Circuit Court for Montgomery County
Case No. 163498-FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 467

September Term, 2022

WONSANG YOU

v.

MIAE JEON

Wells, C.J.,
Nazarian,
Beachley,

JJ.

Opinion by Nazarian, J.

Filed: July 18, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

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

80 percent of success is showing up.

– Woody Allen[1]

Miae Jeon ("Wife") initiated divorce proceedings against Wonsang You ("Husband") in the Circuit Court for Montgomery County on August 6, 2019. A merits hearing was scheduled for November 8, 2021, and on October 19, 2021, Husband, who had moved back to Korea, his native country, filed a motion to permit him to participate in the hearing remotely because, he claimed, returning to the United States would be unduly burdensome. Wife opposed the motion and the trial court denied it.

Husband did not appear in person at the November 8 merits hearing, but his counsel was present and renewed the motion for remote participation. The court again denied the motion but, after Wife's counsel advised the court that the parties had discussed an agreement to postpone the case so that Husband could appear in person, offered Husband's counsel the opportunity to request a continuance from the administrative judge. Husband's counsel declined and insisted on proceeding that day. So the hearing proceeded in Husband's absence, with Wife presenting testimony and evidence on the issues of divorce, alimony, child support, property distribution, and attorneys' fees.

On March 15, 2022, the court delivered its opinion and order. Husband moved for a new trial and for the court to alter, amend, or revise its judgment, which the court

[1] William Safire, *On Language; The Elision Fields*, N.Y. TIMES, August 13, 1989 (§6), at 18.

denied except with respect to attorneys' fees. Husband now appeals, arguing primarily that the trial court erred in denying his motion to participate remotely and deciding the issues without considering the testimony and evidence he would have presented but didn't. We affirm.

I. BACKGROUND

A. Pre-Trial Background.

Husband and Wife were married in Seoul, South Korea, in January 2006. They moved to Montgomery County in 2013, where they purchased a home. They have two minor children together, a daughter and a son, who at the time of the divorce trial were fourteen and eleven years old, respectively. Sometime around April 2019, Husband learned that his father was in critical condition, and Husband and Wife traveled to Korea. Husband's father passed away shortly after, and after the funeral, Wife returned to Maryland. She soon learned that Husband had decided not to return to Maryland, and from that point on, Wife was solely responsible for caring for the children.

On August 6, 2019, Wife filed an action for Absolute Divorce against Husband in the Circuit Court for Montgomery County. She sought an absolute divorce, sole legal and physical custody of the children, child support, alimony, use and possession of the family home and vehicle, jointly titled real property, attorneys' fees, and "such further and other relief as the nature of her cause requires." Husband filed an answer and a counter-complaint on November 22, 2019. The case initially was set for trial on May 10, 2021, but on May 9, 2021, due to Wife's counsel's illness, it was rescheduled for November 8, 2021.

On October 19, 2021, Husband filed a motion asking the court to permit him to participate in the trial remotely under Maryland Rule 2-803. He argued that because he resides in Korea, travel to the United States for these hearings would be "financially overly burdensome" as well as "emotionally and psychologically detrimental." Wife opposed the motion by arguing, among other things, that she would be prejudiced by Husband's remote participation because it would make it more difficult for the court to gauge his credibility. She also claimed that Husband's reluctance to return to Maryland likely was due, at least in part, to an outstanding warrant for Husband's arrest in Montgomery County as the result of a criminal complaint she had filed against him stemming from an incident of spousal abuse before he moved back to Korea. On November 1, 2021, the circuit court denied Husband's motion for remote participation.[2]

B. The Trial.

On November 8, 2021, the scheduled in-person merits hearing began. At the beginning of the hearing, Husband renewed his motion for remote participation. He reiterated the reasons in his written motion and added that, due to then-existing COVID-19 restrictions in Korea that required people traveling outside the country to quarantine for two weeks upon their return, he would have to take weeks off work to travel to the United States and likely would be suspended or terminated from his job. The trial court

[2] Husband filed a reply to Wife's opposition, but not until November 4, 2021, after the circuit court denied his motion. On that same day, he also filed a "Supplemental Motion" seeking again to participate remotely, but this filing was later marked as deficient.

denied the motion again, noting that Husband had known about the November hearing since May and explaining that in-person participation often is necessary to "judge the credibility of the witnesses":

> I require the parties to appear in person unless there's a compelling reason why they should appear by zoom or sometime if the parties agree and there's not going to be a lot of Exhibits and things like that. Because I have to judge the credibility of the witnesses. I have to look at them, I have to hear them, I have to make determinations based on what I'm observing. And so, my decision is that he should be here in person and he elected not to be. So, may we move on?

