Circuit Court for Washington County
Case No: C-21-FM-20-000330

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 633

September Term, 2023

MATTHEW PAUL EDWARDS

v.

TAYLOR LYNN DENNER

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

JJ.

Opinion by Harrell, J.

Filed: February 8, 2024

*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).

This case arises from a custody dispute between Matthew Paul Edwards ("Father"), appellant, and Taylor Lynn Denner ("Mother"), appellee, over their minor child, S.E. On 27 February 2020, Father filed in the Circuit Court for Washington County ("the circuit court") a request for registration of a foreign child custody determination, specifically a custody order entered on 14 November 2019 by the Family Court of the Fifteenth Judicial District of South Carolina, Horry County ("the Horry County Family Court"). On 26 March 2020, the circuit court entered an order confirming the registration of the South Carolina custody order.

On 23 May 2022, Mother filed in the circuit court a petition to modify the custody order. After Father failed to respond to her petition, the circuit court entered an order of default. After a hearing, at which Father did not appear, the circuit court entered an order granting Mother's petition to modify custody. The order granted the parties joint legal custody of S.E. and gave Mother primary physical custody of the child. It set forth also a visitation schedule. The order provided that it supersedes the 14 November 2019 order of the Horry County Family Court.

Twelve days after the court's judgment was entered, Father filed, in proper person, a motion to vacate the default judgment and a request for a stay. The motion to vacate was denied. Thereafter, counsel entered an appearance to represent Father. On 25 May 2023, Father filed a timely notice of appeal. He filed also an amended motion to stay and a motion to alter or amend the judgment. The court held a hearing on those motions on 7 July 2023. The court denied the motions, but scheduled a "supplementary best interest [of the child] hearing" for 5 December 2023.

QUESTIONS PRESENTED

Appellant presents the following questions for our consideration:

> I. Did the circuit court have subject matter jurisdiction to modify a South Carolina custody order?
>
> II. Did the circuit court abuse its discretion by refusing to vacate the order of default and imposing default sanctions on appellant to prevent him from discovering and presenting evidence in support of discovering what is in the best interests of the minor child?

For the reasons set forth below answering "Yes" and "No," respectively to the questions, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The parties, who were never married, are the parents of a minor child, S.E., who was born on 14 January 2016.[1] Custody of S.E. was governed initially by a consent order issued by the Horry County Family Court in case number 2016-DR-26-872. Mother and S.E.'s paternal grandparents shared custody under the terms of that order. At some point, Father enlisted in the military. In November 2019, the parties reached a mediated agreement modifying the pre-existing custody order. That agreement was incorporated in a final order by the Horry County Family Court that was filed on 14 November 2019 in case number 2019-DR-26-191.

By that order, the parties were granted joint custody of S.E. Father was designated the "primary custodian," Mother was designated the "secondary custodian," the parties were to consult with one another with regard to all major decisions affecting S.E., and, in

[1] Mother has an older child, Z., who resides with her. That child is not a subject of this appeal.

case of a disagreement between the parents, Father was given the right to make the decision. The order included a visitation schedule, certain conditions relating to custodial time, and a "no adverse [conduct] order" ("NACO") that prohibited the parents "from engaging, directly or indirectly, in any adverse conduct towards one another." Child support was held in abeyance, Father was to provide health insurance for S.E., and each party was to be responsible for his or her own attorney's fees. Provisions were made for the payment of guardian *ad litem* fees.

At some point, Father, who was, as noted earlier, in the military, moved to Washington County, Maryland. Later, Mother moved to Maryland, but she did not live with Father. On 27 February 2020, Father, proceeding in proper person, filed in the Circuit Court for Washington County, Maryland, a request for registration of a foreign child custody determination pursuant to § 9.5-305 of the Family Law ("FL") Article of the Maryland Code. On 26 March 2020, the circuit court entered a notice of registration of a foreign child custody determination, specifically, the 14 November 2019 order of the Horry County Family Court.

On 14 September 2020, Mother, acting in proper person, filed in the circuit court a petition for contempt against Father. In it, she claimed, among other things, that Father failed willfully to enroll S.E. in court-ordered therapy, denied her time with the child, exposed the child to an immoral environment, and violated the NACO order. Mother requested that she be granted primary custody. On 14 October 2020, Father filed a petition for contempt against Mother. He responded to some of the assertions set forth in Mother's

petition for contempt and averred that Mother failed to provide him with health-related information pertaining to S.E.

