

Circuit Court for Anne Arundel County  
Case No. C-02-FM-21-002809

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND

No. 0476

September Term, 2023

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JOSEPH G. FERKO, III

v.

PATRICIA M. FERKO

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Berger,  
Zic,  
Alpert, Paul E.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Zic, J.

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Filed: June 28, 2024

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises out of a divorce action in the Circuit Court for Anne Arundel County involving Joseph Ferko (“Husband”) and Patricia Ferko (“Wife”). Following a two-day trial, the court entered a judgment of absolute divorce that resolved all issues related to marital property and support. Husband thereafter noted an appeal of that judgment.

In his *pro se*, informal brief, Husband presented three questions for our review. For clarity, we have consolidated, reordered, and rephrased those questions as:<sup>1</sup>

1. Did the hearing court err or abuse its discretion when, as a discovery sanction, it struck Husband’s divorce complaint and precluded Husband from presenting evidence at trial?
2. Did the trial court err in considering or refusing to consider certain evidence at trial?

As to the first question, we hold that the hearing court did not err or abuse its discretion in sanctioning Husband. As to the second question, we hold that Husband’s argument is either waived or unpreserved. Accordingly, we affirm the court’s judgment.

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<sup>1</sup> Husband phrased the questions as:

1. What Documents were falsified by [Wife’s counsel] on 2/14-2/15/23?
2. Why did Joseph Ferko only attend the beginning of the hearing (2/14/23)[?]
3. Why did [the court] react inappropriately on 11/3/22?

## **BACKGROUND**

Husband and Wife were married in 2001. During the marriage, the parties accumulated various assets, most notably, a business that provided supplies for disaster preparation and relief.

On August 12, 2021, Husband filed, in the circuit court, a complaint for limited divorce. Shortly thereafter, Wife filed a counter-complaint for absolute divorce.

On September 22, 2021, Wife filed a notice indicating that Husband had been served with Interrogatories and a Request for Production of Documents. On October 29, 2021, Husband filed a notice indicating that he had responded to Wife’s discovery requests.

### ***Wife’s First Motion to Compel***

On November 10, 2021, Wife filed a Motion to Compel Discovery and Request for Sanctions against Husband. Wife alleged, among other things, that Husband’s discovery responses were inadequate regarding significant marital assets, namely, the parties’ business, and that Husband had rebuffed Wife’s good-faith efforts to obtain the information without court involvement. On December 7, 2021, the court granted Wife’s motion and ordered Husband to “produce full and complete discovery responses within ten (10) days[.]”

### ***Wife’s Second and Third Motions to Compel***

On December 17, 2021, and then again on February 25, 2022, Wife filed additional motions to compel. In those motions, Wife alleged that Husband’s responses

to her requests for interrogatories and the production of documents continued to be deficient.

On March 18, 2022, the court granted both of Wife’s motions. The court ordered Husband to provide full and complete discovery responses by March 27, 2022. The court also ordered that, if any documents requested by Wife were not produced by that date, then Husband would be prohibited from using those documents at trial.

***Wife’s Fourth Motion to Compel***

On August 19, 2022, Wife filed a fourth motion to compel, again claiming that Husband’s discovery responses were deficient. On September 14, 2022, the court granted Wife’s motion and ordered Husband to provide “full and complete supplementation of all discovery responses” within 15 days.

***Wife’s Fifth Motion to Compel and Hearing Court’s Imposition of Sanctions***

On September 30, 2022, Wife filed a fifth motion to compel. On November 3, 2022, a hearing was held on Wife’s motion. At that hearing, Wife proffered that she had been trying to obtain a current valuation of the parties’ business but was unable to because Husband had continually refused to provide updated records. Wife further proffered that Husband had reportedly liquidated a large portion of the business’s assets and had not provided documentation showing those transactions. Wife noted that Husband’s refusal to provide discovery had been a continuing problem throughout the litigation. Wife requested that the court sanction Husband by precluding him from presenting evidence at trial.

Husband refuted Wife’s claims. At the outset of the hearing, Husband alleged that he had recently filed for bankruptcy. Husband argued that his bankruptcy filing should stay the proceedings, which would include the hearing on Wife’s motion for sanctions. When the court asked Husband how his bankruptcy filing would affect the court’s ability to enforce the rules of discovery, Husband gave a non-responsive answer about how the bankruptcy would impact the divorce proceedings and the court’s distribution of marital property. Eventually, Husband addressed the documents, insisting that he had provided “over 3,000 documents” and that he had “never refused to provide any information to” Wife. After another brief tangent about the state of his finances, Husband stated that, at some point during discovery, he had told Wife to contact his attorney, who was in possession of the documents.

The hearing court then asked Husband if he was aware of the discovery order that was entered in May 2022 and, if so, whether he had complied with that order. Husband responded that he was aware of the order. Husband again stated that his attorney had the documents and that Wife “would get them when the bankruptcy was filed.” Husband then engaged in another monologue about how the divorce proceedings were affecting him personally and financially.