Immediately after the court's ruling, counsel for Wife asked the court's permission to speak with Husband's counsel to discuss "a possible solution." The court granted the request and the parties stepped out of the courtroom. When they returned, counsel for Wife explained that Wife "does not want [Husband] to lose his job," so they informed Husband's counsel that Wife would "be agreeable to postpone [the merits hearing] until June [2022]":

> [COUNSEL FOR WIFE]: Your honor, . . . [Wife] does not want [Husband] to lose his job, okay. Your Honor wants him in Court, we want him in Court, okay, and so I offered [Husband's counsel] a possible way for [Husband] to avoid being detained at the airport by obtaining criminal counsel here because I've done this before. Obtaining criminal counsel here, reach an understanding with the State's Attorney's Office and accept process and a promise to appear in person when the case is scheduled then they would strike the warrant and he wouldn't be detained on the way into Court. We wouldn't, you know, have him worry about being fired from his job.
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> So, I suggested that maybe, you know, we'd be agreeable to postpone [the merits hearing] until June or so when the schoolyear, I guess the semester is over. . . . [Counsel for

> Husband] went off to discuss the matter with him.
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> Now, normally we don't want a continuance either but there are proceedings going on in Korea right now, and I thought if we waited some of the other issues would work themselves out where we might have to just come back to Court and maybe for a day to argue about how to resolve the marital home. And so, that's, you know, what at least we were attempting to do.

While they waited for Husband's counsel to finish discussing the matter with Husband and return to the courtroom, the court explained that "[a]t 1:30 I'm either going to be prepared to go to trial or you'll have a continuance. . . . [I]f you want a continuance, . . . you're going to have to ask the administrative judge." When Husband's counsel returned, the court asked how Husband would like to proceed:

> What I need to know is am I sending a request to the administrative judge so that counsel can go to the administrative judge and request their continuance, or are we starting at 1:30 this afternoon.

Husband opted to proceed with trial without Husband present: counsel told the court that "we're starting at 1:30 this afternoon" and did not seek a continuance. So as Husband requested, the court proceeded with the trial, which spanned three days. Wife testified, presented evidence, and was subject to cross-examination. Because he did not appear, Husband did not testify and presented only limited evidence.

C. The Trial Court's Opinion and Order.

On March 15, 2022, the court issued its judgment, opinion, and order.[3] The

[3] We'll refer to this as the "March 15 order."

opinion explained that because Husband "did not appear before the Maryland Court to pursue any of the claims of his Counter-Complaint," it was dismissing them. The court then framed the remaining issues: it explained that "[t]he parties agree that [Wife] shall have legal and residential custody of the parties' children" and "that title of the Husband's [vehicle] shall be transferred to Wife," but that "[t]he parties dispute the remaining issues," which were divorce, alimony, child support, use and possession of the family home, property distribution, and attorneys' fees. The opinion then laid out the court's findings of fact and decisions on all of the disputed issues.

With regard to absolute divorce, the court found that the parties already had been granted a divorce by a court in South Korea and denied Wife's request for a divorce. Nevertheless, the court noted that the Korean court "did not address support or property matters," and that "[t]he parties agree that this court may decide the property and monetary issues before the court."

As to Wife's income and expenses, the court found that Wife made a small income as a violin instructor and would not become self-supporting:

> [Wife] has a High School education with some college. [Wife] gives violin lessons. She in the past has supplemented that income with DoorDash until she determined that, with the gas cost and the need to be home to care for the children, it was not profitable. [Wife] earns approximately $1,300 to $1,350 per month. She also gets public assistance, including food stamps, gas subsidy, Pepco subsidy, and internet subsidy. [Wife] also received the enhanced child tax credit of $500 per month ($250 per child). The tax credit normally is up to $2,000 per qualifying dependent and was expanded in 2021 as part of the Coronavirus relief package. The total in monthly subsidies is $1,150. [Wife]'s expenses for herself

> and the minor children total $4,095 per month. *See* [Wife]'s Ex. 54. This includes $185 per month in extraordinary medical expenses for the children.
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> * * *
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> There is no evidence before the court that [Wife] can become self-supporting. [Wife] recently obtained a work visa. . . . The court is without evidence of any specialized education or skills that [Wife] may utilize to secure more profitable employment. [Wife] . . . does not have a higher degree, and cares for the parties' two children, one with special needs requiring substantial care, without any non-monetary support from [Husband].

In contrast, the court found from Wife's presentation that Husband made over $100,000 in 2019, but that Husband offered no evidence of his current income and expenses:

> [Husband] obtained his master's degree and at the time [Husband] left the country, he was employed at Children's Hospital. He now is working for a university in Korea. In 2017, [Husband] earned $75,749.50. [Wife]'s Ex. 30. In 2018, [Husband] earned $78,001.96. [Wife]'s Ex. 31. In 2019, until he left his employment with Children's Hospital in April 2019, [Husband] earned a total of $37,113.46 (or $9,278.36 per month over the four-month period). [Wife]'s Ex. 32.
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> * * *
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> [Husband]'s salary was increasing. He . . . was slated to earn over $100,000 in 2019, had he not left his employment with Children's Hospital.
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> * * *
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> [Husband] did not appear in court and offered no evidence of his current income or expenses.