Both parties appeared at a contempt hearing that was held via Zoom. Father proceeded in proper person and Mother was represented by counsel. The circuit court granted Mother's petition and found Father in contempt of the March 2020 order of registration and the 14 November 2019 Horry County Family Court order by failing to provide Mother visitation access to S.E. during various time periods in 2020. The circuit court ordered Father to arrange with Mother a time for daily telephone or FaceTime access to S.E., to arrange for counseling for S.E. within ten days, to arrange and provide Mother access to a shared calendar, and to arrange "make-up" time for visits between Mother and S.E.

On 23 May 2022, Mother filed in the circuit court a petition for modification of custody and other relief in which she requested sole legal and primary physical custody of S.E., an order enjoining Father from removing S.E. from Maryland, modification of the existing child support order, and attorney's fees. Mother asserted that she, Father, and S.E. resided in Maryland.[2] She alleged a material change in circumstances resulting from Father's plan to relocate to South Carolina with S.E. Mother asserted also that Father failed to comply with the court's order to enroll S.E. in therapy and failed to provide Mother with school-related information for the child. It is undisputed that Father was served with a copy

[2] Mother resided in Charles County and Father resided in Washington County.

of the petition for modification of custody on 14 July 2022 at his new residence in South Carolina where he had moved with S.E.

Father failed to file a response to the petition for modification of custody. On 24 October 2022, Mother filed a motion for order of default. Mother's motion was accompanied by an affidavit of non-active duty military service and a certificate of service indicating that a copy was mailed to Father.

Four days later, the circuit court entered an order of default against Father. The notice of the default order was addressed to Father. It indicated that he could "move to vacate the Order of Default within (30) days of the entry of" the order. The court set a hearing before a magistrate. On 28 March 2023, Mother appeared at the hearing represented by counsel. Father did not appear. After the hearing, the magistrate issued proposed findings and recommendations. The magistrate found, among other things, that Father moved to South Carolina in late May 2022 "with little or no information or notice to" Mother. Mother lived in Maryland with her older child, Z., and her own mother. She was not employed, but "receive[d] some type of disability income." The magistrate concluded:

> A geographical move by a parent is a material change of circumstances. The issue then becomes a determination of the child's best interest. In this case, [Father's] unilateral move to South Carolina and limiting and/or interfering with [Mother's] access with her daughter is material. [Mother] testified that she would work to ensure that [Father] would have access with his daughter on a consistent and meaningful basis. [Mother's] testimony establishes that [Father] has unilaterally moved to South Carolina without notice, has limited or failed to provide visitation as required under the Court Order, has limited contact via telephone or social media, and has failed to provide [Mother] information regarding the child's education and health. [Father] was previously found to be in contempt and

> make-up visitation was provided to [Mother]. All of these issues are sufficient for the Magistrate to find the child's best interests are served by placing the child in the [Mother's] primary custody. [Father] did not file an answer to the Petition to Modify (default order entered October 26, 2022) and did not appear for this hearing. It is recommended that [Mother's] Motion to Modify be granted. It is recommended that [Mother] be granted primary physical custody, visitation to [Father], and the parties exercise joint legal custody.

Father did not file exceptions to the magistrate's proposed findings and recommendations. On 26 April 2023, the circuit court entered an order granting the parties joint legal custody of S.E. and granting Mother primary physical custody of the child. It set forth also a visitation schedule. The order provided that it superseded the 14 November 2019 order of the Horry County Family Court in case number 2019-DR-26-191.

Twelve days later, on 8 May 2023, Father filed, in proper person, a motion to vacate the default judgment and a request for a stay. In support of his motion to vacate the default judgment, Father wrote:

> I, Matthew Edwards, am filing this motion to vacate the default judgement [sic] due to receiving no court paperwork except for the initial Writ of Summons on June 21, 2022. I responded by fax on 09/16/2022, but the attorneys later said it was not received by them. After receiving nothing else from the courts, I had come to the assumption that nothing else had transpired. On Tuesday, 05/04/2023, my father had received a text by Taylor Denner stating that she was now primary custodian and was planning to receive [S.E.] (child in common) the following day, which she did not follow up on. This is how I discovered that there had been numerous court proceedings that I had never received notification of. I had contacted multiple Hagerstown attorneys and they had confirmed that there have been various court proceedings and a hearing. I did not know any of this until now and I am requesting that the Default Judgement be dismissed.

Father stated further, in support of his request for a stay:

> I also request that there be a movement for Stay of Judgement as [Mother] is planning to bring [S.E.] back to Maryland. I believe this would

> would [sic] negatively effect [S.E.] as we have been living in Horry County, SC for the last 11 months since I had been (honorably) discharged from the Army. This is her first year of Public School and I am worried that such a sudden change for her would be a very negative thing for her development.

