

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1236

September Term, 2023

MARC BOWMAN BROWN

v.

LINDA K. BROWN

Shaw,
Ripken,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: December 23, 2024

In the course of protracted litigation in this divorce case, Appellee Linda K. Brown (“Appellee”) filed motions for discovery sanctions which were not timely opposed by Marc Bowman Brown (“Appellant”). The Circuit Court for Montgomery County then entered a series of discovery sanctions orders that limited the remaining issues and prevented Appellant from presenting evidence at trial. More than four months later, a trial on the merits was held, where the circuit court enforced the discovery orders which sanctioned Appellant. A judgment of divorce was then entered. Appellant simultaneously moved for a new trial and to vacate the sanctions orders. The circuit court denied the motion. This timely appeal followed. For the reasons that follow, we shall affirm.

ISSUES PRESENTED FOR REVIEW

Appellant presents the following issues for our review, which we have reordered and rephrased:¹

- I. Whether the circuit court abused its discretion by ordering sanctions against Appellant for discovery violations.
- II. Whether the circuit court abused its discretion by declining to review the sanctions orders.

¹ Reorganized and rephrased from:

- I. Was it an abuse of discretion to issue disfavored discovery sanctions, including the dismissal of all counter-claims, without factual findings, or determining if the sanctions were the least severe sanctions consistent with the purpose of the discovery rules?
- II. Was it an abuse of discretion to issue disfavored discovery sanctions, including dismissal of all counter-claims, without considering the respective responsibilities of a now-disbarred and criminally convicted attorney and his client?
- III. Was it an abuse [of] discretion to deny Defendant’s motions to continue/postpone, to find that Defendant waived right to counsel, to not revisit the sanctions at trial, and to deny the Motion for New Trial?

- III. Whether the circuit court abused its discretion by declining to postpone the trial.
- IV. Whether the circuit court abused its discretion by awarding attorneys' fees to Appellee pursuant to FL § 7-107.
- V. Whether the circuit court abused its discretion by denying Appellant's motion for a new trial.

FACTUAL AND PROCEDURAL BACKGROUND

In March of 1996, Appellant and Appellee were married. Two children were born of the marriage. In February of 2020, Appellee filed a Complaint for Absolute/Limited Divorce from Appellant in the Circuit Court for Montgomery County. A counter-complaint was filed by Appellant in July of 2020, which he later amended. Following the entry of a custody order in February of 2021, there remained several issues, including spousal support, child support, and the distribution of marital property.

Discovery Violations and Sanctions Orders

Over the ensuing twenty months, the parties engaged in discovery. At the conclusion of the discovery period and with less than two weeks prior to the scheduled trial, in October of 2022, Appellee filed two motions for immediate sanctions due to Appellant's lack of compliance with multiple discovery requests and untimely rescheduling of depositions.²

The first motion for sanctions addressed Appellant's failure to appear for a scheduled deposition. Appellee asserted that both Appellant and Appellant's counsel Justin Winter ("Winter" or "Appellant's counsel") failed to appear for four scheduled depositions

² Both motions were made pursuant to Maryland Rules 2-432 and 2-433, which permit requests for immediate sanctions without requiring a preliminary motion to compel in specific circumstances.

within the preceding four weeks, and that on each occasion Winter cancelled the deposition on the day it was scheduled, claiming illness of either himself or a family member. In support of these assertions, Appellee provided copies of email correspondence, the notices of intent to take deposition, subpoenas for Appellant’s appearance, and subpoenas to produce documents for each rescheduled deposition. Appellee explained the prejudice to her, as the associated expenses for the late cancellations of the depositions were not refundable. In addition, Appellant’s failure to appear at a deposition left Appellee without the opportunity to obtain information pertaining to fundamental issues such as the Appellant’s employment and ability to support himself, the reasons for the breakdown of the marriage, and the dissipation of marital assets. Based on Maryland Rule 2-433 and on Appellant’s failure to appear at the depositions, Appellee sought as sanctions, *inter alia*, the striking of Appellant’s counter-claims; findings related to voluntary impoverishment and dissipation of marital property; a prohibition on presentation of evidence; and attorneys’ fees and costs.

The second motion addressed Appellant’s failure to adequately respond to written discovery requests. Appellee asserted that interrogatories and requests for documents were served on Appellant in August of 2020.³ Appellant failed to provide meaningful responses or documents related to his assets, financial accounts,⁴ or additional information

³ A second request for production of documents made in August of 2022 received no response from Appellant.

⁴ Because Appellee learned in discovery that there were numerous financial institutions at which Appellant maintained accounts that Appellant did not disclose, she sought to obtain the necessary information by subpoena directly from the financial institutions. Appellant

concerning his employment history and ability to support himself. Appellee noted that good faith attempts were made to resolve the issue on November 30, 2021; January 24, 2022; and October 3, 2022.⁵ In each attempt, Appellee sent a letter to Appellant’s counsel identifying the deficiencies in the interrogatory responses and the missing discovery materials. Because Appellant continued to fail to provide meaningful responses, Appellee contended that she was “forced to incur unnecessary and costly attorneys’ fees and costs in pursuing documents needed for trial which the [Appellant] has repeatedly and intentionally refused to produce[.]” Appellee contended that Appellant’s failure to provide discovery responses was intentional and continuous, and had caused severe prejudice, particularly in light of the approaching trial date. Appellee requested that the court enter an order compelling Appellant to produce full and complete answers to the interrogatories and complete responses to requests for production within three days. Appellee also requested that if Appellant failed to comply, the court enter an order prohibiting Appellant “from supporting or opposing designated claims or defenses” and “from introducing designated matters into evidence for any discovery not produced as ordered[.]” in addition to requiring Appellant to pay costs and attorneys’ fees.

Appellant did not file a timely response to either motion. The circuit court granted

refused, however, to cooperate in providing consent for several of these entities to enable production of the materials to Appellee.

