

Circuit Court for Baltimore County
Case No. C-03-FM-23-004015

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1563

September Term, 2023

DOUGLAS SELF

v.

CARLA DEAN

Friedman,
Kehoe, S.,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: November 12, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This matter is an appeal arising from a Petition for Guardianship of Eric Self (“Eric”)¹ brought by the Appellant, Douglas Self (“Mr. Self”), in the Circuit Court for Baltimore County. On appeal, Mr. Self argues that the circuit court erred in determining that an “Order for Remote Hearing” did not compel Eric to appear at the show cause evidentiary hearing on September 18, 2023. Additionally, Mr. Self contends that Section 9-113 of the Maryland Courts and Judicial Procedure statute compelled Eric to testify at the show cause hearing. For reasons that we will outline, we affirm the judgment of the Circuit Court for Baltimore County. We will set forth such facts as are necessary to address the issues raised on appeal.

I. Factual Background

Mr. Self and Ms. Dean were married parents of Eric. In 2010, the Circuit Court for Baltimore County granted a judgment of absolute divorce to Mr. Self and the Appellee, Carla Dean (“Ms. Dean”). The divorce decree awarded shared custody of their son, Eric, and he split an equal amount of time living with Mr. Self and Ms. Dean. Mr. Self and Ms. Dean’s custody agreement expired in 2022 when Eric graduated high school and turned 18 years old, reaching the age of majority.² Not long after graduating high school, Eric chose to sever his relationship with Mr. Self. Eric is now 21 years old and lives with Ms. Dean.

Eric was diagnosed with autism spectrum disorder as a child. Mr. Self’s counsel sent a letter asking Ms. Dean to allow Eric to be examined for guardianship purposes and

¹ Eric and his father, Douglas Self, share the same last name. Throughout the opinion we will refer to Eric Self as “Eric” for clarity. We mean no disrespect by the lack of formality.

² Eric’s birthday is October 1, 2003. Eric turned 21 on October 1, 2024.

to continue the 2010 split custody arrangement. After receiving Mr. Self's request, Ms. Dean retained Ms. Lindsay Moss as counsel for Eric. Ms. Moss arranged to have Eric evaluated for his disability and sign two powers of attorney documents and a medical directive.³ Ms. Moss hired Eric's long-term physician and a licensed clinical social worker⁴ to evaluate whether Eric had the capacity to understand and sign the documents. Both the physician and social worker determined that Eric has the capacity to execute all three documents. Additionally, Ms. Moss conducted an in-person capacity assessment of Eric, in the presence of two paralegals. Ms. Moss and her two paralegals also determined that Eric has the capacity to execute legal documents. Eric signed the three documents as a less restrictive alternative to guardianship. In March and April of 2023, Eric's physician and the licensed clinical social worker completed the medical certificates that Mr. Self requested for the guardianship petition. Eric then refused Mr. Self's request to permit additional examinations from experts chosen by Mr. Self.

On July 13, 2023, Mr. Self filed a petition for guardianship of Eric in the Circuit Court for Baltimore County. Mr. Self's petition asserted that Eric is an alleged disabled person under Md. Code Ann., Estates & Trusts § 13-705(b)(1) and requested that the circuit

³ Eric gave power of attorney to his mother, Ms. Dean.

⁴ Maryland Rule 10-202(a)(3)(A) refers to a licensed clinical social worker as "licensed certified social worker-clinical." The statute provides that "[i]f the petition is not accompanied by the required certificate and the petition alleges that the disabled person is residing with or under the control of a person who has refused to permit examination or evaluation by a physician, psychologist, *licensed certified social worker-clinical*, or nurse practitioner. . ." Md. Rule 10-202(a)(3)(A) (emphasis added). For clarity, we will refer to a licensed certified social worker-clinical as a "licensed clinical social worker."

