

Circuit Court for Prince George's County
Case No. CAD20-02572

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 571

September Term, 2022

SAMIA L. GORE

v.

ANTHONY B. GORE

Berger,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: August 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 its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

**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.

A lengthy and contentious divorce laid the foundation for this appeal and cross-appeal. In June of 2020, Appellee/Cross-Appellant Anthony Gore (“Husband”) sought to divorce Appellant/Cross-Appellee Samia Gore (“Wife”). A key issue in these proceedings was the valuation of the business Wife started during the couple’s marriage and the impact of the valuation on the court’s eventual monetary award. A pattern of discovery disputes protracted the couple’s litigation as Husband sought a litany of documents related to the business, which Wife failed to produce in total, and Wife failed to timely declare an expert who could testify regarding her business’s valuation. The trial court eventually imposed sanctions on Wife, both in the form of monetary penalties and the exclusion of both her testimony and that of her expert regarding the valuation of her business.

When distributing the couple’s marital property, the court ultimately valued the business in accordance with the figures asserted by Husband’s expert. It then awarded Husband 25 percent of that value in his monetary award. The court proceeded to divide the remainder of the couple’s marital property evenly, deducting Wife’s share of the marital property from Husband’s monetary award. Wife appealed the circuit court’s award of monetary sanctions and the court’s exclusion of her and her expert’s testimony regarding her company’s valuation, as well as her attempts to testify regarding the value of her business. Husband cross-appealed the court’s distribution of marital property and the resultant monetary award.

As the appellant, Wife presents three questions for our review, which we rephrase and reorder as two questions:¹

- I. Whether the trial court erred by precluding Wife from providing opinion testimony regarding the value of the business she started during the couple’s marriage.
- II. Whether the trial court erred by imposing sanctions, both monetary and via the exclusion of evidence, for Wife’s discovery failures.

As cross-appellant, Husband presents two questions for our review, which we condense into one question:²

- III. Whether the trial court erred in determining the division of marital property.

¹ Samia Gore’s (“Wife”) original questions presented read as follows:

1. Did the trial court err as a matter of law and/or abuse its discretion when it failed to apply any of the factors of *Taliaferro v. State*, 295 Md. 376 (1983) before making its ruling which precluded [Wife] from offering any valuation of her businesses?
2. Did the trial court err when it refused to let [Wife], as owner of her businesses, state the value of the businesses?
3. What relief is [Wife] entitled to?

² Anthony Gore’s (“Husband”) original questions presented read as follows:

1. Whether the trial court erred when it awarded only 25% of the parties’ marital business value to cross-appellant.
2. Whether the trial court erred in its division of non-business marital property.

For the reasons explained herein, we affirm the circuit court’s decisions regarding Wife’s questions, but we shall reverse the circuit court regarding Husband’s cross-appeal. Accordingly, we remand the matter to the circuit court to properly articulate its findings regarding the distribution of marital property. In so doing, we recognize this prompts the circuit court to review its accompanying monetary rulings regarding alimony and child support. We explain our holdings herein.

FACTS AND PROCEDURAL HISTORY

Gore Marriage and Eventual Separation

Husband and Wife married in Prince George’s County on June 21, 2013. Both spouses had children from prior relationships, and these families grew larger with the birth of the couple’s son (“Son”) in January of 2014. After the family moved into Husband’s home in Upper Marlboro, Maryland, he added Wife to the title of the house. This became the marital home, where the couple resided until they separated. The couple’s relationship began to deteriorate in August of 2017, when Husband suspected, and later confirmed, that Wife engaged in extramarital affairs. The couple continued to reside together, experiencing periods of volatility, before separating on July 9, 2019.

Growth of Bella Barbies International, LLC, d/b/a Body Complete Rx

The business at the heart of this dispute grew during the couple’s marriage and was listed on the couple’s Joint Financial Statements submitted during the divorce proceedings. Roughly six months after the birth of Son, Wife had the first of several cosmetic surgeries in the Dominican Republic. A \$25,000 settlement Husband received following a

discrimination lawsuit against the Federal Railroad Administration predominantly funded these procedures. Wife shared content regarding these procedures, weight loss, and “mommy makeovers” on her social media accounts. The openness and honesty of these posts, and the warm reception from her online audience, led Wife to write a book and to transform her growing social media presence into a business. No longer employed by the federal government, Husband grew into the role of Son’s primary caregiver.

In 2016, Wife’s business transitioned to the sale of dietary supplements, using her social media platforms to promote these products along with her “lifestyle” brand. The entity would become known as Bella Barbies International, LLC (“Bella Barbies”), doing business as (“d/b/a”) Body Complete Rx.³ The company began selling supplements through a company called TLC, with Bella Barbies quickly becoming one of TLC’s top sellers. Husband aided in the business’s growth, both by taking care of Son so that Wife could focus on her business -- also so she could recuperate faster from her surgical procedures, which had effectively become a part of her business -- and by helping package and ship supplements from the couple’s home before the company grew large enough to utilize warehouse space elsewhere. During Wife’s June 16, 2021 deposition, she stated

³ It was unclear from the record what activities the company conducted as “Bella Barbies” compared to as “Body Complete Rx,” or when exactly the new naming convention occurred. In her testimony at trial, Wife said that she used the same corporate entity, under the new d/b/a title, largely out of convenience since she used the same tax ID number created for Bella Barbies for Body Complete Rx. For simplicity, and to avoid confusion, we shall refer to the couple’s business marital property as “Bella Barbies,” regardless of whether we refer to the company’s social media content or its selling of supplements.

that her company just signed “a major contract” with The Vitamin Shoppe.⁴ During trial, Husband introduced Wife’s social media posts of Wife taking Bella Barbies products to a The Vitamin Shoppe location.

As the business grew, the family’s lifestyle grew as well. They began taking more elaborate vacations, including a yearly trip to Disney World for Son’s birthday, owning nicer cars, procuring expensive designer goods, and indulging in luxuries like high-end hotels and private chefs. After the couple’s separation, Wife continued to enjoy this lifestyle, throwing a lavish birthday celebration in Mexico and acquiring multiple automobiles including two Jeeps, two Bentleys, and a BMW used by Husband. Husband testified that his lifestyle became vastly more modest following the couple’s separation.

Divorce Litigation and Initial Proceedings

On June 23, 2020, Husband filed a complaint in the Circuit Court of Prince George’s County for absolute divorce on the grounds of adultery. In his complaint, he sought sole physical custody, both pendente lite and permanently, and joint legal custody of Son, both pendente lite and permanent alimony; child support; a monetary award adjusted to the equities and the respective rights of the parties in their marital property; similar requests regarding the use and waste of the couple’s marital property; and attorney’s fees and costs. On January 27, 2021, Wife filed her answer and a counterclaim for limited divorce on the grounds of separation with no expectation of reconciliation. In her counterclaim she sought

⁴ Specifically, in her deposition Wife stated “we just signed a contract with The Vitamin Shoppe. So that’s a major contract. We’ll be launching at all Vitamin Shoppes August 2021.”

joint physical and legal custody of Son, both pendente lite and permanently; a denial of alimony to Husband, both pendente lite and permanently; a determination of the value and division of the couple's marital property; and any further relief the court found appropriate.

On April 7, 2021, the court issued a scheduling order setting May 7, 2021 as the date the parties must exchange certain required documents related to finances not otherwise specified in discovery requests, June 14, 2021 as the deadline for all discovery including the designation of expert witnesses and related motions, July 9, 2021 as the date to file the Joint Statement of Marital and Non-Marital Property under Maryland Rule 9-207, and August 24–25, 2021 as the trial date.⁵ The order made clear “that failure to abide by this Order will subject the non-complying counsel, party, or both, to appropriate sanctions.” Specific to discovery, the scheduling order warned that “[f]ailure to complete Discovery by the settlement conference [scheduled for July 14, 2021] may result in sanctions imposed against one or both parties and/or attorneys.”

Wife filed her Rule 9-203 Financial Statement on February 26, 2021. On March 5, 2021, Husband filed his notice of discovery that he served on Wife. Husband filed his expert designation on June 14, 2021, in accordance with the scheduling order, naming Treffer Appraiser Group as his expert regarding the valuation of the couple's non-business

⁵ Specifically, the scheduling order required the parties to exchange copies of the following items by May 7, 2021: the past three years of tax returns, with all supporting documents including W2's, K-1's, and 1099's; the current year's year-to-date pay stubs; documents supporting all claimed work-related childcare expenses; documentation of health insurance for Son; a financial statement per Maryland Rule 9-203; and all pension information.

real property, Jane Campbell-Chambliss & Associates, LLC as his expert to value the couple's personal property, and Charles Rains, CPA/ABV/CFF, as his expert for the valuation of the business marital property, Bella Barbies. Wife did not designate an expert by the deadline to do so.