On the question of alimony, the court walked through each of the twelve factors laid out in Maryland Code (1984, 2019 Repl. Vol.), § 11-106(b) of the Family Law Article ("FL") and ultimately "f[ound] it appropriate and necessary to award [Wife]

indefinite alimony in the amount of $500 per month." For child support, the court applied its findings on the parties' income and expenses and calculated Husband's child support obligation at $1,827 per month, with arrears totaling $53,345.[4]

As for use and possession of the family home, the court considered the best interest of the children and found that "[t]he interest of stability for the children, especially considering their father's abrupt abandonment of the family, dictates that they be allowed to remain in their home as long as possible." The court awarded "exclusive use and possession of the home to [Wife] until December 10, 2023 (a period of three years from the date of the Korean divorce)," and ordered Husband to "timely pay to [Wife] or directly to the mortgage company his one-half share of the indebtedness related to the real property, namely, the mortgage principal, interest, taxes and insurance, each month for the use and possession period." For the distribution of other property in dispute, the court walked through each of the factors enumerated in FL § 8-205(b) and ultimately concluded that Wife "shall be the sole owner of the furnishings within the marital home," and that the parties should split the net proceeds from the sale of the home at the end of Wife's use and possession period.

Finally, with regard to attorneys' fees, the court found that Wife had incurred fees of approximately $31,620 and that "[s]he has no funds from which to pay her attorneys' fees, has been without support of [Husband], . . . and was substantially justified in

[4] This calculation credited Husband with having paid $6,474 in support since the date of the complaint.

pursuing her claims before this court." The court also explained that "[Husband] earns seven times what [Wife] earns and has a greater ability to contribute to attorneys' fees than [Wife] does," and that the court was "without evidence of [Husband]'s attorneys' fees." From these findings, the court ordered Husband to pay Wife $20,000 toward attorneys' fees.

D. Husband's Post-Trial Motions.

On March 25, 2022, ten days after the court's opinion and order, Husband filed a Motion to Alter, Amend, and/or Revise Judgment, as well as a Motion for New Trial. In the Motion to Alter or Amend, Husband argued that the judgment was "grossly excessive" and "fail[ed] to reflect the contents of the evidence and testimony presented." He claimed that "the figures used by the Court with respect to [Wife]'s salary and [Husband]'s salary to calculate both child support and alimony were erroneous" because the court's calculation of Husband's income "is not his current salary" and because Wife "misrepresented her education, earning potential and actual income." Husband claimed that the award of attorneys' fees was inappropriate for the same reasons. And he argued that in denying his motion to participate remotely, the court both "deprived [Husband] of his procedural and substantive due process rights by stripping him of the ability to challenge [Wife]'s testimony and evidence and present his own evidence and testimony" and "limited the Court's ability to enter a fair and just judgment having all of the evidence in front of it for consideration." Husband made similar arguments in his Motion for New Trial. Wife opposed both motions.

On April 18, 2022, the court entered orders (the "April 18 orders") denying the Motion for New Trial and denying the Motion to Alter or Amend except with respect to the issue of attorneys' fees. On that issue, the court held a hearing on June 29, 2022, and reduced Husband's contribution to Wife's attorneys' fees from $20,000 to $15,000. On May 16, 2022, Husband appealed the court's March 15 and April 18 orders.[5] Additional facts are supplied below where necessary.

II. DISCUSSION

Husband presents several questions on appeal, which we have consolidated:[6] *first,*

[5] Because Husband filed his Motion to Alter or Amend Judgment and his Motion for New Trial within ten days of the trial court's March 15 order, his notice of appeal was timely as to the March 15 order when it was filed within 30 days of the court's April 18 orders on the Motion for New Trial and the Motion to Alter or Amend Judgment. Md. Rule 8-202(c).

[6] Husband phrased the Questions Presented, which Wife adopted, as follows:

> 1. Did the Court err in denying Appellant's Motions before and at trial to appear via remote electronic participation thereby violating his right to due process and disregarding Maryland Rule[ ]2-803?
> 2. Did the Court err in considering evidence produced by Appellee's Counsel which was clearly inaccurate and outdated?
> 3. Did the Court err in allowing Appellee's counsel to make improper remarks throughout trial and thus evidence judicial prejudice and bias?
> 4. Did the Court err in the amount of child support, alimony, arrearages and attorney's fees awarded as there was no evidence submitted to the Court as to Appellant's current income that would support the findings and judgment entered, further showing judicial bias and prejudice?

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whether the trial court's denial of Husband's motion for remote participation was improper under Maryland Rule 2-803 and amounted to a violation of Husband's right to due process; *second,* whether the trial court erred in awarding child support, alimony, arrears, and attorneys' fees to Wife because the evidence Wife produced that supported the awards was false, "inaccurate and outdated," or insufficient; *third*, whether the trial court exhibited judicial prejudice and bias throughout the trial; and *fourth*, whether the trial court erred in denying, without explanation, Husband's Motion to Alter or Amend and his Motion for New Trial.