court appoint two health care professionals that specialize in autism disorder to examine or evaluate Eric pursuant to Md. Rule 10-202(a)(3). Ms. Dean, as an interested person,⁵ received notice of the guardianship petition and timely objected on August 23, 2023. Ms. Dean is the only interested party that objected to Mr. Self's petition for the appointment of health care professionals. The circuit court served a Show Cause Order on Ms. Dean requiring her to appear at a hearing scheduled for August 24 and show cause why Eric should not be examined or evaluated. On August 24, the circuit court held a 15-minute remote hearing where the parties agreed to resume the evidentiary show cause hearing on September 18, 2023. On September 6, Mr. Self's counsel filed a Motion for Remote Proceeding or to Appear Remotely. The circuit court denied Mr. Self's motion as moot, stating that the case is scheduled to proceed via Zoom.

On September 8, the circuit court issued four Orders for Remote Hearing and four Notices of Remote Trust Hearing to counsel for Mr. Self, Ms. Dean, Eric, and the Baltimore County Department of Social Services. Each "Notice of Remote Trust Hearing" provided a Zoom invitation and directions for the parties and participants to join the Zoom hearing. The "Order for Remote Hearing" explained that the evidentiary hearing will be conducted remotely on September 18 at 9:00 a.m. using Zoom for Government. The order stated that

⁵ In connection with a matter for guardianship of the person or the authorization of emergency protective services, "interested person" means the minor or the disabled person; the guardian and heirs of that person . . . a person holding a power of attorney of the minor or disabled person; and any other person designated by the court. Md. Rule 10-103(f)(1). Unless the court orders otherwise, the petitioner shall mail by ordinary mail and by certified mail to all other interested persons a copy of the petition and show cause order and a "Notice to Interested Persons." Md. Rule 10-203(b)(2).

“the parties and their counsel shall attend the hearing using the Zoom for Government video conference and appear on camera during the entirety of the hearing.” The order further stated:

ORDERED, that no later than September 15, 2023, all exhibits and witness lists must be pre-filed. In addition:

- The parties or their counsel shall file a list containing the names, email addresses, and phone numbers of the attorneys, parties and witnesses (if any) who will attend the hearing.
- All persons must use their real names (not aliases) while online to ensure they will not be prevented from entering the hearing.
- Counsel shall ensure that witnesses are familiar with the rules for remote testimony

ORDERED, that all witnesses will be sworn or affirmed by either the clerk or Judge prior to commencement of their testimony. In addition:

- a. Witnesses, counsel and other attendees who testify must participate via video-conference connection.
- b. Witnesses, counsel and other attendees, if any, must wear appropriate attire and present themselves as they would if they were appearing in a physical courtroom.
- c. The witness is to ensure that there will be no interruptions or distractions for the duration of their appearance at the remote hearing; and it is further

ORDERED, that except as otherwise provided for in this Order, hearings conducted pursuant to this Order shall be conducted to the same standards as hearings in a courtroom and in accordance with the Maryland Rules of Procedure and Evidence.

On September 15, Mr. Self filed his witness list that named Eric as a witness. On September 18, the circuit court held a remote hearing to evaluate Mr. Self’s request for court appointed health care professionals. Mr. Self attempted to call Eric as a witness indicating that the September 8 order required Eric to attend the hearing despite Eric voluntarily waiving his appearance, pursuant to Estates & Trusts Article § 13-705(e)(1)(i),

through his counsel. The court asked Mr. Self's counsel if he filed anything, such as a trial subpoena, to compel Eric's appearance. Mr. Self's counsel admitted that he had not and argued that a trial subpoena was unnecessary to compel Eric's appearance because the court entered an Order for Remote Hearing mandating that all parties shall attend the hearing. Mr. Self's counsel further argued that issuing a subpoena to compel Eric's attendance would duplicate the court's existing order. Counsel for Eric and Ms. Dean argued that Mr. Self was required to issue a trial subpoena to compel Eric to attend and testify at the hearing. The circuit court explained that the Order for Remote Hearing:

[W]as one of those orders that was generated as a result of COVID. Indicating at that time that prior to COVID, all of these hearings were essentially in person in court. The COVID Pandemic caused the court to essentially change its way of functioning, and it's clear from the Order of Remote Hearing. Which is generated as a matter of course. It doesn't change from case to case that this would be conducted via remote electronic participation using Zoom for government. And that - that is the context where the parties and Counsel shall attend the hearing, using the Zoom for government. Essentially interface as opposed to coming directly to court. As in most situations even regarding a Notice of Hearing or a Notice of Trial, but to say in a non-guardianship case that - that is this essentially serves as notice, even regardless of whether it says Order.

