

Circuit Court for Queen Anne's County
Case No. C-17-FM-17-000186

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 285

September Term, 2021

ANGELA C. STOLTZ

v.

CHARLES C. CLARK, IV

Arthur,
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: October 27, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The parties to this appeal are the parents of two children. In 2018, the Circuit Court for Queen Anne’s County granted the mother primary physical custody of the older child and granted the father primary physical custody of the younger child. A year later, the parties agreed to a consent order under which the mother received primary physical custody of both children.

After the change in custody, the mother moved for modification of child support. Although the court ruled in the father’s favor on several motions concerning his discovery obligations, the mother uncovered evidence that the father is the beneficiary of a trust. Under the trust agreement, he is entitled to 25% of the annual earnings from a limited liability company, but he is prohibited from receiving those earnings until 2022. The circuit court determined that these earnings should not be counted as income for the purpose of determining the father’s child support obligations in 2019 and 2020.

The mother has appealed, challenging the rulings that limited discovery and the circuit court’s determination of the father’s income. For the reasons explained in this opinion, we conclude that the circuit court abused its discretion in striking discovery requests made by the mother. In light of this error, we shall vacate the order establishing the father’s child support obligations and remand this case for a new hearing.¹

¹ Although we shall set aside the order modifying child support, we shall reject the mother’s challenge to an order requiring her to pay attorney’s fees in the amount of \$3,625.

FACTUAL AND PROCEDURAL BACKGROUND

A. Prior Custody Litigation Between the Parties

Angela Stoltz and Charles Clark IV are the parents of two daughters: L., born in August 2002, and E., born in February 2004. Ms. Stoltz and Mr. Clark are not married to one another. They have lived separately since 2005.

Around the time of their separation, both parents raised competing custody claims in the Family Court of the State of Delaware. In 2008, the Delaware court ordered that both children should reside primarily with Ms. Stoltz during the school year and primarily with Mr. Clark during the summer. The Delaware court ordered Mr. Clark to pay child support in the amount of \$1,786 per month.

Three years later, Ms. Stoltz relocated from Delaware to Maryland. Although Mr. Clark requested a modification of custody at that time, the Delaware court ordered that the children should continue to reside primarily with Ms. Stoltz during the school year.

In 2016, Ms. Stoltz requested a recalculation of child support based on the passage of time since the previous child support determination. The Delaware court increased Mr. Clark's child support obligation to \$2,236 per month.

Mr. Clark again asked the Delaware court to change custody in 2017. In response, Ms. Stoltz initiated new proceedings in the Circuit Court for Queen Anne's County. The Delaware court declined to exercise jurisdiction over Mr. Clark's custody claim, concluding that Maryland was the more appropriate forum. Mr. Clark then filed a counter-motion in the circuit court, seeking primary physical custody of both children, as

well as a modification of child support.

In May of 2018, the circuit court held a hearing on the competing claims for modification of custody and child support. Both parties presented evidence about their respective incomes and home environments. Ms. Stoltz testified that her only source of income is her salary as a professor at the University of Maryland.

In his testimony, Mr. Clark explained that he manages a residential community known as Riverdale Park in Millsboro, Delaware. Tenants at Riverdale Park pay ground rents for the right to occupy the land. Most of the lots are owned by Riverdale Park, LLC, a company established by Mr. Clark's parents. Mr. Clark personally owns several dozen lots, which he inherited from his grandfather.

Mr. Clark identified three forms of income: stock dividends of around \$1,500 per year; salary of \$52,000 per year as the property manager of Riverdale Park, LLC; and rental income from lots that he personally owns, with gross receipts of around \$125,000 per year before deducting expenses. He introduced his 2017 federal income tax return, on which he reported adjusted gross income of \$161,206.²

On July 5, 2018, the circuit court awarded sole legal custody and primary physical custody of L. (then 15 years old) to Ms. Stoltz and awarded sole legal custody and primary physical custody of E. (then 14 years old) to Mr. Clark. Under the modified

² At the May 2018 hearing, Mr. Clark mentioned that he was not merely an employee of Riverdale Park, LLC. He stated: "I am a member of the LLC. I don't get anything from that. I don't receive any income from that. I don't get anything from that. My income is just what it is. It's what -- I get the \$52,000 I make from Riverdale -- I'm sorry, from Riverdale, LLC and then my own land rental income. That's what I get."

custody arrangement, L. would reside primarily with Ms. Stoltz in Maryland during the school year, while E. would reside primarily with Mr. Clark in Delaware during the school year. Ms. Stoltz appealed, and this Court affirmed the modification of custody. *Angela C. Stoltz v. Charles C. Clark IV*, No. 2156, Sept. Term 2018 (filed May 31, 2019) (unreported).

The circuit court resolved the issue of child support in a separate order dated August 30, 2018. The court found Ms. Stoltz's income to be \$4,167 per month (or \$50,004 per year). The court found Mr. Clark's income to be \$13,434 per month (or \$161,208 per year), as reported on his 2017 income tax return. After finding that the parties' combined monthly income exceeded the highest amount set forth in the schedule of basic support obligations, the court extrapolated from the schedule to determine each parent's child support obligation. The court ordered Mr. Clark to pay \$1,201 per month to Ms. Stoltz, representing the difference between his monthly obligation for support of L. and Ms. Stoltz's monthly obligation for the support of E.

B. Ms. Stoltz's Motion for Modification of Child Support

The custody arrangement established by the circuit court, under which each parent had primary physical custody of one child, ended within one year. In August 2019, E. returned to the care of Ms. Stoltz throughout the year. Through a consent order entered on September 10, 2019, the parties agreed that Ms. Stoltz would have sole legal custody and primary physical custody of both children. The consent order included no specific visitation provisions for Mr. Clark.

The proceedings at issue in the present appeal began one month after the entry of the consent order, on October 7, 2019, when Ms. Stoltz filed a motion to modify child support. Although different attorneys had represented her throughout the earlier litigation, she filed and pursued this motion without representation.

In her motion, Ms. Stoltz explained that the court had made its previous child support determination when each parent had primary physical custody of one child. She requested a modification of child support on the ground that, under the consent order, she now had primary physical custody of both children.

Generally, in cases where a party seeks modification of child support, each party must file a current financial statement. *See* Md. Rule 9-202(f). Although the court previously found that the parents' total income exceeded the highest amount set forth in the child support guidelines, neither party submitted the "long-form" financial statement required by Md. Rule 9-203(a). Ms. Stoltz stated that her income had increased to \$5,594.16 per month (or \$67,129.92 per year). Mr. Clark stated that his income was \$13,433.88 per month (or \$161,206.56 per year), almost exactly the same amount that the court had used in the previous child support determination. Because Mr. Clark did not submit the long-form financial statement, his financial statement did not include disclosures about his assets and liabilities.

C. Interrogatories and Requests for Production of Documents

On December 30, 2019, Ms. Stoltz served written interrogatories and requests for production of documents upon Mr. Clark. Generally, these discovery requests sought

information about Mr. Clark’s income from all sources and documents verifying his income.

On January 14, 2020, the parties appeared for a scheduling conference before a family magistrate. The magistrate recommended the date of February 13, 2020, as the deadline for the completion of discovery. The circuit court adopted that recommendation in a scheduling order issued in accordance with Md. Rule 2-504. The order stated:

2/13/2020 Date by which Discovery must be completed. Interrogatories, notices, requests, responses and all other “discovery materials” referred to in Rule 2-401(d) must be served sufficiently before that date to provide the periods for notice, response or objection prescribed by the Rules.

On February 4, 2020, Mr. Clark’s attorney served answers to Ms. Stoltz’s interrogatories. On the following day, Mr. Clark’s attorney served responses to her requests for production of documents.³ Along with these responses, Mr. Clark produced copies of various bank account statements and credit card statements, as well as his 2017 federal income tax return. These responses spawned a protracted dispute over Mr. Clark’s disclosure obligations.