⁵ Notably, the continuing failure to complete interrogatories and provide complete answers existed before Winter became Appellant’s counsel, as the first two discovery deficiency letters were each addressed to two different attorneys who represented Appellant on those respective dates.

both of Appellee’s motions for sanctions. In granting the first motion, the court noted that it had reviewed “the record and pleadings, exhibits, and . . . no opposition” from Appellant in reaching its decision. The court struck Appellant’s counter-claims, and made factual findings in favor of Appellee on three of the issues to be explored at the depositions.⁶ The court also prohibited Appellant from opposing Appellee’s claims, and from “introducing exhibits at any hearing on this matter,” and from “testifying about any facts or events unless such fact(s) or event(s) were provided in discovery[.]” Additionally, the court struck Appellant’s assertions in the joint statement of marital property. Last, Appellant was ordered to pay \$800.00 for the late cancellation costs of the court reporter for the depositions. The issue of whether to award attorneys’ fees was to be addressed at a future date. The order on the first discovery sanctions motions was signed on October 31, 2022, and entered on November 2, 2022.

The court also granted Appellee’s second motion for discovery sanctions, ordering Appellant to produce full and complete interrogatories and the requested documents within three days or be prohibited from “supporting or opposing designated claims or defenses” and “prohibited from introducing designated matters into evidence for any discovery not produced[.]” In addition, the court ordered Appellant to pay attorneys’ fees for the preparation of the motion. This second discovery sanctions order was signed on October 31, 2022, and entered on November 4, 2022. Appellant failed to comply in production

⁶ Specifically, the court found that Appellant was “voluntarily impoverished[.]” had “dissipated marital property in an amount to be proved at any merits trial or hearing[.]” and had “allowed for marital property to go to waste[.]”

within the three days of the order, and on November 15, 2022, the court subsequently imposed the order that Appellant was “prohibited from supporting or opposing any designated claims or defenses and from introducing designated matters in evidence for any discovery not produced[.]” Appellant was further ordered to pay \$1,235.00 in attorneys’ fees and costs.⁷

The November 1, 2022 Postponement

On November 1, 2022, Appellee, Appellee’s counsel, and Appellant appeared for the scheduled trial on the merits; however, Appellant’s counsel informed the court that he was having a family crisis and would not be present. Appellee then explained that Appellant’s counsel had demonstrated a pattern of announcing shortly before scheduled events that he would not be in attendance based on family emergencies or crises that were never supported by evidence. The trial court directed the case to the administrative judge for a determination on whether the trial should be continued.

The parties subsequently appeared before the administrative judge on the issue of whether the trial should go forward or be continued. Appellee reiterated her claims, explaining that “this would be the third time it’s continued. [Appellant’s counsel] has been a no show [for] at least three depositions and always the same reason: there’s a family emergency.” Appellee stated that the case had been pending for three years and she was

⁷ After the three referenced orders were entered, and after the time to respond to the motions had elapsed, Appellant filed an opposition to the motion for sanctions, noting that he had objected to providing certain documents and that he had provided other documents. Appellant did not reference interrogatory answers or his failure to appear at the depositions. Nor did Appellant provide any evidence supporting his assertions.

ready to proceed.

Following a discussion on the record with Appellant,⁸ the court indicated that Winter’s failure to appear and lack of communication with Appellant was troubling. Due to the many contested issues that required resolution, the administrative judge ordered that the three-day trial would be postponed to March 20, 2023—the next date on which counsel present were available.

Motion for Reconsideration

On December 14, 2022, Appellant filed a motion for reconsideration of one of the sanctions orders. The motion did not identify which order Appellant was requesting the court to reconsider; instead, it merely noted that sanctions had been ordered against Appellant which required the payment of a fee. Appellant stated that he had “substantially complied with discovery requests[,]” had “provided supplemental discovery[,]” and that when attempting to schedule depositions, “both sides had conflicts at least once.” Appellant did not support the motion with documents or affidavits.

Appellee opposed the motion for reconsideration on January 10, 2023. Appellee incorporated by reference her two original motions for sanctions and asserted that Appellant’s motion for reconsideration “lack[ed] in veracity[,]” in addition to being untimely and contrary to Maryland Rule 2-535. The court denied the motion to reconsider on January 13, 2023.

⁸ During the court’s dialogue with Appellant, Appellant was informed of the order sanctioning him.

Appellee’s Motion for Maryland Rule 1-341 Sanctions

Subsequent to the November hearing, Appellee moved for sanctions against Appellant and his counsel, asserting that the failure to appear for the merits trial, which followed their conduct during discovery, was done in bad faith and forced Appellee to incur substantial fees, costs, and expenses, which Appellee sought to recover from Appellant and Appellant’s counsel. Appellee attached documents and affidavits demonstrating these costs. Although Appellant was ordered to file a response to this motion by November 9, 2022, no timely response was filed.⁹

In February of 2023, a hearing was held on the motion. Appellant, Appellee, and Appellee’s counsel were present; however, Appellant’s counsel once again failed to appear. After hearing the evidence, the court granted the motion as to Appellant’s counsel, finding that his conduct was both in bad faith and lacking in substantial justification. The court reserved the issue as to whether to sanction Appellant for the trial judge to address.¹⁰

Withdrawal of Appellant’s Counsel and Appellant’s Postponement Request

Appellant’s counsel moved to withdraw from the case on February 16, 2023.¹¹

⁹ On December 14, 2022, Appellant filed what he styled as an opposition to Appellee’s “[o]ral [m]otion for [a]ttorney [f]ees.” The document Appellant filed did not address Appellant’s counsel’s failure to appear at the scheduled trial. Neither did Appellant meaningfully address the discovery issues.

¹⁰ Appellant had the opportunity to speak at this hearing; however, he spent much of his argument claiming that Appellee had failed to respond to discovery and making disparaging assertions concerning Appellee and her counsel.

¹¹ The motion was deficient, and Appellant’s counsel filed an amended motion to withdraw from the case on March 13, 2023. The court granted the motion in court on the first day of trial.

Appellant, who was aware of this development, filed a pro se motion for a continuance of the merits hearing on February 28, 2023, claiming that he had been “abandoned” by his counsel as demonstrated by the failure to appear at three hearings and the filing of a motion to withdraw. Appellant indicated that his efforts to find a new counsel before the scheduled trial were unsuccessful.