A. The Court Did Not Err In Denying Husband's Motion For Remote Participation.

Husband argues *first* that the trial court erred in denying his motion to appear remotely because "Maryland Rule 2-803 allows the Court to grant" such a motion and "the Court refused to properly take into account the many numerous reasons why [Husband] had requested to appear via Zoom." He also claims that the trial court's refusal to grant the motion amounted to the court "improperly and prejudicially barr[ing] [Husband] from presenting evidence," which is a "clear violation of [Husband]'s

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5. Did the Court err in denying outright Appellant's Motion for a New Trial without addressing any issues raised by the Appellant?
6. Did the Court err in denying outright Appellant's Motion to Alter, Amend, and/or Revise Judgment without addressing any of the issues raised by the Appellant?

We address Husband's Questions 2 and 4 together as our second issue and Husband's Questions 5 and 6 together as our fourth.

fundamental due process rights." We disagree.

1. By failing to appear in person and declining the opportunity to request a continuance, Husband waived his due process right to be present for and participate in the trial.

We'll begin with Husband's claim that he was not afforded due process. "The question of whether a party is deprived of the right to due process involves an issue of law and not of fact. As such, the standard of review applied by an appellate court is *de novo*." *Regan v. Bd. of Chiropractic Exam'rs*, 120 Md. App. 494, 509 (1998), *aff'd*, 355 Md. 397 (1999).

The Fourteenth Amendment to the Constitution of the United States provides that the State shall not "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. Because "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner,'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (*quoting Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)), the Supreme Court of the United States "consistently has held that some form of hearing is required before an individual is finally deprived of a property interest." *Id.* And in Maryland, "we have made clear that a party to civil litigation has a right to be present for and to participate in the trial of his/her case," a right that emanates not only "from the due process clause of the Fourteenth Amendment" but also "from the Maryland equivalent of that clause, Article 24 of the Declaration of Rights," "from the common law of Maryland . . . and from Article 19 of the Declaration of Rights." *Green v. N. Arundel Hosp. Ass'n*, 366 Md. 597, 618 (2001). Still, Maryland

courts "have also made clear, as have most other courts in the nation, that the right [to be present for and participate in the trial of one's case] is not absolute—that there are circumstances in which a civil case may proceed without the attendance of a party and, indeed, with the party excluded." *Id.* at 618–19.

The decision to proceed without a party present lies "'*in the discretion of the court, with due regard to the circumstances as to prejudice*.'" *Id.* at 619 (*quoting Gorman v. Sabo*, 210 Md. 155, 167 (1956)). We won't vacate a trial court's ruling and order a new trial "simply because of the exclusion." *Id.* at 620. Rather, we must examine whether and "*why* the exclusion was prejudicial." *Id.* at 621. Due process is "a flexible concept" that demands "*reasonable* procedural protections, appropriate to the fair determination of the particular issues presented," based on "the totality of the facts in a given case." *Wagner v. Wagner*, 109 Md. App. 1, 24 (1996). And "due process is not to be evaluated in a vacuum. Its purpose is to assure basic fairness of procedure and, if departure from procedure results in unfairness, it may be said to deny due process; if no unfairness results, there is no denial of due process." *Id.* at 25.

Importantly for this case, "it is well settled that 'due process rights to notice and hearing prior to a civil judgment are subject to waiver.'" *Fry v. Coyote Portfolio, LLC*, 128 Md. App. 607, 621 (1999) (*quoting D.H. Overmyer Co., Inc. v. Frick*, 405 U.S. 174, 185 (1972)). Where a party has "voluntarily, knowingly, and intelligently" waived their right to participate in their case, *id.*, their due process rights have not been violated, nor has any prejudice resulted from their exclusion.

A hearing—*i.e.*, an opportunity to be heard—was scheduled in this case. Husband had notice of the hearing nearly six months before the scheduled date. He waited until three weeks before the hearing to move to participate remotely, and he knew that the court had denied his motion at least a week before the hearing. Nevertheless, he declined to appear and sought yet again to appear remotely. Then, after denying Husband's renewed motion to appear remotely (and *then* after the parties discussed the possibility of delaying the trial so Husband could attend), the court offered Husband an opportunity to request that the trial be continued to a later date so that he could participate in person. He declined and, importantly, advised the court that he wanted to proceed with the hearing as scheduled, knowing that he would not be allowed to participate remotely.