One of Ms. Stoltz’s interrogatories had asked for certain information about any

³ Ms. Stoltz has noted that Mr. Clark did not respond to her interrogatories and requests for production of documents within 30 days. She is correct. Generally, a party must respond to interrogatories or to request for production of documents within 30 days after service of the discovery request. Md. Rule 2-421(b); Md. Rule 2-422(c). Because Ms. Stoltz served her discovery requests by mail, Mr. Clark had three additional days to respond. *See* Md. Rule 1-203(c). Because the thirty-third day after service was a Saturday, Mr. Clark’s response deadline was Monday, February 3, 2020. *See* Md. Rule 1-203(a)(1).

business entity in which Mr. Clark owned an interest. In response, Mr. Clark stated: “I am the property manager for Riverdale Park, LLC.” Mr. Clark disclosed that his brother, his two sisters, and his nephew each “have an interest in Riverdale Park, LLC.” He provided the names of those family members, but he gave no additional information other than the following statement: “I do not fully understand their specific or technical positions in [the] LLC, other than that my brother . . . is a co-Manager.”

In another interrogatory, Ms. Stoltz had asked about the creation, value, and disposition of “any trust or other asset held for [Mr. Clark’s] present or future benefit, or from which [he] do[es] or will in the future receive any payment of money or in kind[.]” In his answer, Mr. Clark indicated that he was aware of a trust established for his benefit, but he said that other details were “[u]nknown.” He stated:

Upon information and belief, a trust was established for me by my father years ago. I do not have any access to any records or documents related thereto, and know very little about it. While arguably an asset, I receive no income from it.

Similarly, in response to an interrogatory about gifts or inheritances, Mr. Clark stated: “I do not know the amount or value of the trust established by my father, and presently do not receive, nor am presently entitled to, any income from it.”⁴

Throughout Ms. Stoltz’s requests for production of documents, Ms. Stoltz had requested documents relating to a company that she called “Riverdale, LLC.” For

⁴ As discussed below, Ms. Stoltz later learned that, despite Mr. Clark’s asserted ignorance about the trust and lack of access to its “records and documents,” he is, in fact, a co-trustee of the trust and a signatory of the trust documents.

instance, Ms. Stoltz requested copies of “personal” and “business tax returns that demonstrate [Mr. Clark’s] stake in and income derived from Riverdale, LLC[,]” and documents related to rents collected and expenses for the lots located “at Riverdale Park in Millsboro, Delaware,” owned both by Mr. Clark and by “Riverdale, LLC.”

In response to those requests, Mr. Clark generally directed Ms. Stoltz to the “bank statements, pay stubs, and tax returns” that he had already produced. Mr. Clark raised various objections to the production of any additional documents, asserting that the requested documents were not in his possession, were not relevant to the determination of his income, or would be unduly burdensome for him to produce. For each discovery request in which Ms. Stoltz had mentioned “Riverdale, LLC,” Mr. Clark declined to answer the interrogatory or to produce any documents on the ground that the company was actually named “Riverdale Park, LLC.” For example, in response to one such request, Mr. Clark wrote that he “has no documentation or information related to an entity known as ‘Riverdale, LLC.’”

D. Dispute over Discovery Requests Directed at Mr. Clark

On February 13, 2020, Ms. Stoltz wrote an email to Mr. Clark’s attorney concerning the responses to her discovery requests. Ms. Stoltz complained that Mr. Clark had “refused to respond to requests for documents pertaining to ‘Riverdale, LLC[.]’” Ms. Stoltz asserted that Mr. Clark “kn[ew] full well that the documents and information requested [were] for Riverdale Park, LLC.” Attached to her email, Ms. Stoltz sent “amended” versions of her interrogatories and requests for production of documents. The

amended versions were identical to the original versions, except that Ms. Stoltz replaced the name “Riverdale, LLC” with the name “Riverdale Park, LLC.”

Two weeks later, Mr. Clark filed a motion asking the court to strike Ms. Stoltz’s amended interrogatories and amended requests for production of documents. In his motion, Mr. Clark asserted that Ms. Stoltz’s amended discovery requests sought “information that is substantively different than that sought in her initial requests.” Mr. Clark argued that the amended interrogatories “exceed[ed] the maximum number” of 30 total interrogatories permitted by Md. Rule 2-421(a). Mr. Clark further argued that the amended discovery requests were “untimely” based on the scheduling order. He pointed out that Ms. Stoltz served those discovery requests on the date of the discovery deadline, but that the court’s scheduling order required that any discovery materials “be served sufficiently before” that date “to provide the period for notice, response or objection[.]”

Ms. Stoltz opposed the motion to strike her amended discovery requests. Ms. Stoltz acknowledged that she had served those discovery materials after the time period established in the scheduling order. Ms. Stoltz asserted, however, that she had first received Mr. Clark’s answers and responses during the week before she sent the amended versions. Ms. Stoltz disputed the assertion that her amended discovery requests were substantively different from her original requests, explaining that both versions were identical except that the amended versions used “the correct LLC name.” Ms. Stoltz disputed the assertion that she had exceeded the limit of 30 total interrogatories, noting that she had originally sent 22 interrogatories (while she had amended just two of those

interrogatories).

Meanwhile, Ms. Stoltz filed a motion for discovery sanctions, in which she asserted that Mr. Clark's responses to her discovery requests were inadequate. Among other things, Ms. Stoltz argued that Mr. Clark had given evasive and incomplete answers to interrogatories concerning his ownership of an interest in Riverdale Park, LLC, as well as his income from the trust established by his father. Ms. Stoltz argued that her initial error in referring to the company as "Riverdale, LLC," was not a valid excuse for Mr. Clark's failure to produce any documents relating to Riverdale Park, LLC.

Opposing Ms. Stoltz's motion, Mr. Clark argued that Ms. Stoltz was not entitled to discovery sanctions at that time because she had not yet obtained an order compelling discovery. Mr. Clark argued that, in any event, each of his responses to the initial discovery requests were proper. Along with his opposition, Mr. Clark moved for a broad protective order. He asked the court to "limit discovery by entering an order enforcing the discovery deadline" and "denying any . . . discovery based motion filed after that date as untimely[.]" In addition, he asked the court to require Ms. Stoltz to pay the attorney's fees that he incurred in opposing her motion for sanctions.

The magistrate recommended that the circuit court strike Ms. Stoltz's amended discovery requests and deny her motion for sanctions. The magistrate further recommended that the court reserve its consideration of Mr. Clark's motion for protective order and his request for attorney's fees. On March 4, 2020, the court issued an order adopting those recommendations.

Two weeks later, on March 18, 2020, Ms. Stoltz filed a motion to compel discovery. In her motion to compel, Ms. Stoltz reiterated her arguments that Mr. Clark’s disclosures were inadequate. She asked the court to compel Mr. Clark to give more complete responses to certain interrogatories and to produce documents relating to Riverdale Park, LLC, including recent tax returns filed on behalf of that entity.

In opposition, Mr. Clark argued that Ms. Stoltz had not filed her motion to compel “with reasonable promptness,” as required by Md. Rule 2-432(e). Mr. Clark asserted that he was “neither permitted nor required to turn over documents related to . . . his employer, Riverdale Park, LLC.” Mr. Clark insisted that, because Ms. Stoltz’s initial discovery requests mistakenly referred to “Riverdale, LLC,” he was not obligated to disclose information or produce documents related to Riverdale Park, LLC. Mr. Clark further asserted that he had answered the interrogatory concerning trust income “to the best of his knowledge and with the extremely limited information he has about a trust created by his father for his future (not present) benefit.” Mr. Clark asked the court to deny the motion to compel and to require Ms. Stoltz to pay the attorney’s fees that he incurred in opposing her motion.

The magistrate recommended that the court deny Ms. Stoltz’s motion to compel and grant Mr. Clark’s request for attorney’s fees. On the same day, the court adopted the magistrate’s recommendations. The order stated that the amount of attorney’s fees would be “addressed at any future merits hearing in this matter[.]” The order further stated that “all discovery motions filed after the discovery deadline are hereby denied as untimely.”

E. Dispute over Attempts to Obtain Information from Third Parties

In April 2020, Ms. Stoltz filed a notice stating that she was attempting to serve subpoenas in Delaware for the purpose of taking the depositions of Mr. Clark’s brother, his sister, and his nephew. According to Ms. Stoltz, the purpose of these depositions was to take testimony about income that Mr. Clark derived from Riverdale Park, LLC. The notice stated that the scheduled depositions would “be held via Zoom.” The notice stated that Ms. Stoltz had “registered” the subpoenas in Delaware, but that the Delaware courts at that time were not “issuing service for non-essential matters” because of emergency restrictions imposed in response to the COVID-19 pandemic.

