Circuit Court for Montgomery County
Case Nos. 434214V& 436584V

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 65

September Term, 2022

K. DAVID MEIT

v.

ANETA M. KONDRATOWICZ, *et al.*

Wells, C.J.,
Graeff,
Nazarian,

JJ.

Opinion by Graeff, J.

Filed: January 17, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This case, which involves a dispute between K. David Meit, appellant, and Aneta Kondratowicz and Real Estate Services Systems, LLC ("RESS"), appellees, comes before this Court for a second time. In 2017, Mr. Meit sued Ms. Kondratowicz in the Circuit Court for Montgomery County, alleging, among other things, that Ms. Kondratowicz violated the terms of RESS's operating agreement. Appellees filed counterclaims against Mr. Meit. Mr. Meit's suit was dismissed for failure to state a claim, and appellees moved for sanctions against Mr. Meit for failure to comply with their discovery requests. The circuit court granted appellees' motion, entered a default judgment against Mr. Meit, and awarded appellees damages and attorneys' fees in connection with obtaining this order.

Mr. Meit appealed to this Court, arguing that the circuit court failed to realize that it could consider the relative fault of both him and his counsel, Mitchell Rotbert, when deciding an appropriate sanction. This Court agreed and vacated the judgment and remanded for reconsideration. Following a hearing on remand, the circuit court again ordered a default judgment as a sanction for the discovery failures and awarded appellees attorneys' fees.

In this second appeal, Mr. Meit presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court abuse its discretion by imposing a default judgment against Mr. Meit as a sanction for Mr. Meit's failure to meet discovery deadlines?

2. Did the circuit court err in awarding attorneys' fees to appellees that were incurred in proceedings that took place after the court entered a default judgment against Mr. Meit?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The underlying facts and proceedings were detailed fully in our previous unreported opinion. *See Meit v. Kondratowicz*, No. 1396, Sept. Term, 2019, slip op. at 1–10 (filed Nov. 6, 2020). We set forth here only the facts needed to address the issues in this appeal.

Mr. Meit and Ms. Kondratowicz were co-owners of RESS, with Mr. Meit owning 35% of the company, and Ms. Kondratowicz owning 65%. RESS was formed as a "for-profit business in the real estate industry, principally serving residential real property owners and managers." On December 2, 2014, Mr. Meit and Ms. Kondratowicz entered into an operating agreement for RESS, which provided for equal management rights despite their disparate ownership interests.

On July 7, 2017, Mr. Meit filed a complaint against Ms. Kondratowicz, alleging, among other things, that she violated the terms of RESS's operating agreement by attempting to shut him out of the business, thereby violating her fiduciary duties to him. Mr. Meit retained Mr. Rotbert as counsel for this lawsuit.

On September 6, 2017, Ms. Kondratowicz filed a countercomplaint against Mr. Meit, claiming that he failed to contribute the promised "sweat-equity" in the operation of RESS to justify his 35% share. Ms. Kondratowicz also moved to dismiss Mr. Meit's complaint for failure to state a claim. On the same date, RESS filed a separate action against Mr. Meit, asserting claims for breach of contract, constructive fraud, and unjust enrichment. The circuit court consolidated the cases.

On September 28, 2017, Mr. Meit filed an opposition to Ms. Kondratowicz's motion to dismiss. This filing was three days late. In a motion to accept the late filing as timely, Mr. Rotbert submitted an affidavit explaining that his niece and close friend had recently died and "[d]eath overwhelmed [him] in September 2017." The circuit court granted the motion.

On October 6, 2017, the circuit court held a scheduling hearing. It issued a scheduling order, which set a two-week trial starting October 1, 2018, provided that written discovery be served by February 15, 2018, and provided that discovery be completed by April 2, 2018. The order stated that "[a]ny modifications of this scheduling order must be requested by written motion filed in advance of the deadlines or hearing dates sought to be modified, providing good cause to justify any modification thereof."

On January 3, 2018, Ms. Kondratowicz served interrogatories and a request for production of documents on Mr. Meit. Mr. Rotbert forwarded these requests to Mr. Meit by email on January 4, 2018.

