Circuit Court for Montgomery County
Case No. 130171-FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 350

September Term, 2020

JOHN IRVING

v.

JENNIFER IRVING

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

JJ.

Opinion by Nazarian, J.

Filed: January 7, 2022

John Irving ("Husband") and Jennifer Irving ("Wife") have four children. They divorced in July 2016 and the Circuit Court for Montgomery County ordered Husband to pay child support. In February 2019, Husband filed a motion to modify child support. He filed an amended motion in May 2019 and a second amended motion in November 2019. During the same time period, Wife filed two motions to compel and for sanctions, arguing that Husband hadn't produced discovery she had requested. In January 2020, the circuit court dismissed Husband's Second Amended Motion to Modify as a discovery sanction. We vacate and remand for further proceedings consistent with this opinion.

I. BACKGROUND

The circuit court granted Husband's request for an absolute divorce on July 15, 2016 in an order entered on July 25, 2016. The court entered an Order for Custody and Child Support that same day that ordered Husband to pay $6,560 per month for child support. On September 28, 2018, the court ordered that child support be reduced to $5,750 per month, on the parties' joint request, when the oldest of the children turned eighteen.

This appeal relates entirely to post-divorce motions over child support, and specifically discovery relating to those motions. As a result, we are constrained to recount the discovery back-and-forth in considerable detail. On February 19, 2019, Husband filed a Motion to Modify Child Support ("Motion to Modify"). He asserted that the court's calculation of the monthly child support payment amount had been based on its finding that Husband's pre-tax annual income was $324,996. He represented that in 2019, he expected his pre-tax annual income to be $300,000 and argued that his monthly child

support payment obligation should be recalculated to account for that reduction in income. He also sought a "credit" for $38,900 in 2018–2019 private school tuition payments made for his three youngest children, although he also represented that his parents "have had to pay most of those tuitions this year." He also sought "credit" "for the $19,485 in overpayments that he has made to [Wife] since January 2017," which he argued was the result of the court's inaccurate calculation of his annual income.[1] He requested that monthly child support be reduced to $4,000 per month for the remainder of 2019, then increased to $4,500 per month after.

On May 16, 2019, Wife opposed the Motion to Modify.[2] Wife argued that even if Husband's representations about his salary were true, "a reduction in income annually of less than $25,000.00 does not represent a substantial and material change in financial circumstances justifying a reduction in child support." She also argued that insofar as Husband was requesting a credit for $19,485 in overpayments, Husband improperly sought a retroactive modification of child support, which she asserted is not permitted under *Petitto v. Petitto*, 147 Md. App. 280 (2002).

Also on May 16, 2019, Wife served discovery requests on Husband that included seventeen interrogatories and twenty-two requests for production of documents.

[1] Husband asserted that the determination of his annual income was inaccurate because the court did not properly take into account the "draw" system through which he was compensated as a non-equity partner in a law firm.

[2] Wife also moved to dismiss the Motion to Modify and filed a Counter-Motion for Modification of Child Support, but later withdrew those motions.

On May 30, 2019, Husband filed an Amended Motion to Modify Child Support ("Amended Motion to Modify") in which he represented that he expected his pre-tax annual income in 2019 to be $285,000, and argued that the $39,750 difference between his expected 2019 income and the $324,000 annual income that the court imputed to him in 2016 is a material change in circumstances warranting a reduction in child support under Maryland Code (1984, 2019 Repl. Vol.) § 12-104 of the Family Law Article ("FL"). Husband asked the court to reduce his monthly child support payment to a maximum of $4,929 and to apply that amount retroactively only to the date he filed his first Motion to Modify (February 19, 2019). He represented further that he increased the modified monthly child support he sought between the first and second motions to modify because he caught errors he had made in his first calculation. He also asked the court to maintain or raise the $85,000 in income imputed to Wife in 2016 on the ground that in 2014, she had earned $56,572 while working three days per week. Finally, he indicated again that the tuition costs for his four children were significant ($39,846 in college tuition and fees for his eldest daughter (who he acknowledged was over 18 and did not factor into the child support calculation), $56,400 for two of the minor children, and $7,775 for the third minor child). He did not say in the Amended Motion to Modify, as he had in the first motion, whether he or his parents would be paying those tuition bills.