Mr. Clark moved to quash the three subpoenas. Mr. Clark argued that Ms. Stoltz was not entitled to take the scheduled depositions because the deadline for serving discovery materials had passed, because the Maryland Rules do not expressly permit depositions by Zoom, and because Ms. Stoltz did not serve deposition subpoenas at least 30 days before the date of the depositions. Mr. Clark moved for a protective order prohibiting Ms. Stoltz from noting any additional depositions. Alleging that Ms. Stoltz was pursuing the depositions in bad faith or without substantial justification, Mr. Clark asked the court to require Ms. Stoltz to pay the attorney’s fees that he incurred in responding to her conduct.

Adopting the magistrate’s recommendation, the court granted Mr. Clark’s motion to quash subpoenas and his motion for a protective order prohibiting Ms. Stoltz from noting additional depositions. The court ordered Ms. Stoltz to pay the attorney’s fees

associated with those motions. Once again, the court reserved its determination of the amount of attorney’s fees until a later date.

Several weeks later, Mr. Clark filed a motion titled “Motion of Appropriate Relief.” In that motion, Mr. Clark asked the court to prohibit Ms. Stoltz from issuing trial subpoenas to any out-of-state witnesses. In response, Ms. Stoltz asked the court to postpone the trial and to “reopen discovery” for 60 days so that she could obtain deposition testimony from witnesses who could not be compelled to appear in Maryland. The court denied both Mr. Clark’s motion for appropriate relief and Ms. Stoltz’s motion for a postponement.

In July 2020, Mr. Clark received notice that Ms. Stoltz had issued several subpoenas for financial records related to Riverdale Park, LLC. These subpoenas were directed at two of his family members, two accountants, and two banks. Mr. Clark moved to quash these subpoenas, arguing that all of the subpoenas were “deficient on their face” and “untimely” based on the scheduling order.

In August of 2020, one week before the scheduled merits hearing, Ms. Stoltz notified Mr. Clark that she had obtained documents demonstrating that Mr. Clark is “a 25% beneficiary of Riverdale Park, LLC[.]” Ms. Stoltz disclosed redacted copies of those documents to Mr. Clark. Ms. Stoltz moved for a postponement, asserting that she needed additional time to review the documents before the hearing. The court denied her postponement request.

F. Merits Hearing Before the Magistrate

The merits hearing before the family magistrate began as scheduled on September 3, 2020.

Before taking testimony, the magistrate heard arguments on Mr. Clark's motion to quash the subpoenas issued to third parties. Although the targets of the subpoenas largely had refused to provide anything to Ms. Stoltz, Ms. Stoltz received certain documents from Mr. Clark's sister, Mary Lisa Clark.

The magistrate recommended that the motion to quash be granted. At Mr. Clark's request, the magistrate directed Ms. Stoltz to destroy any documents that she may have received in response to her subpoenas.

The central issue at the merits hearing was Mr. Clark's income. Mr. Clark offered into evidence his federal income tax returns from 2017 and 2019. He reported adjusted gross income of \$161,206 for 2017 and adjusted gross income of \$183,520 for 2019. He said that he had not yet filed a 2018 income tax return because his former tax preparer had died before completing that tax return.

Mr. Clark identified three sources of income. First, he earned annual stock dividends, which amounted to \$1,647 in 2019. Second, he earned an annual salary of \$52,000 as the property manager of Riverdale Park, LLC. Third, he earned rental income from several dozen lots that he personally owned. During 2019, he collected gross rents of \$150,941, while incurring expenses of \$21,068 for utilities, maintenance, and repairs, for net rental income of \$129,873. Mr. Clark said that he expected his rental income in

2020 to be around \$30,000 or \$40,000 less than it was in 2019, because of the economic downturn and other factors related to the COVID-19 pandemic.

Mr. Clark introduced an unredacted copy of an irrevocable trust agreement dated December 27, 2012 (which Ms. Stoltz had uncovered one week earlier). Through that instrument, Mr. Clark’s father and mother had transferred their “98% Class B Non-Voting Membership Interest” in Riverdale Park, LLC, to a trust established for the benefit of their children and grandchildren. The trust agreement named Mr. Clark and his brother as co-trustees.

The trust agreement provided that, during the lifetime of Mr. Clark’s parents, any income realized by the trust (i.e., income from the non-voting shares of Riverdale Park, LLC) would be “distributed annually” to five beneficiaries. Mr. Clark, his brother, and one of his sisters would each be entitled to 25% of the annual distributions. His other sister, Mary Lisa Clark, and her son each would receive 12.5% of the annual distributions. The agreement provided that, upon the deaths of both of Mr. Clark’s parents, the trustees would be required to distribute the trust property (i.e., membership interest in Riverdale Park, LLC) to the five beneficiaries in the same proportions used for their distributions of annual income.

The trust agreement further provided: “Notwithstanding anything contained herein to the contrary, no income shall be paid to the Grantor’s son, [Mr. Clark], until the year 2022, unless it is necessary for exceptional medical expenses as determined by the Trustees.” The agreement stated that “no principal shall be paid” to Mr. Clark “until the

year 2022, unless it is necessary for exceptional medical expenses as determined by the Trustees.” The agreement did not include any similar restrictions on the payments made to any of the other four beneficiaries. The parties’ youngest daughter, E., will reach the age of 18 and graduate from high school in 2022.

As part of her case, Ms. Stoltz called Mr. Clark’s sister, Mary Lisa Clark, to testify remotely from her Pennsylvania home. The magistrate told the witness that any subpoena that she may have received, purporting to compel her to appear, was invalid. She nevertheless said that she was still willing to testify.

In her testimony, Mary Lisa Clark said that she was a member of Riverdale Park, LLC. She confirmed that, as stated in the trust agreement, she receives 12.5% of the annual distributions from Riverdale Park, LLC. She stated that she receives \$65,000 per year, “on average,” but the amount varies depending on rental receipts and expenses. She recalled that, around the time that her parents established the irrevocable trust, Mr. Clark told her that “[h]is portion” of the annual distributions “went into a trust.” She further testified that, about three years before the hearing, Mr. Clark had borrowed “[r]oughly \$16,000” “against the trust,” which he then gave to her as a gift so that she could pay for dental repair surgery.

In his testimony, Mr. Clark admitted that he had borrowed \$16,000 to pay for his sister’s dental surgery and said that he later paid that money back to the trust. Mr. Clark said that he and his brother, as co-trustees, determined that the cost of his sister’s dental surgery was an “exceptional medical expense.” Mr. Clark said that, aside from that loan,

he had never received anything from the trust created by his parents. Although Mr. Clark acknowledged that he had signed the trust agreement, he was not asked any questions about the purpose of the provisions prohibiting the trust from making payments to him until 2022.

In her closing argument, Ms. Stoltz argued that, in addition to the income reported on his tax returns, the trust agreement demonstrates that Mr. Clark is “a 25 percent beneficiary” of Riverdale Park, LLC. Mr. Stoltz argued that, based on Mary Lisa Clark’s testimony that she received an average of \$65,000 per year as a 12.5% beneficiary, the magistrate should conclude that Mr. Clark earned an average of \$130,000 per year as a 25% beneficiary. Citing *Leineweber v. Leineweber*, 220 Md. App. 50 (2014), Ms. Stoltz contended that Mr. Clark’s deferred earnings should be counted as income for each year that it was earned rather than the year that it is actually received.

Ms. Stoltz argued that it was no coincidence that the trust agreement delays Mr. Clark’s distributions until 2022, the same year that his oldest daughter will reach the age of 18. Ms. Stoltz pointed out that Mr. Clark was a signatory of the trust agreement, that he had already been involved in child support litigation before the creation of the trust, and that he is the only beneficiary whose distributions are deferred until 2022. In light of those circumstances, she argued that the apparent purpose of this provision was to reduce his income for the purpose of calculating his child support obligations.

Counsel for Mr. Clark contended that Mr. Clark’s income, for the purpose of calculating his child support obligation, should not include the earnings from the trust

created by his parents. Counsel emphasized that the trust agreement prohibits Mr. Clark from receiving payments from the trust until 2022. Counsel argued that, although Mr. Clark had signed the trust agreement as a trustee, only his parents had the authority to define the terms of the trust agreement.