Husband was given the opportunity to be heard in person, and he waived that right through the "affirmative act of absenting [him]self and thereby implicitly assenting to the court's proceeding without [his] presence." *Exxon Corp. v. Yarema*, 69 Md. App. 124, 143 (1986). And although he may have faced significant costs in traveling to the United States for a hearing, that matters only if it rendered Husband's failure to appear for the hearing involuntary, such that he did not meet the standard for waiver. It didn't. If "the facts on the record suggest that [a party is] involuntarily absent," the court must "inquire as to the seriousness of the . . . condition [causing the absence] or the expected length of [the] absence prior to exercising [its] discretion to proceed without [that party]." *State v. Hart*, 449 Md. 246, 273 (2016). But where nothing in the record suggests that the absence was involuntary, no such inquiry is necessary. Husband never argued in the trial court,

and doesn't argue on appeal, that his absence was involuntary, and the evidence never suggested that it was. Husband never claimed that it would be impossible for him to travel to the United States, only that the costs to him from doing so outweighed the benefits. The fact that the court's cost-benefit analysis yielded a different conclusion doesn't create a due process violation. And even if we were to find that Husband's failure to appear on November 8 was involuntary, that finding would not extend to his decision to decline the judge's offer to request a continuance. We cannot find that Husband's due process rights were violated when he waived his right to appear in person affirmatively.

2. The trial court was not required to allow Husband to participate remotely in the trial under Maryland Rule 2-803.

We turn next to Husband's claim that the court violated the Maryland Rules by precluding him from participating in the trial remotely. The question before us is whether the statute was interpreted and applied correctly, so our review again is *de novo*. *Friendly Fin. Corp. v. Orbit Chrysler Plymouth Dodge Truck, Inc.*, 378 Md. 337, 342–43 (2003).

At the time of this trial, "[r]emote electronic participation in an evidentiary proceeding, such as the trial in the instant case, [wa]s governed by Maryland Rule 2-803."[7] *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 259 (2021). Rule 2-803 provided as

[7] Effective July 1, 2023, Chapter 800 of Title 2 of the Maryland Rules was rescinded and replaced with a new Title 21, Chapter 12. Rule 2-803 itself has been replaced by new Rule 21-201, which authorizes, but does not require, courts to permit parties and witnesses to participate remotely in non-jury evidentiary proceedings. The two Rules give the court essentially the same authority to permit remote participation under appropriate circumstances. And the Committee Note to new Rule 21-201 counsels

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follows:

> (a) **In General. —** Subject to section (b) of this Rule and Rule 2-804, a court, on motion or on its own initiative, may permit one or more participants or all participants to participate in an evidentiary proceeding by means of remote electronic participation (1) with the consent of all parties, or (2) in conformance with section (c) of this Rule. With the approval of the county administrative judge or the judge's designee, remote electronic participation in an evidentiary proceeding before a magistrate, examiner, or auditor is permitted in accordance with the Rules in this Chapter.
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> (b) **On Court's Own Initiative. —** If the court intends to permit remote electronic participation pursuant to this Rule on its own initiative, it shall notify the parties of its intention to do so and afford them a reasonable opportunity to object. An objection shall state specific grounds. The court may rule on the objection without a hearing.
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> (c) **Absence of Consent; Required Findings. —** In the absence of consent by all parties, a court may exercise the authority under section (a) only upon findings that:
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> (1) participation by remote electronic means is authorized by statute; or
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> (2) the participant is an essential participant in the proceeding or conference; and

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that "[r]emote proceedings generally are not recommended when the finder of fact needs to assess the credibility of evidence but may be appropriate when the parties consent or the case needs to be heard on an expedited basis and remote proceedings will facilitate the participation of individuals who would have difficulty attending in person." Rules Order to 214th Report of the Standing Committee on Rules of Practice and Procedure at 386, Rules Order at 386 (Md. Apr. 21, 2023), available at mdcourts.gov/sites/default/files/rules/order/ro214.pdf (last visited July 11, 2023), *archived at* perma.cc/37VB-P62E. Put another way, the new Rules direct trial courts to perform exactly the same balancing that the trial court performed in this case and would support the same outcome here.

> (A) by reason of illness, disability, risk to the participant or to others, or other good cause, the participant is unable, without significant hardship to a party or the participant, to be physically present at the place where the proceeding is to be conducted; and
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> (B) permitting the participant to participate by remote electronic means will not cause substantial prejudice to any party or adversely affect the fairness of the proceeding.

The Rule is couched in permissive terms: a court "*may* permit one or more participants" to participate remotely.[8] Md. Rule 2-803 (emphasis added). It doesn't define any conditions under which the court *must* allow such participation, nor does any other rule, statute, or order that we can identify, and Husband hasn't cited any. This Rule *does*, however, give Maryland trial courts broad discretion to deny[9] motions for remote

[8] *See Uthus v. Valley Mill Camp, Inc.*, 472 Md. 378, 393–94 (2021) ("This Court has long interpreted the term 'may' in a statute to be permissive. . . . By contrast, this Court has also long held that the term 'shall' in a statute indicates the legislative intent that the statute be mandatory." (citations omitted)).

[9] Conversely, a trial court's discretion to *grant* a motion for remote participation in an evidentiary hearing was *not* unfettered under Rule 2-803. To grant such a motion, the trial court must first have had the consent of all parties or made specific findings regarding fairness *and* good cause. And under Rules 2-804 and 2-805, even with consent or the necessary findings, remote electronic participation was allowed only if certain standards related to connections, software, and equipment were met. The fact that the Rules constrained the court's authority to grant a motion for remote participation while placing no constraints on the court's authority to deny one indicates that remote participation generally was not meant to be the default state, and definitely isn't the default state under the new Rules.