The circuit court further explained that:

In terms of practice, I think that it's always a practice to summons or subpoena someone to actually appear in court. Even appearing in court, I believe in a guardianship matter, that the, in this case, [Eric], can make the decision as to whether he's going to testify and if he says, even though I'm here, I'm not going to testify, and that becomes a matter for the court to decide. Whether he should or is otherwise protected. I think he has the ability to do that. I think he has the ability to do that through Counsel. This is a matter that's routinely done in court, when you have an alleged disabled person and Counsel for that alleged disabled person, waives a presence at trial. So, I'm - I'm there's an objection that I'm hearing even though it's not

maybe stated in that sense. So, I'm going to – I'm going to basically sustain that objection.

Mr. Self's counsel responded "okay. . . In that case, Your Honor, we have no further witnesses." Mr. Self effectively ended his case-in-chief.

After reviewing the totality of evidence presented, the circuit court found that Ms. Dean appeared and showed cause as to why appointing healthcare professionals to evaluate or examine Eric should not be permitted. The circuit court issued an order denying Mr. Self's request for the appointment of two health care professionals and dismissing the guardianship petition.

II. Questions Presented

Mr. Self timely appealed and presents the following issues which we rephrase as follows:⁶

1. Did the circuit court abuse its discretion in finding that the Order for Remote Hearing acts as a notice and did not compel Eric to appear at the September 18 show cause hearing?
2. Does Md. Code Ann., Courts & Judicial Procedure § 9-113 compel an adverse witness to testify at a hearing absent a subpoena?

III. Standard of Review

The parties do not agree on the appropriate standard of review. Mr. Self asserts that the question presented is one of law and should be reviewed *de novo*. Conversely, Ms. Dean argues that the circuit court's ruling amounts to an exclusion of evidence. Ms. Dean

⁶ In his brief, Mr. Self framed the question as follows:

1. Did the Circuit Court err when it sustained Eric Self and Carla Self's objection and refused Appellant's call to have Eric Self testify at the hearing on 9/18/23?

suggests that we apply the prescription set forth in Rule 5-103 that “error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling” and the substance was made known to the court by offer on record or was apparent from the context within which the evidence was offered. Md. Rule 5-103(a)(2). Further, we would view the admission or exclusion of evidence as a function of the trial court and treat the court’s decision with great latitude, reversing only “upon finding that the trial judge’s determination was both manifestly wrong and substantially injurious.” *Angelakis v. Teimourian*, 150 Md. App. 507, 525 (2003). However, we disagree with both parties. For reasons we will outline, the appropriate standard of review is abuse of discretion.

IV. Discussion

A. Adult Guardianship Proceedings

Mr. Self contends that the circuit court abused its discretion in finding that Eric had the right to waive his presence at the show cause hearing because the circuit court issued an Order for Remote Hearing mandating that the parties attend. The circuit court found that the Order for Remote Hearing is a standard order that was generated during the COVID-19 pandemic to notify parties that a hearing will be held on Zoom for Government. The circuit court further explained that Eric, as the alleged disabled person, has the ability to waive his presence through counsel which is a matter routinely done in court.