Discovery Disputes, Motions, and Sanctions

Husband filed a Motion to Compel Discovery and/or For Sanctions on April 19, 2021. In his motion, Husband asserted that he served upon Wife both interrogatories and a request for the production of documents on February 24, 2021 and that responses and document production were due on March 26, 2021. Further, Husband claimed that despite efforts to alert Wife and her counsel of this deficiency and to provide them additional time to produce discovery materials, as of the filing of the motion they had not produced the requested documents, leaving Husband prejudiced in his preparation for the upcoming pendente lite hearing. Wife filed a motion in opposition on April 28, 2021. Between April 23, and April 29, 2021, Husband filed multiple notices of service and subpoena duces tecum to produce the financial records sought.

On May 27, 2021, the court issued an order granting the motion to compel discovery.⁶ The court ordered Wife to provide all responses related to Husband's motion to compel by the close business the next day, May 28, 2021 and to pay Husband's

⁶ There is some confusion regarding these orders. The docket includes only an order dated June 15, 2021, with nothing docketed for May 27, 2021, yet the order in the record provides the date issued as "this 27th day of May, 2021" and establishes a deadline for Wife to comply as May 28, 2021. Because this order is among a series of orders with which Wife did not comply, we view this discrepancy as immaterial to our review.

attorney's fees for drafting the motion to compel. When Wife did not comply with this order, Husband again filed another Motion for Sanctions on June 3, 2021. In response, the court issued an order on June 15, 2021 imposing sanctions that required Wife to pay Husband's attorney's fees for drafting his motion and any related responses. Despite the successive orders, Wife's discovery production remained outstanding.

On August 10, 2021, the court held a hearing on the pending request for sanctions. At the time of the hearing, 135 discovery requests remained at issue, and Wife had not produced discovery since May 7, 2021. Though her counsel was present, Wife did not appear at the hearing, much to the court's disappointment. Husband's counsel stated that Wife had provided some bank statements from 2018 and 2019, as well as her income tax returns for both those years, but "that's all she has produced up until this point," all while Husband incurred "hundreds of dollars" subpoenaing the outstanding financial records from the financial institutions with which Bella Barbies interacted. The court proceeded to order Wife to pay sanctions of \$500, as well as \$100 per day, for each day from May 28, 2021 -- the prior deadline to produce outstanding discovery -- until the date of the hearing, and \$1 per day for each of the 135 remaining discovery requests, until such time Wife produced those materials.

The day after the hearing, Husband filed a motion seeking to postpone the merits trial. In response to Husband's motion, Wife filed a Consent answer on August 15, 2021 stating she needed to hire new counsel. Three days later, she filed a Line to Strike her consent for the continuance.

At a hearing held August 24, 2021, the original date selected for the start of trial, the court instead heard Wife’s counsel’s motion to withdraw. Her counsel explained that it had become “impossible to effectively represent [Wife] despite my efforts to do so.” Counsel cited the recurring discovery issues, difficulties communicating with Wife, Wife’s threats to pursue malpractice complaints if she did not prevail, and Wife’s posting of negative comments online about counsel’s law firm. Over Husband’s recorded opposition to any postponement, the court found good cause to continue the matter to October 27–28, 2021. The court also advised Wife that she should secure new counsel as soon as possible, as “if you do not have counsel by [the new trial dates], you’ll have to represent yourself.”

Prior to the new trial dates, the parties found themselves in court for a hearing arguing discovery violations again. On September 10, 2021, Wife appeared pro se, saying she had yet to secure an attorney but “will have one within the next two weeks, a new one.” The court explained that it stayed the prior sanctions due to concerns that Wife’s prior counsel did not convey the information from the last sanctions hearing when fines were imposed. The court extended its stay of the prior sanctions for seven days, giving credit to Wife for her attempts to comply and noting that the outstanding discovery requests decreased from 135 to six. The court proceeded to schedule a 30-minute hearing for September 17, 2021, warning Wife that if she did not fulfil the discovery requests by then, “the clock starts ticking and you are going to start paying a daily fine for everything you don’t get them.” The court did not award additional attorney’s fees. The court issued an order docketed September 20, 2021 memorializing its rulings and fines.

When the parties reconvened for the hearing a week later, Husband’s counsel informed the court that Wife had still not produced her 2020 federal tax return, as well as bank and credit card statements for Bella Barbies from May 1, 2021 through September 2021.⁷ Wife stated that her 2020 tax filing was currently under review by her accountant and had yet to be filed with the IRS, agreeing to provide a copy to Husband’s counsel once this occurred. The court informed Wife that she must turn over the outstanding discovery materials on the six bank accounts requested by Husband by September 27, 2021, effectively staying the sanctions from the court’s prior order until then.

In an order docketed September 27, 2021, though, the court awarded \$245 in attorney’s fees to Husband and ordered Wife to comply with its prior May 27, 2021 order and to produce the outstanding 2020 tax documents by September 27, 2021, as well as a litany of other financial documents primarily related to Bella Barbies but also including some documents related to the custody dispute, with fines reserved until that date. The court “reserve[d] on the issue of evidentiary sanctions against [Wife].”

Husband again filed a motion for sanctions on September 29, 2021, informing the court that Wife had not paid the \$245 attorney’s fees she had been fined two days prior, nor had she provided the outstanding discovery documents, as per the court’s orders. In an

⁷ Husband’s counsel noted that Wife provided the login and password information for the requested bank and credit card accounts, presumably so counsel could access and obtain what may be needed, but counsel stated “I’m not going to do that. That makes me very uncomfortable. I don’t want there to be any type of claim of impropriety on my part or anything of that nature, especially given [Wife’s] allegations against her former lawyer.” The court concurred, noting that this approach was “not really a good idea.”

order docketed October 22, 2021 requiring Husband to keep certain documents obtained via subpoena confidential, the court also imposed an additional \$350 in attorney's fees against Wife representing the cost of Husband's September 29, 2021 motion.

The Protracted Trial - Round 1

Two days before the start of the already once-delayed trial, Wife obtained new counsel, and they entered their appearances. The trial started on October 27, 2021, with a discussion of the lingering discovery issues. Wife's counsel argued that Wife provided to her previous lawyer all relevant documents requested for Husband's business valuation expert's report, and that the only outstanding documents related to custody matters. Her counsel proceeded to assert that specific documents related to Bella Barbies' potential contract with the Vitamin Shoppe -- which were necessary to support projections in the Husband's expert's valuation -- could have been subpoenaed. In part due to the lateness of both her appearance and the production of the Vitamin Shoppe documents, Wife's counsel asked for a continuance, which the court denied. Husband's counsel responded that those documents related to the contract were subpoenaed, with Wife being sent a motion to produce such documents the same day, arguing "[t]here is nothing else I could have done to get The Vitamin Shoppe documents any quicker than I did. [Wife] could have provided them to me because it was requested in her document request, but she didn't

do it.”⁸ The court did not directly rule on these evidentiary disputes and instead moved on to the merits, with Husband’s counsel presenting Husband’s case.

Husband’s counsel qualified, and the court accepted, Thomas Weigand, a certified real estate appraiser and co-owner of Caralex LLC d/b/a Treffer Appraisal Group, as Husband’s expert witness regarding residential real estate valuation. Mr. Weigand testified that the couple’s marital home in Upper Marlboro was worth \$455,000.

Husband’s counsel next qualified, and the court accepted, Charles Rains as an expert witness regarding business valuation. Husband’s counsel entered Mr. Rains’ expert report into the record.⁹ Mr. Rains testified, according to his projections based upon the documents provided through discovery and subpoena, that the fair market value of Wife’s 100 percent interest in Bella Barbies was \$34,590,000. Mr. Rains explained the basis for these projections relied heavily on Bella Barbies’ contract with several retailers, chief among them The Vitamin Shoppe, a nationwide retailer with more than 700 stores as well as online sales. He noted that much of the information he relied upon came from Wife’s own

⁸ Husband’s counsel attempted to explain to the court that the subpoena did not produce swift results as The Vitamin Shoppe’s representative was concerned about an outstanding motion for a protective order that had been filed, thus the representative would not produce documents until being provided the protective order.

⁹ Wife’s counsel objected to entering the expert report into the record, arguing that it was 26-pages long and had only been provided on October 26, 2023. The court admitted it over this objection, noting Wife’s counsel could cross-examine him on it, “[a]nd if you feel the need to bring [Mr. Rains] back, we can do that, too.” Husband’s counsel attempted to assert that difficulties obtaining the necessary documents through Wife’s discovery production or subpoena caused the delay in providing the report, to which the court interjected with a simple, “I know.”

deposition, and that the projected sales figures also contemplated a potential contract with Target stores, though Mr. Rains qualified that this was not heavily weighted and considered in his assessment of “other retailers” with which Bella Barbies does business.

With the parties failing to present their entire respective cases during the two-day trial, the court continued the matter until December 20–21, 2021. Notably, Wife did not confirm she would be present at the virtual proceedings, and the court again continued the case until March 22–23, 2022.