During the COVID-19 pandemic, Chief Judge Barbera of the Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)* issued

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participation in evidentiary hearings.

Husband's argument that "the Court refused to properly take into account the many numerous reasons why [Husband] had requested to appear via Zoom" under Maryland Rule 2-803 ignores the reality that the court did hear and consider the many reasons Husband put forth in favor of granting his motion, but found that they were outweighed by the court's need to assess his credibility in person. This was a perfectly rational conclusion, and fell perfectly within the trial court's discretion under the Rule.

B. The Court Did Not Err In Awarding Child Support, Alimony, Arrearages, And Attorneys' Fees.

Husband argues *next* that the court erred in setting the amount of child support, alimony, arrearages, and attorneys' fees it awarded to Wife. The crux of Husband's

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administrative orders that not only authorized but encouraged courts to allow for remote participation "to the extent that . . . [m]atters may be handled remotely," and one such order was in place at the time of the November 8 trial. *See* Third Amended Administrative Order Expanding Statewide Judiciary Operations in Light of the COVID-19 Emergency, (Md. August 6, 2021), available at https://mdcourts.gov/sites/default/files/admin-orders/20210806thirdamendedorder expandingstatewidejudiciaryoperationsinlightofthecovid19emergency.pdf (last visited July 11, 2023), *archived at* https://perma.cc/P2CQ-LE8A. Importantly, though, none of these orders *required* the circuit courts to hold evidentiary hearings remotely.

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

argument is that the court's determinations of Wife's income and Husband's income—the factual determinations on which the awards were based—were grounded in evidence (all from Wife, since he never presented any) that was "clearly wrong," "outdated and inaccurate," or insufficient. Because Husband makes this argument by pointing to what he believes to be several specific problems with Wife's evidence and the trial court's reliance on it, we'll summarize and address each in turn.

We begin with Husband's arguments about the evidence of Husband's income. He argues that Wife "failed to present evidence of [Husband's] current income that was in [her] possession," that "[Wife] had obtained [his] current salary in discovery, but did not disclose it at trial, instead offering into evidence previous higher salaries that were several years outdated and earned in the United States, not Korea." Wife counters that "[i]t is not the duty of opposing counsel to offer into evidence what it believes to be fake and incomplete income information provided by the other side." We agree with Wife. Had Husband appeared at trial, he could have presented evidence of his current income and testified about it; he might even have tried to offer evidence through other witnesses. Any failure to present evidence rests squarely with him, not Wife.

We move next to Husband's arguments about Wife's income. *First*, he claims that because Wife "presented no documentary evidence as to her monthly and annual income," her "income had not actually been proved." But he points to no statute or rule that requires that Wife "prove" her income via "documentary evidence" before the court can credit her testimony, and we have found none.

Then, Husband complains that Wife's answers to questions on direct examination about her income were "misleading, if not outright deceptions" because "[s]he presented herself as a poor, starving, uneducated violin teacher with little steady income" and "conveniently left out her own accomplishments in the music world." To the extent that this is true (and we make no finding about whether it was), Husband's opportunity to call the credibility of that evidence into question lay in the trial court, not on appeal. Husband's counsel had the opportunity to cross-examine Wife on these matters, but they didn't. And had Husband appeared in court, he would have had the opportunity to testify and present evidence to refute Wife's claims, but he didn't.

Husband argues *next* that Wife's credibility *was* called into question,[10] so the court

[10] Specifically, he claims that Wife's credibility was called into question in the following ways: (1) "[i]n the course of the trial [Wife] testified to two or three different monthly incomes"; (2) she admitted on cross that she didn't have work authorization while she and Husband were living together, so although she had income, she didn't declare it on their joint tax return; (3) she provided no explanation for her failure to introduce into evidence her tax returns for 2019, 2020, and 2021 after she had work authorization; and (4) "throughout most of [her] cross-examination, she denied everything," including "threaten[ing] [her] husband by brandishing a sharp knife."

Several of these claims mischaracterize the record. Wife "testified to two or three different monthly incomes" because she was asked about her monthly income during different months: just before the COVID-19 pandemic ($2,595), over the course of several months in 2020 and 2021 ($770-$940), and in the months leading up to the hearing ($1,300-$1,350). She didn't explain why her tax returns weren't in the record because she wasn't asked to do so. Wife's denial of certain events on cross-examination, including brandishing a knife, is, at best, weak evidence of her lack of credibility given that no evidence was offered to prove that those things actually occurred. Regardless, we have no opportunity here to revisit Wife's credibility.

erred in "rel[ying] solely on [Wife]'s self-serving statements" to determine her income and Husband's income. There are two main problems[11] with this argument. *First*, it fails to recognize that credibility determinations are left to the fact-finder, in this case the trial court:

> When weighing the credibility of witnesses and resolving conflicts in the evidence, the fact-finder has the discretion to decide which evidence to credit and which to reject. The fact[-]finder may believe or disbelieve, credit or disregard, any evidence introduced, and a reviewing court may not decide on appeal how much weight must be given to each item of evidence.