Appellee opposed the continuance, arguing that she had already been prejudiced by the four-month delay from the previously scheduled trial. Appellee also opposed the continuance on the grounds that Appellant had the opportunity to obtain new counsel since November of 2022, when he was aware his counsel had failed to appear for trial and had demonstrated a pattern of not attending scheduled events. The circuit court denied the motion for continuance on March 10, 2023, and ordered that the trial proceed as scheduled.

Appellant’s Motion to “Quash” Sanctions

On March 3, 2023, Appellant filed a motion requesting that the sanctions against him be “quashed,” asserting that Appellant had in fact provided “hundreds of pages of updated discovery documentation to the [Appellee] during the most recent discovery period[.]” Appellant claimed that the sanctions that had been granted were based on what he described as “false allegations made against the [Appellant.]” Although Appellant attached exhibits to his motion—primarily copies of the sanctions motions—none of them demonstrated that the missing discovery was ever provided to Appellee.¹²

¹² In this motion, Appellant also sought sanctions against Appellee based on alleged discovery failures. However, his motion failed to include a certification as required by Maryland Rule 2-431 demonstrating good faith efforts to resolve the alleged discovery dispute.

Appellee opposed the motion to quash, arguing that Maryland Rule 2-535 applied and prevented the sanctions orders from being revisited absent procedural fraud, mistake, or irregularity—none of which were alleged by Appellant.

The court denied Appellant’s motion on the record at trial, explaining that it did not have the power to revise the sanctions order.

Trial

At the commencement of the merits trial, Appellant orally moved for another continuance on the grounds that he had still not obtained an attorney. Appellee opposed the continuance, citing the length of time the case had been ongoing, the three prior continuances, Appellant’s presence at the November 1, 2022 hearing where the administrative judge made clear that the trial would proceed on March 20, 2023, and Appellant’s recent request for a continuance that was denied.

The court inquired as to why Appellant had not obtained a new attorney after his counsel failed to appear for the previously scheduled trial. Appellant spoke at length regarding Winter’s unrelated criminal conviction and his incorrect understanding of the State Attorney’s Office efforts on his behalf, ultimately indicating that the potential substitute attorneys he spoke with “needed time to prepare[.]”

The court denied the motion to continue and found that Appellant’s actions constituted a waiver of the “right to go forward represented by counsel[.]” The court based the decision on several factors, including Appellant’s knowledge that his counsel was facing criminal charges; Appellant’s presence at the November 1, 2022 hearing, where he was informed that his counsel had failed to appear at several depositions and that trial

would proceed on March 20, 2023; and the presence of witnesses, including experts, prepared for trial to proceed that day.

Circuit Court’s Findings and Judgment of Divorce

In June of 2023, after reviewing the evidence and the law, the circuit court conducted a hearing and made findings of fact and a ruling on the record. As part of its analysis, the court valued and divided the marital property.¹³ The court also awarded attorneys’ fees to Appellee pursuant to Maryland Code (1984, 2019 Repl. Vol.), section 7-107 of the Family Law Article (“FL”). As support for awarding the attorneys’ fees, the court found that Appellant’s conduct “caused protracted litigation”; in addition to the missed discovery and depositions, the court also cited Appellant’s personal conduct of moving funds from financial accounts to avoid disclosure through subpoenas or by other discovery methods. The court found that Appellant’s “gamesmanship” was what caused protracted litigation and resulted in Appellee being obligated to retain experts to provide evidence concerning Appellant’s net worth and employability.

The court denied Appellant’s request for alimony, holding that even if Appellant’s complaint had not been dismissed, alimony would not be appropriate in this case. In reaching that determination, the court examined and made findings as to each of the factors

¹³ Although the November 2, 2022 sanctions order included a finding that Appellant was voluntarily impoverished, the circuit court, at this hearing, examined each factor to make the finding on the record. In addition, although the November 2, 2022 sanctions order included a finding that Appellant had committed waste of marital property, the circuit court examined the facts and the law and denied the request for additional funds to be apportioned to Appellee from the sale of the home based on the doctrine of marital waste.

relevant to alimony.

A written order was entered on June 23, 2023.

Motion for New Trial

Appellant subsequently filed a motion for new trial. The motion was predicated on the discovery sanctions and the impact of those sanctions on the trial. Appellant asserted that the issuance of the sanctions was an abuse of discretion. Appellant listed a variety of contentions as to how the court abused its discretion, including an alleged failure to consider the *Taliaferro* factors before issuing the sanctions;¹⁴ a failure to evaluate the relative responsibility of Appellant and Appellant’s counsel; and a failure to vacate the sanctions after the case had been postponed in November “because any potential prejudice of not being able to depose [Appellant] sufficiently before trial would have evaporated[.]”

Appellee opposed the motion. Appellee asserted that to the extent the motion sought revision of the sanctions orders, those orders were final orders and any request for modification was required to be filed within thirty days of their entry. Therefore, Appellee contended that Appellant’s motion was untimely. Appellee claimed that Maryland Rule 19-707 prevented Appellant from attaching the attorney grievance complaint, which Appellant had included as an exhibit to his motion. Appellee also contended that the court was not required to apportion the responsibility between Appellant and his attorney when awarding sanctions, per *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962).

Appellant filed a reply, arguing that because the sanctions orders were not final

¹⁴ See *Taliaferro v. State*, 295 Md. 376 (1983).

orders, the circuit court could review them, and the revisory motion was therefore timely. Appellant also asserted that it was permissible to attach the attorney grievance complaint, and that the portion of *Link v. Wabash Railroad Co.* relied upon by Appellee was dicta.

The trial court denied the motion for new trial. This timely appeal followed.

DISCUSSION

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY GRANTING APPELLEE’S MOTIONS FOR SANCTIONS.