Wife’s Late Attempts to Designate an Expert Witness

On December 22, 2022, Wife filed a Motion to Permit Expert Testimony on the Issue of Business Valuation, naming Richard Wolf, CPA as her expert. She requested “Mr. Wolf’s testimony for the limited purpose for rebuttal to [Husband’s] business valuation and expert.” Her motion indicated that she would consent to again continue the matter if necessary so that Husband could depose Mr. Wolf. Wife proceeded to file her expert designation on January 10, 2022.

That same day, Husband filed a Motion to Strike Defendant’s Expert Witness Designation. The following day, he filed his opposition to Wife’s motion to designate an expert. The court issued an order hand dated March 17, 2022 but docketed April 20, 2022 granting Husband’s motion to strike Wife’s expert witness designation. The order proceeded to preclude from the merits trial both testimony from Mr. Wolf and Wife’s use of any reports or documents prepared by Mr. Wolf or his business. Further, the court

ordered Wife to pay Husband \$420 in attorney’s fees within 10 days of the date of the order.

The Protracted Trial - Round 2

The reconvening of the trial on March 22, 2022 began abruptly with Wife’s then counsel seeking to withdraw.¹⁰ The court granted the motion but informed Wife there would be no additional postponements, leaving her with the option to either proceed pro se in the day’s proceedings or attempt to work out the issues with counsel, providing a brief recess to do so.¹¹ Wife chose the former, and the court granted her counsel’s motion to withdraw, allowing time for counsel to provide “whatever information she needs to go forward and then that’s it.”

Wife proceeded to present her case, largely through her own testimony. When Wife twice attempted to assert a significantly lower valuation for Bella Barbies than the valuation provided in Husband’s expert’s testimony, Husband’s counsel objected each time, and the court sustained those objections in both instances. The March 22, 2022 proceedings closed with Husband’s counsel revisiting the remaining outstanding discovery and sanctions requests.

¹⁰ This marked the second time the respective attorney serving as Wife’s counsel felt compelled to withdraw, with both motions being filed on the cusp of trial.

¹¹ Neither Wife nor her counsel elaborated on the underlying issue prompting withdrawal. The court noted that “[t]his is the second time that close to the trial date or on the trial date Counsel had to withdraw because of whatever’s going on. This is just not fair to [Husband] at this point, or to [Son]. It’s time for this case to be finished.”

On the following day, Wife attempted to assert her compliance with many, if not all, of Husband’s discovery requests by pinning the blame on her prior counsel where failures did occur. Husband’s counsel rebutted these arguments. Additionally, the court noted that back in September it clarified that, notwithstanding what Wife’s counsel might have represented regarding producing documents that had otherwise been subpoenaed or provided to just her counsel, the court instructed Wife to provide the requested documents directly to Husband’s counsel.

With these lingering issues, the court decided that it would proceed with completing the divorce and questions of alimony and child support, then deal with the division of marital property within 90 days.¹² Husband’s counsel objected to yet another continuance. The court noted the objection and reassured Husband’s counsel that Wife “will be responsible for all attorney’s fees,” including those resulting from this additional continuance.

The proceedings returned to the matter of the divorce, with Wife resuming her case in chief. In Wife’s closing statement, she again attempted to dispute Mr. Rain’s “\$34,000,000” valuation of Bella Barbies. Husband’s counsel renewed his objection. Again, the court did not permit Wife to testify about the value of her business.

¹² In a proceeding for an annulment or absolute divorce, the court may expressly reserve the power to determine the division of marital property within 90 days of the court’s express grant of divorce or annulment. Md. Code (1984, 2020 Repl., 2021 Suppl.) § 8-203(a) of the Family Law Article (“FL”).

Adjudication of Divorce and Distribution of Marital Property

The proceedings resumed on April 12, 2022 with the court providing its oral disposition of the divorce on all matters except the division of marital property. The court memorialized its rulings in a Judgment of Absolute Divorce docketed May 19, 2022. The court granted the parties an absolute divorce, awarding the couple joint legal custody of Son with Husband receiving primary physical custody and setting forth a custody schedule for the parents to follow. The court ordered Wife to pay \$2,310 per month in child support, in accordance with the statutory guidelines, as well as an additional \$750 per-month towards arrearages on the unpaid pendente lite child support. The court awarded both pendente lite child support and pendente lite alimony for Husband, with arrearages due and owing as of April 24, 2022. Husband also received one year of non-modifiable rehabilitative alimony at \$3,400 a month, with an additional \$1,000 per month towards arrearages.

The court awarded Husband \$136,508.53 in attorney's fees. During the hearing, Husband's counsel noted the issue concerning \$50,000 in as yet unpaid attorney's fees from a prior order issued by the court, although it does not appear the court then included this amount in its judgment.

The parties returned on April 25, 2022 for the court's oral disposition regarding the distribution of marital property. The court ruled that the family's marital property, other than the business, was worth \$771,355.06, with \$387,853.58 in liabilities against it, leaving each spouse's interest in such property at \$191,750.71 apiece. The court ordered that

Husband retain the couple's marital home as his exclusive property, ordering Wife to sign a quitclaim deed transferring her interest in the home within 15 days of Husband presenting such a deed.

Regarding the value of the marital business property, the court assessed Bella Barbies' value in accordance with Husband's expert's valuation at \$34,590,000, deducting \$850,000 in liabilities from this total and then awarding Husband 25 percent of that figure. The court then reduced his share by 10 percent due to his "doing things that could have caused devalue to the property." The court then deducted Wife's share of the marital property from Husband's monetary award. Memorialized in its Judgment of Absolute Divorce, the court ultimately ordered a monetary award in favor of Husband for \$7,396,023.71 which was "reduced to judgment against [Wife], in favor of [Husband], with post judgment interest at the legal rate."

Wife, who remained pro se, challenged the court's figures, arguing that it did not consider her valuation at all. The court explained that it could only use the evidence presented at trial to reach these calculations, and "because you wouldn't cooperate or because your lawyer didn't do something, I don't know the answer to that. All I know is what the court received."

Husband's counsel inquired as to how the court determined Husband was only due 25 percent of the value of Bella Barbies. The court refused the invitation to expound on its apportionment of the business marital property, and the docketed Judgment of Absolute Divorce provided no further clarity on the court's reasoning.

Wife filed her appeal on June 1, 2022. Husband followed with his cross-appeal a week later on June 8, 2022. Additional facts will follow as they pertain to our analysis.

DISCUSSION

I. The Circuit Court Did Not Err By Precluding Wife From Testifying As to Her Personal Valuation of Her Business.

Both during her testimony, and again during her closing argument, Wife attempted to provide her own assessment of the value of her business -- a valuation that refuted many of the projections asserted by Husband's expert with Wife's claim that these sales projections never materialized. Wife alleges that, in both instances, the trial court thwarted these efforts, sustaining objections from Husband's counsel during both occasions. On appeal, Wife argues that she was "legally entitled to present her opinion as to the value of her business," thus the court erred by preventing such testimony. We do not dispute that Wife, like most business owners, was capable of attesting to the value of her business property. Asserting this testimonial ability as an entitled right, however, is a mischaracterization. Instead, we must evaluate the denial of her testimony regarding the valuation of Bella Barbies as we would the exclusion of any other evidence. As we shall explain, *infra*, we hold that the trial court did not err in excluding her testimony under the circumstances of this case.

A. Business owners are qualified to provide opinion testimony regarding the value of their business's property, but this is not an absolute right.

The rule permitting owners to testify regarding the value of their property -- in this case a business owner testifying regarding the value of her business -- exists among related

rules governing the testimony of lay witnesses and expert witnesses. “The rule in Maryland is that a lay witness is not qualified to express an opinion about matters which are either within the scope of common knowledge and experience of the jury or which are peculiarly within the specialized knowledge of experts[;]” however, “[a] lay witness may opine ‘on matters as to which he or she has first-hand knowledge.’” *Goren v. U.S. Fire Ins. Co.*, 113 Md. App. 674, 685 (1997) (citations omitted); *see also* Md. Rule 5-701 (permitting lay witness opinion testimony where it is “(1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue”).

