial court was not required to make such an explicit finding; it is enough if it makes an implicit one. From the totality of the circumstances, it is clear that to make an

analysis; their not having been supplied when ordered was further evidence to the court of the garnishees' dilatoriness.

There is ample support in the record for the court's findings and conclusions. As previously indicated, the court had lived with this case, was intimately acquainted with the discovery issues, with which it had frequently and painstakingly dealt, and had more than a passing acquaintance with counsel, who had themselves been active participants in the process since the garnishment action had been instituted, some even longer. Consequently the court had its finger on the pulse of the case, being able to see and hear counsel as they argued their respective positions; it was in the best position of anyone to assess the progress of discovery and the sincerity with which it was being conducted. It is obvious, given the judgment it rendered, the opinion it filed, and the comments it made at the various hearings, especially those after July 1994, that the court did not believe that the garnishees were sincerely engaged in discovery. And I do not believe that there is any basis

implicit finding that the description was misleading is precisely what the court did. The court need not, and, indeed, apparently did not, accept that the mislabeling was inadvertent. It was free to, and I submit, did, accept the City's concealment argument. Second, from the fact that the description was not entirely accurate and, in fact, with respect to the McHugh memorandum, was totally inaccurate, it is neither surprising nor illogical that one would argue, or that the court would accept, that the purpose of so labeling the documents was to deceive.

Finally, the majority rejects the trial court's conclusion that the 61 missing pages were relevant. In so doing, it once again fails to defer to the discretion of the trial court, substituting its judgment instead.

on which this Court can conclude that the trial court abused its discretion in that regard.

The majority asserts that "[a] right for the wrong reason' rationale does not apply to the imposition of discovery sanctions as presented in the instant matter, because that rationale would have the appellate court exercising its discretion in the first instance." North River Insurance Co., ___ Md. at ___, ___ A.2d at ___, [slip op. at 13]. I agree, generally, that an appellate court is not required to search the record for reasons to uphold the trial court's decision; however, I also believe that we should fairly and accurately evaluate the trial court's exercise of discretion. We cannot do that if we fail to read the court's opinion accurately. When the language and the context of the opinion do not indicate that it should be so construed, we should not view the court's opinion as setting forth every reason on which it relied for its determination that the garnishees' actions evidenced an intent to frustrate the discovery process. It is a well-settled principle of law that "trial judges are not obliged to spell out in words every thought and step of logic." Beales v. State, 329 Md. 263, 273, 619 A.2d 105, 110 (1993); See also Jackson v. State, 340 Md. 705, 717, 668 A.2d 8, 14 (1995); Whittlesey v. State, 340 Md. 30, 48, 665 A.2d 223, 230 (1995); Coviello v. Coviello, 91 Md. App. 638, 659, 605 A.2d 661, 671 (1992); Compolattaro v. Compolattaro, 66 Md. App. 68, 77, 502 A.2d 1068, 1073 (1986); Kirsner v. Edelman, 65 Md. App. 185, 196 n.9, 499

A.2d 1313, 1319 n.9 (1985) ("[A] judge is presumed to know the law, and thus is not required to set out in intimate detail each and every step of his or her thought process."); Zorich v. Zorich, 63 Md. App. 710, 717, 493 A.2d 1096, 1099 (1985) ("Because trial judges are presumed to know the law, (citation omitted), not every step in their thought process needs to be explicitly spelled out."); Bangs v. Bangs, 59 Md. App. 350, 370, 475 A.2d 1214, 1224 (1984) ("A chancellor is not required to articulate every step in his thought processes.").

With this caveat regarding the exercise of judicial discretion in mind, our review of the bases for the trial court's discovery decisions should encompass not only those reasons the court set forth in its opinion, but also all of the other reasons that may appear in the record, which, given the circumstances, may have contributed to the court's determination on that issue; support for the court's decision should not be sought only from the four corners of the court's opinion where, as here, the court did not purport to so limit the reasons for its decision.⁴ Thus, the

⁴ As the majority sees it, matters not mentioned in the trial court's opinion were not matters on which the trial court relied in deciding to sanction the garnishees. I have previously expressed my disagreement with that approach; it is much too narrow a reading of the court's opinion. More to the point, however, it is a total disregard of the plain words of that opinion. It could not be clearer that the court was concerned with the garnishees' dilatoriness. An effective means of delaying disclosure of discoverable information is to delay already scheduled depositions. The City asked the court, in argument, so to interpret the garnishees' actions in that regard. Giving appropriate deference to the court's decision and, since

incidents which the City alleged evidenced garnishees' intent to stall discovery, including those relating to the scheduling of the depositions of some of the garnishees' employees or witnesses,⁵ should have been considered. The record of the discovery proceedings reflects that the court addressed the discovery issues as they arose. The City not only apprised the court of the problems, but it offered them as bases for sanctioning the garnishees. The court was also aware of each time that the garnishees failed to furnish discovery after they had been ordered

judges are presumed to know and correctly apply the law, we must assume that the court accepted its argument.

⁵ Even though they are not expressly set forth in the trial court's discovery opinion as one of the bases for its imposition of sanctions against the garnishees, the specific assertions, regarding the garnishees' deposition misconduct which call into question whether the garnishees complied with discovery in good faith are set forth in the City's Motion for Sanctions, filed August 27, 1994. Specifically, Mr. Bowley, an Environmental Claims Supervisor, was initially scheduled for deposition on a specified date. Shortly before that date, the deposition was cancelled by the garnishees because of his alleged unavailability. At his rescheduled deposition, however, Bowley stated that he had been available on the preceding date. Corporate designee Roger Quigley, similarly was scheduled for deposition, but, just prior to the date agreed upon, it was cancelled because he was very busy. In actuality, as Quigley later testified, he had retired in 1993, and other than testifying once a month for Crum & Foster, had done no other work since that time.