During the hearing, Mr. Clark introduced an affidavit from his attorney regarding attorney's fees. The affidavit stated that Mr. Clark had incurred a total of \$3,625 of attorney's fees in connection with Ms. Stoltz's motion for sanctions, her motion to compel discovery, and Mr. Clark's motion to quash subpoenas for the purpose of taking depositions. The court had previously ruled that Ms. Stoltz would be required to pay attorney's fees, but it had reserved its determination of the amount of fees.

G. Magistrate's Report and Recommendation

On January 29, 2021, the magistrate issued a written report, recommendations, and findings of fact on the issues of child support and attorney's fees.

The magistrate found that a material change in circumstances had occurred before September 2019, when Ms. Stoltz regained primary physical custody of the younger child. The magistrate concluded that requiring Mr. Clark to pay child support retroactively, from the date when Ms. Stoltz filed her motion for modification of child support, would not produce an inequitable result. The magistrate set out to determine each parent's income from the date of filing.

The magistrate found Ms. Stoltz's income to be \$5,706 per month (\$68,472 per year) during 2019 and \$5,875 per month (\$70,500 per year) during 2020. These totals

accounted for her base salary and other miscellaneous earnings as a university professor.

The magistrate found that Mr. Clark’s income included his stock dividends; his salary as the manager for Riverdale Park, LLC; and his rental income as the owner of several dozen lots. For 2019, the magistrate found Mr. Clark’s income to be \$15,293 per month (\$183,516 per year), an amount equal to the adjusted gross income that he reported on his 2019 federal income tax return. For 2020, the magistrate found Mr. Clark’s income to be \$14,363 per month (\$172,356 per year), an amount “represent[ing] the average of [Mr. Clark’s] 2017 and 2019 earnings as reflected on his tax returns[.]”

The magistrate rejected Ms. Stoltz’s argument that Mr. Clark’s income should include “an additional \$130,000 every year as a result of his interest in an irrevocable trust established by his father in 2012.” The magistrate wrote:

[Mr. Clark] argues that the trust is not an asset from which income can be used to calculate child support until [Mr. Clark] experiences realized gains from it, which will not occur until 2022. [Mr. Clark] further points out that the deferring of income was a decision made by the Grantors and not a voluntary act on his part. In this instance, [Mr. Clark] is correct that it is inappropriate to include [his] unrealized gain, whether \$130,000 annually or some other amount, as income.

The magistrate recognized that, in *Leineweber v. Leineweber*, 220 Md. App. 50 (2014), this Court had concluded that a parent’s “deferred income should be included in the child support calculation only during the year that it was earned and not during the year it is actually received.” *Id.* at 62. The magistrate reasoned that Mr. Clark’s situation was distinguishable, because the *Leineweber* case concerned a parent who voluntarily elected to defer income from his employer. The magistrate wrote: “Under the terms of

the trust agreement, for whatever reason it may be, [Mr. Clark] may not elect to receive the income or elect to defer it.”

Extrapolating from the schedule of basic support obligations, the magistrate calculated that Mr. Clark’s support obligation should be: \$3,058 per month from November 2019 through December 2019; \$2,856 per month from January 2019 through August 2020, when the older child reached the age of 18; and \$1,988 per month thereafter.

Finally, the magistrate recommended that Mr. Clark’s requests for attorney’s fees be denied. The magistrate said that Mr. Clark “did not provide sufficient testimony” to evaluate “the statutory requirements necessary for consideration of an award of attorney’s fees” under section 12-103 of the Family Law Article of the Maryland Code.

H. Exceptions to the Magistrate’s Report and Recommendation

Within 10 days after the entry of the magistrate’s report and recommendations, Ms. Stoltz filed timely exceptions with the circuit court. Ms. Stoltz asked the court to require Mr. Clark to produce “documents that identify [his] actual Riverdale Park, LLC annual earnings (even if they are being deferred),” and to include Mr. Clark’s “earnings that have been deferred until 2022” in its calculation of his income.

On the same day that Ms. Stoltz filed her exceptions, the circuit court entered an order summarily denying those exceptions. The order stated that Ms. Stoltz had failed to comply with Md. Rule 9-208(g), which requires an excepting party to “order a transcript of so much of the testimony as is necessary to rule on the exceptions,” to file that

transcript with the court, and to serve that transcript on the opposing party. On February 12, 2021, the circuit court entered an order modifying child support in accordance with the magistrate’s findings and recommendations.

Ms. Stoltz notified the court that she had, in fact, ordered transcripts of the merits hearing and that she had already served a copy of the transcripts on opposing counsel. Ms. Stoltz asked the court to schedule a hearing on her exceptions. Ms. Stoltz submitted a second transcript request, asking the court reporter to send a copy of the hearing transcripts to the court. In addition, Ms. Stoltz filed a separate motion asking the court to reconsider its denial of her exceptions. On February 22, 2021, the court granted Ms. Stoltz’s request for an exceptions hearing and effectively reinstated her exceptions.

Four days after the court reinstated Ms. Stoltz’s exceptions, on February 26, 2021, Mr. Clark submitted his opposition to Ms. Stoltz’s exceptions. At the same time, Mr. Clark filed his own exceptions, arguing that the magistrate erred in recommending that the court deny his requests for attorney’s fees. Ms. Stoltz opposed his exceptions on the ground that he did not file any exceptions within the time required by Md. Rule 9-208(f) – “[w]ithin ten days after recommendations are placed on the record or served,” or within ten days of service of another party’s exceptions, “whichever is later.”

After a hearing, the circuit court overruled Ms. Stoltz’s exceptions concerning the child support determination and sustained Mr. Clark’s exceptions concerning his requests for attorney’s fees. The court issued a final child support order based on the magistrate’s findings and recommendations. The order required Mr. Clark to pay child support in the

amounts of \$3,085 per month effective November 2019; \$2,856 per month effective January 2020; and \$1,988 per month after the older child's eighteenth birthday in August 2020. The order required Ms. Stoltz to pay attorney's fees of \$3,625, the amount stated in the affidavit submitted by Mr. Clark.

Ms. Stoltz made a timely motion to alter or amend the circuit court's judgment. Within 30 days after the entry of judgment, Ms. Stoltz filed a notice of appeal. Thereafter, the court denied her motion to alter or amend.⁵

ISSUES PRESENTED

In this appeal, Ms. Stoltz asks this Court to set aside the order modifying child support. Ms. Stoltz contends that the circuit court erred by restricting discovery regarding Mr. Clark's income and by excluding any trust earnings from its calculation of his income. She asserts that, on remand, the court should require Mr. Clark to provide documents verifying his trust earnings, even if he has not yet received those earnings. She asks this Court to require the circuit court to recalculate Mr. Clark's income, to include the annual earnings from the trust. In addition, she asks this Court to reverse the order requiring her to pay \$3,625 of attorney's fees.

In her appellate brief, Ms. Stoltz seeks review of the following issues:

1. Whether the Court committed error by failing to compel the Defendant to provide documentation of his actual income, including his Riverdale Park, LLC trust income and by blocking the Plaintiff's attempts

⁵ Ms. Stoltz was not required to file a second notice of appeal after the denial of the motion to alter or amend. *See, e.g., Edsall v. Anne Arundel County*, 332 Md. 502, 508 (1993).

to acquire documentation demonstrating the Defendant’s actual income.

2. Whether the Court committed error by issuing a final child support ruling which failed to include the Defendant’s Riverdale Park, LLC trust income in any of the child support calculations.

3. Whether the Court committed error by ordering the Plaintiff to pay the Defendant’s legal fees for requesting the Court’s intervention when the Defendant evaded his obligation to provide documentation of his actual income during discovery.

Mr. Clark asks this Court to affirm the judgment in all respects. He contends that the circuit court did not abuse its discretion when it made a series of rulings that “limited the scope” of discovery. He further contends that the court did not err in concluding that his income for child support purposes should not include what he calls “third-party contributions” to a trust established for his future benefit. Finally, he argues that the court properly considered his exceptions regarding the issue of attorney’s fees.

For the reasons discussed below, we shall vacate the order modifying child support but affirm the order requiring Ms. Stoltz to pay attorney’s fees.

CHILD SUPPORT

Under the Maryland Child Support Guidelines, Md. Code (1984, 2019 Repl. Vol.), §§ 12-201 through 12-204 of the Family Law Article (“FL”), parents have a statutory obligation to provide support for their minor children. The Guidelines are designed to ensure that, when a child’s parents live apart, the child “receive[s] the same proportion of parental income, and thereby enjoy[s] the standard of living, [the child] would have experienced had the child’s parents remained together.” *Voishan v. Palma*, 327 Md. 318, 322 (1992).