“[A]n owner of property is presumed to be qualified to testify as to his [or her] opinion of the value of property he [or she] owns.” *Abdullahi v. Zanini*, 241 Md. App. 372, 413 (2019) (affirming trial court permitting wife to testify to the value of inherited land in Somalia while precluding husband from offering such testimony because court could not discern how he reached his figures) (quoting *Colonial Pipeline Co. v. Gimbel*, 54 Md. App. 32, 44 (1983) (alterations original)). “The rule is not without limitations. If it is demonstrated that the owner possesses no knowledge of the market price and condition of the property in question, that testimony on value may be inadmissible.” *Brown v. Brown*, 195 Md. App. 72, 120 (2010) (citation omitted) (affirming trial court’s ruling that both spouses were qualified to provide testimony regarding value of marital business); *see also Asibem Assocs., Ltd. v. Rill*, 264 Md. 272, 279 (1972) (restating “the rule permitting lay witnesses to testify as to the value of real property if they have knowledge of the values of

comparable property in the neighborhood and have adequate knowledge of the property in question”); *Webster v. Archer*, 176 Md. 245, 256–57 (1939); *City of Balt. v. Smith & Schwarz Brick Co.*, 80 Md. 458, 472 (1895) (holding that, even if not as qualified an expert on the subject of property valuation, a landowner with sufficient knowledge on the value of the property, as well as a familiarity with the sale of similar properties, may testify as to the value of her land). So long as the owner can provide “some intelligent reasons for [her] opinion as to value,” the question of whether an owner is qualified to provide such opinion testimony “must be left, in a large measure, to the discretion and judgment of the trial court.” *Smith & Schwarz Brick Co.*, *supra*, 80 Md. at 472.

B. The trial court excluded Wife’s testimony about the value Bella Barbies as a sanction for her discovery violations, and not due to concerns about her ability to provide such opinion testimony.

Wife twice attempted to provide her opinion testimony regarding the value of her business, both times asserting a considerably more modest number than that put forth by Husband’s expert. In both instances, the court precluded this testimony not because of concerns with Wife’s qualifications to speak to the value of her business, but because permitting her testimony would undermine the court’s prior sanctions excluding certain evidence based upon discovery violations. In both instances, the court did not err.

While presenting her case-in-chief during the first day of the March 22–23, 2022 trial, Wife stated that “[t]he valuation that [Husband’s expert] had done of my business[,] that was not accurate.” Husband’s counsel objected, recalling the prior sanctions orders prohibiting Wife from speaking about aspects of the business’s valuation derived from

documents she failed to produce through discovery and precluding Wife from entering her expert's valuation into evidence. His counsel argued that without the most recent financial documents counsel did not know the basis of Wife's appraisal, therefore counsel could not discern the basis for Wife's statements regarding Bella Barbies' value. The court sustained the objection, concurring that it issued the prior orders because Wife did not respond to the discovery and orders compelling discovery. The court further noted "that's what happens when you don't respond to the discovery, that they can't prepare and you didn't respond up until the moment I signed the Order, and so you are prohibited from putting on evidence that would negate their evidence because you didn't give them the information that they requested."

When Wife continued to attempt to state her valuation of her company -- asserting Bella Barbies' worth at around \$5,000,000 rather than the \$34,590,000 put forth by Mr. Rains -- again Husband's counsel objected, noting that she had no way of knowing the basis for the information Wife put forth. Accordingly, Husband's counsel maintained that she could not effectively cross-examine her. The court sustained this objection. An extended colloquy continued from there, with the parties and the bench discussing what documents provided the basis for Mr. Rains' calculations, how this compared to Wife's potentially more current knowledge, how the documents that had not been produced during discovery may help clarify this chasm, and how, due to Wife's discovery failures, Wife may no longer present such contradictory rebuttal evidence. The court proceeded to preclude Wife from testifying regarding matters that contradicted projections used by Mr.

Rains to develop his valuation of Bella Barbies. The court explained its instruction, stating that “[t]he time for you to have been able to do that would have been if you had answered the discovery request and provided the information that they requested.”¹³

This issue arose anew when, during her closing argument, Wife attempted to again refute the “\$34,000,000” valuation of Bella Barbies provided by Husband’s expert. Husband’s counsel immediately objected. The court did not directly rule on the objection, but instead it explained that because Wife did not submit evidence supporting her own business valuation -- largely due to her discovery production failures -- and because her expert designation was last minute and thus denied, she could not now effectively testify in her closing with contradictory evidence regarding Bella Barbies’ value. Wife asserted that as a business owner she could share her thoughts on the value of her business, to which Husband’s counsel again objected. The court responded that “[t]he only thing she said is that as a business owner, she believes that she can do that, and I’m telling her she cannot.”

¹³ The court explained to Wife that “[t]he reason you’re in the position that you’re in right now is because you wouldn’t provide the financial document, wouldn’t couldn’t, I don’t know, woulda coulda shoulda.” Harkening to its prior orders requiring discovery production and imposing fines, the court opined that it had given her up until the week prior to the current proceedings to produce the outstanding materials, and yet she still did not comply. “I gave it that much time because I was hoping that you all were going to come to your sense, provide the information, so the [c]ourt can make a decision based on all the information.”

In each instance, the court did not appear to quibble with Wife’s knowledge of her business and its value.¹⁴ Additionally, Husband’s objections did not relate to Wife’s qualifications to give such opinion testimony. It is clear to us that the court was not concerned about her ability to speak to the value of her business. Instead, the court clearly predicated its denial of Wife’s testimony regarding business valuation upon her failures adhering to the court’s prior orders compelling Wife to produce discovery materials. During Wife’s closing argument, the court tied its denying Wife the ability to dispute Mr. Rains’ “\$34,000,000” valuation of Bella Barbies directly to its rulings striking her untimely designation. In precluding Wife’s attempts during her closing argument to attack Mr. Rain’s “\$34,000,000” valuation of Bella Barbies, the court specifically cited its orders compelling discovery and striking Wife’s overdue expert witness designation. As such, Wife was not denied some “legal entitlement” as a business owner to testify regarding the value of her business. Accordingly, we instead examine the trial court’s ruling as we would any other exclusion of evidence. *See* discussion *infra* Section II.B.3. As we explain, the court was not incorrect “as a matter of law,” despite Wife’s protests to the contrary.

¹⁴ Though the court made no ruling on Wife’s qualifications to evaluate her property, it can be noted that in her Rule 9-203 Financial Statement, Wife stated “I do not know the value of my business to due [sic] COVID-19 and Valuation not having currently been performed.”

II. The Circuit Court Did Not Err By Imposing Sanctions -- Both Monetary and By Excluding Evidence -- Upon Wife For Her Repeated Discovery Failures and Disregard of Prior Court Orders.

We hold that the court did not abuse its broad discretion by enforcing sanctions, both monetary and the exclusion of evidence, in the face of Wife’s frequent discovery failures and disregard for the court’s orders. Wife argues that the court failed to exercise discretion and instead simply applied sanctions as a strict rule. In our view, the record is replete with the court wrestling with Wife’s frequently frustrating actions and attempting to exercise nuance and restraint until such patience evaporated. Wife further argues that the court failed to reckon with and expound upon the factors that Maryland case law requires trial courts to weigh before excluding evidence as a sanction. Again, we focus on the trial transcripts which reflect the court grappling with its responsibilities to both serve the interests of equity and justice for both spouses, as well as to protect the rules that seek to impart order and efficiency to litigation. The balancing of these competing principles evidences sufficient consideration of the required factors and exercise of discretion to warrant this Court’s affirmation of the trial court’s rulings.

A. A trial judge enjoys substantial discretion in implementing sanctions -- both via monetary penalties and the exclusion of evidence -- so long as the court weighs certain factors before issuing such a ruling.

A court may award sanctions for failures of discovery when prompted by a discovering and moving party. *Butler v. S & S P’ship*, 435 Md. 635, 658 (2013). Upon a motion filed by a complaining party, if a court “finds a failure of discovery,” the court may issue an order: (1) designating facts in accordance with the claim of the complaining party;

(2) “refusing to allow the failing party to support or oppose designated claims or defenses” or prohibiting the introduction of such evidence by its proponent; (3) striking pleadings, staying proceedings, or dismissing an action; and/or (4) imposing reasonable costs and expenses, including attorney’s fees, on the failing party unless such an award would be unjust. *See* Md. Rule 2-433(a).

The Supreme Court of Maryland (then known as the Court of Appeals) “explained that, in deciding whether to [impose sanctions such as] exclud[ing] evidence, a court should consider several factors, commonly referred to as the *Taliaferro* factors.” *Butler, supra*, 435 Md. at 650. Chief among these relevant factors are: (1) whether the discovery violation was technical or substantial; (2) the timing of the eventual disclosure; (3) the reason for the violation; (4) the degree of prejudice to the other party, (5) whether such prejudice could be cured by a postponement, and if so, the desirability of such a continuance; and (6) the parties’ good faith compliance with the scheduling order. *Id.* (citing *Taliaferro v. State*, 295 Md. 376, 390–91 (1983)). “Frequently these factors overlap. They do not lend themselves to a compartmental analysis.” *Id.* at 650–51 (2013) (quoting *Taliaferro v. State*, 295 Md. 376, 390–91 (1983)). “When a court exercises its discretion by balancing and weighing the rights, interest, and reasons of the parties, the court is not required to discuss each factor considered’ . . . and is ‘not required to set out in detail each and every step of [the court’s] thought process.’” *Kadish v. Kadish*, 254 Md. App. 467, 495 (2022) (citations omitted).