On January 19, 2018, after a hearing, the court entered an order dismissing Mr. Meit's complaint for failure to state a claim. The court found: (1) "as to Count 1 . . . Maryland does not recognize an independent cause of action for breach of fiduciary duty in the LLC context"; and (2) as to Count 3, the allegations "are strictly promissory, which may form a claim for breach of contract, but do not, as a matter of law, constitute a claim

for fraud."[1] Count 2 was voluntarily withdrawn by Mr. Meit. The court granted Mr. Meit 30 days to file an amended complaint, with a deadline of February 20, 2018. The court allowed appellees' claims against Mr. Meit to proceed.

On February 7, 2018, RESS served its discovery requests on Mr. Meit, including a request for production of documents and interrogatories. Mr. Rotbert did not inform Mr. Meit of these requests.

On February 16, 2018, Mr. Rotbert sent appellees a request for an extension to file the amended complaint, stating that he and his wife "learned today that some tests [he] recently had done came back showing a higher than expected risk of aggressive prostate cancer. So, [he was] kind of out of it today." Counsel for appellees did not oppose this request.

On February 20, 2018, Mr. Rotbert attempted to file Mr. Meit's amended complaint by leaving it in the court's night-box. The following day the clerk rejected the filing, stating that "the case was closed." Mr. Rotbert claimed in a subsequently filed affidavit that he spoke to the clerk about this, and he also attempted unsuccessfully to reach the circuit court judge by phone. Appellees were served with the unfiled amended complaint on approximately February 27, 2018.

[1] In *Plank v. Cherneski*, 469 Md. 548, 572 (2020), the Supreme Court of Maryland subsequently held "that managing members of an LLC owe common law fiduciary duties to the LLC and to the other members based on principles of agency." On December 14, 2022, the name of the Court of Appeals was changed to the Supreme Court of Maryland.

Mr. Rotbert did not respond to appellees' discovery requests on Mr. Meit's behalf. On March 7, 2018, Ms. Kondratowicz filed several motions: (1) a motion for sanctions against Mr. Meit, asking the court to enter a default judgment in her favor and to order him to pay her reasonable attorneys' fees; (2) a motion to strike the amended complaint (if Mr. Meit filed it, as opposed to merely serving it on her); and (3) a motion to dismiss the amended complaint for failure to state a claim. RESS also moved for sanctions for Mr. Meit's failure to respond to its February 7, 2018, request. Mr. Meit failed to file an opposition to any of these motions.

On April 20, 2018, the circuit court held a status hearing. Mr. Meit did not attend. During the hearing, Mr. Rotbert acknowledged that Mr. Meit "owe[d] discovery," and he orally moved to modify and extend the pretrial schedule based on the "volumes of data that we have to produce." The court told Mr. Rotbert to file a written motion to amend the scheduling order.

On April 25, 2018, Mr. Rotbert filed a written motion to extend the scheduling order, requesting that the close of discovery be extended to July 9, 2018. In support of this motion, Mr. Rotbert attached an affidavit that detailed his personal problems and the resulting impact it had on his work. As recounted in our earlier opinion, Mr. Rotbert attached a January 2018 letter to the federal court in a different matter, which explained that his personal life crisis and recent medical problems had impacted his work and performance as an advocate. The letter noted:

> (1) his niece had "died unexpectedly and inexplicably," which caused him to spend "many weeks arranging and then attending [her] funeral" in Sweden;

> (2) upon returning to the country, Mr. Rotbert fell seriously ill, "had no energy," and could not work more than four hours a day; (3) his only paralegal, "who had not calendared Mr. Meit's case in our case tracking system," resigned without notice; (4) Mr. Rotbert had been working with two new lawyers at his firm while still "carrying a relatively heavy case-load"; (5) he had been diagnosed with cancer; and (6) he had been operating "from the premise that, because trial in this action [was] scheduled to occur on October 1, 2018, the pretrial schedule should reflect dates that closed discovery closer to trial."

Meit, slip op. at 5–6.

Appellees filed an opposition to the motion to amend the scheduling order. They argued that the discovery violations were substantial, and they were prejudicial because they had no information to prepare for trial. They noted that Mr. Meit's intention was to exhaust Ms. Kondratowicz's resources, and a postponement would further his "purpose to emotionally and financially bully Ms. Kondratowicz."