Title 10 of the Maryland Rules and Maryland Estates & Trusts Article §§ 13-701 to 13-713 govern adult guardianship proceedings for disabled persons. A petition for

guardianship of a person ordinarily must be supported by two medical certificates. Md. Rule 10-202(a)(1); Md. Code Ann., Est. & Trusts § 13-705(c)(2). The medical certificates must be completed by either two physicians licensed to practice medicine in the United States or by one licensed physician and a licensed psychologist, a licensed certified social worker-clinical, or a nurse practitioner. Md. Rule 10-202(a)(3)(A); Est. & Trusts § 13-705(c)(2)(i)-(ii). The court will hold a show cause proceeding when such certificates are not provided because the petitioner has been unable to access or examine the alleged disabled person. Md. Rule 10-202(a)(3)(A).

If a petition for guardianship is filed without medical certificates and “alleges that the disabled person is residing with or under the control of a person who has refused to permit examination or evaluation,” and that the alleged disabled person “may be at risk unless a guardian is appointed,” the court shall delay issuance of a show cause order. Md. Rule 10-202(a)(3)(A). The court shall instead issue an order directing “the person who has refused to permit the disabled person to be examined or evaluated to appear personally on a date specified in the order and show cause why the disabled person should not be examined or evaluated.” *Id.* That order shall be served on the person objecting to the petition for guardianship of the alleged disabled person. *Id.* If, after the show cause hearing, the court finds that examinations are necessary, it shall appoint either (i) two physicians or (ii) one physician and one of the approved health care providers to conduct the examination or evaluation and file their reports with the court. Md. Rule 10-202(a)(3)(B). If the two healthcare providers certify that the person is disabled, the petition

proceeds as if the certificates had been filed with it. *Id.* Otherwise, the circuit court must dismiss the petition. *Id.*

Mr. Self filed a petition for guardianship, alleging that Eric lives with Ms. Dean, refused to be examined by medical professionals, and requested the circuit court to appoint two medical professionals to examine Eric. Ms. Dean, as an interested person, objected to Mr. Self's petition for guardianship and the court issued an order directing Ms. Dean to appear on August 24, 2023, and show cause why Eric should not be examined or evaluated. Eric was not named in the show cause order, which only required Ms. Dean to present evidence showing that Eric should not be examined. The court set the show cause hearing to continue on September 18, 2023, for an evidentiary hearing. Through his counsel, Eric voluntarily waived his right to be present at the evidentiary hearing.

1. *Alleged Disabled Person's Right to Waive Presence at a Guardianship Hearing*

An alleged disabled person has the right to appear at guardianship hearings unless the person knowingly and voluntarily waived their right to be present or cannot attend because of physical or mental incapacity. Est. & Trusts § 13-705(e)(1)(i); *see also Matter of Jacobson*, 256 Md. App. 369, 388 n.5 (2022) (noting that the alleged disabled person named on the show cause order voluntarily waived her right to appear through her attorney at the show cause hearing). Waiver may not be presumed from nonappearance but shall be determined based on factual information supplied to the court by counsel or a representative appointed by the court. Est. & Trusts § 13-705(e)(1)(ii). It is the role of the alleged disabled person's attorney to explain the proceedings to their client, advise the

client of their rights, advocate the client's position, and protect the client's interest. *In re Lee*, 132 Md. App. 696, 718 (2000). Section 13-705(e) ensures that an alleged disabled person has the right to be heard before enduring a loss of fundamental rights while providing the alleged disabled person with the choice to waive their appearance. *Id.* at 7-18-19 (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)).

2. *Compelling Witness Attendance at Show Cause Hearings*

We next consider Mr. Self's contentions that Eric's right to waive his presence is limited by the Order for Remote Hearing or by a trial subpoena. The parties agree that Eric generally has the right to waive his presence at guardianship hearings pursuant to Section 13-705(e)(1)(i). However, Mr. Self asserts that he did not need to file a subpoena because the Order for Remote Hearing satisfied the need.