On June 6, 2019, the circuit court held a hearing. The transcript for the June 6 hearing was not part of the record, but according to the docket, the magistrate scheduled a hearing on the merits of Husband's Amended Motion to Modify for October 22, 2019. The

magistrate also directed Husband to file a long form financial statement by June 21, 2019, and Husband did on June 12.

Also at the June 6 hearing, Husband hand-delivered a letter to Wife's counsel listing documents that he was producing in response to her May 16 requests, and attached the documents themselves. Those documents included, among other things:

- documents concerning his compensation from the law firm for 2015, 2016, 2017, 2018, and 2019 (*e.g.*, "communications" and "Compensation Recaps");
- paystubs from January to May 2019;
- 2017 and 2018 W-2 forms;
- 2017 and 2018 Tax Returns; and
- redacted Wells Fargo bank account statements that, he asserts, showed amounts that he received from his law firm, that he paid in child support, and that he paid for the children's health care.

On June 13, 2019, Wife filed an Answer to Husband's Amended Motion to Modify. She admitted that Husband consistently had been paying $5,750 per month in child support. She observed as well that the court's July 15, 2016 Order for Custody and Child Support awarded Husband final tiebreaking authority for education decisions and stated that "tie-breaking authority in this area does not include the right to seek reimbursement for payment of tuition from [Wife] without her consent."

On August 13, 2019, Wife's counsel sent a letter to Husband asserting that Husband's June 6 discovery responses were insufficient because Husband hadn't responded to the interrogatories and hadn't served a "formal" response to the request for production of documents. On August 19, 2019, Husband responded by letter and agreed to

provide some additional documents, including:

- 2016 federal tax returns;
- 2016, 2017, and 2019 state tax returns;
- 2016 "Compensation Recap"; and
- additional 2019 paystubs.

He declined to provide the following:

- details of monthly payments from his family;
- records relating to his retirement account;
- unredacted versions of the Wells Fargo bank statements;
- paystubs from 2016 and 2017;
- documents concerning reimbursements for business-related travel or gifts received in the past three years; and
- documents regarding Husband's expenses as reflected in the financial statement filed with the court.

He also declined to produce a number of documents responsive to some of Wife's broadly phrased requests, including documents relating to all claims and/or allegations filed in any pleading in the case; all subpoenas, notices of deposition, and requests received by Husband or his attorney from a third party; "all work related child care expenses"; any school and transportation expenses; and any extraordinary medical expenses incurred by the children.

On August 29, 2019, Wife responded by letter, seeking the following additional documents, among others:

- 2016 federal tax return;
- worksheets accompanying 2017 and 2018 federal tax returns;
- "all records pertaining to any account or accounts of every

kind and nature whatsoever in which you have deposited or withdrawn funds or incurred debts or credits" since July 1, 2016; and

- paystubs from July 1, 2016 to December 31, 2017.

In addition, Wife requested "all" documents and "formal" responses regarding a laundry list of other requests, including, for example, financial statements concerning joint ventures and partnerships, records of fringe benefits from any business in which Husband has an interest, and all loan or credit applications and/or financial statements of any kind prepared by or for Husband for any purpose whatsoever from July 1, 2016.

On September 3, 2019, Husband responded by letter. He included a sworn statement affirming the August 19 letter and declined to produce additional documents. He argued that the descriptions of the additional documents sought were "vague, unreasonably invasive, and [] simply an unethical abuse of process intended to intimidate me and drive up your legal fees."

On September 6, 2019, Wife filed a Motion to Compel and For Sanctions. She complained that Husband failed to provide:

- any answers to interrogatories;
- a "formal" response to requests for production of documents;
- 2016 tax return, worksheets for 2017 and 2018 tax returns;
- documents concerning income;
- list of witnesses;
- documents concerning all accounts;
- 2016 and 2017 paystubs;
- documents relating to gifts and reimbursements;

- loan and credit applications;
- all emails relating to this action from 2016 to present;
- all correspondence relating to Wife;
- all documents used to prepare financial statement;
- all documents supporting "all claims and/or allegations made by you in any other pleading[] filed in this matter";
- all documents relating to children's extraordinary medical expenses; and
- all documents concerning any school and transportation expenses.

On September 20, 2019, Husband produced additional documents, including an additional pay slip, information about payments for the children's tuition and expenses, and communications between himself and Wife.