On May 16, 2018, the circuit court denied Mr. Meit's motion to amend the scheduling order and granted appellees' motions for sanctions. It found that Mr. Meit was "subject to sanctions under Rule 2-432(a) and Rule 2-433 for failure to provide discovery." The court ordered judgment of default against Mr. Meit on all counts and that a hearing be held within 60 days "on the amount of expenses and reasonable attorneys' fees incurred by [appellees] in obtaining this Order."

The court explained its rulings in an accompanying memorandum opinion, which relied on the five factors identified in *Taliaferro v. State*, 295 Md. 376, *cert. denied*, 461 U.S. 948 (1983). As we noted in our prior opinion, the court found that:

- The violations were substantial, not technical, because "there has been a complete failure to provide discovery despite repeated attempts by opposing

counsel to obtain both supplementations to expert designations and answers to their requests for documents and answers to interrogatories";

- The "timing of the ultimate disclosure" weighed heavily in favor of sanctions because, at the time of the status hearing, there had been no disclosures at all;

- No sufficient justification for the discovery violations had been provided; and

- The degree of prejudice and whether such prejudice could be cured by a postponement both weighed in favor of sanctions because although Ms. Kondratowicz had engaged in reasonable efforts to litigate the case, "[Mr.] Meit has completely failed to engage in the discovery process." As a result, Ms. Kondratowicz lacked information to prepare for trial. The court also noted Ms. Kondratowicz's allegation "that from the beginning [Mr.] Meit has stated his intent to use this litigation to drain her personal resources as well as those of RESS," and concluded that "[i]t would be contrary to public policy and the efficient administration of justice to reward [Mr.] Meit with a postponement of the scheduling order for his flagrant violations of the deadlines set forth by the [c]ourt and the Maryland Rules relating to discovery."

Meit, slip op. at 7.

Mr. Meit contends that he was blindsided by this order, asserting that Mr. Rotbert had been providing false assurances and misrepresenting the progress of the case. Mr. Rotbert informed Mr. Meit on multiple occasions that things were "moving along" and everything was "in hand." Following the default judgment, Mr. Meit terminated Mr. Rotbert and retained new counsel.

On June 15, 2018, with the assistance of his new counsel, Mr. Meit filed a motion to vacate the default judgment and served discovery responses to appellees. He also submitted an affidavit to the court, explaining that Mr. Rotbert had never informed him of the discovery failures and that he had diligently gathered responsive materials needed to

respond to the requests. Specifically, Mr. Meit attested that: (1) he "diligently checked in with [Mr. Rotbert] and inquired about the case" on a monthly basis; (2) "[d]espite [his] diligence," he was unaware of the two sets of interrogatories that appellees served on him in early 2018; (3) he was generally aware that documents had been requested, although he had not seen the specific requests until his new counsel "provided them to [him] in June of 2018"; (4) he had "worked diligently to collect responsive documents and provide them to" Mr. Rotbert; (5) Mr. Rotbert never informed him that discovery requests existed or that they were overdue; (6) Mr. Rotbert did not inform him of the motions for sanctions, even though they had lunch together on May 3, 2018, where Mr. Rotbert informed him that "the case was 'moving along'"; (7) he had only learned about the outstanding discovery and sanctions motions after Mr. Rotbert forwarded him the court's order granting the sanctions motions and entering judgment against him; and (8) he had always "been willing . . . to fulfill [his] discovery obligations in this matter." Appellees filed an opposition to the motion to vacate. On January 4, 2019, the circuit court held a hearing on the motion to vacate the default judgment. The court noted all the failures in this case, and it found no valid excuse for the failures. The court denied the motion and ordered a hearing within 60 days on the issue of damages and attorneys' fees.[2]

[2] The court stated that the hearing would be held by a different judge because the judge rotation was changing.

On August 5, 2019, the court, with a different judge presiding, held a hearing. On August 19, 2019, the court ordered Mr. Meit to pay $131,250 in damages.[3] With respect to attorneys' fees, the court interpreted the initial order as including any additional fees related to those sanctions beyond the date of the initial order. It ordered Mr. Meit to pay attorneys' fees of $59,566, plus post-judgment interest.