“It has been said that the exclusion sanction should be one of last resort, to be ‘invoked only in those cases where other less stringent sanctions are not applicable to effect the ends of justice.’” *Taliaferro v. State*, 295 Md. 376, 395 (1983) (quoting *State v. Smith*, 599 P.2d 199, 208 (Ariz. 1979)). The harsh sanction of excluding evidence essential to supporting a party’s claim is “normally reserved for persistent and deliberate violations that actually cause some prejudice, either to a party or to the court.” *Watson v. Timberlake*, 251 Md. App. 420, 437 (2021), *cert. denied*, 476 Md. 281 (2021) (quoting *Butler v. S & S P’Ship*, 435 Md. 635, 650 (2013)).

“Normally, we evaluate a trial court[’]s[] discovery sanction in a civil case through a well-defined lens—abuse of discretion.” *Kadish, supra*, 254 Md. App. at 492–93; *see also Rodriguez v. Clarke*, 400 Md. 39, 56 (2007) (“Trial judges are vested with great discretion in applying sanctions for discovery failures.”). “This is a very deferential standard” that requires a showing that “no reasonable person would take the view adopted by the [trial] court,” or that the court “act[ed] without reference to any guiding rules or principles,” or that “the court’s ‘ruling [was] clearly against the logic and effect of facts and inferences before the court.’” *State v. Alexander*, 467 Md. 600, 620 (2020) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)). Abuse of discretion may also be found, however, if the record does not reflect the court exercised its discretion “in a situation calling for choice.” *Hart v. Miller*, 65 Md. App. 620, 627 (1985). “A failure to exercise discretion — for whatever reason — is by definition not a proper exercise of discretion.” *Alexander, supra*, 467 Md. at 620.

B. Due to Wife’s pattern of providing insufficient discovery, failing to fully comply with court orders, prolonging proceedings, and failing to comply with the scheduling order, the trial court did not abuse its discretion by awarding sanctions in favor of Husband and against Wife.

Wife’s contention that the court abused its discretion by not exercising any discretion is without merit. *See Colter v. State*, 297 Md. 423, 430–31 (1993) (holding trial court abused its discretion by not weighing factors and considering prejudice, but instead applying a uniform rule to exclude defendant’s alibi witness who was not timely disclosed); *Hart, supra*, 65 Md. App. at 627 (holding that trial court erred by declining to exercise its discretion “in favor of adhering to some consistent or uniform policy”). The dispute at bar is clearly distinct from both *Colter* and *Hart*, as the trial court in this case considered the relevant issues at play and ordered sanctions tailored to Wife’s failure to provide specific documents and timely disclose them. In our view, the court provided ample grace to Wife throughout the dispute, until that patience faded.

Though we will analyze each sanction in greater detail, as an overriding observation, we espy that the circuit court continually exercised its discretion when crafting and applying each sanction imposed upon Wife for her discovery failings. The court’s enforcement of its monetary sanctions provides the clearest example of this exercise of discretion, so we shall begin our analysis there.

1. Ordering monetary sanctions and awarding attorney’s fees

It is clear to us that the court exercised its discretion when it routinely provided Wife additional time to cure her deficiencies and stayed monetary penalties when any doubt existed about Wife’s notice of the sanction or her fair opportunity to abide by the relevant

court order. *Cf. Bartholomee v. Casey*, 103 Md. App. 34, 50–51 (1994) (“Where, as here, a party’s claim or defense is substantially prejudiced by an opponent’s failure to provide, in a timely manner, information in discovery, the trial court’s failure to fashion at least some remedy to alleviate the resulting injury constitutes an abuse of discretion.”).

Between April 19, 2021 and the start of trial on October 27, 2021, the court issued six orders related to discovery violations -- compelling discovery, awarding attorney’s fees, and applying monetary sanctions for failure to comply with the respective order -- and conducted three hearings on these issues. We view the monetary sanctions crafted by the court as a reasonable, appropriate, and restrained exercise of the court’s discretion, reflecting a proper balance of the *Taliaferro* factors.

Early, the court simply awarded attorney’s fees representing the cost of filing Husband’s motion to compel. As the fines escalated, they remained reasonable, never rising above \$500. Soon, though, the court noticed that Wife’s discovery failings “ha[ve] become a pattern.” Yet still, the court measured its sanctions to the discovery failings, giving Wife the benefit of the doubt whenever the court could, despite frustrations with Wife’s behavior.¹⁵ The sanctions crafted and modified during the August 10, September 10, and September 17, 2021 hearings -- in which Husband sought 135 outstanding

¹⁵ During the August 10, 2021 hearing, the court did not impose harsher sanctions despite its exasperation that Wife had not complied with prior orders and did not appear, despite informing the court that she would attend the virtual proceeding. “I’m going to reserve on evidentiary sanctions. But I’m frustrated that I signed an order on May 28th, and they’ve received almost nothing.”

documents, and the court ordered a fine of \$1 per-day, per-document -- illustrate the court's tempered approach. The court went on to stay these fines twice out of concern that Wife may not have been aware she remained in violation of the order and that her continued delay in providing the necessary documents would cost her money, noting Wife's counsel's turnover and the court's clarification that Husband's subpoenas did not change Wife's obligations to supply documents.¹⁶ Additionally, in awarding Husband \$136,508.53 in attorney's fees, the court reasoned that Husband was "justified in pursuing all of the discovery that he requested in this case when [Wife] refused to cooperate," that the fees incurred in these efforts were appropriate, and that Husband did not have the means to pay these fees while Wife does.

In the face of this restraint from the trial court, Husband routinely complained that this month's long discovery saga resulted in significant prejudice to him. As the trial proceedings elongated, Husband testified that he struggled economically through the separation, with Wife not paying pendente lite alimony or child support resulting in the

¹⁶ At the September 10, 2021 hearing, the court informed Wife of the stayed but pending \$1-per-document-per-day sanctions. Husband's counsel alerted the court that Wife had not provided the discovery she was ordered to produce since the prior hearing, outside of an incomplete contract between Bella Barbies and the Vitamin Shoppe, "[s]o my client is just further at a disadvantage with all of this." Wife argued that she had produced the requested financial documents up and through March 2021. Further, she stated that her prior attorney informed her that because Husband filed subpoenas with the relevant financial institutions to access the discovery materials, Wife no longer had to produce them. The court informed Wife that the alleged advice she received from her attorney was incorrect. Further, the court alerted Wife to her ongoing obligation to update discovery as the proceedings progressed prior to trial, noting that though she may have provided documents in March, it was September, thus she needed to provide updates to her discovery materials for the interim six months.

need to obtain outside financial assistance. The relentless pursuit of the outstanding documents through motions to compel, hearings on these motions, and subpoenas served on third parties cost him significantly. These issues continued to delay trial and added to these expenses. Further, Husband’s counsel frequently complained that the lack of needed discovery left counsel unprepared to proceed, or at a significant disadvantage to do so. This even prompted a request for a continuance, with Husband arguing Wife’s failures in discovery left him “unfairly prejudiced in preparing his case for trial,” and that the lack of the requested financial documents left him unable to prepare his expert on business valuation for trial.

Husband clearly made the court aware of the prejudice at play, such that the court could render reasonable sanctions in a timely manner. *Cf. Watson, supra*, 251 Md. App. at 438 (holding trial court did not abuse discretion by declining “last minute sanction for scheduling order violation” when plaintiff knew of issue for months, agreed to trial date, then moved to exclude at start of trial). Further, the court recognized and accounted for Wife’s discovery failings being frequent, untimely, and substantial, as the documents sought were essential to establishing the value of marital property at the heart of this dispute. *See Kadish, supra*, 254 Md. App. at 495. Accordingly, the court did not abuse its discretion by imposing monetary sanctions upon Wife.

2. *Striking Wife’s designated expert, thereby excluding expert testimony*

In every civil action, Maryland requires circuit courts to enter scheduling orders specifying the deadline for the designation of expert witnesses expected to be called at trial,

and the deadline for the completion of all discovery. *Asmussen v. CSX Transp., Inc.*, 247 Md. App. 529, 546 (2020) (citing Md. Rule 2-504(a)(1)). “Scheduling orders must be given respect as orders of the circuit court, and the court may, under appropriate circumstances, impose sanctions upon parties who fail to comply with the deadlines in scheduling orders.” *Maddox v. Stone*, 174 Md. App. 489, 507 (2007). “When a discovery violation becomes apparent only after the trial has commenced, the potential for prejudice is greater than if the discovery violation had occurred prior to trial.” *Storetrax.com, Inc. v. Gurland*, 168 Md. App. 50, 89 (2006), *aff’d*, 397 Md. 37 (2007).

