

Circuit Court for Howard County
Case No. C-13-CV-25-000040

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 618

September Term, 2025

IN THE MATTER OF JIA QIAN

Berger,
Tang,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: July 22, 2026

*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 to Rule 1-104(a)(2)(B).

Yi Xu, appellant, appeals a judgment entered in the Circuit Court for Howard County that denied, in part, her motion for a protective order and ordered her to comply with a foreign subpoena in an action in which she is not a party. Xu presents three questions for our review, which we have rephrased and consolidated into a single question¹:

Did the circuit court err in failing to hold an evidentiary hearing before ruling on Xu’s motion for a protective order and ordering Xu to comply with the foreign subpoena?

For reasons to follow, we hold that the court erred in failing to hold an evidentiary hearing. We therefore reverse the judgment and remand for further proceedings consistent with this opinion.

¹ Xu phrased the questions as:

1. Should this Court apply [*Trusted Science and Technology, Inc. v. Evancich*, 262 Md. App. 621 (2024)] to the Record Facts and reverse the Circuit Court ruling that Ms. Xu is entitled to the entry of a Protective Order that the discovery not be had and that Ms. Xu is entitled to attorney fees for both the proceeding in the Circuit Court and in this Court, appellate costs and circuit court costs and entering its Order Reversing the Circuit Court, Granting Ms. Xu’s Motion for Protective Order that Discovery Not be Had and awarding her attorney fees for both the proceeding in the Circuit Court and in this Court and her appellate costs and remanding the matter to the Circuit Court to determine the amount of attorney fees according to Maryland Law?
2. Does the Court’s May 5, 2025, Order (E218) logically follow from the facts, is it arbitrary, or is it clearly wrong such that the Court abused its discretion?
3. Is the Court’s May 5, 2025, Order (E218) supported by competent material evidence?

BACKGROUND

Xu is a licensed Maryland attorney who provides legal advice to clients regarding immigration law. At one time, she provided legal representation to three companies based in North Carolina: Carolina Sawmills L.P. (“CSLP” or “Partnership”), Halifax Safeguard Property, LLC (“HSP” or “General Partnership”), and Carolina Growth Regional Center (“CGRC”). During her representation, Xu provided legal advice regarding the EB-5 Immigrant Investor Program.² Xu’s initial representation of CSLP, HSP, and CGRC ended in June 2023. In August 2023, CGRC retained Xu “on an emergency basis because one or more of the CSLP limited partners were about to lose their ability [to] obtain a Green Card[.]” That representation officially ended in September 2024.

The North Carolina Action

In April 2023, several members of HSP (“Plaintiffs”) filed a lawsuit against HSP and CSLP in North Carolina Superior Court. The lawsuit concerned the distribution of bankruptcy proceeds that CSLP received as part of a separate bankruptcy action involving Klausner Lumber Two LLC (“KL2”), to which CSLP had loaned money. At that time, HSP was the general partner of CSLP, with some control over CSLP’s funds and management decisions.

² Created by Congress in 1992, the EB-5 Immigrant Investor Program “sets aside EB-5 visas for participants who invest in commercial enterprises associated with regional centers approved by [U.S. Citizenship and Immigration Services] based on proposals for promoting economic growth.” *EB-5 Immigrant Investor Program*, U.S. Citizenship & Immigration Services, <https://www.uscis.gov/working-in-the-united-states/permanent-workers/eb-5-immigrant-investor-program> (last visited June 16, 2026).

In or around November 2024, thirty-three limited partners of CSLP (“Intervenors”) intervened in Plaintiffs’ case and brought a derivative action against HSP. Intervenors alleged that HSP had breached its fiduciary duty by misappropriating \$20 million of CSLP’s money through three separate schemes: 1) loaning money to CSLP and then receiving “three times the loan amount in repayment” without CSLP’s consent; 2) transferring more than \$14 million of CSLP’s funds to a third party without CSLP’s consent; and 3) using CSLP’s funds to pay HSP’s legal fees in violation of the relevant governing documents.