Mr. Meit appealed to this Court, arguing, among other things, that "the circuit court abused its discretion when it failed to recognize that it could take Mr. Meit's relative lack of fault into account when determining an appropriate sanction" for the discovery delays. In our November 6, 2020 decision, this Court noted that the circuit court "engaged in a thorough and well-reasoned review" of the requisite factors when weighing the appropriate sanctions in this case. We held, however, that the circuit court improperly believed that it was precluded from considering the relative fault of the client and attorney in determining the appropriate sanction. Accordingly, this Court vacated the circuit court's order denying the motion to vacate the default judgment and remanded for the court to reconsider its ruling. *Meit*, slip op. at 29–30.[4]

[3] Based on the finding, by default, that Mr. Meit fraudulently induced Ms. Kondratowicz to agree to enter into a business agreement with him, the $131,250 damages award represented restitution in the amount of distributions that Mr. Meit had received from the business.

[4] This Court stated that, because the circuit court's decision on remand might render some of Mr. Meit's alternative claims moot, we declined to consider Mr. Meit's claims that: (1) "the motions court abused its discretion in imposing the ultimate sanction of a default judgment; (2) the trial court erred in awarding damages; and (3) the trial court erred in its final award of attorneys' fees."

On October 22, 2021, the circuit court ordered limited discovery on the issue of relative fault of Mr. Rotbert and Mr. Meit. It ordered that discovery be limited to "communications between Mr. Rotbert and Mr. Meit relative to the discovery failure and violations at issue in this matter and the knowledge held by each party as to the discovery failure and violations."

The ensuing discovery included the production of several written documents and depositions of both Mr. Meit and Mr. Rotbert. Mr. Meit testified in his deposition that, in preparation for a meeting with Mr. Rotbert regarding discovery, he "had gathered several banker's boxes full of documentation in response to the discovery requests, and [they] spent four to five hours reviewing . . . and organizing the documents." Following this meeting, he was under the impression that Mr. Rotbert would organize all the documents and "respond timely with the documents that [he] provided." Mr. Meit checked in with Mr. Rotbert many times regarding the status of the case, and Mr. Rotbert gave constant assurances and "painted a picture that everything was on track."

Mr. Rotbert testified that Mr. Meit brought a truck with approximately eight boxes of materials to him "as part of . . . organizing everything for the case." The volume of records "was far more than [he] was prepared to handle, and [he] mismanaged the data, and therefore did not produce it in a timely fashion." Mr. Rotbert testified that, "[b]etween [Mr. Meit] and my firm, my judgment is [Mr. Meit] is blameless, because he produced documents to us, he responded to our requests when we made them."

Following the limited discovery, appellees filed a memorandum, claiming that the discovery on remand revealed that the facts stated in Mr. Meit's affidavit attached to his motion to vacate were untrue. Although the affidavit stated that Mr. Meit "'did not know outstanding written discovery requests existed' and 'did not learn about the outstanding discovery' until 'on or about May 16, 2018,' after sanctions already had been granted," discovery revealed that to be untrue. Discovery revealed that Mr. Meit *did* know written discovery requests existed and had received them the day after they were served, and he knew when the responses were due. On January 4, 2018, Mr. Rotbert emailed Mr. Meit the discovery requests served the prior day, and in another email sent on February 5, 2018, he advised Mr. Meit that responses were due on February 12, 2018. Appellees argued that, based on this affidavit, Mr. Meit's testimony was unreliable and lacked credibility.

Appellees also argued that the record showed motivation for Mr. Meit's refusal to participate in discovery, pointing to Ms. Kondratowicz's affidavit stating that, prior to filing suit, Mr. Meit threatened to "drown her in legal fees if the two of them were to become involved in a lawsuit." Thus, there was evidence to suggest fault by Mr. Meit.[5]

In an opposition to this memorandum, Mr. Meit asserted that the court should disregard appellees arguments because: (1) the affidavit was filed after the court's sanction

[5] At oral argument in this Court, counsel noted that discovery also revealed that Mr. Rotbert emailed Mr. Meit a ShareFile activity notification containing a copy of the April 25, 2018 motion to amend the scheduling order, which specifically referenced the "concededly late discovery" and the pending motion for sanctions. The email, however, merely suggested lunch to catch up on the case and forwarded the notification. There was no evidence that Mr. Meit opened this attachment.

ruling, and "[t]he purpose of the relative fault analysis is to address what occurred *before* the sanctions were entered"; (2) Mr. Meit did not realize the affidavit contained this error as it was prepared by his new counsel; and (3) the affidavit is irrelevant on remand as the question was whether Mr. Rotbert was the primary cause of the discovery failures. Mr. Meit conceded that the affidavit was "[a]dmittedly . . . false."