Mr. Self argues that Eric's right to waive his presence is limited by the Order for Remote Hearing or by a trial subpoena. Although Mr. Self is correct that a trial subpoena may compel Eric to appear and testify, Mr. Self admits that he did not request or serve a subpoena to compel Eric's attendance. Nevertheless, he insists that there was no need to issue a trial subpoena because the Order for Remote Hearing compelled Eric to appear at the evidentiary hearing. Ms. Dean counters that the Order for Remote Hearing is an administrative order, similar to a scheduling order, and if this Court should find that an order setting a hearing date extinguishes an alleged disabled person's fundamental right to waive their presence our decision would render the intent of Section 13-705(e)(1)(i) of the guardianship statute meaningless. We agree with the circuit court's conclusion that the

general practice to compel a witness is by issuing a subpoena and Eric has the ability to waive his presence through counsel, which is a matter routinely done in court.

The Maryland Rules require that parties obtain a subpoena to compel witnesses to attend and provide testimony at court proceedings before a magistrate, auditor, or examiner. Md. Rule 2-510(a)(1)(A)-(B); *Pleasant v. Pleasant*, 97 Md. App. 711, 733 (1993). A subpoena is “a written order or writ directed to a person and requiring attendance at a particular time and place to take the action specified therein.” Md. Rule 1-202(cc). The party requesting a subpoena must complete the required forms that include the name and address of the person to whom it is directed, the name of the party that requested to have it issued, the date, time, and place where attendance is required, and a notice to designate the person to testify. Md. Rule 2-510(c).

A witness served with a subpoena under Rule 2-510 is liable to body attachment and fine for failure to obey the subpoena without sufficient excuse. Md. Rule 2-510(j); *see also Evans v. Howard*, 256 Md. 155, 159 (1969). The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. Md. Rule 2-510(j). If court is in session, the witness shall be taken immediately before the court. *Id.* If the court is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the witness’s appearance at the next session of the court that issued the attachment. *Id.*

Next, the Order for Remote Hearing is a separate document issued to parties in advance of a hearing date. To navigate unprecedented circumstances resulting from the

COVID-19 Pandemic, a significant number of judicial proceedings shifted from in-person hearings to remote Zoom hearings.⁷ The Supreme Court approved Title 21 of the Maryland Rules, effective July 1, 2023, to set forth procedures for remote electronic participation in judicial proceedings. Md. Rule 21-101, *et seq.* Specifically, Chapters 100 and 200 of Title 21 govern remote electronic participation in civil cases and authorize circuit courts to conduct remote electronic proceedings in either evidentiary or non-evidentiary matters. Md. Rule 21-101, *et seq.*; 21-201(a)(1).

Title 21 is silent on procedural standards for entering an order authorizing remote hearings in trial courts. Instead, the Rules permit a circuit court administrative judge or a presiding judge to determine what matters may be held virtually. The county administrative judge, by administrative order entered as part of the court’s case management plan, may direct circuit courts to conduct remote electronic participation for specific categories of

⁷ “To promote the fair and effective administration of justice when holding court proceedings remotely, the Maryland Judiciary has established [] guidelines and recommendations when [Maryland Rules 21-101, *et. seq.*] are invoked.” Maryland Judiciary, *Remote Hearings and Proceedings*, <https://www.mdcourts.gov/remotehearings> (Nov. 2023). The guidelines and recommendations for remote hearings in Maryland circuit courts can be found on the Maryland Judiciary’s website. Maryland Judiciary, *Guidelines for Remote Hearings in the Maryland Trial Courts*, <https://www.mdcourts.gov/sites/default/files/import/eservices/pdf/remotehearingsguidelinre.pdf>. Although the guidelines are not mandatory for circuit courts to implement, they are a resource to help parties navigate remote evidentiary and non-evidentiary matters. *See id.* Among several other recommendations, the guidelines explain that the preferred platform for remote proceedings is Zoom for Government; all persons must use their real names (not aliases) while online to ensure they will not be prevented from entering the hearing; circuit courts may implement a method for pre-filing exhibits and witness lists; and that hearing participants and witnesses may be required to present themselves as if they were appearing in a court room. *Id.*

proceedings, in whole or in part, unless otherwise ordered by the presiding judge in a particular case. Md. Rule 21-103(a)(2), 21-201(a). However, if a court permits or requires remote electronic participation on its own initiative in a proceeding that is subject to participation but is not subject to an administrative order, the court shall notify the parties in writing of its intention to do so and afford them a reasonable opportunity to object. Md. Rule 21-103(b).⁸