On September 23, 2019, Husband opposed the Motion to Compel and For Sanctions. He included a schedule of the documents he already had produced and argued that those documents complied with Wife's requests and that her requests for additional documents were overbroad and unduly burdensome. He pointed out that he had provided his W2s and federal and state tax returns and that he had no investment income worksheets. He argued that "[m]any of [Wife's] demands are also so overly broad as to be practically unintelligible."

On September 27, 2019, Wife replied. She argued that Husband failed "to provide any formal Answers to Interrogatories signed under penalty of perjury" in violation of Rule 2-421(b) and failed to provide "formal" responses to documents requests in violation of Rule 2-422(c). She went on to argue that because this is an "above-Guidelines" case, Husband is required to produce documents relating to payments or loans from his parents

and unredacted bank and credit card statements. She asserted that Husband's income was "complicated" and claimed that she could not prepare adequately for a merits hearing without the unredacted Wells Fargo bank statements.

On October 3, 2020, the court granted in part and denied in part Wife's September 6 Motion to Compel and For Sanctions in a form order that largely adopted the proposed order attached to the Motion. The court ordered Husband to produce the requested discovery within ten days and stated that Husband would be "precluded from introducing any evidence not produced within [the] time set forth above during the pendency of this action, both pendente lite and permanently, except with regard to custody of the minor children . . . ."

On October 4, 2019, Husband filed a Motion to Quash Subpoena to Wells Fargo Bank. Earlier, Wife had sought unredacted versions of Husband's bank account statements through the subpoena.

Also on October 4, Wife moved to continue the merits hearing date on the ground that Husband's supplemental discovery was due on October 15, 2019 and she would need more time to prepare for the hearing. Husband did not oppose the motion to continue because he anticipated changing jobs from the law firm to a position in the federal government (starting in November 2019) and he anticipated filing another amended motion to modify child support. On October 16, 2019, the court continued the October 22 merits hearing on the motion to modify to February 4, 2020.

On October 15, 2019, Husband provided to Wife "formal" interrogatory responses,

"formal" document request responses, and additional documents, including the unredacted Wells Fargo bank account statements, the first pages of American Express credit card statements, documentation concerning loans from his family, and documentation of his 2016 retirement account withdrawal.

On November 18, 2019, Wife filed a Motion for Sanctions and For Other Relief. Wife acknowledged that Husband had produced interrogatory responses, a written document request response, and additional documents, but Wife complained that the following documents were still missing:

- documents concerning interest income reflected on tax returns;
- documents relating to income after July 2019;
- documents concerning monies Husband received from his parents since 2016 (although Wife acknowledged that Husband had indicated in his interrogatory responses that he received $45,200 from his parents in 2019);
- all pages of all American Express bills;
- unredacted pay stubs;
- paystubs from 2016 and 2017;
- household bills;
- retirement account statements;
- another copy of medical records provided previously; and
- tuition payment documents (in addition to those already provided).

On November 19, 2019, in an order entered on December 2, 2019, the court denied Husband's Motion to Quash Subpoena to Wells Fargo Bank. (As noted above, Husband had already produced those statements on October 15, after the court had granted Wife's

first motion to compel.)

On December 2, 2019, Husband opposed the second Motion for Sanctions and filed a Second Amended Motion to Modify Child Support. He represented that he had changed jobs, that his new salary was $183,100, and that he expected to be paid a total of $189,497 in 2020. He argued that he should pay $4,160 per month for child support through May 2020 and that he should pay $2,952 per month starting in June 2020. He also asked that Wife repay $3,785 in overpayments from the time he filed the first Motion to Modify in February 2019. He again discussed the tuition payments, although he again didn't say whether he or his parents would pay them, and he asserted that he "also paid additional money to his children beyond tuition and court-ordered Child Support, including monthly mobile telephone payments, car insurance for his two older daughters, and providing a car for those two children to drive and keep at [Husband's] home." Husband also produced additional documents to Wife, including:

- his first paystub from his new employment;
- his 2019 W-2 from the law firm; and
- January–November 2019 paystubs from the law firm.

In a January 22, 2020, order, entered on January 30, 2020, the court granted Wife's November 18, 2019 Motion for Sanctions. The January 30 order largely adopted the proposed order Wife had attached to the motion. Among other things, it stated that "all facts alleged in [Wife's] pleadings shall be established for the purpose of this action" (without identifying what "pleadings" to which it was referring) and it dismissed Husband's Second Amended Motion to Modify. The order contained no explanation or

reasoning.