Father attached to his motion a statement in which he asserted, among other things, that on 1 June 2022, he moved with S.E. to his parents' home at 9677 Sullivan Drive, Murrells Inlet, in Horry County, South Carolina. The only reason he lived in Washington County, Maryland, was because he was in the Army and had been stationed at Fort Detrick. Father explained various circumstances that prevented him from enrolling S.E. in therapy within ten days of the circuit court's contempt order. He claimed also Mother had been provided S.E.'s school information "through email, from the minor child's school itself." Father's statement concluded:

> [T]he minor child does not have any significant connections to the State of Maryland and had been opinionated towards wanting to move to South Carolina, as she has a strong connection to her grandparents on my side, whom we now reside with, as well as friends from her school, as she was homeschooled during our time living in Maryland. I do not believe [Mother] has any evidence for anything and that this is nothing more than her attempt to grab for the wind because we have moved and [Mother] has to now be "inconvenienced" by a longer commute in order to spend time with the minor child.

Father also filed a motion for emergency stay of enforcement of the court's default custody order. In support of that motion, Father stated that Mother was

> attempting to remove our daughter from her school in South Carolina where she has been attending since September. It is against the best interest of the child to pull her out of school before it ends but too late in the year for her to start up again at any practical level in a new place. I would thus ask the court to stay any enforcement of this matter until I am able to participate (see previously filed Motion to Vacate Default Judgment filed this same day). There is no reason the child's life should be uprooted when no emergency

> has been alleged and I was never given notice of any of the court hearings subsequently missed.

On 5 June 2023, the court entered an ambiguous order with respect to the request to stay enforcement of the custody order and the motion for emergency stay. The court filed what appeared to be a proposed order with the word "GRANTED" and some other portions of the order crossed out. The order did not state explicitly that either the request for a stay or the motion for an emergency stay was denied.

Subsequently, an attorney entered his appearance on behalf of Father. On 25 May 2023, counsel filed on behalf of Father a notice of appeal,[3] an amended motion for stay of enforcement of the custody order, and a motion to alter or amend the judgment pursuant to Maryland Rule 2-535. In his amended motion to stay enforcement of the custody order, Father argued that Mother had attempted to remove S.E. from her residence and school in South Carolina, and that a stay of enforcement was "necessary to preserve the welfare and best interests of the minor child, as well as the rights of" Father. He argued further that the circuit court did not have subject matter jurisdiction, that allowing the court's order to "go into effect" would deprive him "of the benefit of the interstate compact regarding foreign custody determinations and remove a minor child from her home without legal justification."

[3] Section 12-303(3)(x) of the Courts and Judicial Proceedings Article ("CJP") of the Maryland Code provides that a party may appeal from an interlocutory order "[d]epriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order[.]"

In his motion to alter or amend the judgment, Father asserted that when his "duty station attendance requirement" with the Army ended "at the end of May 2022[,]" he moved with S.E. to South Carolina "to serve out the remainder of his service obligation with the South Carolina National Guard." He acknowledged that he "was personally served with the writ of summons and complaint for modification of the South Carolina custody order on July 14, 2022, at his residence in South Carolina." He claimed that he attempted to answer the petition for modification of custody, but his filing was rejected "because it was sent by facsimile and not filed through MDEC."[4] He asserted that he "did not learn of the failure . . . until after the final modification order was entered."

Father took issue with the affidavit pertaining to his military service that Mother filed in support of her motion for order of default. He argued that her assertion that he was not in service to the United States military was "incorrect, and had she secured the requisite SCRA Affidavit of Military Service, the [circuit court] may have taken different action." Father denied being served with notice of entry of the default order, the order itself, or notice of the hearing. Father argued that, although the circuit court was permitted to enforce the 2019 order of the Horry County Family Court, it was not permitted to modify it because it lacked subject matter jurisdiction to do so. He asked the circuit court to "reopen the matter to receive evidence relating to subject matter jurisdiction."