On February 8, 2022, the circuit court held a hearing to reconsider sanctions for the discovery failures. The court specifically stated that it would consider the relative fault of Mr. Meit and his attorney "in determining the appropriate sanctions for the discovery failures in this case." As discussed in more detail, *infra*, the circuit court, relying on the factors laid out in *Taliaferro*, granted appellees' motion for sanctions and ordered a default judgment against Mr. Meit. The court then stated that it would enter judgment in the amount previously ordered, $131,250 in damages and $59,566 for attorneys' fees.

This appeal followed.

STANDARD OF REVIEW

A circuit court is entrusted with broad discretion in imposing sanctions when a party fails to comply with discovery rules, and this Court reviews this decision under an abuse of discretion standard. *Attorney Grievance Comm'n v. Kreamer*, 404 Md. 282, 342 (2008); *Yacko v. Mitchell*, 249 Md. App. 640, 690, *cert. denied*, 474 Md. 737 (2021) (citing *Sibley v. Doe*, 227 Md. App. 645, 658, *cert. denied*, 448 Md. 726 (2016)). *See also Sindler v. Litman*, 166 Md. App. 90, 123 (2005) ("[A]ppellate courts are reluctant to second-guess the decision of a trial judge to impose sanctions for a failure of discovery. . . . Accordingly,

we may not reverse unless we find an abuse of discretion."). "An abuse of discretion occurs 'where no reasonable person would take the view adopted by the [trial] court,' 'when the court acts without reference to any guiding rules or principles,' or when the court's 'ruling is clearly against the logic and effect of facts and inferences before the court.'" *State v. Alexander*, 467 Md. 600, 620 (2020) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)).

With respect to the court's factual findings, we are bound by them unless they are clearly erroneous. *City Homes, Inc. v. Hazelwood*, 210 Md. App. 615, 695, *cert. denied*, 432 Md. 468 (2013). "A trial court's findings are not clearly erroneous if 'any competent material evidence exists in support of the trial court's factual findings.'" *Plank v. Cherneski*, 469 Md. 548, 568 (2020) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). "Our scope of review is narrow and our function is not to substitute our judgment for that of the fact finder, even if we might have reached a different result." *City Homes, Inc.*, 210 Md. App. at 695. "Instead, we must 'decide only whether there was sufficient evidence to support the trial court's findings. In making this decision, we must assume the truth of all the evidence, and of all the favorable inferences fairly deducible therefrom, tending to support the factual conclusions of the lower court.'" *Id.* at 695–96 (quoting *Klupt v. Krongard*, 126 Md. App. 179, 193 (1999)).

DISCUSSION

I.

Default Judgment

Mr. Meit contends that the circuit court abused its discretion in imposing a default judgment as a sanction in this case. He argues that "there is no evidence indicating that [he] willfully refused to engage in discovery . . . and there is no indication that any party suffered significant prejudice as a result of the discovery delays." He asserts that a weighing of the factors set out in *Taliaferro* leads to the conclusion that the circuit court abused its discretion in determining that a default judgment was an appropriate sanction. Mr. Meit requests that this Court reverse the default judgment and remand for the circuit court to issue a new scheduling order to complete discovery and "allow this matter to be decided on the merits."

Appellees contend that the circuit court on remand properly exercised its discretion to select the appropriate sanction for the discovery failures "based on the facts presented to it." They argue that there was "ample evidence in the record to support the [c]ircuit [c]ourt's finding 'that Mr. Meit bears at least some, if not equal, responsibility' for the discovery failures," and the court reasonably found that Ms. Kondratowicz's affidavit "corroborates the assertion that Mr. Meit's behavior was thoughtful, deliberate, and designed to delay," and that Mr. Meit bore "some responsibility" for the discovery failures.

Maryland Rule 2-433(a) provides that the court, upon a finding of a failure of discovery, may enter such orders as are just, including one or more of the following:

> (1) An order that the matters sought to be discovered, or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim of the party obtaining the order;
>
> (2) An order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or
>
> (3) An order striking out pleadings or parts thereof, or staying further proceeding until the discovery is provided, or dismissing the action or any part thereof, or entering a judgment by default that includes a determination as to liability and all relief sought by the moving party against the failing party if the court is satisfied that it has personal jurisdiction over that party.
>
> * * *
>
> Instead of any of those orders or in addition thereto, the court, after opportunity for hearing, shall require the failing party or the attorney advising the failure to act or both of them to pay the reasonable costs and expenses, including attorneys' fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of costs and expenses unjust.