On February 2, 2020, Husband filed a "Motion Seeking Clarification and Reconsideration of the Court's January 30, 2020, Order and To Maintain the February 4, 2020 Hearing Currently Scheduled In This Matter." He argued that he had, in good faith, provided Wife with responsive documents and that the sanction of dismissal of his Second Amended Motion to Modify was unwarranted.

At the February 4, 2020 hearing, the magistrate declined to consider the merits of the Second Amended Motion to Modify and explained that Husband's motion to reconsider would be taken under advisement once it was fully briefed.

On the same day, after the hearing, Husband filed a "Supplement" to his motion for reconsideration. He asserted that he had provided documents to Wife and that Wife had not identified relevant documents that he had not yet provided. He argued that dismissal of his Second Amended Motion to Modify was not warranted under the factors set forth in *Taliaferro v. State*, 295 Md. 375, 390–91 (1983).

On February 18, 2020, Wife opposed Husband's motion for reconsideration. She contended that Husband still had "refused to provide certain financial information that [her] counsel believed was crucial to calculating child support in an above-guidelines case." She maintained that Husband continued to refuse to produce the following:

- complete American Express statements (Husband had to date produced only the first page of the statements);
- documents regarding Husband's retirement account; and
- documents concerning payments from Husband's parents beyond what Husband already produced.

On February 21, 2020, Husband replied. He identified the documents that he had already produced that were relevant to demonstrating his income, including:

- unredacted statements for Wells Fargo checking account and Visa credit card dating back to 2016;
- tax returns;
- paystubs;
- retirement account documentation;
- documents regarding payments from family members; and
- documents concerning payment of the children's school tuition.

He agreed to produce unredacted and complete American Express statements, although he explained that he hadn't yet produced them because they contained information concerning work travel that he asserted was private and in any event had no bearing on his income. He also explained that he had provided information regarding payments from his family, and cited items 53 and 62 on a schedule of produced documents that was attached to his Motion for Reconsideration.

Several months later, on May 4, 2020, the court adopted in full Wife's proposed one-page form order and denied Husband's Motion for Reconsideration. The order was entered on May 7, 2020, and, as with the court's earlier orders, contained no explanation or reasoning.

Additional facts will be discussed as needed below.

II. DISCUSSION

Husband identifies two questions presented that we consolidate and rephrase: Did the circuit court err in dismissing, as a discovery sanction, Husband's December 2, 2019

Second Amended Motion to Modify?[3] We hold that it did, and we vacate the judgment and remand for further proceedings consistent with this opinion.

Maryland Rule 2-433 authorizes sanctions for violations of the discovery rules. The Rule provides in relevant part that the court "may enter such orders in regard to [a discovery] failure as are just," including an order "dismissing the action or any part thereof." Md. Rule 2-433(a)(3).[4] We review a trial court's decision to impose sanctions for

[3] Husband, who is a practicing attorney and filed his brief *pro se*, phrased the Questions Presented as follows:

> 1. Whether the Circuit Court failed to exercise or abused its discretion in granting, without a hearing, Appellee's Motion for Sanctions for Appellant's alleged failure to provide discovery, denying Appellant's Motion Seeking Clarification and Reconsideration of that Order, and dismissing Appellant's Motion for Modification of Child Support, where the court's earlier Order granting Appellee's Motion to Compel Discovery was unclear, Appellant repeatedly sought clarification from the court, Appellant provided extensive discovery and Appellee provided none beyond her Financial Statement and Appellant's own bank records, and dismissal was unwarranted under Maryland law.
>
> 2. Whether the Circuit Court['s] factual findings were clearly erroneous in the absence of a hearing and any evidentiary support beyond Appellee's assertions.

Wife's brief, also filed *pro se*, does not contain a statement of the Questions Presented.

[4] Maryland Rule 2-433 provides in relevant part:

> (a) For Certain Failures of Discovery. Upon a motion filed under Rule 2-432 (a), the court, if it finds a failure of discovery, may enter such orders in regard to the failure 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

a discovery violation for abuse of discretion. *Dackman v. Robinson*, 464 Md. 189, 231 (2019). We also review for abuse of discretion the court's denial of a motion for reconsideration. *Wormwood v. Batching Sys., Inc.*, 124 Md. App. 695, 699 (1999).