A. Contentions

Appellant contends that the trial court abused its discretion when it granted Appellee’s first motion for immediate sanctions on two grounds: first, that the trial court failed to engage in fact finding or apply the *Taliaferro* factors;¹⁵ and second, that it failed to apportion responsibility for the missed and rescheduled depositions between Appellant and Appellant’s counsel, per *Williams v. Williams*, 32 Md. App. 685 (1976). As such, Appellant argues that the sanctions must be vacated and reassessed on remand. Appellee disputes Appellant’s characterization of the law and contends the court acted within its discretion when it granted the motion for immediate sanctions on October 31, 2022.

B. Standard of Review

The trial court is afforded a great deal of discretion when it rules on discovery disputes and grants sanctions for failures of discovery. See *Kadish v. Kadish*, 254 Md. App. 467, 494 (2022). Thus, this Court reviews the grant of sanctions for an abuse of discretion

¹⁵ Though Appellant does not expressly reference *Taliaferro v. State* by name, he frames his analysis using the factors established in that case and cited subsequently by other authorities. See *Taliaferro v. State*, 295 Md. 376 (1983).

and “we consider only the grounds relied on by the trial judge.” *Muffoletto v. Towers*, 244 Md. App. 510, 540 (2020) (citing *Att’y Grievance Comm’n of Md. v. Kent*, 447 Md. 555, 577 (2016)). Appellate review of a trial court’s resolution of a discovery dispute is “quite narrow.” *Valentine-Bowers v. Retina Grp. of Washington, P.C.*, 217 Md. App. 366, 378 (2014) (emphasis in original) (quoting *Sindler v. Litman*, 166 Md. App. 90, 123 (2005)). Even if a trial court invokes “the ultimate penalty of dismissing the case” as a sanction, that ruling “cannot be disturbed on appeal without a clear showing” that the trial court abused its discretion. *Id.* (quoting *Mason v. Wolfing*, 265 Md. 234, 236 (1972)).

An abuse of discretion occurs when “[t]he decision under consideration [is] . . . well removed from any center marked imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *Sindler*, 166 Md. App. at 123 (quoting *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005)). As such, sanctions will only be vacated in the “extraordinary, exceptional, or most egregious case.” *Mason v. State*, 487 Md. 216, 239 (2024) (quoting *Wilson*, 385 Md. at 199).

C. Analysis

The Maryland Rules provide the trial court with wide discretion to control discovery, including the ability to issue sanctions for the purpose of protecting the litigation process and preventing abuse. *See* Md. Rule 2-433(a); *see also Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 728–29 (2002). Sanctions may be initiated by the court or pursuant to a party’s motion, as in the case *sub judice*. Here, Appellee moved for sanctions pursuant to Rule 2-432, without first filing a motion to compel, based on Appellant’s repeated failure to appear for a deposition, after proper service. Md. Rule 2-432(a).

Appellee also moved for sanctions based on Appellant’s incomplete discovery responses under the same rule. *Id.*

Upon such a motion, the court may enter an order for sanctions if it finds that the party indeed committed a failure of discovery. Md. Rule 2-433. A broad spectrum of sanctions are available to the court, “ranging from striking pleadings to dismissal.”¹⁶ *Rose v. Rose*, 236 Md. App. 117, 131 (2018). In determining which sanctions are the most appropriate, the appellate courts have outlined five factors, known as the *Taliaferro* factors, “which often overlap,” to guide the trial court. *See Sindler*, 166 Md. App. at 124; *see also Asmussen v. CSX Transp., Inc.*, 247 Md. App. 529, 550 (2020). Those factors include “(1) whether the disclosure violation was technical or substantial; (2) the timing of the ultimate disclosure; (3) the reason, if any, for the violation; (4) the degree of prejudice to the parties respectively offering and opposing the evidence; and (5) whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance.” *Sindler*, 166 Md. App. at 124; *see also Asmussen*, 247 Md. App. at 550 (same).

Concerning these factors, a court “is not required to discuss each factor considered,

¹⁶ Rule 2-433(a) identifies a broad range of sanctions available to the trial court for such failures of discovery, including

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 dismissing the action or any part thereof[.]

and is not required to set out in detail each and every step of [its thought process.” *Kadish*, 254 Md. App. at 495 (internal citations and quotation marks omitted). As such, in some circumstances, the court’s discretion may be apparent without any explicit factual findings. *See Warehime v. Dell*, 124 Md. App. 31, 51 (1998). A trial court is not required to make factual findings on the record; indeed, in *Warehime*, this Court affirmed a sanctions order dismissing a party’s complaint without any factual findings in the order. *Id.* at 39, 48. Instead, “a trial court must exercise its discretion in imposing sanctions in light of [the *Taliaferro*] factors[.]” *Id.* at 45. Appellate courts therefore “do not look at each incident in isolation, but rather at the entire history and context of the case in reviewing the trial court’s decision.” *Kadish*, 254 Md. App. at 489 n. 11 (quoting *Valentine-Bowers*, 217 Md. App. at 380).

Here, the court’s statement in the first sanctions order that it had reviewed the “record and pleadings, exhibits and . . . *No opposition*[,]” illustrates the court’s exercise of discretion in granting the sanctions motion in light of the *Taliaferro* factors. (emphasis added). Appellant’s failure to appear for depositions in the final weeks before the planned merits trial on November 1, 2022, constituted a substantial violation.¹⁷ Similarly, Appellant provided incomplete interrogatory answers and other discovery to Appellee, preventing Appellee from adequately preparing for trial. Likewise, the record does not show that Appellant made any attempt to sit for a deposition or to comply with Appellee’s discovery requests following the court-ordered sanctions.

¹⁷ *See Taliaferro*, 295 Md. at 391.