On 5 June 2023, the circuit court denied Father's motion to alter or amend the custody order and set a motions hearing for 7 July 2023. At the hearing, the court

[4] MDEC is an acronym for Maryland Electronic Courts, a judiciary-wide integrated case management system.

considered Father's motion to stay enforcement of the custody order and motion to vacate the default judgment. During the course of that hearing, counsel for Father confirmed Father's proffer that after he moved to South Carolina, he was served with Mother's petition to modify custody. He attempted to file an answer via fax and it "was rejected." Father denied receiving notice of the order of default and notice of the hearing. The judge asked the clerk to review the record to determine if either the notice of entry of the order of default or the hearing notice had been returned to the court and the clerk responded that neither had been returned. Counsel for Father also acknowledged that Father had not alleged that his service in the South Carolina National Guard constituted active duty military service and there was no allegation of fraud by Mother with respect to the affidavit of non-active duty military service filed with her motion for order of default. The court determined, as a matter of fact, that Father was aware of the petition to modify custody, that he "was properly sent a notice of order of default and notice of default hearing," and that he failed to respond with a motion to vacate the order of default and failed to attend the hearing.

The court determined further that there was "no reason to disturb the default judgment" with respect to the finding of a material change in circumstances sufficient to justify a modification of custody, but the child was entitled to "a final modification hearing[.]" The court denied the motion to vacate, but set a hearing to determine the best interests of the child. Counsel for Mother argued that the hearing ordered by the court was, in effect, the same as granting Father's motion to vacate the default judgment. The court responded that the "true difference is that if I vacate the order then [Father] benefits from

his delay." The court stated that Mother would not have to put on again evidence that had been presented at the prior hearing and that there would be a presumption that the prior ruling was correct.

With respect to the hearing to determine the best interests of the child, the court ruled that Father would not have the right to participate in discovery. Counsel for Father questioned the court as to how he would be able to rebut Mother's evidence without discovery and the following occurred:

> THE COURT: . . . I'll get you a written order. Sorry it's so confusing, but it's, it's simply, you know, giving the, giving the, the – [S.E.] the chance for the other party to put forth its evidence.
>
> [Counsel for Mother]: To present evidence verbally under oath at a hearing.
>
> THE COURT: Right.
>
> [Counsel for Father]: Will the Court be so kind as to make sure that the, that the limit is that he is only permitted testimony under oath?
>
> THE COURT: No, he could, no, he could, he could – whatever his, whatever his case is he can bring.
>
> [Counsel for Father]: But no ability to rebut any evidence presented by [Mother]?
>
> THE COURT: Well, sure he can, sure he can rebut that evidence.
>
> [Counsel for Father]: How without discovery?
>
> THE COURT: But what he can't, but what he can't do is obligate, he can't put a burden on the folks that have already fulfilled their whole burden to the Court and to [S.E.]
>
> [Counsel for Father]: Well, the only thing is, Your Honor, is that I don't believe, I mean was child support addressed in the underlying issue? Because there's a complete modification of custody wherein no financial aspect was addressed. So, is there no financial aspect to this?

THE COURT: I don't know that there is.

[Counsel for Father]: Also certain, I mean the Court in order to make a determination as to what's best, in the best interest of the minor child I find it difficult to understand how that can be if he is not allowed to inquire of any information of [Mother].

THE COURT: Well, the point is that he's waived it. That's the, you know, I don't see how he can assert it. He's waived it by his failure to participate. I'm just, you know –

[Counsel for Mother]: So, essentially what you're doing is you're sort of going back in time and saying, you know, you're giving him the right to have had that hearing on that date that it initially should have been and he wouldn't – had he done that he wouldn't have done discovery anyway. He would have just showed up at the hearing and the Court would have allowed him to present evidence.

THE COURT: Well, lots of things.

[Counsel for Mother]: Okay.

THE COURT: I don't want to, I don't want to go that far. But I'm going to make a written order that's very specific.

In a written order filed on 10 July 2023, the circuit court found that it had both personal and subject matter jurisdiction over the modification of custody proceeding, that Father had been "duly served" with the petition to modify custody, that he failed to file an answer, that he was sent a notice of order of default and a notice of a hearing on the default, and that he "willfully and knowingly failed to participate in the modification matter[.]" The court made also the following findings and issued the following orders:

> **FOUND** that [Father's] willful and knowing failure to participate in a timely fashion before the final judgment constitutes a waiver of his right to file any counterclaims, and a waiver of his right to propound discovery, and a waiver of his right to challenge [Mother's] default proof, and a waiver of

cross examination of [Mother's] witnesses – all consistent with him being in default and subject to the final order of this Court; and it is further

FOUND that notwithstanding that [Father's] contumacious disregard for this Court's proceedings has forfeited *his* rights in regard to participation in the modification matter, this Court still owes a duty to review [S.E.'s] "indefeasible" rights in light of Flynn v. May, 157 Md. App. 389, 410 (2004), and Wells v. Wells, 168 Md. App. 382 (2006); and it is further