The circuit court properly addressed the issue of whether the Order for Remote Hearing compelled Eric to testify. Mr. Self argued that the order mandates that all parties shall attend the hearing. Mr. Self's argument ignores the context of the order that explains how the parties are to appear. The full sentence in the order mandates that "the parties and their counsel *shall attend the hearing using the Zoom for Government video-conference* and appear on camera during the entirety of the hearing." (emphasis added). The circuit court explained that:

[The Order for Remote Hearing] doesn't change from case to case that this would be conducted via remote electronic participation using Zoom for

⁸ Effective April 4, 2022, the Honorable Ruth A. Jakubowski, Administrative Judge on the Circuit Court for Baltimore County, approved the Circuit Court's Resumption of Normal Operations. Honorable Ruth A. Jakubowski, *Circuit Court for Baltimore County Resumption of Normal Operations*, Baltimore County Government (April 4, 2022), <https://www.baltimorecountymd.gov/files/Documents/Circuit/ResumptionofNormalOperation.pdf>. As Maryland courts adjusted to resuming operations post-pandemic, Judge Jakubowski listed proceedings that would continue to be held remotely. *Id.* Guardianship hearings remained remote with the exception of subpoena hearings. *Id.* However, this was not a circuit court administrative order. The Resumption of Normal Operations was added to the Baltimore County Circuit Court's COVID-19 policies in response to Chief Justice Joseph M. Getty's Fifth Administrative Order Lifting the COVID-19 Health Emergency as the Maryland Judiciary issued on March 28, 2022. *Id.*

government. And that - that is the context where the parties and Counsel shall attend the hearing, using the Zoom for [G]overnment. Essentially interface as opposed to coming directly to court. As in most situations even regarding a Notice of Hearing or a Notice of Trial, but to say in a non-guardianship case that - that is this essentially serves as notice, even regardless of whether it says Order.

The Order for Remote Hearing is a routine court order which is distinct from a subpoena. The order lacks specific features required in subpoenas that are necessary to compel witness attendance. These features include identifying the names and addresses of the parties compelled to attend, a notice to designate the person to testify and a notice to the intended witness that failure to appear will result in a fine, body attachment or contempt of court. The Order for Remote Hearing merely directed the parties to attend the hearing using Zoom for Government, as opposed to attending the hearing in person at the courthouse. Put another way, the order to appear via Zoom for Government is no different from an order directing the parties to appear for a hearing at a designated courtroom at the courthouse.

We are not persuaded that a routine order for remote hearings, absent a subpoena, supersedes statutory rights provided to alleged disabled persons under Section 13-705(e)(1)(i). The order for remote hearing generally states that parties must attend the hearing on Zoom for Government on September 18, 2023. Mr. Self does not cite, and we have not found, any authority suggesting that a routine court order alone waives, revokes, or modifies the guardianship statute that serves to protect fundamental rights of alleged disabled persons.

We find that the circuit court did not abuse its discretion in determining that the Order for Remote Hearing does not compel witness attendance. Without a proper subpoena, Eric rightfully waived his presence at the show cause hearing and the circuit court accurately found that Eric was not compelled to attend and testify. The trial court did not abuse its discretion by not ordering Eric to testify.

B. The Adverse Witness Statute: Md. Code Ann., Courts & Judicial Procedure § 9-113

Intertwined in the issues, Mr. Self urges this Court to find that the adverse witness statute under Md. Code Ann., Courts & Judicial Procedure § 9-113 compelled Eric to testify as a witness at the show cause hearing. Mr. Self further contends that the circuit court's decision to disallow counsel the right to call Eric to testify was wrong as a matter of law. Mr. Self's interpretation of Section 9-113 is misplaced, and he fails to offer any case law in support of his argument.