Qun Lin v. Cruz, 247 Md. App. 606, 629 (2020) (cleaned up). So even if Husband had managed to call Wife's credibility into question, we would not second-guess the trial court's decision to believe her nonetheless.[12]

The *second* main problem with Husband's argument is that it acknowledges that the court relied on evidence before the court (*i.e.*, Wife's "self-serving statements") to

[11] These are by no means the only problems. For example, Husband's argument also presumes, unjustifiably, that the court found him credible and should have relied on the information he provided to the court.

[12] For the same reason, Husband errs when he argues that the trial court's finding about his income was erroneous because the trial court failed to consider "demonstrative evidence" that he submitted after the trial, including "a child support guidelines calculation with a copy of [Husband's] current pay stub" and "an alimony calculation." The trial court was free to discredit and disregard this indisputably late evidence.

reach its income determinations.[13] But that's exactly what courts are supposed to rely on. The trial court's findings about the parties' incomes were factual findings that resolved disputed claims using the evidence admitted during the trial. Findings of fact "are subject to review under the clearly erroneous standard embodied by Md. Rule 8-131(c); we will not disturb a factual finding unless it is clearly erroneous." *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229 (2000). "When the trial court's findings are supported by substantial evidence, the findings are not clearly erroneous." *Id.* In other words, we would overturn the trial court's factual findings about the parties' incomes only if we found that there wasn't "substantial evidence" in the record to support those findings, yet Husband himself admits that the findings were supported by the evidence. He complains that the evidence was false, outdated, or incomplete. But those characterizations go to the weight and quality of the evidence, and even if he were correct about them, that would not provide a basis for us to overturn the trial court's income findings on appeal.[14]

Finally, Husband argues that the court abused its discretion in the amount of child

[13] Husband admits this again elsewhere in his brief by acknowledging that the court "us[ed] the information presented by [Wife] as the basis for a child support award, alimony award, monetary award, [and] attorney's fee award."

[14] For this reason, we also find meritless Husband's argument the court erred in determining his income because it "used a figure for [Husband]'s income which it knew was not his current income." As the court explained in the post-trial motions hearing on June 29, 2022, the court "made a finding of what [Husband]'s income was based on the only . . . [and] most current income figure that [it] had." These were the income figures from Husband's 2017, 2018, and 2019 W-2 forms, to which the parties stipulated and which Wife introduced into evidence. Thus, the court's finding was supported by substantial evidence, so we affirm it.

support, alimony, and attorneys' fees it awarded to Wife. But Husband's challenge to the amount of the awards merely reprises his complaints about the court's findings on the parties' incomes, and because we already have rejected those complaints, there's nothing new to consider.[15]

C. The Court Did Not Exhibit Judicial Prejudice Or Bias.

Throughout his brief, Husband claims that the court itself displayed impermissible prejudice and "clear bias" during the trial in favor of Wife, and in several ways: *first*, by finding Wife credible "[e]ven after [her] credibility was called into question"; *second*, by the court's "characterization that [Husband] did not appear for trial" when, according to Husband, he was actually "refused admission" and "effectively barred from addressing the veracity of the testimony and facts presented"; *third*, by "rush[ing]" Husband's counsel when she "tried to present a short video and some photos of [Husband] interacting with his children," even though "the Court did not rush [Wife]'s counsel," and

[15] In addition to the issues discussed above, Husband voices two other concerns about the trial court's awards and the income findings on which they were based. *First*, he claims that Wife's counsel violated his duty of candor to the court by presenting evidence that, according to Husband, Wife's counsel "knew [was] erroneous and inaccurate, if not actually mendacities." This claim is separate from the claim that the court erred in considering the evidence before it, and in any case, this is not the appropriate forum in which to make that claim in the first instance, so we will not address it. *Second*, Husband claims again and again that he was "unfairly prejudiced" by the court's decision to "[n]ot allow[] [Husband] to testify and present evidence concerning [Wife's income] and other events which occurred during the marriage." But we already have decided that the court did not commit any error, constitutional or otherwise, in precluding Husband from participating remotely when he failed to appear in person for the trial and to seek a continuance, so there is no need for us to address that issue further either.

by "not even bother[ing] to view" the content of the video and pictures, even though the court "did view [Wife]'s videos and pictures"; and *fourth*, by allowing Wife's counsel to make certain remarks in opening and closing statements that Husband characterizes as "improper."[16] Husband doesn't identify any specific underlying reason that the trial judge was biased, but claims that this collection of decisions by the trial judge demonstrates that she was, for reasons unknown, biased against Husband and in favor of Wife.