Foreign Subpoena

In January 2025, Intervenors obtained a subpoena for Xu in the North Carolina Superior Court. The subpoena, which contained twenty-seven separate requests, directed Xu to provide, among other things: all documents and communications concerning her representation of CSLP or HSP; all documents and communications prepared by Xu in her capacity as attorney for CSLP or HSP; all documents and communications concerning any loans or transactions involving CSLP, HSP, and/or any of either company’s members or affiliates; all documents and communications related to any agreements involving CSLP, HSP, and/or any of either company’s members or affiliates; all documents and communications related to the termination of Xu’s representation of HSP or CSLP; all documents and communications received by Xu from any party to the North Carolina action following the termination of her representation; all documents and communications related to Xu’s reengagement as counsel for HSP or CSLP; and all documents and

communications related to the North Carolina action or any of the issues involved in said action.

Shortly thereafter, Intervenor filed, in the Circuit Court for Howard County, a request to have the North Carolina subpoena issued to Xu in Maryland. The court ultimately granted the request in part and issued the subpoena.

Motion for Protective Order

Following its issuance, Xu filed a motion objecting to the subpoena and requesting a protective order pursuant to Maryland Rule 2-403. She argued that she should not be required to comply with the subpoena because the requested documents could be more easily obtained from her former clients, HSP and CSLP, each of which was a party to the North Carolina action. Xu also argued that the requested documents were protected by the attorney-client privilege and by the attorney work product doctrine. In addition, she argued that the subpoena was overbroad, vague, and overly burdensome. She noted that the subpoena sought all documents and communications pertaining to her representation of HSP and CSLP “without any limitations on time, subject matter, or relevance[.]” According to Xu, the request would require her “to conduct a time-intensive review of a massive amount of documents for privileged or confidential documents, to prepare an extensive and time[-]consuming privilege log, and to review the extensive pleadings to determine if the [r]equests are relevant to the subject matter involved in the North Carolina Action[.]”

Intervenors responded that they had requested the subpoena because Xu “was an attorney involved in the challenged loan transaction and is believed based on documents obtained to date to have had involvement and communications concerning the proposed redeployment of Partnership funds and expenditure of Partnership funds for HSP or its managers’ legal fees.” Intervenors asserted that Xu’s motion for a protective order should be denied because it lacked a “good faith” certificate; Xu did not make a good-faith effort to resolve the discovery dispute; Xu failed to meet her burden of proving the requested documents were protected or privileged; and Xu failed to meet her burden of proving that the requested documents were vague, overbroad, and burdensome. Therefore, she should be required to comply with the subpoena.

Xu filed a reply and requested a hearing. She argued that she had made good-faith attempts to resolve the discovery dispute and included in her response an affidavit outlining those attempts. In addition, citing *Trusted Science and Technology, Inc. v. Evancich*, 262 Md. App. 621, *cert. denied*, 489 Md. 253 (2024), Xu argued Intervenors were required to show that the requested documents were relevant to the underlying action and that they had not done so. She further stated that she was not involved in the preparation of loan documents or other business matters; that she did not have any documents regarding the misappropriation of CSLP’s funds; that her representation of HSP and CSLP was limited to immigration matters; and that many of the facts alleged in Intervenors’ complaint occurred after her representation concluded.

Order

Without a hearing, the court entered an order (the “Order”) on March 19, 2025, directing Xu to comply with the subpoena and ordering Xu to produce a privilege log and to provide all non-privileged documents identified in the subpoena. In its Order, the court noted that Xu’s motion for a protective order had been deemed deficient and that Xu had yet to correct the deficiency. The court declared that the only filings properly before the court were Intervenor’s response to Xu’s motion and Xu’s reply.

Motion to Alter/Amend

On March 27, 2025, Xu filed a motion to alter or amend the court’s Order pursuant to Maryland Rule 2-534. In that motion, Xu asked the court to consider her motion for protective order, which Xu claimed had been properly filed despite the alleged deficiencies. Xu insisted that the arguments raised in the motion were meritorious and that she was entitled to a protective order.