In determining whether the circuit court abused its discretion in imposing a default judgment as a discovery sanction, we note that the court applied the requisite factors set forth in *Taliaferro*, 295 Md. at 390–91:

> [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.

These factors overlap and they do not lend themselves to a compartmental analysis. *Id.* at 391.

This Court has noted that there are "two broader inquires within the *Taliaferro* factors":

> First, has the party seeking to have the evidence admitted substantially complied with the scheduling order? This is increasingly less likely the later the disclosure and the less "technical" the violation at issue. Second, is there good cause to excuse the failure to comply with the order? This is more likely when the party seeking an accommodation has a good reason for noncompliance, where the prejudice he suffers from non-admission is great, and where the prejudice his opponent suffers from admission is less severe.

Asmussen v. CSX Transp. Inc., 247 Md. App. 529, 550–51 (2020).

Here, the circuit court on remand explicitly discussed the *Taliaferro* factors. With respect to first factor, the circuit court found that the violation was substantial and egregious; it was not a technical violation. The court based this opinion on the fact that "there was a complete failure to provide discovery responses to the [appellees'] interrogatory requests and their requests for documents." We agree. At the time the court initially rendered its decision, Mr. Meit had provided no discovery despite numerous requests from appellees. This was a blatant violation of the scheduling order.

With respect to the second factor, the timing of the ultimate disclosure, the court found that the "disclosures were not made until six months after the requests were made," which the court found to be "a considerable amount of time" that was "highly prejudicial to the defense." Moreover, as appellees note, the disclosures were made only after the sanction of default judgment was imposed. The circuit court did not abuse its discretion in finding this factor weighed in favor of sanctions.

With respect to the third factor, the reason for the violation, the circuit court stated that it would "weigh the relative fault of Mr. Meit and Mr. Rotbert in considering the reasons for the violation." The court found that the emails produced in discovery showed that Mr. Meit signed an affidavit knowing that the statements made about discovery were "blatantly false," and that Mr. Meit "deliberately filed that affidavit in an effort to become the innocent plaintiff, the innocent client."[6] It found that Mr. Meit placed a "shroud of dishonesty" over the proceedings. The court stated that, "although I find that Mr. Rotbert knew about the interrogatories . . . I find that Mr. Meit bears at least some, if not equal, responsibility of these discovery failures." The court also accepted the assertions in Ms. Kondratowicz's affidavit regarding Mr. Meit's threats to drown her in legal fees as evidence that Mr. Meit's "behavior was thoughtful, deliberate, and designed to delay." These factual findings are not clearly erroneous. The circuit court did not abuse its discretion in determining that the reason for the discovery violation was to willfully delay the process, and this factor should be weighed against Mr. Meit. *See Bland v. Hammond*, 177 Md. App. 340, 358 (2007) ("[A] litigant has a duty to keep himself informed as to the progress of a pending case.").

With respect to the fourth *Taliaferro* factor, the circuit court found that there was significant prejudice caused by Mr. Meit's discovery failures. Initially, the court

[6] Mr. Meit's argument that the court erred in considering this affidavit is without merit. The court was required to consider the totality of the evidence, which included the affidavit that put Mr. Meit's creditability in doubt.

questioned how appellees could rely on anything Mr. Meit said after it was shown that he signed an affidavit under oath that was blatantly false. Additionally, there was time and money expended to litigate the discovery failures, including the procedures that day. Moreover, given that no discovery was provided, appellees were not able to properly prepare for trial, which the court found to be what Mr. Meit wanted, to "drain Ms. Kondratowicz's resources." The court found that this factor weighed heavily in favor of sanctions. We agree.

The court next found that it would not be in the interest of justice to grant a postponement "and continue this lingering litigation." A postponement would not cure the prejudice but "would reward [Mr.] Meit for inappropriate and deceptive behavior." We agree with appellees that the circuit court did not abuse its discretion in finding this factor weighed in favor of sanctions.