In every child support determination, “the trial court must ascertain each parent’s ‘actual income.’” *Walker v. Grow*, 170 Md. App. 255, 267 (2006). If the parents’ combined adjusted monthly income exceeds the highest amount listed on the schedule of basic support obligations (currently \$15,000), then “the court may use its discretion in setting the amount of child support.” FL § 12-204(d). But even in cases “calling for the exercise of discretion, the rationale of the Guidelines still applies.” *Malin v. Mininberg*, 153 Md. App. 358, 410-11 (2003). Accordingly, in every such case, the court must determine each parent’s income in a manner that is consistent with the statute. *See Ruiz v. Kinoshita*, 239 Md. App. 395, 428 (2018); *Reichert v. Hornbeck*, 210 Md. App. 282, 327 n.12 (2013).

Under the Guidelines, “[i]ncome’ means (1) actual income of a parent, if the parent is employed to full capacity; or (2) potential income of a parent, if the parent is voluntarily impoverished.” FL § 12-201(i). The term “[a]ctual income’ means income from any source.” FL § 12-201(b)(1). This expansive definition includes: salaries, wages, commissions, bonuses, dividend income, pension income, interest income, trust income, Social Security benefits, workers’ compensation benefits, unemployment insurance benefits, disability insurance benefits, certain third-party payments to or for a child, alimony or maintenance received, and certain expense reimbursements or in-kind payments that reduce personal living expenses. FL § 12-201(b)(3). “For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, ‘actual income’ means gross receipts minus

ordinary and necessary expenses required to produce income.” FL § 12-201(b)(2). In addition, “[b]ased on the circumstances of the case,” the court may consider severance pay, capital gains, gifts, and prizes to be actual income. FL § 12-201(b)(4).

Maryland Rule 9-202(f) requires that, in cases to establish or modify child support, both parties must file a current financial statement under affidavit. FL § 12-203(b)(1) provides that “[i]ncome statements of the parents shall be verified with documentation of both current and past actual income.” Examples of “suitable documentation of actual income” include “pay stubs, employer statements otherwise admissible under the rules of evidence, or receipts and expenses if self-employed, and copies of each parent’s 3 most recent federal tax returns.” FL § 12-203(b)(2). Under this provision, the court “must rely on the verifiable incomes of the parties, and failure to do so results in an inaccurate financial picture.” *Ley v. Forman*, 144 Md. App. 658, 670 (2002).

In this appeal, Ms. Stoltz argues that Mr. Clark failed to produce adequate documentation of his actual income. In particular, Ms. Stoltz complains that, despite her repeated requests, Mr. Clark failed to disclose that he is a beneficiary and co-trustee of an irrevocable trust created by his parents in December 2012. The trust agreement states that 25% of the “income realized” from Riverdale Park, LLC “shall be distributed annually” to Mr. Clark, but that “no income shall be paid” to him “until the year 2022[.]” Ms. Stoltz argues that the circuit court “wrongfully blocked” her from “acquiring and presenting evidence pertaining to [Mr. Clark’s] actual income,” including his earnings as the beneficiary of that trust.

For his part, Mr. Clark asserts that the circuit court made a series of discretionary rulings limiting the scope of discovery. He observes that, a “trial judge has the discretion to limit the scope of discovery in order to prevent its employment in an abusive fashion.” *Drolsum v. Horne*, 114 Md. App. 704, 712-13 (1997). Appellate courts “review the denial of discovery under the abuse of discretion standard[.]” *Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 28 (2005). According to Mr. Clark, the appropriate question for review is whether the circuit court abused its discretion when it made a series of rulings regarding his disclosure obligations. In his view, each of the rulings limiting discovery was proper.

“In Maryland, the rules of discovery ‘were deliberately designed to be broad and comprehensive in scope.’” *Falik v. Hornage*, 413 Md. 163, 182 (2010) (quoting *Ehrlich v. Grove*, 396 Md. 550, 560 (2007)). Maryland Rule 2-402(a) states that “[a] party may obtain discovery regarding any matter that is not privileged . . . if the matter sought is relevant to the subject matter involved in the action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.” The rules of discovery “are not designed or intended to ‘stimulate the ingenuity of lawyers and judges to make the pursuit of discovery an obstacle race.’” *Ehrlich v. Grove*, 396 Md. at 560 (quoting *Barnes v. Lednum*, 197 Md. 398, 406-07 (1951)). Rather, “[o]ne of the fundamental and principal objectives of the discovery rules is to require disclosure of facts by a party litigant to all of [the party’s] adversaries, and thereby to eliminate, as far as possible, the necessity of any party to litigation going to trial in a confused or muddled

state of mind, concerning the facts that give rise to the litigation.” *Mullaney v. Aude*, 126 Md. App. 639, 648-49 (1999) (quoting *Klein v. Weiss*, 284 Md. 36, 55 (1978)). Accordingly, the Maryland Rules concerning discovery are “liberally construed in order to effectuate their purpose.” *Gonzales v. Boas*, 162 Md. App. 344, 356 n.10 (2005) (citations and quotation marks omitted).

The first ruling at issue here is the court’s decision to strike Ms. Stoltz’s amended discovery requests. Ms. Stoltz served her initial interrogatories and requests for production of documents on December 30, 2019. Three weeks later, the court issued a scheduling order, which designated February 13, 2020, as the “[d]ate by which [d]iscovery must be completed.” The order stated: “Interrogatories, notices, requests, responses and all other ‘discovery materials’ referred to in Rule 2-401(d) must be served sufficiently before that date to provide the periods for notice, response or objection prescribed by the Rules.”

On February 4 and 5, 2020, Mr. Clark’s attorney served answers to Ms. Stoltz’s interrogatories and responses to her requests for production of documents. In two of her interrogatories and throughout the requests for production of documents, Ms. Stoltz had erroneously referred to the business for which Mr. Clark works as “Riverdale, LLC.” For each such request, Mr. Clark declined to produce any documents on the ground that the company is actually named “Riverdale Park, LLC.”⁶ On February 13, 2020, Ms. Stoltz

⁶ Mr. Clark’s appellate brief explains: “As a result of [Ms. Stoltz’s] error[,] [Mr. Clark] did not furnish the information desired by [Ms. Stoltz].”

sent amended versions of her interrogatories and requests for production of documents, using the correct name, “Riverdale Park, LLC.” Mr. Clark then moved to strike the amended discovery requests on various grounds. The court granted his motion.

In his appellate brief, Mr. Clark argues that the court properly exercised its discretion in deciding to strike the amended discovery requests. He observes that Md. Rule 2-421(a) authorizes parties to serve written interrogatories directed at another party. That Rule states: “Unless the court orders otherwise, a party may serve one or more sets having a cumulative total of not more than 30 interrogatories to be answered by the same party.” *Id.* Mr. Clark argues that “the Maryland Rules do not allow a party to ‘amend’ discovery requests, and [Ms. Stoltz’s] effort to ‘supplement’ interrogatories amounts to an attempt to circumvent the limitations established by Maryland Rule 2-421(a).”

This purported reliance on Md. Rule 2-421(a) is misplaced. This Rule expressly authorizes multiple sets of interrogatories. Ms. Stoltz’s initial set of interrogatories included 22 numbered interrogatories. The second set of interrogatories was identical to the original set, except that it corrected the two interrogatories that had used the name “Riverdale, LLC.” Even if those two should be treated as additional interrogatories, the cumulative total of interrogatories to be answered by Mr. Clark was 24, well within the limit established by Rule 2-421(a). Moreover, Mr. Clark’s motion asked the court to strike not only the amended interrogatories but also the amended requests for production of documents. The limit on the number of interrogatories cannot be used as a basis to strike requests for production of documents. *See* Md. Rule 2-422(a) (authorizing a party

to “serve one or more requests” for production of documents).

Yet even if Ms. Stoltz had exceeded the interrogatory limit, the Rule expressly authorizes the court to permit a party to serve more than 30 interrogatories to be answered by another party. This qualifying language (“[u]nless the court orders otherwise”) grants the court discretion to exceed the limit on interrogatories where appropriate. It is difficult to imagine a more appropriate case than this one for permitting a party to serve additional interrogatories.