As to timing of the ultimate disclosure,¹⁸ at the time the court ordered the sanctions, the case had been ongoing for more than two years, and the merits trial was scheduled to commence. Moreover, the record does not demonstrate that Appellant made any attempt to sit for a deposition or to supplement his deficient discovery responses—before the court ordered the sanctions or thereafter. Thus, an ultimate disclosure never occurred. Likewise, Appellant did not provide a reason for the violation.¹⁹

Further, Appellee’s motion, as supported by the record, demonstrated significant prejudice²⁰ experienced by Appellee due to Appellant’s inaction and actions. Appellee’s attempts to obtain information necessary for the resolution of marital property and the other issues were followed by incomplete answers in the interrogatories; and the failure to attend depositions further compounded this problem. It was not until the final missed deposition that Appellee moved for sanctions, after having attempted other good faith means of resolving the issues, ten days before the scheduled merits trial. Thus, with less than ten days before trial, the lack of information severely inhibited Appellee’s ability to prepare for trial, particularly as it related to marital funds and Appellant’s employment activity. *See Balt. Transit Co. v. Mezzanotti*, 227 Md. 8, 13 (1961) (explaining that to achieve the fundamental objectives of the discovery rules—which is to ensure litigants have disclosed

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See id.*

all facts giving rise to the litigation to avoid confusion at trial—trial judges are vested with substantial discretion in their administration).

The prejudice to Appellee would not have been cured by a continuance,²¹ but instead would have been compounded. Appellee’s contention that a continuance would result in more harm to her did become a reality when the November 1, 2022 merits trial was postponed, allowing Appellant to continue to live in the marital home without contributing to the mortgage or to ongoing child support. In addition, Appellee was required to prepare new materials for the trial relating to updated financial information, including re-engaging experts, re-subpoenaing financial institutions, and updating the 9-207 statement.²² Thus, considering the *Taliaferro* factors and Appellant’s lack of opposition, we cannot conclude the trial court acted unreasonably in granting Appellee’s motion for immediate sanctions. *See, e.g., Warehime*, 124 Md. App. at 45–50.

Appellant is also incorrect that the circuit court was required to impose a less severe sanction merely because other sanctions were available. Although trial courts are encouraged to impose the least severe sanction that is consistent with the purpose of the discovery rules, the determination of the appropriate sanction remains within the discretion of the circuit court. Put another way, merely because a trial court *could* have imposed a different sanction does not mean that it was *required* to do so. *See Valetine-Bowers*, 217

²¹ *See Taliaferro*, 295 Md. at 391.

²² A Rule 9-207 statement is a document filed in divorce cases when a monetary award or other property relief is at issue. In those cases, the parties are required to “file a joint statement listing all property owned by one or both of them.” Md. Rule 9-207(a).

Md. App. at 386. “Discretion means just that—it was up to the trial court to fashion a remedy that it deemed appropriate in light of the course of discovery here.” *Id.*²³

The circuit court did not abuse its discretion in granting Appellee’s motions for immediate sanctions.

II. ANY ERROR IN THE CIRCUIT COURT’S DECISION NOT TO REVISIT THE SANCTIONS WAS HARMLESS.

A. Contentions

Appellant asserts that the circuit court abused its discretion when it ruled that it did not have the power to revisit the sanctions. In support of the claim, Appellant contends that the court was permitted to review the sanctions orders because pursuant to Maryland Rule 2-602, interlocutory rulings are subject to review until there is a final judgment. Appellee disputes Appellant’s argument, asserting that the trial court correctly ruled that it did not have the power to reconsider the sanctions pursuant to Maryland Rule 2-535.

B. Analysis

Trial courts generally have broad discretion in governing the discovery process and imposing discovery sanctions. *Warehime*, 124 Md. App. at 43–44. However, a trial court abuses its discretion when its decision encompasses an error of law. *Schlotzhauer v. Morton*, 224 Md. App. 72, 84–85 (2015). In this case, the circuit court declined to review

²³ To the extent Appellant argues that the circuit court’s sanctions orders were an abuse of discretion because the court failed to consider the relative fault of the Appellant as opposed to his attorney, that argument was not raised in the circuit court until Appellant filed a post-trial revisory motion. In light of Appellant’s “unexplained disregard” of outstanding discovery and “subsequent inadequate explanation” for failure to respond, the circuit court did not abuse its discretion in imposing sanctions. *Warehime*, 124 Md. App. at 51.

the sanctions orders, ruling that it did not have the power to reconsider the sanctions based on Maryland Rule 2-535. While the court did have the power to revise the non-final sanctions orders—*Waterkeeper All., Inc. v. Md. Dep’t of Agric.*, 439 Md. 262, 277 (2014) (stating that “Rule 2-535 is applicable only to final judgments. Thus, non-final orders are subject to revision without regard to Rule 2-535.”) (internal citations and quotation marks omitted)—that is not the end of the analysis.

In the civil context, “[i]t has long been the policy in this State that this Court will not reverse a lower court judgment if the error is [harmless]. The burden is on the complaining party to show prejudice as well as error.” *Flanagan v. Flanagan*, 181 Md. App. 492, 515 (2008) (internal citation and quotation marks omitted). Standards for determining prejudice “depend upon the facts of each individual case.” *Id.* “Prejudice can be demonstrated by showing that the error was likely to have affected the verdict below; an error that does not affect the outcome of the case is harmless error.” *Id.* at 516. Appellate courts have also found reversible error “when the prejudice was substantial.” *Id.* “The focus of our inquiry is on the *probability*, not the *possibility*, of prejudice.” *Id.* (emphasis added).

In this case, Appellant’s request that the court eliminate the sanctions orders did not provide the court with a basis to do so. Appellant did not address the failure to attend depositions, nor the failure to provide complete discovery requests. Appellant did not indicate that he made and supplemented his discovery responses. Without identifying what was incorrect, he merely asserted that Appellee had made “false statements” and “lies” against him. Likewise, Appellant did not identify evidence he would present if the sanctions were removed. Appellant did not demonstrate that the trial court would have been

likely to revise the sanctions orders absent the belief that it could not do so.

Although the trial court had the authority to reconsider the sanctions, its refusal to do so left the parties in the same position they were before it denied the motion, with the sanctions orders that had been in place for four months remaining as they were. Indeed, it would have been highly prejudicial to Appellee if, on the day of trial, the trial court reinstated Appellant's claims and allowed Appellant to present evidence that was never produced in discovery.

Appellant did not meet his burden of demonstrating that the trial court's refusal to reconsider the sanctions motion affected the outcome of the case. *Flanagan*, 181 Md. App. at 516. Therefore, to the extent there was an error in the court's decision not to reconsider the sanctions orders, that error was harmless.