In appeals, like the one at bar, challenging the exclusion of a witness untimely designated or disclosed, this Court has observed that while “scheduling-order deadlines are not ‘unyieldingly rigid,’ . . . they should not be complaisantly lax either.” *Asmussen, supra*, 247 Md. App. at 547–48 (quoting *Naughton v. Bankier*, 114 Md. App. 641, 653 (1997)). We require circuit courts to demand parties at least substantially comply with the scheduling order, or, at a minimum, to show “good faith and earnest effort toward compliance,” and to prohibit parties from deviating from these deadlines without a showing of good cause. *Id.* at 548 (2020) (quoting *Naughton v. Bankier*, 114 Md. App. 641, 653 (1997)). “To permit parties to shirk scheduling-order deadlines without substantial compliance and good cause for the modification requested would be, ‘on its face, prejudicial and fundamentally unfair to opposing parties’ and would ‘decreas[e] the value of scheduling orders to the paper upon which they are printed.’” *Id.* (quoting *Faith v. Keefer*, 127 Md. App. 706, 733 (1999)).

Though the exclusion of a key witness -- such as Wife's expert witness needed to establish a competing and lesser valuation of her company that rebuts Husband's expert's testimony -- is subject to the discretion of the trial court, "the imposition of such a draconian sanction must be supported by circumstances that warrant the exercise of the court's discretion in such a manner." *Maddox, supra*, 174 Md. App. at 501–02 (citing *Taliaferro v. State*, 295 Md. 376, 398 (1983) (affirming trial court's excluding alibi witness disclosed the last day of trial yet known and discoverable weeks prior)).

Wife argues that the court failed to exercise any discretion before excluding Mr. Wolf, her expert witness testifying on business valuation. Further, she asserts that any prejudice caused by the late disclosure could have been cured by the court postponing proceedings so that Husband could prepare for such testimony by deposing Mr. Wolf, and that husband should have prepared for such an expert, regardless, since Wife discussed her thoughts on business valuation during her deposition. In support of the trial courts order excluding Mr. Wolf's testimony, Husband points to the pronounced untimeliness of Wife's expert designation, Wife's lack of diligence and pattern of disregarding the scheduling order and court orders governing discovery production, and the significant prejudice caused by the frequent delays and the timing of the untimely expert designation. Our assessment of the situation aligns with Husband's.

In applying the relevant *Taliaferro* factors, we see no error in the trial court's denial of Wife's expert designation. As we have noted, Wife's discovery violations were substantial and frequent, particularly regarding financial documents related to Bella

Barbies, key pieces of evidence for either party to prepare accurate valuations of the company. As such, preparing to cross-examine or depose any witness put forth by Wife would have been difficult for Husband. Regarding the timing of Wife’s designation, while stopping Wife’s attempts to testify as to business valuation during the trial, the court explained that Wife did not get the opportunity to call an expert because “you didn’t respond to the information and the request, and because that person was last minute.”

The timing of her designation weighs heavily in favor of the trial court’s exclusion. The scheduling order required parties to designate expert witnesses by June 14, 2021, with the order warning of potential evidentiary sanctions for lack of compliance.¹⁷ *See Storetrax.com, Inc., supra*, 168 Md. App. at 89. Husband met this deadline. More than six months later, on December 22, 2021, Wife filed her motion to permit expert testimony from Mr. Wolf on the issue of business valuation. Such a pronounced delay “is ludicrous. If scheduling orders are to be permitted to be treated in such a casual fashion, why bother with them?” *Naughton v. Bankier*, 114 Md. App. 641, 653–54 (1997) (holding trial court abused its discretion permitting testimony from expert disclosed one day before trial and more than a year after the designation deadline).

Critically, Wife’s expert designation came well past the scheduled start of trial in October of 2021, and the continuance moved the trial to December 20, 2021 (which was

¹⁷ Wife’s response to interrogatories foreshadowed her struggles complying with the scheduling order’s deadlines for experts when, on May 5, 2021 in response to Husband’s interrogatory number 29, Wife responded that “[d]efendant has not yet made any decisions regarding expert witnesses, but will supplement her response if needed.”

then continued again when Wife did not confirm she would be present for remote proceedings on that date). At no time did Wife alert the court that she planned to designate an expert, even during her testimony on October 28, 2021. Wife eventually filed her expert designation on January 10, 2022. At the time of Wife’s expert designation, Husband’s expert in business valuation had already testified and been cross-examined roughly two months earlier. “For a trial court to permit a party to deviate so from a scheduling order without a showing of good cause is, on its face, prejudicial.” *Id.*

The reasons for Wife’s untimely designation of an expert do not soften our view that the trial court correctly excluded this testimony. In her motion to designate Mr. Wolf as an expert, Wife stated that she had asked previous counsel on numerous occasions to arrange for such an expert, all to no avail. From our reading of the trial transcripts, we infer that Wife likely bears some responsibility for her troubles cooperating with and retaining counsel.¹⁸

¹⁸ While addressing the court regarding her motion to withdraw, Wife’s first counsel stated that “I simply cannot communicate with my client. Everything has been threats of malpractice, and not only is it impossible aside from any legal issues to represent her, it’s basically physically sickening at this point.” Counsel said she called the attorney’s ethics hotline about her conundrum, “gave all the facts, [and] was told I had no choice but to withdraw.”

When Wife’s subsequent counsel also withdrew, in response to the court’s questions confirming her withdrawal, Wife’s then-counsel stated that “in good faith, I can’t move forward.” Later in the proceedings, prior to the court adjourning and continuing the matter, the court advised Wife to consider obtaining a new attorney before the trial resumed. The bench commented that “you keep having issues with lawyers. At some point you really have to look at yourself at why this has gone this way. That’s what I will advise you to do.”

Further, her consent to a continuance so that Husband could depose Mr. Wolf, and her counsel’s assertion at oral argument that such a continuance would negate prejudice to Husband by allowing him to properly prepare for trial, ignore the prejudice to Husband by repeatedly extending the trial. In our view, continuing the matter yet again to allow this deposition would not have cured prejudice but increase it. *See Asumessen, supra*, 247 Md. App. at 544–46 (affirming trial court’s “harsh” penalty of excluding plaintiff’s expert due to significant prejudice caused by plaintiff’s “indefensible lack of diligence” in designating expert five months after deadline and “just days before the close of discovery”).

By the time Wife sought to designate Mr. Wolf as her expert, Wife’s failures to produce discovery resulted in multiple delays. Trial had been postponed from August 24–25, 2021, to October 27–28, 2021, which then had to be continued until March 22–23, 2022. When the court again continued proceedings to tackle the issue of the disposition of marital property following yet another contentious trial dispute about outstanding discovery production and Wife’s ability to testify regarding business valuation, Husband’s counsel explained the significant prejudice resulting from the continued delays. His counsel noted that delaying another 90 days resulted in Husband continuing to incur attorney’s fees for a trial he was ready for months earlier that continued to be delayed, and that with each opportunity Wife was given to comply and produce discovery she failed. “I think Your Honor has been very, very conciliatory with her and has given her multiple opportunities to get her case together . . . She bore no consequences, and my client is the one that has continued to sit here after we filed for divorce in January of 2020.”

Given the pronounced untimeliness of Wife’s expert designation, her discovery issues producing documents likely to provide the basis for the expert’s testimony, and the prejudice to Husband caused by the lack of document production and the resultant prolonging of litigation, the court did not abuse its discretion in excluding Wife’s expert. *See Heineman v. Bright*, 124 Md. App. 1, 7, 11 (1998) (excluding evidence when party failed to respond to interrogatories at all and just ignored them); *Shelton v. Kirson*, 119 Md. App. 325, 332 (1998) (excluding expert named 12 months after deadline for such disclosures); *Helman v. Mendelson*, 138 Md. App. 29, 43–47 (2001) (holding appellant’s lack of diligence in designating and preparing expert witness so declared after scheduling order deadline, without good cause and resulting in delays and litigation costs that prejudiced appellee, was a “substantial and not merely technical” discovery violation, thus exclusion was not abuse of discretion); *Lowery v. Smithsburg Emergency Med. Serv.*, 173 Md. App. 662, 676 (2007) (excluding expert report filed two-and-one-half months after the close of discovery and twelve days before trial, holding such delay deprived appellees of “sufficient time to prepare their [case] and was therefore prejudicial”).

3. *Excluding Wife’s “business owner testimony” and limiting cross-examination of Husband’s expert on business valuation*

We now return to the issue of the trial court precluding Wife from testifying about the value of Bella Barbies. *See* discussion *supra* Section I.B. Husband’s expert, Mr. Rains, attempted to arrive at his expert opinion from the documentation provided -- nearly all of which came at great cost and effort to Husband, who routinely used subpoenas to obtain as many of the relevant financial documents as possible -- as well as from Wife’s deposition

testimony. This created a financial picture up to and through roughly October 2021, projecting the company's growth based upon Bella Barbies' relationships with The Vitamin Shoppe and other retailers.