Ms. Stoltz, a litigant seeking child support for two minor children, possessed virtually no information about Riverdale Park, LLC, a closely-held company managed by Mr. Clark and owned by members of his family. In her discovery requests, she mistakenly referred to that company as “Riverdale, LLC.” The mistake itself was unremarkable.⁷ In context, it was entirely obvious to all parties that Ms. Stoltz was seeking information regarding Riverdale Park, LLC. Notably, her requests for production of documents sought information about the “Riverdale, LLC” properties located “at Riverdale Park in Millsboro, Delaware.” But even though the meaning of the initial discovery requests was not in any doubt,⁸ Mr. Clark insisted that, because Ms. Stoltz did

⁷ The record shows that, during the prior litigation concerning custody, attorneys and witnesses mistakenly referred to “Riverdale, LLC.” An interrogatory answer from 2018, prepared by Mr. Clark and his attorney, states that Mr. Clark worked full time as the manager of “Riverdale, LLC[.]” At the hearing on May 31, 2018, Mr. Clark testified that he earns salary “from Riverdale, LLC.”

⁸ At oral argument in this appeal, Mr. Clark’s attorney acknowledged that he readily understood from Ms. Stoltz’s initial discovery requests that she was seeking information and documents related to Riverdale Park, LLC.

not use the correct name of the business entity, he was under no obligation to disclose information related to Riverdale Park, LLC. In these circumstances, refusing to permit additional interrogatories to correct the mistake in the initial interrogatories would be entirely unreasonable.

As a separate basis for striking the amended discovery requests, Mr. Clark asserts that those discovery requests were “untimely.” He purports to rely on the scheduling order, which established February 13, 2020, as the deadline for completion of discovery. The scheduling order stated that discovery materials “must be served sufficiently before that date to provide the periods for notice, response or objection prescribed by the Rules.” Ms. Stoltz served her amended discovery requests on that date, but she did not serve those requests sufficiently before that date to provide the period for response or objection.

Mr. Clark appears to contend that the court could properly exercise its discretion to strike the amended discovery requests merely because she served them after the period established by the scheduling order. In the circumstances of this case, his view is untenable.

In civil cases, the circuit court “may at any time order that discovery be completed by a specified date or time, which shall be a reasonable time after the action is at issue.” Md. Rule 2-401(b). The court must issue a scheduling order that must include “a date by which all discovery must be completed[.]” Md. Rule 2-504(b)(1)(d). The court “should demand ‘at least substantial compliance, or, *at the barest minimum*, a good faith and earnest effort toward compliance’ with the scheduling order’s requirements.” *Asmussen*

v. CSX Transp., Inc., 247 Md. App. 529, 548 (2020) (emphasis in original) (quoting *Naughton v. Bankier*, 114 Md. App. 641, 653 (1997)). “[P]arties should not be able to deviate from a scheduling order’s deadlines without establishing good cause for their failure to comply with the dates originally set.” *Asmussen v. CSX Transp., Inc.*, 247 Md. App. at 548 (citing *Faith v. Keefer*, 127 Md. App. 706, 733 (1999)).

Nevertheless, a “scheduling order is not meant to function as a statute of limitations[.]” *Maddox v. Stone*, 174 Md. App. 489, 501 (2007). Accordingly, the “deadlines set in a scheduling order are not ‘unyieldingly rigid.’” *Asmussen v. CSX Transp., Inc.*, 247 Md. App. at 547 (quoting *Naughton v. Bankier*, 114 Md. App. at 653). Maryland Rule 2-504(c) expressly states that, although a “scheduling order controls the subsequent course of the action[.]” the scheduling order “shall be modified by the court to prevent injustice.” This rule reflects “a recognition of the reality that ‘absolute compliance with scheduling orders is not always feasible’ and that, sometimes, ‘extraordinary circumstances . . . warrant modification.’” *Asmussen v. CSX Transp., Inc.*, 247 Md. App. at 547 (quoting *Naughton v. Bankier*, 114 Md. App. at 653).

“‘[T]he more draconian sanctions’” for a party’s failure to meet a deadline in a scheduling order, such as “‘precluding the evidence necessary to support a claim, are normally reserved for persistent and deliberate violations that actually cause some prejudice, either to the party or to the court.’” *Maddox v. Stone*, 174 Md. App. at 501 (quoting *Admiral Mortgage, Inc. v. Cooper*, 357 Md. 533, 545 (2000)). Where a party discloses information after the discovery deadline set in a scheduling order, the decision

of whether to mandate strict compliance with the deadline or to accommodate the failure to meet the deadline focuses on two inquiries:

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 [the party] suffers from non-admission is great, and where the prejudice [the] opponent suffers from admission is less severe.

Asmussen v. CSX Transp., Inc., 247 Md. App. at 550-51.

A similar analysis was required here, where the “violation” at issue was the service of additional discovery requests after the deadline set in a scheduling order, rather than a belated disclosure.

In this case, Ms. Stoltz had served her initial discovery requests weeks before the court even announced a discovery deadline. In a stunning display of procedural gamesmanship, Mr. Clark refused to provide responsive answers on hyper-technical grounds that border on the preposterous: he had no doubt that she wanted information about Riverdale Park, LLC, but he claimed that he had no obligation to disclose that information because she had mistakenly used the term “Riverdale, LLC” – a term that he and his lawyer had themselves used to refer to Riverdale Park, LLC. During the week after Ms. Stoltz received the unresponsive responses, she sent amended discovery requests using the correct name, “Riverdale Park, LLC.” When she served these discovery materials, the settlement conference was still two months away, and the merits hearing was expected to occur within 90 days after the settlement conference (although

no date had been set). As it happened, the actual hearing did not occur until more than six months after Ms. Stoltz sent the amended discovery requests.

Mr. Clark has never attempted to explain how he may have suffered any prejudice by receiving these discovery requests on February 13, 2020, rather than a few weeks earlier. Responding to the amended discovery requests would present, at worst, a minor inconvenience to Mr. Clark, with no adverse effect on his ability to prepare for the merits hearing. On the other hand, Ms. Stoltz would suffer substantial prejudice if she were denied discovery related to Riverdale Park, LLC, in a child support case where documentation of Mr. Clark’s income was essential.

This Court “will reverse a decision that is committed to the sound discretion of a trial judge if we are unable to discern from the record that there was an analysis of the relevant facts and circumstances that resulted in the exercise of discretion.” *Maddox v. Stone*, 174 Md. App. at 502. On this record, we fail to see any reasonable rationale for striking the amended discovery requests as the consequence for such an insubstantial deviation from the scheduling order. Here, the court appears simply to have adopted Mr. Clark’s position that it should deny all discovery after the period set forth in the scheduling order, without due consideration of the facts and circumstances. For the judge’s discretion to be entitled to deference, however, “the record must reflect that the judge exercised discretion and did not apply some predetermined position.” *Id.* (citing *Gunning v. State*, 347 Md. 332, 351 (1997), and other cases). We conclude, therefore, that the court abused its discretion when it granted Mr. Clark’s motion to strike the

amended discovery requests.

On the same day that the court granted Mr. Clark's motion to strike, the court denied Ms. Stoltz's motion for discovery sanctions. As Mr. Clark noted in his opposition, the motion for sanctions was premature. Under Md. Rule 2-432, a discovering party may not move for sanctions based on the opposing party's failure to answer an interrogatory or failure to comply with a request for production of documents without first seeking and obtaining an order compelling discovery. Thus, we agree with Mr. Clark that the court did not abuse its discretion when it denied Ms. Stoltz's motion for sanctions.

The remainder of the record, however, demonstrates that the improper decision to strike the amended discovery requests resulted in substantial prejudice to Ms. Stoltz's child support claim. After the court granted the motion to strike, Ms. Stoltz moved to compel Mr. Clark to answer interrogatories and to produce documents related to Riverdale Park, LLC. Mr. Clark opposed that motion, arguing that she had not filed the motion "with reasonable promptness," as required by Md. Rule 2-432(e). He also argued that he had no obligation to provide information or documents related to "Riverdale Park, LLC," because her initial discovery requests did not use the name. The court denied Ms. Stoltz's motion to compel.

Many of the grounds on which Mr. Clark opposed the motion to compel were dubious, at best. Despite her initial mistake regarding the full name of Mr. Clark's business, the initial discovery requests sufficiently expressed that she was seeking

information and documents regarding Riverdale Park, LLC. Ms. Stoltz might have acted more promptly, but the merits hearing was still many months away.⁹ In any event, the court’s ruling on the motion to compel cannot be separated from the earlier decision to strike the amended discovery requests. If the court had allowed the amended discovery requests to stand, as it should have, then the issue would have been Mr. Clark’s compliance with the amended discovery requests, not the initial requests.