Later, Husband claimed that he had recently provided to Wife updated bank records regarding the business. Wife’s counsel acknowledged that Husband had provided those documents, but counsel added that, overall, Husband’s responses to discovery had been seriously deficient. The court then addressed Husband, asking: “Why didn’t you give him everything he’s asked for?” Husband responded: “Your Honor, the attorneys

have all the original documents. I do not have them.” When the court explained that Husband, not his attorney, was responsible for making sure the documents were given to Wife, Husband stated that he tried to get the documents from his attorney and that he was “doing [his] best.”

Ultimately, the hearing court granted Wife’s motion for sanctions. In so doing, the court struck Husband’s complaint for limited divorce. In addition, the court ordered that Husband “shall be prohibited at trial from introducing any testimony or evidence related to the issues of marital property, determination of marital property or ownership of title of real property and/or personal property to include the business[, and] . . . any information relating to alimony or attorney’s fees.”

### ***Trial***

On February 13, 2022, the parties returned to court for the start of the divorce trial. At the beginning of the hearing, before any meaningful proceedings had ensued, Husband asked the trial court if he could “make a statement,” and the court agreed. Husband then engaged in a lengthy diatribe regarding his frustrations with how the case had transpired and how those events had affected him, his finances, and his family. Husband stated that he was “not going through five days of listening to this BS” and that he would “pray upon the [c]ourt to make the decisions that you feel are appropriate and get this done.” Husband concluded his statement by telling the court that “it’s in your hands” and “I hope that you’ll treat me fairly and I don’t want to go any further.”

The court then heard from Wife’s attorney, who provided a response and some additional opening remarks. After several minutes, Husband interrupted, stating that he

would “like to end this now” and would “like to leave.” After the court informed Husband that he was not under subpoena and therefore did not have to participate, Husband reiterated that he wished to leave and that he wanted the court to “take this into your hands and make the divisions appropriately.” Husband then left the courtroom and did not return.

Following Husband’s voluntary exit from the courtroom, the court proceeded with trial, at which Wife presented significant testimonial and documentary evidence related to the parties’ past and present financial circumstances. It does not appear from the record that Husband was present for any portion of the trial, aside from his brief appearance at the start of the first day.

At the conclusion of trial, the court entered judgment granting the parties an absolute divorce, identifying the parties’ marital property, and distributing that property accordingly. The court also ordered Husband to pay Wife alimony and a lump sum for past-due support and attorney’s fees.

This timely appeal followed. Additional facts will be supplied as needed below.

### **MOTION TO DISMISS**

Wife has included, in her appellee brief, a motion to dismiss Husband’s appeal. She contends that Husband’s appeal should be dismissed because the issues raised by Husband were not preserved pursuant to Maryland Rule 8-131.

Wife is mistaken. Failing to meet the preservation requirements of Rule 8-131 is not grounds for dismissing an appeal. *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 416 (2016). Consequently, Wife’s motion is denied.

## DISCUSSION

### **I. THE HEARING COURT DID NOT ERR OR ABUSE ITS DISCRETION WHEN IT PREVENTED HUSBAND FROM PRESENTING EVIDENCE AT TRIAL AS A DISCOVERY SANCTION.**

Husband first claims that the hearing court erred when, as a discovery sanction, it struck his pleading and barred him from presenting evidence at trial. Husband insists, as he did below, that he did not violate discovery and that he provided Wife with all the pertinent documents. Husband claims that Wife presented false information to the hearing court and that the hearing court exhibited bias against him.<sup>2</sup>

Wife argues that the hearing court acted within its discretion in sanctioning Husband for his repeated discovery violations. Wife asks that we affirm the court’s ruling.

Maryland Rule 2-433 states, in pertinent part, that, if a court finds a failure of discovery, the court may enter 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 . . . striking out pleadings or parts thereof.” Md. Rule 2-433(a). In addition, a court may enter such an order “[i]f a person fails to obey an order compelling discovery[.]” Md. Rule 2-433(c).

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<sup>2</sup> It appears that Husband continues to maintain that the proceedings should have been stayed in light of his bankruptcy filing. We find no merit to that assertion. Although Husband claims that he filed for bankruptcy on October 26, 2022, the record suggests that his bankruptcy petition was not filed until November 9, 2022, several days after the hearing court issued its ruling on November 3, 2022, granting Wife’s discovery sanctions. Moreover, the bankruptcy court lifted the stay in January 2023, several weeks prior to the start of trial.



“When reviewing the circuit court’s imposition of sanctions for discovery abuse, we are bound to the court’s factual findings unless we find them to be clearly erroneous.” *Klupt v. Krongard*, 126 Md. App. 179, 193 (1999) (citations and quotations omitted). The scope of our review in that respect is narrow, and we do not substitute our judgment for that of the court. *Id.* at 193. “Instead, we must decide only whether there was sufficient evidence to support the trial court’s findings.” *Id.* (citations and quotations omitted).