On cross-examination, Wife's counsel attempted to attack the validity of Mr. Rain's report and valuation by challenging the basis for his projection as relying too heavily on older financial documents rather than more recent financial statements, including the bank statements and 2020 tax documents at the heart of the discovery dispute. The court shut down this line of questioning, noting that Mr. Rains would not modify his answers because his report was based on the limited information provided him by Wife, and thus "these are self-inflicted wounds," because of the delay in discovery production. Wife's counsel appeared to be seeking additional time to review the report and explore the wide discrepancy between Mr. Rains' valuation and the considerably lower figure Wife believed the company was worth. The court noted that "[n]obody else created these issues. These are self-inflicted wounds. If they had had those documents in August, if they had had them in September when I ordered her to do it, this wouldn't be happening right now. Period."¹⁹

Later, while Wife represented herself pro se, she sought to dispute Mr. Rains' valuation by asserting her own testimony based on first-hand knowledge of Bella Barbies' business dealings -- and presumably its financial documents from October 2021 until

¹⁹ When Wife's counsel asserted that the discovery issues were related to issues with Wife's prior counsel, the court responded vociferously, "No. No. No. She had plenty of time to get these documents. . . . I ordered her, and she said she was going to do it. That's what she told me she was going to do when she came in . . . [s]o, no, that's not what happened."

present, which she did not produce to Husband. She asserted that the relationships with retailers, relied upon by Mr. Rains in his expert valuation, failed to materialize and bear the fruit Mr. Rain’s projected.

From as far back as the conclusion of the August 10, 2021 hearing on Husband’s motion to compel, Wife had been ordered to produce the relevant financial documents that could potentially add valuable information to these financial projections, yet she did not. The court even provided Wife a “final opportunity” to sort out what documents were missing and provide them to Husband’s counsel,” when it announced the 90-day pause between hearings adjudicating the divorce and dividing the marital property.²⁰ Yet, when Wife again challenged Mr. Rains’ \$34,590,000 valuation of Bella Barbies during the court’s adjudication of marital property, the court responded by noting that Mr. Rains’ valuation was “the only evidence that was presented at trial,” and thus was “what I worked with[,] and if that was because you wouldn’t cooperate or because your lawyer didn’t do something, I don’t know the answer to that. All I know is what the court received.” Upon her continued protest, the court explained “[y]ou have to present evidence and you did not do that.” Before dividing the property, the court noted that “because [Wife] refused to cooperate, essentially, the [c]ourt had no choice but to accept all the numbers presented by [Husband].”

²⁰ We recognize that this “final opportunity” came after the court’s rulings excluding both Wife’s own testimony and her business expert’s testimony on Bella Barbies valuation. We note this “final opportunity” more to show that Wife’s discovery failures persisted throughout the very of the couple’s litigation.

As explained *supra*, the court did not abuse its discretion by imposing sanctions on Wife for her recurring and substantial failures in fulfilling her discovery obligations, timely designating an expert witness, and adhering to the multiple court orders compelling such discovery. As a sanction, the court was permitted to determine the value of the business after due consideration of Husband’s expert testimony, as well as to refuse to allow Wife to support her claim by prohibiting evidence on the matter of business valuation. *See* Md. Rule 2-433(a)(1)–(2). Though excluding Wife’s testimony about the value of her business resulted in a severe sanction due to the court utilizing Husband’s expert’s valuation, this sanction resulted from “persistent and deliberate violations” of months of discovery obstinacy that caused prejudice for Husband throughout the proceedings. *See Watson, supra*, 251 Md. App. at 437. As such, we affirm the trial court’s denial of Wife’s testimony regarding business valuation.

III. The Circuit Court Erred By Distributing the Marital Property and Then Determining Husband’s Monetary Award Without Articulating the Required Statutory Factors That Undergirded That Decision.

Though the trial court has broad discretion in distributing marital property and adjudicating the couple’s divorce, we must ensure the trial court adheres to the requirements of the applicable statutes when exercising that discretion. Because the court failed to produce a record, through neither its oral adjudication nor its written order, from which we can discern adherence to these rules, we remand the matter for further proceedings.

Marital property refers to all property acquired by one or both spouses during the marriage -- excluding property acquired prior to the marriage, or acquired during the marriage by an inheritance or a gift from a third party, or excluded by valid agreement, or directly traceable to these aforementioned sources -- regardless of who holds title to such property. Md. Code (1964, 2020 Repl., 2021 Suppl.) § 8-201(e)(1) of the Family Law Article (“FL”); *see also Abdullahi, supra*, 241 Md. App. at 405. Upon determining what property is marital property, the court may transfer to either spouse ownership of such property, or the court may “grant a monetary award . . . as an adjustment of the equities and rights of the parties concerning marital property,” or both. FL § 8-205(a)(1).

In granting a monetary award, a trial court undertakes a three-step process, in accordance with Sections 8-203, 8-204, and 8-205 of the Family Law article: (1) First, the court must determine what is marital property; (2) second, “the court must determine the value of the marital property[;]” (3) third, “the court must consider various factors before fashioning any [monetary] award” adjusted to reflect each spouse’s interest in the marital property. *Alston v. Alston*, 331 Md. 496, 498–500 (1993); *see also Flanagan v. Flanagan*, 181 Md. App. 492, 519–20 (2008); *Wasylyuszko v. Wasylyuszko*, 250 Md. App. 263, 279–80 (2021). “[T]he ultimate decision regarding whether to grant a monetary award, and the amount of such an award, is subject to review for abuse of discretion,” but the “trial court must exercise its discretion in accordance with correct legal standards.” *Flanagan, supra*, 181 Md. App. at 521–22 (citing *Alston v. Alston*, 331 Md. 496, 504 (1993)); *see also Abdullahi, supra*, 241 Md. App. at 407.

In this case, after reducing the \$34,590,000 valuation provided by Husband’s expert by the \$850,000 in liens against the company attested to by Wife, the trial court determined that Bella Barbies had a value of \$33,740,000. The court then awarded Husband 25 percent of that figure, or \$8,435,000. As “a penalty” for Husband’s alleged “putting things on the internet” that potentially caused reputational harm to the business and antagonized Wife, the court reduced Husband’s allotment of company value by an additional 10 percent, or \$843,500. In dividing the remaining non-business marital property, the court determined that each party would receive half of the value of all other marital property, thus \$191,750.71 apiece.²¹ The court then deducted Wife’s share of the non-business marital property from Husband’s award of business marital property for a monetary award of \$7,399,749.30 ordered in favor of Husband.²²

Neither party challenges the first step in this process, as all assets assessed by the trial court and divided between the parties were designated as “marital property.”²³ As

²¹ The trial court determined that all other marital property not including Wife’s ownership of Bella Barbies had a value of \$771,355.06, with liabilities against this property totaling \$387,853.58, leaving \$383,501.48 to be allocated between the spouses.

²² The court proceeded to readjust these figures again, deducting an additional \$14,902.37 from the value of the business to account for outstanding amounts from the business checking account, resulting in an award to Husband of \$7,396,023.71.

²³ Though not disputed by the parties, we note that businesses created during a marriage, or the increased value of a business started prior to the marriage but that grew during the course of the marriage due to one or both spouses’ efforts, may be considered marital property. *See Long v. Long*, 129 Md. App. 544, 571–72 (2000); *Innerbichler v. Innerbichler*, 132 Md. App. 207, 231–32 (2000) (affirming trial court’s determination that appreciation of business traceable to husband’s efforts managing company was marital

cross-appellant, Husband claims that the trial court erred in the second and third steps. He asserts that the circuit court erred in determining the value of the couple’s marital property other than the business, specifically taking issue with the circuit court’s reduction of his monetary award based upon Wife’s testimony regarding liens against two cars and jewelry.

Additionally, he challenges the court’s 10-percent reduction of his share of Bella Barbies based on the court’s determination that Husband harmed the value of the business. Lastly, in challenging his award of only 25 percent of the value of his Wife’s ownership interest, Husband argues that the court failed to articulate any consideration of the required factors provided by FL § 8-205(b). Though we do not agree with Husband regarding the trial court’s factfinding when valuing the marital property, the trial court clearly erred in failing to enumerate the required statutory factors when granting a monetary award.

“Valuation [of marital property] is a question of fact subject to the clearly erroneous standard.” *Abdullahi, supra*, 241 Md. App. at 412–13. “When an action is tried without a jury, the appellate court reviews the case based on the law and the evidence and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” *Goicochea v. Goicochea*, 256 Md. App. 329, 340 (2022) (quoting Md. Rule 8-131(c)). Accordingly, we grant significant deference to the trial court and its ability to “accept—or reject—all, part, or none of the testimony of any witness.” *Id.* (quoting *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011)).

property); *cf. Wilen v. Wilen*, 61 Md. App. 337, 349 (1985) (affirming trial court’s determination that appreciation of business traceable to increase in value of property acquired by business prior to marriage was not marital property).