Ms. Stoltz then attempted to use various subpoenas to obtain deposition testimony and documents concerning Mr. Clark’s income derived from Riverdale Park, LLC. The court granted two motions to quash these subpoenas. It seems unlikely that Ms. Stoltz would have resorted to these measures, directed at third parties, if she had been able to obtain discovery directly from Mr. Clark.

The prejudice to Ms. Stoltz is not cured simply because, one week before the merits hearing, she obtained (apparently from Mr. Clark’s sister) a copy of the irrevocable trust agreement from December 2012. The trust agreement states that 25% of the “income realized” from the non-voting membership interest in Riverdale Park, LLC, “shall be distributed annually” to Mr. Clark. Notwithstanding that provision, the agreement states that “no income shall be paid” to Mr. Clark “until the year 2022, unless it is necessary for exceptional medical expenses as determined by the [t]rustees.” At the hearing, the magistrate received no evidence concerning these earnings other than the

⁹ The scheduling order had set a deadline for the service of “discovery materials,” not a deadline for motions to compel answers and responses to previously-served discovery materials.

agreement itself and some brief testimony from Mr. Clark and his sister. On the evidence presented, the magistrate and the court concluded that Mr. Clark's income, for child support purposes, should not include his annual earnings from the trust.

In her appeal, Ms. Stoltz contends that the circuit court erred by failing to include Mr. Clark's annual trust earnings in his income for the purpose of calculating his child support obligations. She argues that, under *Leineweber v. Leineweber*, 220 Md. App. 50 (2014), a parent's deferred income should be included in the calculation of a parent's income during the year it is earned, rather than the year it is received.

In *Leineweber v. Leineweber*, 220 Md. App. at 55-56, a father moved for a modification of child support, alleging that his income had substantially decreased since the previous determination. Under a deferred compensation plan from his employer, the father could elect to defer portions of his annual earnings to future years. *Id.* at 56. The father argued that his income for child support purposes should not include \$396,164.24 of deferred compensation that he received during the year that he moved for modification of child support. *Id.* at 57-58. The father contended that the sum in question had already been included in prior calculations of his income, during the years when he previously elected to defer it. *Id.* at 57-58. The court denied his motion for modification, concluding that the sum should be included in his income for the year in which he received it. *Id.* at 58-59.

On appeal, this Court agreed that “deferred income, which has been attributed to a parent in the years it was earned for purposes of calculating child support, should not be

counted a second time when that parent actually receives it.” *Leineweber v. Leineweber*, 220 Md. App. at 60. This Court observed that the Supreme Court of Alaska had addressed “a similar issue” when construing a provision that “define[d] income as the parent’s ‘total income from all sources.’” *Id.* at 61. We quoted the following statement:

Given this broad definition, we believe that the [trial] court has discretion whether to include in income amounts voluntarily deposited into deferred income compensation accounts. *Under this rule, the court will be able to prevent a parent from decreasing his or her child support obligation by shifting income earned presently into the future.*

Leineweber v. Leineweber, 220 Md. App. at 61 (quoting *Bergstrom v. Lindback*, 779 P.2d 1235, 1237 (Alaska 1989)) (emphasis in *Leineweber*).

“Applying the same reasoning,” the *Leineweber* Court concluded that “deferred income should be included in the child support calculation only during the year that it was earned and not during the year that it is actually received.” *Leineweber v. Leineweber*, 220 Md. App. at 62. This Court reasoned: “if we adopt the . . . belief that deferred income should be included only when the . . . parent actually receives the money, then that parent would be able to decrease his or her child support obligation by shifting income earned presently into the future.” *Id.* We nevertheless concluded that the father had failed to establish that the sum in question had already been included in the previous child support determinations. *Id.* at 63-64.

In the present appeal, Mr. Clark contends that the “facts of the present case are easily and materially distinguishable” from those of *Leineweber*. He states that the “uncontradicted testimony (and the trust instrument itself) indicated that [Mr. Clark]

receives no disbursements from the trust, and will not until 2022.” Mr. Clark argues that the rule stated in *Leineweber* should apply only to situations in which the parent can voluntarily choose either to receive the income or to defer it until the future.

We agree with Mr. Clark, but only to a limited extent. If Mr. Clark, a signatory of the trust document and co-trustee of the trust, did not request, suggest, imply, or otherwise insinuate that his parents should delay his share of the trust earnings until 2022, then those earnings should not be included in his income before the year 2022. On the other hand, if Mr. Clark did in some way request, suggest, imply, or otherwise insinuate that his share of the annual earnings should be delayed until 2022, then his earnings should be treated as income during each year that those sums are earned. Otherwise, Mr. Clark “would be able to decrease his . . . child support obligation by shifting income earned presently into the future.” *Leineweber v. Leineweber*, 220 Md. App. at 62.

Under the circumstances, we cannot say that Ms. Stoltz received a fair opportunity to discover and present all potentially relevant facts concerning Mr. Clark’s trust earnings. Mr. Clark consistently refused to disclose information or to produce any documents relating to the trust, including information and documents to which he had access as a trustee and beneficiary of the trust. Ms. Stoltz managed to obtain a copy of the trust agreement one week before the merits hearing, but she was deprived of a reasonable opportunity to obtain testimony or additional documents concerning the trust. Ultimately, no evidence was presented about the purpose of the provision stating that Mr. Clark may not receive income from the trust until 2022. The magistrate made no finding

on the issue of why Mr. Clark’s earnings have been delayed until 2022.¹⁰

Because the improper denial of discovery cannot be said to be harmless to Ms. Stoltz’s child support claim, we shall vacate the order modifying Mr. Clark’s child support obligations. Ms. Stoltz is entitled to a reasonable period of discovery before a new hearing on the merits. Upon request, Mr. Clark has an obligation to produce documents verifying the disposition and amount of his annual trust earnings for all years in dispute.¹¹ Although the court could conceivably determine that those earnings should not be counted as income until the year that he is able to receive them, that mere possibility is no justification to deny disclosure of the potentially relevant facts.

¹⁰ Because the court permitted Mr. Clark to withhold relevant information about the trust, it is unclear where Mr. Clark’s share of the trust income has been going for most of the last decade; who (if anyone) is disclosing Mr. Clark’s share of the income to the relevant taxing authorities and paying any taxes that might be due on it; whether the accumulated trust income is generating additional investment income, and who (if anyone) is disclosing that income to the taxing authorities and paying any taxes that might be due on it; what rights Mr. Clark might have, as a trust beneficiary, to receive some portion of the income before 2022 (as he apparently did when he provided funds to his sister); and what power Mr. Clark might have, as a co-trustee of the trust, to distribute some portion of the income to himself before 2022. Notably, Mr. Clark has described his interest in the trust as an “asset,” but he did not disclose it as an asset in the long-form financial statement that he is required to file under Md. Rule 9-203(a). Indeed, he did not file the long-form financial statement. (Nor did Ms. Stoltz.)

¹¹ Maryland Rule 2-422(a) permits a party to request documents “that are in the possession, custody, or control of the party upon whom the request is served[.]” Under this Rule, “control is not synonymous with possession, but refers to the ‘right, authority, or ability to obtain upon demand.’” *Pleasant v. Pleasant*, 97 Md. App. 711, 732 (1993) (quoting *Scott v. Arex, Inc.*, 124 F.R.D. 39, 41 (D. Conn. 1989)). “Where documents are within the control of the party upon whom a request for production of documents has been made, *that party* must obtain and produce those documents.” *Pleasant v. Pleasant*, 97 Md. App. at 733 (emphasis in original). “To hold otherwise would be to permit circumvention of the discovery process and create unnecessary expense.” *Id.*

When this case returns to the circuit court, the parents' incomes from 2019 through 2022 will be at issue. Mr. Clark informs us that the younger child, who will reach 18 years old in February 2022, is expected to graduate from high school in June of 2022. Mr. Clark observed that the testimony presented at the merits hearing "did not provide a clear explanation as to what funds, and in what amount, will be distributed to [Mr. Clark] in 2022." On remand, Ms. Stoltz is entitled to take discovery on those and other matters pertaining to Mr. Clark's income and assets.