After weighing all the evidence in light of the *Taliaferro* factors, and pursuant to Rule 2-433(a), the circuit court found that, "[b]ased on the circumstances of this case . . . granting a default judgment against Mr. Meit would be, and is, an appropriate sanction." It stated that both Mr. Meit and Mr. Rotbert were responsible for "willfully delaying this process" and both were "to blame for the discovery failures." With respect to Mr. Meit, the court reiterated that he "lied under oath, and he failed to ensure his claims were being adequately handled by counsel, knowing that those claims were out there. The e-mails reveal that." Based on our review of the record, we cannot find that the circuit court abused

its discretion in concluding that the appropriate sanction for the discovery failures in this case was a default judgment.

II.

Attorneys' Fees

Mr. Meit next contends that the circuit court erred in ordering attorneys' fees to appellees in the amount of $59,566. He argues that, in the May 2018 order, the court ordered a hearing on "the amount of expenses and reasonable attorneys' fees incurred . . . in obtaining this Order," and the fees incurred prior to the issuance of the 2018 order were only $18,051.50. Mr. Meit asserts that, pursuant to Rule 1-341, "without a finding that the post-default motions lacked a good faith basis," he should only be liable for expenses incurred before the issuance of the May 2018 sanctions order. He argues that the court abused its discretion in including post-sanction fees in the attorneys' fees award.

Appellees contend that the "court correctly calculated the amount of the fee award." They argue that, because the court's award was "grounded in both the language of Rule 2-433 and the [s]anctions [o]rder," there did not need to be any finding of bad faith to support the award. Rather, because the fees that post-dated the order were "fees associated with getting to a resolution" of the order, the court properly included them in the award of attorneys' fees.

A.

Proceedings Below

On May 16, 2018, in its memorandum opinion, the circuit court stated that "reasonable attorney's fees for the litigation of motions to obtain discovery shall be granted . . . in an amount to be determined." The court stated that a hearing would be set "to determine reasonable attorneys' fees and expenses as a result of obtaining this Order."

On August 5, 2019, the court, with a different judge presiding, held the hearing on the issue of damages and attorneys' fees. Mr. Meit argued at the hearing that the fees should be limited to those incurred before the May 2018 order was issued. Appellees argued that, because there was a motion to vacate pending after the issuance of the order, "all of those proceedings were related to the order" and "our meter didn't cut off at May 2018."

The circuit court construed the initial May 2018 order to "include any additional fees related to those sanctions beyond May of 2018." After finding that appellees showed by clear and convincing evidence that their fees were "reasonable and appropriate," the court granted attorney's fees in the amount of $59,566.

In the February 2022 hearing following remand from this Court, the same judge who presided over the August 2019 hearing revisited the issue of attorneys' fees. The court stated that it would award attorneys' fees "incurred for the litigation and motions to obtain discovery," noting that "it costs time and money to draft interrogatories, and the defendant should not be penalized for following the rules while Mr. Meit thumbed his nose at them."

The court then stated that, "[b]ecause this [c]ourt is taken back in time to when . . . judgment was entered . . . I don't believe that you're entitled to any fees from that time to today." Accordingly, the court awarded attorneys' fees previously found reasonable in the amount of $59,566.[7]

B.

Analysis

As discussed, the circuit court is given broad discretion in imposing sanctions related to a discovery failure. *Kreamer*, 404 Md. at 342. Rule 2-433(a) states that: "the court, after opportunity for hearing, shall require the failing party . . . to pay the reasonable costs and expenses, including attorneys' fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award . . . unjust."

Here, we conclude that the circuit court did not abuse its discretion in calculating attorney's fees. The court was free to enter an award "including attorneys' fees, caused by the failure." Md. Rule 2-433(a). We agree that the fees incurred were not limited to the amount of expenses incurred before the May 2018 order. The circuit court properly awarded fees incurred prior to its ultimate award of fees, including fees in responding to the motion to vacate the default judgment. *See Friolo v. Frankel*, 403 Md. 443, 460–61 (2008) (quoting *Trimper v. City of Norfolk*, 58 F.3d 68, 77 (4th Cir. 1995)) ("'[I]t is well

[7] The judge erroneously stated that the prior judge had found $59,566 to be reasonable attorneys' fees when she actually had been the one to award that amount.

settled that the time spent defending entitlement to attorney's fees is properly compensable.'"). The circuit court did not abuse its discretion in awarding attorneys' fees in the amount of $59,566.

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