Intervenor’s opposed the motion, raising essentially the same arguments they raised in their response to Xu’s initial motion for protective order. Xu replied to Intervenor’s response and, in so doing, reiterated that she had requested a hearing prior to the issuance of the court’s Order.

Amended Order

On May 2, 2025, the court, again without holding a hearing, entered an order (the “Amended Order”) amending, in part, its prior Order. The court explained that it appeared from the record that there were multiple deficient filings and that there was some

“confusion over what filings had or had not been cured.” The court declared that, “[i]n the interest of fairness,” it would “grant the motion to Alter or Amend in part to note that the deficiency in [Xu’s motion for protective order] has been cured and for the purposes of reviewing the Motion and reconsidering the objections to the subpoena.” The court then granted, in part, Xu’s motion for a protective order and struck two of Intervenor’s twenty-seven document requests “as overly broad and duplicative[.]” Otherwise, the court directed Xu to comply with the remaining requests, to produce a privilege log, and to produce all non-privileged documents identified in the subpoena.

This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

Parties’ Contentions

Xu contends that the court erred in ruling on her request for a protective order and that, before compliance with Intervenor’s discovery requests could be compelled, it was required to consider the relevancy of the requests to the underlying action, which it did not do. In addition, Xu contends that the court erred in failing to find that she met her burden of showing that the discovery requests imposed an undue burden upon her. She argues that, at the very least, the court “had an obligation to hold a hearing so that the parties could collectively consider the proportionality of the discovery sought by the Intervenor to resolve the dispute.”

Intervenors argue that the court’s Amended Order should be affirmed. Intervenors argue that Xu failed to satisfy her burden of showing that the requested documents were privileged or that the requests were vague, overbroad, or burdensome.³

For reasons to follow, we hold that, under the circumstances presented, the court erred in failing to hold a hearing before issuing its two orders. We therefore reverse the court’s judgment and remand the case for further proceedings. For that reason, the merits of the parties’ arguments should be first addressed by the court after factfinding at an evidentiary hearing as outlined below.

Analysis

A.

Maryland Rule 2-311(f) states that, when a motion is filed, “the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.” We have interpreted the rule as requiring a hearing if the court’s decision would be dispositive of a claim or defense and a hearing had been requested. *Logan v. LSP Mktg. Corp.*, 196 Md. App. 684, 696 (2010). Here, if the court’s decision in the instant case was dispositive of Xu’s claim or defense, the court was required to hold

³ Intervenors also argue that we should affirm because Xu’s motions lacked a good-faith certificate as required by Maryland Rule 2-431 and because Xu made “no effort” to comply with the court’s order before filing her motions. Those arguments are not supported by the record. Assuming without deciding that a good-faith certificate was required, the record shows that Xu did include a good-faith certificate in her reply to Intervenors’ response to her motion for protective order, and that certificate outlined the efforts Xu made at resolving the dispute.

the requested hearing before issuing its Order. *See Wilson v. N.B.S., Inc.*, 130 Md. App. 430, 453 (2000) (holding that the court had no discretion to dismiss a complaint without first holding a hearing that had been requested by one of the parties).

We addressed a similar situation in *Bond v. Slavin*, 157 Md. App. 340 (2004). There, the parties were involved in a custody dispute, and, during the court proceedings, the former husband obtained a subpoena for the former wife’s financial records. Those records included joint accounts held by the former wife and her current husband, who was not a party to the custody action. *Id.* at 346-47. The current husband sought a protective order to prevent the disclosure of the joint account records and requested a hearing. The court denied his request without a hearing. *Id.* at 348, 355. On appeal, we held that the court erred by not holding a hearing. *Id.* at 354-55. We explained that, because a hearing had been requested on the motion and the order denying the motion for a protective order was dispositive of the current husband’s claim, Rule 2-311(f) required a hearing. *Id.*

We reach that same conclusion here. Xu, who is not a party to the underlying North Carolina action, has no pending claims aside from those raised in her protective order request. Because the Order was essentially dispositive of her claims and she requested a hearing, a hearing was required.