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING THE MOTIONS FOR CONTINUANCE.

A. Contentions

Appellant contends that the circuit court committed a "gross abuse of discretion" when the court denied Appellant's motion to continue. Appellant asserts that the motion should have resulted in a continuance based on fairness and the balance of the equities, particularly because Appellant acted with due diligence and was caught by surprise. Thus, according to Appellant, the prejudice to Appellee would be minor compared to the "obvious and dramatic harms" to Appellant if the trial was not postponed.

Appellant asserts that the court committed an abuse of discretion by denying the oral motion to continue and finding that Appellant waived his right to be represented by

counsel. Appellant specifically contends that the court’s interest in ensuring that the trial process is fair “strongly favored” permitting a continuance so that Appellant could acquire new counsel.

B. Standard of Review

Maryland Rule 2-508 dictates that the circuit court may, “[o]n motion of any party or on its own initiative, . . . continue or postpone a trial or other proceeding as justice may require.” Md. Rule 2-508(a). As such, the decision to grant or deny a motion for continuance is “within the sound discretion of the trial judge.” *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006); *see also Prince v. State*, 216 Md. App. 178, 203 (2014); *Thanos v. Mitchell*, 220 Md. 389, 392 (1959). “This rule applies even where the ground for the requested continuance is the withdrawal of movant’s counsel from the proceedings.” *Fontana v. Walker*, 249 Md. 459, 463 (1968). Thus, this Court reviews the decision for an abuse of discretion. *See Bradley v. Bradley*, 208 Md. App. 249, 267 (2012). An abuse of discretion exists when “no reasonable person would take the view adopted by the court’ or if the court acts ‘without reference to any guiding rules or principles.’” *Serio v. Baystate Properties, LLC*, 209 Md. App. 545, 554 (2013) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)). As such, “[r]eversal on appeal . . . occurs only in ‘exceptional instances where there was prejudicial error.’” *Das v. Das*, 133 Md. App. 1, 31 (2000) (quoting *Thanos*, 220 Md. at 392).

C. Analysis

The Supreme Court of Maryland, and this Court, have reviewed numerous cases wherein a motion for a continuance was denied, and have identified the following

circumstances as abuses of discretion: when the continuance was mandated by law; “when counsel was taken by surprise by an unforeseen event at trial, when he had acted diligently to prepare for trial”; and “in the face of an unforeseen event, counsel had acted with diligence to mitigate the effects of the surprise[.]” *Touzeau*, 394 Md. at 670 (internal citations omitted). In contrast, it is not an abuse of discretion for a trial court to deny a motion to continue where a party failed to adequately prepare for trial. *See Reaser v. Reaser*, 62 Md. App. 643, 648 (1985) (stating that “[f]ailure to prepare adequately for trial is ordinarily not a proper ground for continuance or postponement.”). Nor has an abuse of discretion been found in many instances where the motion was based, at least in part, on the ability of party’s counsel to attend the proceeding were it not postponed. *See, e.g., Cruis Along Boats, Inc. v. Langley*, 255 Md. 139, 143 (1969); *Travelers Indem. Co. v. Nationwide Const. Corp.*, 244 Md. 401, 407 (1966); *Fontana*, 249 Md. at 463.

In *Touzeau v. Deffinbaugh*, the Supreme Court of Maryland reaffirmed that the denial of a motion for continuance which “had the effect of leaving the moving party without the benefit of counsel[.]” is not an abuse of discretion. 394 Md. at 671. The mother in *Touzeau* filed a motion to continue a custody modification hearing on the grounds that a new custody evaluation report “vastly differed” from prior reports and thus she was now “attempting to obtain pro bono counsel.” *Id.* at 659, 661. The trial court denied the motion, and at the custody modification hearing ten days later, the mother renewed her motion to continue, asserting that she obtained pro bono counsel who “was unable to file a line of appearance because he already had another commitment at today’s hearing date.” *Id.* at 660.

The trial court denied the renewed motion, explaining that mother had plenty of time to obtain pro bono counsel at any time during the proceedings and that the nature of the report did not provide a basis for the continuance. *Id.* at 662–63. The Supreme Court of Maryland affirmed the trial court’s ruling, noting that the case “lack[ed] the elements of surprise and due diligence[,]” and that the mother “failed to demonstrate that she experienced an unforeseen circumstance in the contested custody proceedings that she reasonably could not have anticipated and that she acted with due diligence to mitigate the consequences of not being represented by counsel at the hearing[.]” *Id.* at 675, 678.

1. February motion to continue

Based on the record before this Court, we cannot conclude that the circuit court abused its discretion when it denied the motion to continue filed less than three weeks before trial. Here, as in *Touzeau*, Appellant was aware that his counsel had failed to appear at the scheduled trial in November; however, he did not act to file for a continuance until the last day of February, less than three weeks before the merits trial. Although Appellant asserts that he acted with diligence in the face of the surprise of the abandonment of his counsel, the record and the motion filed by Appellant illustrate that he was on notice of the deficient performance of his counsel and noted counsel’s failure to appear at scheduled depositions on November 1, 2022, almost five full months before the merits trial was scheduled. Not only was Appellant on notice of his counsel’s failures on November 1, 2022, but Appellant was aware that the case had already been continued on two prior occasions and that the trial would commence on March 20, 2023.

Although Appellant asserted in the motion that he made efforts to obtain a new

attorney, Appellant provided no support for the claim. He merely explained in the motion that he had tried to obtain alternative counsel; however, the attorneys he contacted “stated there is not enough time to prepare for [the] case,” unless there was a continuance. Not only did this contention lack support, but no information was provided to the court as to when Appellant would be able to obtain counsel and rectify the issue necessitating the continuance he sought. *See Touzeau*, 394 Md. at 671 (emphasizing that a motion for continuance “must reflect that the basis for the delay will be obviated within a brief period of time.”); *see also Thanos*, 220 Md. at 393.