Even though these incidents were not explicitly mentioned in the court's opinion they no doubt were considerations which played a part in the court's decision to impose sanctions against the garnishees. As we have seen, the court was not required to set forth, exhaustively every incident contributing to its decision. Therefore, in this case, this Court must consider not only those reasons set forth in the court's opinion, but also those facts, as can be discerned from the record, upon which the court is presumed to have properly relied.

to do so. In addition, it certainly knew the reasons the garnishees gave for those defaults. It was not required to accept the garnishees' explanations. In fact, the court could have, as it no doubt did, consider the frequency of the failures, along with the similarity of the explanations given to justify them, in deciding what credibility to give them.

In conclusion, there is much in the majority opinion that I find troubling.⁶ The biggest problem with it is its approach.

⁶In addition to everything else, the majority substitutes its judgment for that of the trial judge, while purporting and protesting that it is not. I have already mentioned one instance in which this has occurred. See note 3. Two other examples further elucidate this point. One of the reasons the majority concludes that the trial court abused its discretion in ordering the phase two discovery was because:

[T]he requested discovery would be only contingently and marginally relevant under the Maryland law concerning the interpretation of written contracts. ... Thus, although the trial court had discretion to allow discovery to proceed before deciding whether the policy language was ambiguous, proceeding in that fashion was inefficient. If the court decided that the exclusion was facially ambiguous, and if garnishees sought to prove lack of ambiguity factually, the scope of the City's discovery would have been limited to matters relevant to the facts relied upon by the garnishees.

North River Ins. Co., ___ Md. at ___, ___ A.2d at ___ [slip op. at 37]. While recognizing the court's discretion to proceed as it did, the majority nevertheless finds that proceeding in that manner contributed to the court's abuse of discretion. In so doing, it loses sight of a point that is both well settled and elementary: "The discovery contemplated by our rules is designed to permit inquiry into the facts underlying an opponent's case as well as to bolster one's own") Barnes v. Lednum, 197 Md. 398, 79 A.2d 520, 524 (1951). Moreover, I am not at all sure that the court did not resolve the ambiguity issue in the City's favor. Certainly, as the City argues, persuasively to me, this Court seems itself to have resolved the issue in its favor also. See

The majority does not take the trial court at its word. Notwithstanding the court's viewing the case as one deserving of the imposition of a sanction due to intentional and deliberate delay, rather than a complete failure of discovery, the majority inclines toward the latter view. In addition, instead of looking at the totality of the circumstances, as the trial court did, the majority focuses solely on those actions mentioned in the court's opinion and treats each as a separate issue. Rather than according the trial court even a modicum of the deference it deserves, the majority, in effect, does just the opposite. By reading the court's opinion as narrowly as possible, it puts the worst possible face on it. Ordinarily, because of the presumption of knowledge, trial courts are given the benefit of any doubt-- only when the record demonstrates that it is not deserved will appellate courts

Sullins v. Allstate Ins. Co., 340 Md. 503, 667 A.2d 617 (1995).

Another reason offered by the majority for concluding that the trial court abused its discretion in connection with the phase two discovery was the majority's belief that the court "seems to have given almost no weight" to affidavits describing the magnitude of the search, which the majority determined to be reasonable on their faces. North River Ins. Co., ___ Md. at ___, ___ A.2d at ___ [slip op. at 37]. What weight a trial judge gives to evidence is quintessentially within the province of the trial court, not the appellate court. Brown v. State, 339 Md. 385, 391, 663 A.2d 583, 589 (1995); Chambers v. State, 337 Md. 44, 47, 650 A.2d 727, 728 (1994). "It is not the function or duty of the appellate court to undertake a review of the record that would amount to, in essence, a retrial of the case." State v. Albrecht, 336 Md 475, 479, 649 A.2d 336, 337 (1994). This is just one more example of the majority failing to pay proper deference to the trial court's special and superior position from which to assess and decide discovery matters.

do otherwise. To read an opinion, which on its face does not even imply that it is, not to mention purport to be, an exhaustive list of each fact contributing to its decision and on which it relied, refusing to draw reasonable and logical inferences, is to give the benefit of the doubt to a party, rather than to the judge. That is particularly the case when, as here, the rule pursuant to which the court acted does not require it so meticulously to explain its rationale,⁷ and, as we have seen, there are many appellate cases explicitly stating that the court need not specify every step in its reasoning process.

Although the critical feature of this case is not that the garnishees failed completely to comply with discovery orders, the court determined nevertheless that there was a complete failure of discovery with respect to "some 18 answers to interrogatories" propounded in phase one discovery as well as several responses to the phase three request for production of documents. Neither the garnishees nor the majority has adequately refuted that determination. That failure of discovery is, as the City points out, by itself sufficient to sustain the trial court's judgment. Lynch, 251 Md. at 261, 247 A.2d at 287; Mezzanotti, 227 Md. at 21, 174 A.2d at 775.

Since I do not believe that the trial court abused its decision in entering default judgment in favor of the City, I would

⁷ Neither Maryland Rule 2-432 nor Maryland Rule 2-433 even addresses the manner or form that the court's ruling must take.

affirm the judgment of the Circuit Court for Baltimore City.