In addition to Rule 2-311(f), Rule 2-311(e) would also require a requested hearing. Under that subsection, when a Rule 2-534 motion to alter or amend a judgment is filed, “the court shall determine in each case whether a hearing will be held, but it may not grant the motion without a hearing.” Md. Rule 2-311(e). Here, after the entry of the court’s Order,

Xu properly filed a motion to alter or amend under Rule 2-534, asking the court to consider her motion for protective order, which the court had previously refused to consider based on filing deficiencies. The court granted, in part, the motion to alter or amend, and, after considering the merits of Xu’s motion for protective order, entered the Amended Order and granted, in part, Xu’s motion for protective order. Here, the court did not hold a hearing before granting Xu’s motion to alter or amend. *See Miller v. Mathias*, 428 Md. 419, 439 (2012) (“[I]n the case of a Rule 2-534 motion, the hearing requirement of Rule 2-311(e) is mandatory.”).

B.

Because we are remanding the case for a hearing on the merits of Xu’s motion for protective order, we offer the following for guidance going forward. “In Maryland, the scope of discovery is delineated in Rule 2-402.”⁴ *Trusted Sci.*, 262 Md. App. at 643. Under that rule, “[a] party may obtain discovery regarding any matter that is not privileged ... if the matter sought is relevant to the subject matter involved in the action[.]” Md. Rule 2-402(a). Thus, for a party to be entitled to discovery, the matter sought to be discovered must be non-privileged and relevant to the underlying action. “Ultimately, the court is responsible for ensuring that ‘matters which either are not relevant or are subject to a privilege are not discoverable.’” *Coates v. Charles Cnty. Bd. of Comm’rs*, 266 Md. App.

⁴ Foreign subpoenas are governed by the same rules as domestic subpoenas. Md. Code, Cts. & Jud. Proc. § 9-404.

266, 329 (quoting *Pub. Serv. Comm’n of Md. v. Patuxent Valley Conservation League*, 300 Md. 200, 216 (1984)), *cert. denied*, 492 Md. 446 (2025).

Rule 2-402 also permits the court, either on its own or upon proper motion, to limit or modify the discovery rules regarding “the length and number of depositions, the number of interrogatories, the number of requests for production of documents, and the number of requests for admissions.” Md. Rule 2-402(b)(1). The Rule further states that the court:

shall limit the frequency or extent of use of the discovery methods otherwise permitted under these rules if it determines that (A) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the burden or cost of the proposed discovery outweighs its likely benefit, taking into account the complexity of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

Id.

During discovery, a party may seek documents from a nonparty with a subpoena. *Trusted Sci.*, 262 Md. App. at 644. “Implicitly – as with all discovery – a request that a nonparty produce documents or other tangible things is necessarily confined by the bounds of Rule 2-402(a).” *Id.* at 645 (emphasis omitted). If the nonparty believes that the subpoena exceeds those bounds or those of any other discovery rule, he or she may file a motion for protective order under Maryland Rule 2-403 or an objection to the subpoena under Maryland Rule 2-510. *Id.* at 645-46. Upon the filing of such motions, “the court may enter any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense[.]” *E.g.*, Md. Rule 2-403(a); Md. Rule 2-510(e).

As a general rule, the burden of establishing non-discoverability rests on the one from whom it is requested, but it follows “that the person to whom a subpoena is directed (whether a party or nonparty) has standing to object based on relevance and overbreadth in our courts as well.” *Trusted Sci.*, 262 Md. App. at 652.

Here, the question involves the requesting party’s burden, if any, when it seeks discovery from a party or a nonparty who objects or requests a protective order. In answering that question, our decision in *Trusted Science* is instructive, even though the issues in the two cases are not the same. There, the trial court gave greater weight to the nonparty’s objection to the subpoena than it would have given an objection filed by a party. *Id.* at 650-54. We held that the nonparty’s objections “should have been given the same weight as if they were a party to the action.” *Id.* at 652. There is no indication in this case that the court applied the wrong standard, but *Trusted Science* provides a roadmap when considering an objection to a subpoena and/or request for a protective order by a nonparty.