> 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. If, in order to enable the court to enter default judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court may rely on affidavits, conduct hearings or order references as appropriate, and, if requested, shall preserve to the plaintiff the right of trial by jury.
>
> 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.
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> ***
>
> (c) For Failure to Comply With Order Compelling Discovery. If a person fails to obey an order compelling discovery, the court, upon motion of a party and reasonable notice to other parties and all persons affected, may enter such orders in regard to the failure as are just, including one or more of the orders set forth in section (a) of this Rule. If justice cannot otherwise be achieved, the court may enter an order in compliance with Rule 15-206 treating the failure to obey the order as a contempt.

Appellate review "of the trial court's resolution of a discovery dispute is *quite narrow*; appellate courts are reluctant to second-guess the decision of a trial judge to impose sanctions for a failure of discovery." *Valentine-Bowers v. Retina Grp. of Washington, D.C.*, 217 Md. App. 366, 378 (2014) (*quoting Sindler v. Litman*, 166 Md. App. 90, 123 (2005)). Nevertheless, we will find an abuse of discretion when "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) (cleaned up); *North v. North*, 102 Md. App. 1, 14 (1994) (stating that an abuse of discretion occurs when the court's decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable").

In addition, "[a] 'proper exercise of discretion involves consideration of the particular circumstances of [the] case' and the court's exercise of discretion must be clear from the record." *Alexander*, 467 Md. at 620 (alteration in original) (*quoting Gunning v. State*, 347 Md. 332, 351–52 (1997)); *Nelson v. State*, 315 Md. 62, 70 (1989) ("If the judge has discretion, he must use it and the record must show that he used it. He must use it, however, soundly or it is abused."). The record of the trial court's deliberation is especially important when the sanction imposed is dismissal because "[t]he rules and the courts 'do not favor imposition of the ultimate sanction absent clear support.'" *Weaver v. ZeniMax Media, Inc.*, 175 Md. App. 16, 46 (2007) (*quoting Holly Hall Publ'ns, Inc. v. Cnty. Banking*

and Trust Co., 147 Md. App. 251, 267 (2002)). "The dismissal of a claim [] is among the gravest of sanctions, and as such, is warranted only in cases of egregious misconduct such as 'wil[l]ful or contemptuous' behavior, 'a deliberate attempt to hinder or prevent effective presentation of defenses or counterclaims,' or 'stalling in revealing one's own weak claim or defense.'" *Manzano v. Southern Maryland Hosp., Inc.*, 347 Md. 17, 29 (1997) (alterations in original) (*quoting Rubin v. Gray*, 35 Md. App. 399, 400–01 (1977)).

In weighing the appropriate discovery sanction, a trial court should be guided by the factors set out in *Taliaferro v. State*, 295 Md. 376, 390–91 (1983),[5] which have been restated by the Court of Appeals as follows:

> (1) the reasons why the disclosure was not made; (2) the existence and amount of any prejudice to the opposing party; (3) the feasibility of curing any prejudice; and (4) any other relevant circumstances.

Dackman, 464 Md. at 231–32 (*citing Beka Indus., Inc. v. Worcester Cty. Bd. of Educ.*, 419 Md. 194 (2011)); *see Valentine-Bowers*, 217 Md. App. at 378–79 (reviewing trial court's analysis of *Taliaferro* factors in imposing discovery sanction). Even so, the factors frequently overlap and "do not lend themselves to a compartmental analysis." *Taliaferro*,

[5] *Taliaferro* stated the factors like this:

> whether the disclosure violation was technical or substantial, the timing of the ultimate disclosure, the reason, if any, for the violation, the degree of prejudice to the parties respectively offering and opposing the evidence, whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance.

295 Md. at 390–91.

295 Md. at 391. And regardless of how the factors are framed, "[o]rdinarily a court will 'impose the least severe sanction that is consistent with the purpose of discovery rules.'" *Beka Indus.*, 419 Md. at 232 (*quoting Thomas v. State*, 397 Md. 557, 571 (2007)).