Statutory interpretation is a question of law that requires an appellate court to apply a *de novo* standard of review. *See Bittinger v. CSX Transp. Inc.*, 176 Md. App. 262, 273 (2007). We first look to the plain language of the statute, giving it its natural and ordinary meaning. *Bottini v. Dep't of Fin.*, 450 Md. 117, 187 (2016). When the statutory language is clear, unambiguous and expresses a plain meaning, we will give effect to the statute as it is written. *Id.* at 187-88. If there is no ambiguity in the language, either inherently or by reference to other relevant laws or circumstances, the inquiry as to legislative intent ends. *Id.* at 188.

Section 9-113 provides that in civil cases, “a party . . . *may* be called by the adverse party and interrogated as on cross-examination.” Md. Code Ann., Cts. & Jud. Proc. § 9-113 (1974) (emphasis added). The purpose of this rule is to construct a method for parties to call a person as an adverse witness, examine the witness using leading questions and impeach the witness’s testimony. *Proctor Elec. Co. v. Zink*, 217 Md. 22, 32 (1958). Section 9-113 prevents the repetition of testimony by permitting a party to call an opposing party as a witness. *Takoma Park Bank v. Abbott*, 179 Md. 249, 259 (1941). The nature and scope of the adverse witness statute must be strictly construed and does not alter the common law except as explicitly provided. *Williams v. Wheeler*, 252 Md. 75, 79 (1969) (citing *Mason v. Poulson*, 43 Md. 161, 177 (1875)).

In *Williams*, the Maryland Supreme Court explained that the statute mitigates some of the harshness of the common law by permitting a party who calls an adverse witness to use leading questions on direct examination for the purpose of contradicting and impeaching the witness, as if the witness had been called by the adverse party. *Id.* We also recognize that circuit courts may prohibit parties from calling witnesses as an “adverse witness” if the person does not fall within the ambit of the adverse witness statute. *See Keefover v. Giant Food, Inc.*, 83 Md. App. 306, 309-10 (1990). Nevertheless, a party may still call the person as a witness to be questioned under direct examination but must exclude leading questions. *Id.* at 310. While the statute permits counsel to call an adverse witness to the stand, statutory permission to examine an adverse witness does not compel the

witness to be present to testify at trial for the purpose of such examination. The only accepted means to secure the presence of an adverse witness is to file a subpoena.

Mr. Self's interpretation of Section 9-113 asks this Court to establish a new mechanism to compel witness testimony. We decline to interpret the statute in this manner. First, the plain language of the statute asserts that a witness "may be called by the adverse party and interrogated as on cross examination." Md. Code Ann., Cts & Jud. Proc. § 9-113. The plain language of the statute merely provides a party with the opportunity to call an adverse witness to the stand and use cross-examination techniques to interrogate the witness. *See Williams*, 252 Md. at 79; *Nottingham Vill., Inc. v. Baltimore County*, 266 Md. 339, 309 (1972); *Proctor Elec. Co.*, 217 Md. at 32-33.

Furthermore, in *Lee*, we addressed a similar issue where the appellant contended that the trial court erred in denying appellant's request under Maryland Rule 10-205(b)(1)⁹

⁹ Rule 10-205(b)(1) stated that:

"A physician's or psychologist's certificate is admissible as substantive evidence without the presence or testimony of the physician or psychologist unless, not later than 10 days before trial, an interested person who is not an individual under a disability, or the attorney for the alleged disabled person, files a request that the physician or psychologist appear. If the trial date is less than 10 days from the date the response is due, a request that the physician or psychologist appear may be filed at any time before trial."