ATTORNEY'S FEES

As the final issue in this appeal, Ms. Stoltz contends that the circuit court erred when it ordered her to pay attorney's fees in the amount of \$3,625 to Mr. Clark.

Before the merits hearing, the circuit court ruled on three separate requests for attorney's fees made by Mr. Clark. First, he asked the court, under Md. Rule 2-433(d), to require Ms. Stoltz to pay the attorney's fees that he incurred in opposing her motion for sanctions. The court denied the motion for sanctions, but reserved its ruling on the request for fees. Second, he asked the court, also under Md. Rule 2-433(d), to require her to pay the attorney's fees that he incurred in opposing her motion to compel. Third, he asked the court, under Md. Rule 1-341(a), to require her to pay the attorney's fees that he incurred when he moved to quash three subpoenas. The court granted those two requests but reserved its determination of the amount of fees to a later date. At the merits hearing, Mr. Clark submitted an affidavit affirming that he had incurred \$3,625 of attorney's fees in connection with those three motions.

When the magistrate issued its report, however, the magistrate recommended that the court deny Mr. Clark's requests for attorney's fees. The magistrate wrote:

[Mr. Clark] has requested attorney's fees in this matter. Pursuant to Family Law Article, Maryland Annotated Code, Section 12-103, an award of attorney's fees is only appropriate after considering the "(1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding." [Mr. Clark] did not provide sufficient testimony to satisfy the statutory requirements necessary for consideration of an award of attorney's fees. Arguably, the statutory considerations do not apply in this circumstance because the fees [Mr. Clark] seeks are punitive in nature. However, the court is not satisfied that a basis for such a request exists in the manner in which it was presented to the court.

The magistrate filed the report and recommendations on January 29, 2020. Under Md. Rule 9-208(f), a party may file written exceptions from the magistrate's recommendations within 10 days after the recommendations are placed on the record or served. "Within that period or within ten days after service of the first exceptions, whichever is later, any other party may file exceptions." *Id.* Exceptions must "set forth the asserted error with particularity." *Id.* "Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise." *Id.*

Ten days after the magistrate placed findings and recommendations on the record, on February 8, 2021, Ms. Stoltz filed timely exceptions. On the same day, the court summarily denied her exceptions, stating that she "[f]ailed to follow" Md. Rule 9-208(g). That provision requires an excepting party to order, file, and serve copies of the transcript of the testimony before the magistrate. Ms. Stoltz asked for reconsideration, informing the court she had, in fact, ordered and served the necessary transcripts, but that the

transcripts had not yet been filed with the court. On February 22, 2021, the court granted her request for an exceptions hearing.

Four days later, on February 26, 2021, Mr. Clark filed his own exceptions to the magistrate's recommendations. Mr. Clark argued that the magistrate had erroneously recommended the denial of his requests for attorney's fees. He asserted that "[t]he basis for the request for fees was previously provided to the [c]ourt, and fees had already been ordered by the [c]ourt to be paid." He argued that "the [m]agistrate's recommendation to deny attorney's fees was inconsistent with prior court orders" and "did not take into consideration" those orders.

Opposing Mr. Clark's exceptions, Ms. Stoltz argued that his exceptions were untimely because he did not file his exceptions within the period prescribed by Rule 9-208(f) – 10 days after the magistrate placed findings and recommendations on the record or 10 days after Ms. Stoltz filed her exceptions, whichever is later. After the exceptions hearing, the circuit court sustained Mr. Clark's exceptions. The court ordered Ms. Stoltz to pay attorney's fees in the amount of \$3,625.

On appeal, Ms. Stoltz contends that the circuit court erred when it ordered her to pay attorney's fees. She observes that Mr. Clark did not file his exceptions within ten days after the magistrate placed the recommendations on the record, nor did he file exceptions within ten days after the service of her initial exceptions. She argues that, because Mr. Clark did not file his exceptions within the time period set forth in Md. Rule

9-208, “his [e]xceptions should neither have been heard nor granted.”¹²

Mr. Clark argues that the court did not err in considering his exceptions. He notes that, under Rule 9-208(f), he was entitled to file his exceptions within ten days after Ms. Stoltz served her exceptions. He argues that this Rule, “in essence” allows parties “who may not initially be included to pursue exceptions” to “change their mind” after an adversary files exceptions. Here, however, the circuit court erroneously denied Ms. Stoltz’s exceptions as soon as they were filed on February 8, 2021, but later reinstated those exceptions on February 22, 2021. He argues that, under these circumstances, “the period within which [Mr. Clark] was required to file his exceptions should be tolled from February 8 until February 22, 2021.”

Regardless of whether Mr. Clark’s exceptions should be regarded as timely, we conclude that the court did not err in considering Mr. Clark’s challenge to the magistrate’s recommendation. The magistrate’s “report is advisory only[.]” *O’Brien v. O’Brien*, 367 Md. 547, 554 (2002). The magistrate’s “findings of fact . . . are not to be disturbed by the court unless found to be clearly erroneous,” but the magistrate’s “ultimate conclusions are merely recommendatory and must be reviewed by the court ‘with an independent exercise of judgment.’” *Id.* at 554-55 (quoting *Harryman v. State*, 359 Md. 492, 507 (2000)). This Court has held that, if a party fails to file timely exceptions, that party ordinarily is precluded from making a subsequent challenge to the

¹² In this appeal, Ms. Stoltz relies solely on Md. Rule 9-208(f) as the basis for her challenge to the award of attorney’s fees. Accordingly, our analysis is limited to the effect of the timing of Mr. Clark’s exceptions.

magistrate's factual finding. *See Green v. Green*, 188 Md. App. 661, 674 (2009) (citing *In re Levon*, 124 Md. App. 103 (1998), *rev'd on other grounds*, 361 Md. 626 (2000); *Miller v. Bosley*, 113 Md. App. 381 (1997)). A party's failure to file timely exceptions, however, does not preclude that party from challenging the magistrate's application of law to the facts. *Green v. Green*, 188 Md. App. at 674.

In this case, Mr. Clark did not challenge the magistrate's factual findings. Rather, he argued that the recommendation to deny his request for attorney's fees was based upon a legal error. The magistrate incorrectly evaluated his request for attorney's fees as a claim for attorney's fees under section 12-103 of the Family Law Article. That provision authorizes the court to award "the costs and counsel fees that are just and proper under all the circumstances" in a case to establish or modify child support. FL § 12-103(a)(1). Before deciding to award fees under this provision, the court must consider "(1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding." FL § 12-103(b).

Contrary to the magistrate's recommendation, the requirements of FL § 12-103(b) had no bearing on Mr. Clark's requests for attorney's fees. Two of his fee requests were based on Md. Rule 2-433(d). That provision requires the court to order the moving party to pay the attorney's fees when the court denies a motion to compel discovery or motion for discovery sanctions, "unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust."

His remaining request for fees was based on Md. Rule 1-341(a). That provision authorizes the court, “if it finds that the conduct of any party in maintaining or defending a proceeding was in bad faith or without substantial justification,” to require an offending party to pay the attorney’s fees incurred in opposing a party’s conduct.

Here, regardless of whether Mr. Clark filed timely exceptions, the circuit court was required to exercise independent judgment in deciding whether to adopt the magistrate’s recommendation on the issue of attorney’s fees. In making that decision, the circuit court was not required to repeat the same legal error made by the magistrate. Indeed, if the court had decided to adopt the magistrate’s recommendation on the issue of attorney’s fees, Mr. Clark himself could have appealed to challenge the court’s adoption of the magistrate’s recommendation, even if he filed no timely exceptions. *See Green v. Green*, 188 Md. App. at 674. Because Mr. Clark did not dispute the magistrate’s factual findings, but instead argued that the magistrate made a legal error in evaluating his claims for attorney’s fees, the court was entitled to correct that error.

Accordingly, we affirm the circuit court’s order requiring Ms. Stoltz to pay attorney’s fees.

**JUDGMENT OF THE CIRCUIT COURT
FOR QUEEN ANNE’S COUNTY
VACATED. ORDER OF THE CIRCUIT
COURT FOR QUEEN ANNE’S COUNTY
REQUIRING APPELLANT TO PAY
ATTORNEY’S FEES AFFIRMED. CASE
REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY**

ONE-THIRD BY APPELLANT AND TWO-THIRDS BY APPELLEE.