Our discussion in *Trusted Science* began with an analysis under the federal rules, which we found to be functionally the same as under the Maryland Rules. *Id.* at 651-52. Under the federal rules, what is sought “must be relevant to a party’s claim or defense[,] ... proportional to the needs of the case and not impose an undue burden.” *Id.* at 647. Thus, it follows that when a nonparty objects to a subpoena on the grounds that it imposes an undue burden, “[t]he ultimate question [is] whether the benefits of discovery to the

requesting party outweigh the burdens on the recipient.”⁵ *Id.* at 647-48 (citation and quotation marks omitted). Answering that question involves an assessment of the various factors and circumstances of each case, including: the breadth of the request; the relevance of the information sought and the party’s need for it; whether that information could be more easily obtained from one of the parties to the litigation; the financial and other burdens on the nonparty; and privacy or privilege concerns. *Id.* at 648-49.

In addition, under the federal rules, “it is incumbent on the party who seeks to compel compliance with a subpoena ... to demonstrate that the production sought by the subpoena is relevant to the proceedings.” *Id.* at 649. If relevance is established, “the burden shifts to the recipient [of the subpoena] to establish that the requested discovery should be denied.” *Id.* (citations and quotation marks omitted). That, in our view, is a logical approach to follow under the Maryland Rules. The parties and the court “have a collective responsibility to consider the proportionality ... in resolving discovery disputes.” *Id.* at 650 (citations and quotation marks omitted).

As we explained in *Trusted Science*, the Maryland Rules reflect key factors inherent in the federal discovery rules. *Id.* at 650-53. For example, a party’s right to discovery is constrained under Maryland Rule 2-402 by the relevance of the matter sought to the subject

⁵ As we explained in *Trusted Science*, federal cases interpreting the federal rules generally hold that, when discovery is sought from a nonparty as opposed to a party, the scope of the subpoena should be more limited, and the standard for requiring compliance with the subpoena should be more demanding. *Trusted Sci.*, 262 Md. App. at 647-48. In *Trusted Science*, we declined to adopt that more limited standard and held instead that nonparties and parties have equal status. *Id.* at 652. We do so here also.

matter in the underlying action, and that rule “requires the court to limit discovery if ‘the burden or cost ... outweighs its likely benefit,’ that is, if the request is disproportionate to the needs of the case – *i.e.*, overbroad.” *Id.* at 651 (quoting Md. Rule 2-402(b)(1)).

Thus, when a party or a nonparty raises a proper objection to a subpoena, both relevance and proportionality of the discovery are in play. That requires a “proportionality analysis” to determine whether there is a fair balance between the needs of the case and the burden imposed on the nonparty. In that analysis in this case, both Intervenor and Xu have individual burdens, but establishing the proportionality of the discovery requests is a shared responsibility. *Id.* at 650. In a proportionality assessment, things to consider are the relevance of the requests to the underlying action, the requesting party’s need for the information, and whether it could be gathered from one of the parties to the litigation.

That, in turn, may require some reasonable specificity by the requesting party as to why the information is relevant and necessary. If, in turn, the party from whom it is required indicates that they do not have such documents, the requestors need to explain why they believe they do. The nonparty should be required to show, also with reasonable specificity, the claimed undue burden. As to that burden, the court should consider effort, time, and expense imposed by the request, in addition to any privacy or privilege concerns, and whether the request can be tailored to alleviate that burden. If the court finds the relevance of the requested information and Intervenor’s need for it outweighs the burden imposed on Xu, compliance is appropriate. If, on the other hand, the court finds Xu’s burden

unnecessarily nonproportional to Intervenor’s need, the subpoena should be quashed or a measured protective order issued.

CONCLUSION

In sum, we remand the case to the circuit court for an evidentiary hearing on Intervenor’s subpoena requests and Xu’s objection and request for a protective order in accordance with this opinion. In doing so, we express no opinion as to what would be the correct outcome. But as it stands, the validity of the respective positions cannot be determined without further factfinding and credibility assessments by the court.

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY REVERSED;
CASE REMANDED TO THAT COURT
FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION; THE
PARTIES ARE RESPONSIBLE FOR
THEIR OWN COSTS.**