In this way, Husband's allegations are similar to the appellant's allegations in *Reed v. Baltimore Life Insurance Co.*, 127 Md. App. 536 (1999). In that case, the losing party argued that the trial judge had made facial expressions, expressions of frustration, evidentiary rulings, and trial management decisions that demonstrated that the judge "was biased against him and expressly favored appellees' counsel." *Id.* at 550. We explained that these sorts of allegations, which are "analogous to participating in an athletic contest . . . [and] filing a formal complaint against the umpire because one is unhappy with what the umpire perceives to be the appropriate ball or strike call," are usually "more appropriately reviewed in the context of whether the judge's rulings comport with applicable law, rather than by divining a motive speculatively attributed to the trial judge by counsel." *Id.* at 552. But Husband fails to explain how any of the actions at issue failed to "comport with applicable law" beyond claiming baldly that they demonstrate bias. If this is bias, any losing party can claim it, and that's not what bias is.

[16] Husband does not state what relief he seeks from the alleged prejudice beyond his general request that we remand the case for a new trial.

Moreover, Husband's bias claim isn't preserved. Preserving review of "the conduct and actions of a trial judge during the course of a proceeding in which it is alleged that such conduct is detrimental to a party's case" requires that "the party raises the issue during the trial," as well as a record in which the following four requirements are met:

> (1) facts are set forth in reasonable detail sufficient to show the purported bias of the trial judge; (2) the facts in support of the claim must be made in the presence of opposing counsel and the judge who is the subject of the charges; (3) counsel must not be ambivalent in setting forth his or her position regarding the charges; and (4) the relief sought must be stated with particularity and clarity.

Braxton v. Faber, 91 Md. App. 391, 408–09 (1992). Indeed, "it is incumbent upon counsel to state with clarity the specific objection to the conduct of the proceedings and make known the relief sought." *Id.* at 407. And Husband did nothing of the sort here.

In *Braxton*, the party seeking appellate review of the trial judge's conduct informed the trial judge of the conduct at issue expressly, stating for the record, "[I]t has been our observation throughout the trial that Your Honor has rushed us along, rolled your eyes, yelled at us, complained, moaned and groaned, but only when the plaintiff is speaking or only when the plaintiff's attorneys are speaking." *Id.* at 399 (footnote omitted). Nevertheless, we found that because the appellant had not made clear that she was seeking recusal, mistrial, or some other specific relief, their "attempt to raise the question of judicial bias fail[ed] principally to put the trial judge on notice as to the relief sought." *Id.* at 409. So too here, where Husband did even less than the appellant in

Braxton—he failed to inform the trial judge at any point during or after trial that he believed certain actions by the judge demonstrated bias or prejudice, and he failed to ask for appropriate relief, such as recusal.

And even assuming the issue was preserved, the actions he highlights don't reveal any bias or prejudice. When reviewing a trial judge's alleged failure to recuse, and "assuming the sufficiency of the record, our inquiry is limited to what impact, if any, the trial judge's alleged conduct had on the appellant's ability to obtain a fair trial. We are not here otherwise concerned with adjudication of judicial misconduct." *Reed*, 127 Md. App. at 536 (*quoting Braxton*, 91 Md. App. at 405 n.6).

Even taken together, the actions Husband calls out do not demonstrate that he suffered any unfairness. *First*, finding a witness credible hardly indicates impermissible bias—if it were, judicial bias would taint every trial in which the parties presented conflicting evidence, or, said more bluntly, every trial. *Second*, it wasn't unfair for the trial judge to state that Husband did not appear for trial—that is in fact what happened. *Third*, it would have been a perfectly rational trial management decision for the court to review Husband's video evidence after the trial rather than during it. There was no jury. Unlike Wife, Husband was not there to testify about it. And nothing in the record indicates that the court did not, in fact, review the video after the in-court phase concluded. And *finally*, the record reveals that both parties made remarks during opening and closing arguments that the court deemed were improper and decided not to consider. The transcript is rife with examples of the court trying to control the proceedings and

confine the attorneys' arguments to the facts that had been presented, and the court aimed its directives fairly and squarely at both sides.

D. The Court Did Not Err In Denying Husband's Motion To Alter Or Amend Judgment And Husband's Motion for New Trial.

After the trial court issued the March 15 order, Husband filed a Motion to Alter or Amend Judgment and a Motion for New Trial, both of which argued that the court should grant the motions for all the same reasons he asks this Court to reverse the March 15 order on appeal (except for judicial prejudice and bias, which weren't included). Husband argues now that the court erred in denying these motions "outright." But there was no error in the court's decision not to provide an explanation for denying Husband's motions. The trial court was not required to "elaborate on the reason" for its decisions. *See Attorney Grievance Comm'n v. Jeter*, 365 Md. 279, 288 (2001). When reviewing decisions of the trial court, we "presume that trial judges know the law and correctly apply it." *Id.* And for all of the reasons set forth in the foregoing pages, Husband's arguments lacked merit then, just as they lack merit now.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.