In support of his argument, Appellant asserts that Appellee would have faced “minimal” prejudice were the trial to have been continued when he filed the February motion. This argument is belied by the record and Appellee’s opposition to the continuance, which noted that Appellee would be significantly prejudiced by a continuance because of the cost and the amount of preparation necessary for trial, particularly as Appellee had to send new subpoenas for the March trial, “re-engage experts[,]” “update the 9-207 statement[,]” and “supplement her discovery.” Nor was this the only occasion Appellee was required to reproduce her efforts, and granting another postponement would have resulted in Appellee having to engage in this process for a fourth time. Fairness to both parties required the trial court to look at the entirety of the situation, and the court does not have a duty to one party over the other, even if one party is pro se. Thus, the record before this Court demonstrates that, like *Touzeau*, the “elements of surprise and due diligence” were missing, such that the trial court did not abuse its discretion when it denied the February motion to continue. *See Touzeau*, 394 Md. at 675, 678.

2. *Oral motion to continue*

Nor can we conclude that an abuse of discretion occurred when the trial court denied the oral motion to continue and held that Appellant waived his right to have counsel represent him at the merits hearing. As discussed *supra*, the denial of a motion to continue may permissibly result in the moving party lacking the “benefit of counsel.” *Touzeau*, 394 Md. at 674. Here, the court denied the motion for a continuance and found that Appellant waived the presence of counsel by failing to act with diligence and acquire new counsel in a timely manner.

While Appellant emphasized that he was not waiving his right to counsel following the court’s holding, Appellant’s actions, as evidenced in the record, supported the court’s denial of the motion to continue, leaving him without counsel for the hearing.²⁴ In so holding, the court specifically identified that: it was aware of the denial of the February motion to continue; that Appellant had knowledge in November that his attorney failed to appear for numerous depositions; and that Appellant was previously informed by the trial court that the “trial would go forward today.”²⁵ The trial court also noted the ongoing

²⁴ Appellant takes issue with the trial court not construing his pro se motion for a continuance more liberally, citing *Simms v. State* for the proposition that “pro se litigants are held to less stringent standards than formal pleadings drafted by lawyers.” 409 Md. 722, 731 (2009) (internal citations and quotation marks omitted). We note that this Court has held that “[t]he procedural, evidentiary, and appellate rules apply alike to parties and their attorneys. No different standards apply when parties appear pro se.” *Gantt v. State*, 241 Md. App. 276, 302 (2019) (quoting *Tretick v. Layman*, 95 Md. App. 62, 86 (1993)).

²⁵ Indeed, in Appellant’s later-filed motion for new trial, it was apparent that Appellant was disturbed enough by his counsel’s conduct that he had filed a bar complaint against his former counsel in January of 2023, citing the failure to appear at trial and failure to respond to communications.

prejudice to Appellee as the case had been pending for three years and that Appellee had experts present in the courtroom. Notably, when the court inquired of Appellant what efforts he had taken to obtain an attorney, Appellant referenced only the efforts he made prior to the February motion to continue, even though it had been three weeks since the denial of that motion, and the order explicitly stated that the trial would proceed as scheduled.

Here, the court's findings, as supported by the record before us, demonstrate that from the time the February motion to continue was denied, the only change was the amount of prejudice to be suffered by Appellee if the merits hearing was continued. This prejudice increased with every continuance due to the presence of experts who were prepared to testify at the merits hearings and the cost associated with the preparation and use of such experts, the length of the litigation preventing the resolution of issues related to the failure to pay child support by Appellant, and costs associated with the marital home resided in by the Appellant. Thus, we cannot conclude that the court abused its discretion when it denied the motion to continue and held that Appellant's actions waived the presence of counsel.

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY AWARDING APPELLEE ATTORNEYS' FEES UNDER FL § 7-107.

A. Contentions

Appellant asserts that the trial court abused its discretion by awarding attorneys' fees to Appellee under FL section 7-107. In support of this argument, Appellant claims that the trial court imputed the actions of Appellant's counsel to Appellant and that the

subsequent award of attorney fees was made based on his counsel's conduct.

B. Standard of Review

At any point in a divorce proceeding, “the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding.” FL § 7-107(b). Before ordering the payment, the court is required to consider: “(1) the financial resources and financial needs of both parties; and (2) whether there was substantial justification for prosecuting or defending the proceeding.” FL § 7-107(c). “A court’s decision to award attorney’s fees generally is reviewed under an abuse of discretion standard.” *Henriquez v. Henriquez*, 185 Md. App. 465, 475 (2009). “If the court gives proper consideration to the statutory factors and the circumstances of the case, an award of attorney’s fees will not be reversed ‘unless a court’s discretion was exercised arbitrarily or the judgment was clearly wrong.’” *Id.* at 476 (quoting *Collins v. Collins*, 144 Md. App. 395, 447 (2002)) (further citation and quotation marks omitted).

C. Analysis

In this case, the trial court performed an analysis under FL section 7-107 for the purpose of awarding reasonable and necessary expenses regarding attorneys’ fees. In addressing the factors identified in FL section 7-107(c), the court preliminarily determined that Appellee had more need than Appellant considering her support of the parties’ children. The court likewise found that given his substantial financial assets, Appellant had the ability to pay. In addressing the justification of the litigation, the court found that while both parties were “substantially justified in proceeding with this case,” Appellant engaged

in protracting the litigation, which justified the award of attorneys’ fees. In reaching its decision, the court noted “the record is really full of examples,” which “weighed heavily on the [c]ourt.”

The court specifically referenced Appellee’s expert—who the court found to be credible—stating that the testimony reflected that the facts of the case placed it in “a category of its own as far as how much - - what disregard that the [Appellant] had for the rules of the court[.]” The court found that “there were several rescheduled depositions that had to be rescheduled and caused unnecessary expense for the court reporter fees, [and] attorneys’ fees, just because the [Appellant] and his counsel didn’t show.” While the court acknowledged Appellant’s argument that his attorney was “wayward[.]” the court found that the protracted litigation was caused not only by the actions of Appellant’s attorney, but also by Appellant’s conduct.