Regarding the value of the non-business marital property at issue, “when the court values marital property, it deducts from the gross value any marital debt. Only the net value of marital property is, in fact, available for equitable distribution via a monetary award.” *Zandford v. Wiens*, 314 Md. 102, 107–08 (1988). Wife’s financial statement showed liens totaling \$60,000 -- a \$20,000 lien on a 2015 BMW X6 which Husband enjoyed possession and use of, and a \$40,000 balance due on jewelry. Husband argues that failures in discovery left him bereft of proof to dispute these figures, and that the court could not just accept the value of this alleged debt. We defer to the trial court’s ability to weigh the credibility of the evidence regarding these debts. Accordingly, we cannot say that its factual findings establishing the value of the marital property, sans Bella Barbies, demonstrate clear error. *See Abdullahi, supra*, 241 Md. App. at 412–13.

Similarly, our deference to the trial court’s role as factfinder charged with weighing the credibility of the testimony and evidence before it extends to that court’s conclusion that Husband’s conduct harmed the business such that his interest in the value of the business marital property may be reduced by 10 percent. *See Goicochea, supra*, 256 Md. App. at 340 (noting that because court’s determination of dissipation is a factual one reviewed for clear error, so long as “any competent evidence” exist to support this factual finding, it cannot be held “clearly erroneous”). Wife testified about a pattern of online harassment on social media against her and her business, sharing screenshots and messages sent from sources that did not identify Husband but that Wife plausibly traced to Husband. Though Husband disputed these allegations, the fact finder sorted out such contradictory

evidence. As such, we cannot find error or abuse of discretion in the trial court determining that, based on the evidence presented, Husband’s conduct warranted the reduction imposed by the trial court.

Returning to the basis upon which we vacate the monetary award, we hold that the trial court’s failure to articulate any reasoning and review of the required statutory factors supporting its allocation to Husband of a monetary award that includes 25 percent of the business’s value warrants remand. Wife argues that such a remand is simply an unnecessary “homework assignment” if -- as is the case here -- we do not otherwise find clear error or abuse of discretion in the division of marital property. Though we recognize the circuit court is free upon remand to again exercise its discretion in dividing marital property and granting a monetary award -- it may even make the same allocations of marital property and grant the same monetary award as it did before -- we stress that a court must address the statutory factors. *See* FL § 8-205(b).

In the third and final step of the division of marital property, “the court *must consider* the eleven factors enumerated” in Section 8-205(b) of the Family Law article: (1) each spouse’s contributions, monetary and nonmonetary, to the well-being of the family; (2) “the value of all property interests” for each spouse; (3) each spouse’s economic circumstance at the time the court determines the award; (4) the circumstances that factored into the spouses’ separation; (5) “the duration of the marriage;” (6) each spouse’s age; (7) each spouse’s physical and mental condition; (8) the circumstances of the acquisition of marital property such as pensions, retirement funds, profiting sharing or deferred

compensation plans, liens, real property, and family use property, including each spouse's efforts in acquiring such property or their interest therein; (9) the contributions of each spouse's non-marital property -- thus property acquired before the marriage, or via an inheritance or third-party gift, or excluded by valid agreement, or directly traceable to such a source -- to the acquisition of any real property the spouses hold as tenants by the entirety; (10) any award of alimony, or any award made by the court regarding family use property or the family home; (11) "any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in [marital] property." *Wasyluszko*, *supra*, 250 Md. App. at 280 (emphasis added) (citing FL § 8-205(b)); *see also Flanagan*, *supra*, 181 Md. App. at 520 ("In regard to a monetary award, the chancellor is required to consider the statutory factors contained in [FL] § 8-205(b)."). "Although the court is not required to recite each factor in making a monetary award, appellate courts must be able to discern from the record that these factors were weighed." *Hart v. Hart*, 169 Md. App. 151, 166–67 (2006) (vacating monetary award as "there is simply no evidence of such consideration" of the required factors).

At the disposition hearing, when Husband's counsel inquired as to how the court reached its 25 percent allocation of marital business property, the trial court refused to give an answer, inviting an appeal the judge deemed inevitable.²⁴ In our review of both the

²⁴ Replying to Husband's counsel's inquiry, the court responded "I made a decision based on the evidence, and I'm not going to sit here and try to explain how I made that decision because we'll be here all day with both of you, and you're both going to appeal anyway, so go, appeal, appeal."

transcript of the disposition hearing and the Order providing judgment of absolute divorce and distributing marital assets, the record is devoid of the necessary consideration of FL § 8-205(b)'s factors. The court properly determined the value of marital property and accounted for debts against it, but it appeared to then just pull from the ether Husband's share of the value of Bella Barbies. The court pointed to no specific facts found, nor the application of those facts to the required factors considered.²⁵ Failure to even recognize the existence of the factors required by FL § 8-205(b), let alone to provide even a scintilla of analysis in weighing them en route to determining Husband's monetary award, is reversible error requiring us to vacate the trial court's ruling regarding the division of marital property. *See Hart, supra*, 169 Md. App. at 166–67.

Vacating the monetary award requires us to also vacate the trial court's other financial determinations regarding child support, alimony, and attorney's fees.²⁶ *Wasyluszko, supra*, 250 Md. App. at 283 (holding that by vacating the monetary award, the

²⁵ We do not comment on the correctness or wrongness of the amount of the monetary award bestowed upon Husband, as we recognize this determination is ultimately within the discretion of the trial court. This Court is loath to upset such distributions of property, doing so in the rare circumstances where “the sizeable, unexplained disparity resulting from the monetary award compels us to vacate the award.” *Flanagan v. Flanagan*, 181 Md. App. 492, 527 (2008) (“We have overturned monetary awards when the trial court's disposition demonstrated a great disparity in light of the statutory factors.”); *see also Long, supra*, 129 Md. App. at 575–76 (holding that, despite a thorough analysis of the required factors, the trial court erred by awarding roughly 80 percent of the marital assets to the husband, despite finding the wife more credible and weighting more factors in favor of her).

²⁶ We specify that the attorney's fees that must be revisited are those awarded upon the ultimate adjudication of the divorce, and not those awarded previously as part of the trial court's sanctions for Wife's repeated discovery violations.

court must also vacate the award of attorney’s fees “for reconsideration in light of any modification to the monetary award upon remand”). “The factors underlying alimony, a monetary award, and counsel fees are so interrelated that, when a trial court considers a claim for any one of them, it must weigh the award of any other.” *Id.* (quoting *Turner v. Turner*, 147 Md. App. 350, 400 (2002)).

Wife asserts that because our remand returns these questions regarding the division of marital property to the trial court, then by default the trial court must reopen the record and take new evidence on the value of this property. *See Doser v. Doser*, 106 Md. App. 329, 349–49 (1995). We note, though, that in cases like *Doser*, the trial court heard new evidence upon remand regarding the value of the marital property because this Court found errors in the evaluation of such property. *See id.* We find no such errors here.

Further, the need to hear new evidence regarding marital property value derives from the principle “that equity requires that reasonable efforts be made to ensure that valuations of marital property approximate the date of a judgment of divorce which includes a monetary award.” *Fox v. Fox*, 85 Md. App. 448, 460–61 (1991) (quoting *Green v. Green*, 64 Md. App. 122, 141 (1985)). We cannot say that equity would be served if we effectively washed away Wife’s repeated abuses of the discovery process and disregard for court orders by providing her yet another opportunity to put forth evidence supporting her competing valuation of Bella Barbies upon remand. The trial court already heard evidence and extended “reasonable efforts,” considering Wife’s discovery failings, to “ensure that valuations of marital property approximate[d] the date of a judgment of

divorce.” *Id.* Accordingly, the circuit court is not required to hear new evidence on the value of marital property when that court revisits its division of marital property and properly articulates Husband’s monetary award, in accordance with the factors required by FL § 8-205(b), upon remand.

We note, though, that because we do not specifically limit the circuit court’s actions upon remand, we leave to the court’s discretion whether it may wish to take additional evidence regarding the valuation of Bella Barbies. *See In re Homick*, 256 Md. App. 297, 315–16 (2022) (holding that when this Court remands a matter for “further proceedings,” the remand court does not exceed the scope of remand by hearing additional evidence, unless it is so limited by the remand mandate). That echoes the discretionary standard with which we reviewed the exclusion of evidence at the heart of this appeal. *See Kadish, supra*, 254 Md. App. at 492–93. Nonetheless, the trial court need not revisit the discovery sanctions we affirmed *supra*.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED AS TO ISSUES I AND II AS TO
APPELLANT’S APPEAL AND VACATED
AS TO ISSUE III AS TO CROSS-
APPELLANT’S CROSS-APPEAL. CASE
REMANDED TO THE CIRCUIT COURT
FOR DETERMINATION OF MONETARY
AWARD IN ACCORDANCE WITH THE
REQUIRED STATUTORY FACTORS.
COSTS TO BE PAID BY APPELLANT.**