Husband argues that the circuit court erred in three ways when it granted Wife's second Motion for Sanctions, dismissed his Second Amended Motion to Modify, and denied his motion for reconsideration. *First*, he argues that the circuit court "failed to exercise its discretion" by issuing its rulings in form orders and without making any factual findings or legal analysis. *Second*, he argues that the circuit court abused its discretion by imposing discovery sanctions without considering the *Taliaferro* factors. And *third*, Husband argues that the circuit court's factual findings—to the extent it made any when it adopted as true the facts alleged in Wife's "pleadings"—were clearly erroneous.

All three of Husband's arguments touch on the problem with the circuit court's rulings without quite getting to the heart of it, which is that we cannot tell if the court exercised its discretion when it dismissed the Second Amended Motion to Modify, or if it dismissed the motion for a legal reason or on some other basis. Where the record does not reveal that the trial court took into account the appropriate factors in imposing a discovery sanction—especially where that sanction is dismissal—then we will reverse. *Schneider v. Little*, 206 Md. App. 414, 437 (2012), *rev'd on other grounds*, 434 Md. 150 (2013); *Scully v. Tauber*, 138 Md. App. 423, 431 (2001).

Put another way, the error here isn't that the court "fail[ed] to exercise" its discretion—it's that we cannot discern whether the court exercised its discretion. In *Hart*

v. Miller, 65 Md. App. 620, 627 (1985), for example, we held that the trial court abused its discretion by failing to exercise it when it dismissed a case on the ground that the plaintiff failed to provide timely interrogatory answers. *Id.* The trial court had set forth its reasoning on the record during the hearing—it based its decision on the general principle that, if a party violates a deadline set by one of its orders, then the sanction of dismissal is required. *Id.* at 625. We held that the court's failure to exercise discretion was an abuse of discretion:

> The alternatives available to a trial judge in imposing sanctions for failure to comply with discovery, answering interrogatories herein, clearly demonstrate that the trial judge is required to consider every aspect of the case and then choose the most appropriate remedy. Discretion signifies choice. Consideration of the various elements of the problem does not preordain a single permissible conclusion. **Failure to exercise choice in a situation calling for choice is an abuse of discretion, because it assumes the existence of a rule that admits of but one answer.** When, as in the present case, the trial court recognizes its right to exercise discretion, but then declines to exercise it in favor of adhering to some consistent or uniform policy, it errs.

Id. at 626–27 (emphasis added) (citations omitted).

The distinction between this case and *Hart* is that in *Hart* we had the benefit of the court's reasoning. In this case, there is no record of the court's factual findings or legal analysis. The court had scheduled a hearing on the merits of the Second Amended Motion to Modify, but never held it. The January 30 order dismissing Husband's motion effectively rubber-stamped Wife's form order and contains no factual findings or legal analysis—and specifically no consideration of the *Taliaferro* factors—that might shed light on the court's reasoning. The absence of any articulated basis for the court's ruling, and especially the

absence of any consideration of sanctions less severe than dismissal, leaves us unable to discern whether the court exercised discretion here or if it dismissed the motion on another ground. On remand, the circuit court should consider the *Taliaferro* factors and articulate the factual and legal grounds for its decision.

We acknowledge that it's possible that the court will reach the same conclusion on remand, *i.e.*, that Husband committed discovery violations and that those violations warranted the imposition of sanctions, whether dismissal or some less severe sanction. And we don't reach lightly the conclusion that the court abused its discretion by failing to articulate its reasoning. Indeed, we recognize that trial courts are not required "to state each and every consideration or factor" in making discretionary rulings because they are "presumed to know the law, and [are] presumed to have performed [their] duties properly . . . " *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003). But in this case, the record could support both Husband's and Wife's positions in the discovery disputes, and so the trial court needs in the first instance to decide if or how those disputes affect child support.