“When considering the actual imposition of discovery sanctions by the trial court, our review is narrower still.” *Id.* We review that decision for abuse of discretion, and we will not reverse unless the decision is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *Valentine-Bowers v. Retina Group of Washington, P.C.*, 217 Md. App. 366, 378 (2014) (citations and quotations omitted). “Even when the ultimate penalty of dismissing the case or entering a default judgment is invoked, it cannot be disturbed on appeal without a clear showing that the trial judge’s discretion was abused.” *Klupt*, 126 Md. App. at 193 (cleaned up).

We have identified several factors that a court should consider before imposing sanctions: (1) whether the failure to disclose was technical or substantial; (2) the timing of the disclosure; (3) the reason for the failure to disclose; (4) any prejudice to the parties; (5) whether such prejudice may be cured by a continuance, and, if so, whether a continuance is desirable. *Muffoletto v. Towers*, 244 Md. App. 510, 542 (2020). That said, the court need not “go through a checklist and note its consideration for each

factor.” *Id.* Moreover, because the factors often overlap, we view them in conjunction with one another and within the context of the entire history of the case. *Id.*

Against that backdrop, we hold that the hearing court did not err or abuse its discretion in striking Husband’s pleading or in precluding him from presenting evidence at trial as a sanction for his discovery violations. First, the record supports the hearing court’s finding of a discovery violation, and Husband has presented no evidence or argument to suggest that the court’s finding was clearly erroneous. Although Husband claims, as he did below, that he complied with all discovery requests, the court was under no obligation to accept Husband’s self-serving assertion. *Valentine-Bowers*, 217 Md. App. at 380 (noting that a court is entitled to grant little weight to a party’s unsupported explanation related to a discovery violation). Nevertheless, Husband all but admitted that he failed to meet his discovery obligation when, after the court asked him why he did not provide all the requested documents, he intimated that he did not comply with the request because his attorneys were in possession of the documents. As such, we cannot say the court erred in finding a failure of discovery on the part of Husband.

As to the court’s ultimate decision to impose sanctions, the record shows that, not only did Husband repeatedly fail to produce the requested discovery responses, but his failure was substantial. Over the course of approximately one year, Wife filed multiple motions to compel that resulted in multiple court orders commanding Husband to comply with Wife’s discovery requests. And yet, Husband consistently failed to meet his discovery obligations, even though, as the plaintiff in the case, he had an affirmative duty to move the case forward. *Id.* at 380 (“Disregard of discovery deadlines constitutes a

‘substantial violation’ because the plaintiff, as the party initiating suit, has an affirmative duty to move her case toward trial[.]”). Moreover, the information requested by Wife related to the parties’ primary marital asset (the business), and it appeared that, during the discovery process, Husband was making decisions that may have affected the business’s valuation. Providing complete and updated information regarding that asset was therefore essential, and Husband’s failure to do so prejudiced Wife. Finally, when Husband was given the opportunity to explain his reasons for failing to disclose, he provided conflicting responses, claiming on the one hand that he had complied with all discovery requests while at the same time admitting that he had not disclosed all of the requested documents, blaming his attorney for that failure, and relying on his alleged bankruptcy filing as an excuse for his non-compliance. And, rather than being contrite in explaining his failures, Husband was belligerent and seemingly more concerned with addressing issues that were irrelevant to the matter at hand. Given those circumstances, we cannot say that the court abused its discretion in sanctioning Husband.

As to Husband’s claim that the hearing court was biased against him, we find no merit to that assertion. Although the record suggests that the court may have become frustrated with Husband and may have chastised him for his behavior during the hearing, Husband has presented no evidence to overcome the strong presumption of impartiality on the part of the court. *See In re K.H.*, 253 Md. App. 134, 153-56 (2021).

**II. HUSBAND’S CLAIM THAT THE TRIAL COURT ERRED IN CONSIDERING EVIDENCE SUPPLIED BY WIFE AT TRIAL IS NOT PRESERVED.**

Husband next claims that the trial court erred in accepting into evidence various documents compiled and submitted by Wife. Husband argues that those documents were “falsified” and that the court should have considered other documents instead.

Wife argues, and we agree, that Husband’s claims are not preserved. Maryland Rule 5-103 states, in pertinent part, that error may not be predicated upon a ruling that admits evidence unless “a timely objection or motion to strike appears of record.” Md. Rule 5-103(a)(1). The Rule also states that error may not be predicated upon a ruling that excludes evidence unless “the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered.” Md. Rule 5-103(a)(2). “Further, where a party acquiesces in a court’s ruling, there is no basis for appeal from that ruling.” *Simms v. State*, 240 Md. App. 606, 617 (2019).

Here, Husband voluntarily left the courtroom at the start of trial. Prior to doing so, Husband stated quite clearly that he was imploring the trial court to “make the decisions that you feel are appropriate” and to “take this into your hands and make the divisions appropriately.” From that, a reasonable inference can be drawn that Husband was acquiescing in the court’s impending decisions regarding the evidence it would consider in issuing its decision. Regardless, because Husband was voluntarily absent from the evidentiary portion of the trial, he did not lodge any objections to Wife’s evidence, nor

did he offer any evidence of his own. Consequently, Husband's claims of error as to the court's admission or exclusion of evidence are either waived or unpreserved.

**APPELLEE'S MOTION TO DISMISS  
DENIED.**

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