Rule 10-205(b)(1) was amended on December 4, 2007, and rewritten as Rule 10-205(b) stating:

(b) Guardianship of Alleged Disabled Person. When the petition is for guardianship of the person of an alleged disabled person, the court shall set the matter for jury trial. The alleged disabled person or the attorney representing the person may waive a jury trial at any time before trial. If a jury trial is held, the jury shall return a verdict pursuant to Rule 2-522(b)(2) as to any alleged disability. Each certificate filed pursuant to

that two doctors who prepared the physician certificates of the guardianship petition, and were in court, be permitted to testify. 132 Md. App. at 714. Rule 10-205(b) permits an interested party the right to request the presence of the physicians who prepared the medical certificates to testify at trial. *Id.* The appellant timely requested for the doctors to appear at trial under Rule 10-205(b)(1) and the doctors appeared as requested. *Id.* at 715. However, the trial court excused the doctors from testifying over the appellant's objection. *Id.* The Appellate Court of Maryland¹⁰ determined that the trial court erred in excusing the physicians from testifying after their presence had been *properly requested* by the appellant under Rule 10-205(b)(1). *Id.* (emphasis added).

Rule 10-202 is admissible as substantive evidence without the presence or testimony of the certifying health care professional unless, not later than 10 days before trial, an interested person who is not an individual under a disability, or the attorney for the alleged disabled person, files a request that the health care professional appear to testify. If the trial date is less than 10 days from the date the response is due, a request that the health care professional appear may be filed at any time before trial.

This rule permits an interested party or the alleged disabled person to request the physician's presence in court. This is not an alternative to obtaining a subpoena. However, the circuit court may not prohibit a physician from testifying when a party properly requests the physician to appear.

¹⁰ On December 14, 2022, the Court of Special Appeals was renamed the "The Appellate Court of Maryland." The change in name does not affect precedential value of opinions. *See* Governor Larry Hogan, *Governor's Proclamation Declaring the Result of the Election of November 8, 2022, For Constitutional Amendments*, (Dec. 14, 2022), <https://www.courts.state.md.us/sites/default/files/import/reference/pdfs/proclamation20221213.pdf>.

Unlike *Lee*, Mr. Self failed to compel Eric's attendance properly by requesting, filing, and serving a subpoena under Rule 2-510 before the hearing on September 18.¹¹ The circuit court is not under any obligation to compel Eric to testify absent a subpoena. As a result, the circuit court did not excuse or disallow Eric's testimony but proceeded without Eric's testimony because Mr. Self had failed to compel Eric's attendance and testimony.

Mr. Self adds that he was prejudiced because the circuit court prohibited Mr. Self from calling Eric as an adverse witness.¹² This argument ignores the circuit court's reasoning in denying Mr. Self's request. In fact, Mr. Self did exercise his right under Section 9-113 to call Eric as a witness at the hearing on September 18. However, the circuit court determined that Eric retained the right to waive his appearance and that the Order for Remote Hearing acted as a hearing notice that did not compel Eric to attend the hearing. As opposed to Mr. Self's reading of Section 9-113, the plain language of the statute and common law interpretations do not provide any indication that Section 9-113 compels an adverse witness to be available to testify when a party fails to secure the witness's presence by filing a subpoena. We find that the circuit court did not abuse its discretion.

¹¹ Mr. Self and his counsel attended the hearing on August 24 when the circuit court set the date for the evidentiary hearing on September 5. This provided Mr. Self with an ample amount of time to request, file and serve a subpoena to Eric.

¹² Mr. Self also argues that Eric's testimony was "central to Appellant's case." If so, Mr. Self should have served Eric with a subpoena between August 24 and September 11. Md. Rule 2-510(d). Mr. Self's alternative was requesting a continuance at trial, but he waived this option once he ended his case-in-chief.

V. Conclusion

We find that the circuit court properly held that the Order for Remote Hearing is a routine court order that did not compel Eric to attend the show cause hearing. Absent clear language compelling a witness to appear and testify, the Order for Remote Hearing may not hold the same authority as a subpoena. Additionally, Section 9-113 provides a party the opportunity to call an adverse witness to be examined using leading questions. The statute does not compel a witness to testify absent a trial subpoena. Therefore, a subpoena was required to compel Eric to attend and testify at the show cause hearing. For those reasons, we affirm the decision of the Circuit Court of Baltimore County.

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY IS AFFIRMED.
APPELLANT TO PAY COSTS.**