The court again highlighted the expert’s testimony, explaining that “money was constantly disappearing and moving from account to account in a very suspicious way,” such that “once one account was subpoenaed, the money would disappear and then go somewhere else and then another - - when that institution was subpoenaed, the money would go somewhere else[.]” The court noted that this movement of money was visible in Appellee’s exhibits. The court further noted that there was not “proper disclosure and discovery in this case[.]” and “discovery had to be reproduced” multiple times over.

The court determined that “these violations were to avoid having to disclose . . . assets” because Appellant “did not want his full assets to be shown.” As such, the court concluded that “the full extent of [Appellant’s assets]” are unknown, requiring the court to

“infer that the only reason that [the bank statements were not in front of the court] is because money was intended to be hidden so that the [Appellee] wouldn’t be able to know” whether the accounts were marital. The court concluded by finding that “all of this is, I find, gamesmanship that caused . . . protracted litigation and, in the words of [the expert], showed great disregard for the rules of the [c]ourt. That’s also corroborated by the fact that sanctions were granted by [the trial court] twice and, I also believe [by another judge].” The court then awarded Appellee \$95,000.00 in attorneys’ fees.

Contrary to Appellant’s assertion on appeal—that the trial court imputed the actions of Appellant’s counsel to Appellant in establishing the award of attorneys’ fees—the court’s limited finding pertaining to Winter’s prior actions was related to the deposition-scheduling behavior. The trial court clearly considered the factors established in FL section 7-107. The court gave thorough attention to the statutory factors and the circumstances of this case. The trial court did not abuse its discretion, and therefore we decline to reverse the award of attorneys’ fees.

V. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING THE MOTION FOR A NEW TRIAL.

A. Contentions

Appellant asserts that the trial court committed an abuse of discretion in the denial of the motion for a new trial. Specifically, Appellant contends that the motion for new trial alerted the trial court to multiple errors that required the trial court to vacate the merits trial and reconsider the sanctions. Appellant identifies those errors as the following: (1) that the initial sanctions orders were in error because the trial court failed to consider the *Taliaferro*

factors or respective fault between Appellant and Winter before issuing the sanctions; (2) that the request for sanctions was impermissible because Appellant’s counsel had not received the second request for production of documents until September 30, 2022, and thus, Appellee filed the request for sanctions nine days before the timeline permitted; and (3) that Appellant was not placed on notice of the second order granting sanctions for failure to produce documents. Appellant argues that once the trial court was alerted that Appellant was not responsible for, nor had knowledge of, the behavior precipitating the sanctions, the court “had an obligation to set aside at least the sanctions which ended [Appellant’s] case[.]”

B. Analysis

Maryland Rule 2-533 permits a party to “file a motion for a new trial within ten days after entry of judgment.” Md. Rule 2-533(a). “A trial court’s denial of a motion for new trial is generally reviewed for an abuse of discretion.” *Mahler v. Johns Hopkins Hosp., Inc.*, 170 Md. App. 293, 321 (2006). The Supreme Court of Maryland has previously explained that:

the exercise of discretion under these circumstances depends so heavily upon the unique opportunity the trial judge has to closely observe the entire trial, complete with nuances, inflections, and impressions never to be gained from a cold record, it is a discretion that will rarely, if ever, be disturbed on appeal.

Buck v. Cam’s Broadloom Rugs, Inc., 328 Md. 51, 59 (1992). This is particularly so when a motion for new trial “ask[s] the [court] to draw upon [its] own view of the weight of the evidence” to determine whether “justice would be served by granting a new trial.” *Piquette v. Stevens*, 128 Md. App. 590, 601–02 (1999) (quoting *Buck*, 328 Md. at 59).

Having previously concluded that the trial court did not abuse its discretion in granting Appellee’s motions for immediate sanctions, we quickly dispose of that argument as grounds for an abuse of discretion in the denial of the motion for new trial. Appellant’s remaining arguments turn on credibility determinations and the weighing of evidence by the trial court. Thus, the court’s discretion as to these determinations was “necessarily at its broadest.” *Piquette*, 128 Md. App. at 601 (quoting *Buck*, 328 Md. at 59).

Appellant first asserts a factual contention—that service of the second request for the production of documents did not occur until September 30, 2022, and therefore the motion for immediate sanctions could not be filed until October 30, 2022. Notably, the court was presented with a certification that the notice of deposition and the second request for production of documents were served on August 30, 2022, and the certification was filed through the MDEC system that same day. Appellant filed an affidavit from Tina Stanczewski—one of Appellant’s former attorneys who had withdrawn from the case by September 30, 2022—which stated that Stanczewski experienced errors with MDEC and did not receive the notification. However, there was no evidence to dispute that Winter, who entered an appearance for Appellant at the same time as Stanczewski, had not received notice. Further, the only evidence to support that Appellant’s contention that he had not received notice was his own testimony. Thus, the trial court weighed the evidence. There was evidence in the record supporting notice of the August 30, 2022 date and therefore, we cannot conclude that the trial court abused its broad discretion on this issue.

Appellant finally argues that he had no notice of the order to produce documents and that trial court therefore should have set aside the sanctions immediately upon learning

about his counsel’s behavior. This argument relies, again, solely on Appellant’s testimony that he did not receive any notice to produce documents and interrogatories related to the second order for immediate sanctions, and that he had no knowledge of the actions of his attorney concerning the depositions. Thus, the trial court was tasked with determining the credibility of Appellant’s testimony, and what, if any, weight to give such testimony.

As these determinations are solely within the broad discretion of the trial court, we defer to the trial court’s findings because it had the ability to “closely observe the entire trial [and other proceedings], complete with nuances, inflections, and impressions never to be gained from a cold record[.]” *Buck*, 328 Md. at 59. There is evidence in the record that supports a determination to afford Appellant’s testimony little weight, to include: the original interrogatories shared by Appellant; the entry of the orders on MDEC; and Appellant’s habit of moving of money between more than ten financial institutions, which the court found was intended to serve the purpose of preventing Appellee from preparing expert reports and determining the amount of marital property.

As such, we cannot conclude that the trial court acted outside the bounds of reason and abused its discretion when it denied the motion for a new trial.

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