And that's the context: the substantive issue is whether there was a "material change in circumstances" and, if so, whether it justified a change in the amount of child support Husband owed. FL § 12-104(a) ("The circuit court may modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change in circumstances."). Wife asserts that this is an "above-the-Guidelines" case, which means that rather than being bound by the standard Child Support Guidelines calculation,

"the court may use its discretion in setting the amount of child support." FL § 12-204(d). The court need not follow the formula set forth in FL § 12-204 and may consider various factors in determining child support, including "the parties' financial circumstances, the reasonable expenses of the child, and the parties' station in life, their age and physical condition, and expenses in educating the child." *Walker v. Grow*, 170 Md. App. 255, 266 (2006) (cleaned up). But the "central factual issue" is the actual income of each parent, *id.* at 267 (*quoting Johnson v. Johnson*, 152 Md. App. 609, 615 (2003)), which the Family Law Article defines as "income from any source." FL § 12-201(b)(1). Section 12-201(b)(3) of the Family Law Article lists possible types of income, including salaries, wages, and commissions.[6] The Family Law Article provides further that, based on "the circumstances

[6] FL § 12-201(b)(3) that "Actual income" includes:

> (i) salaries;
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> (ii) wages;
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> (iii) commissions;
>
> (iv) bonuses;
>
> (v) dividend income;
>
> (vi) pension income;
>
> (vii) interest income;
>
> (viii) trust income;
>
> (ix) annuity income;
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> (x) Social Security benefits;
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> (xi) workers' compensation benefits;
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> (xii) unemployment insurance benefits;
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> (xiii) disability insurance benefits;
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> (xiv) for the obligor, any third party payment paid to or for a minor child as a result of the obligor's disability, retirement, or

of the case," the court "may" (but need not) consider "gifts" as actual income.[7] FL § 12-201(b)(4). And in making an actual income determination, "[t]he court must verify the parents' income statements 'with documentation of both current and past actual income.'" *Walker*, 170 Md. App. at 269 (*quoting* FL § 12-203(b)(1)).

We can see from the record that Husband provided a significant volume of documents relevant to the question of income in response to Wife's discovery requests. As of December 2019, shortly after Wife filed her November 2019 Motion for Sanctions and Husband filed the Second Amended Motion to Modify, Husband appears to have provided at least the following:

- federal and state tax returns going back several years;
- paystubs going back to at least 2018;
- information and/or documents concerning his receipt of "loans," including a payment or loan of at least $45,200 from his parents in 2019;

other compensable claim;

(xv) alimony or maintenance received; and

(xvi) expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business to the extent the reimbursements or payments reduce the parent's personal living expenses.

[7] FL § 12-201(b)(4) provides:

(4) Based on the circumstances of the case, the court may consider the following items as actual income:

(i) severance pay;

(ii) capital gains;

(iii) gifts; or

(iv) prizes.

- 2017, 2018, and 2019 W-2 forms from his law firm;
- 2019 W-2 form from his new employment; and
- unredacted statements from his Wells Fargo bank account.

As of February 2020, after the court dismissed his Second Amended Motion to Modify, Husband produced the following additional documents:

- complete American Express statements;
- documents concerning his retirement account; and
- additional documents concerning payments from his parents.

We also see support in the record for Husband's contention that Wife's discovery and document requests were overbroad and unduly burdensome—they included requests for "all" documents concerning a wide-ranging laundry list of topics, as we outline above. And finally, while Husband's first two motions to modify pointed only to a $24,000 and then a $39,000 change in annual salary, the Second Amended Motion to Modify identified a change in employment and an approximate $135,000 change in annual salary.

The record also supports Wife's contention that Husband refused to respond to discovery requests or provided delayed and insufficient responses. Throughout the dispute, Wife complained about redacted Wells Fargo bank account statements (which Husband eventually produced after Wife subpoenaed the bank), incomplete American Express credit card statements (which Husband produced only after the court granted Wife's first motion to compel), and incomplete information about financial help from Husband's parents (which Husband also eventually produced after the court granted Wife's first motion to compel).

Because the court didn't explain its reasoning for dismissing Husband's Second Amended Motion to Modify, we don't know how the court weighed Husband's and Wife's respective assertions and arguments—or indeed whether the court weighed them at all. And after reviewing the record closely ourselves, we cannot see any justification for the extreme sanction of dismissal, even construing the dispute in a light most favorable to Wife. *Hart*, 65 Md. App. at 628 ("Dismissal runs counter to valid societal preference for a decision on the merits.").[8]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED AND CASE REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.

[8] Wife makes a number of assertions in her appellate brief, both as to the merits of Husband's Second Amended Motion to Modify and the discovery dispute, all without citation to the record. We decline to consider them. She also states that Husband "cherry picked" certain documents to compile an incomplete record extract. We did not find the record extract deficient, and in any event, we were able to review the complete paper record from the circuit court.