FOUND that the instant case is distinguishable from the facts of Flynn and Wells as the defaulting parents in Flynn and Wells lacked the level of disregard for this Court's process exhibited by [Father] in this matter; and it is further

FOUND that were the Court to have granted the relief requested by [Father] (vacation and stay of the final judgement [sic] in this matter) that the Court would invite an absurd result: that no matter how long a parent waits to participate in a proceeding, that that defaulting parent is relieved of his or her procedural obligations and is entitled to assert his or her litigation rights at a whim; and it is further

FOUND that this Court has continuing jurisdiction and responsibility to assure the best interests of [S.E.]; and it is therefore

ORDERED that the final judgment of this Court of April 26, 2023 is deemed *prima facie* correct, and that the Court has found that [Mother] has met her burden of demonstrating [S.E.'s] best interest being met by the current order; and it is further

ORDERED that since the default has not been vacated, [Father] need not file an answer in this matter, and may not file a counterclaim; and it is further

ORDERED that this Court hold a supplementary best interest hearing on December 5, 2023 at 9:30 AM and that the sole reason for that hearing is for [Father], or counsel on [S.E.'s] behalf as best interest attorney, to put on additional evidence of [S.E.'s] best interest in regard to legal custody, physical custody, and parental access *as the circumstances exist as of December 5, 2023*; and it is further

ORDERED that [Mother] may propound discovery upon [Father], but [Father] is precluded from propounding discovery upon [Mother] as he has waived that privilege; and it is further

> **FOUND and therefore ORDERED** that the jurisdiction for the contemplated hearing does not sound in the power of the Court to revise its prior order under Md. Rule 2-535, but instead in the responsibility of this Court to recognize the paramount rights of [S.E.] and
>
> > The absolute obligation on the trial judge to undertake a thorough examination of all possible factors before determining child custody . . .

Flynn, 157 Md. App. at 407.

The court denied the motion to vacate the default judgment and the motion to stay enforcement of the custody order.[5]

DISCUSSION

I.

Father contends that the circuit court did not have subject matter jurisdiction to modify the 2019 Horry County Family Court order that was registered by the circuit court on 26 March 2020. He maintains that the circuit court failed to comply with the procedures required by Title 9.5 of the Family Law Article of the Maryland Code. Specifically, he argues that at "the time of service of process" and "at the time of the trial" he and S.E. were residents of South Carolina. We disagree.

Standard of Review

"When reviewing an action tried without a jury, we review the judgment of the trial court 'on both the law and evidence.'" *Baltimore Police Dep't v. Brooks*, 247 Md. App.

[5] We view the court's denial of the motion to stay to resolve both the request for a stay and the motion for an emergency stay initially filed by Father, in proper person, and the amended motion to stay filed by his attorney.

193, 205 (2020) (quoting *Banks v. Pusey*, 393 Md. 688, 697 (2006)). We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and [we] will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). Issues of law, however, are reviewed *de novo*. *Brooks*, 247 Md. App. at 205. The question of subject matter jurisdiction is a legal one that we review *de novo*. *Rowe v. Maryland Comm'n on C.R.*, 483 Md. 329, 340-41 (2023); *Beckwitt v. State*, 477 Md. 398, 420, *reconsideration denied* (25 March 2022), *cert. denied*, 143 S. Ct. 216 (2022), *reh'g denied*, 143 S. Ct. 475 (2022). We review such issues "without deference to . . . the circuit court[.]" *Wheeling v. Selene Fin. LP*, 473 Md. 356, 373 (2021). The issue of subject matter jurisdiction need not be raised by a party, but may be raised by a court, *sua sponte*, at any time. *Derry v. State*, 358 Md. 325, 334 (2000); *Lewis v. Murshid*, 147 Md. App. 199, 202-03 (2002).

The UCCJEA

The court's jurisdiction to make a child custody determination is set forth in Title 9.5 of the Family Law Article of the Maryland Code, which is known as the Maryland Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). The UCCJEA establishes "systematic and harmonized approaches to urgent family issues in a world in which parents and guardians, who choose to live apart, increasingly live in different states and nations." *Cabrera v. Mercado*, 230 Md. App. 37, 73 (2016) (quotation marks and citation omitted). Two of the primary functions of the UCCJEA are to "deter[] parents from removing their children from a jurisdiction without consent" and to "[f]acilitate the enforcement of custody decrees of other States." *Pilkington v. Pilkington*, 230 Md. App.

561, 577 (2016) (quotation marks, citation, and emphasis omitted). Thus, we must apply the UCCJEA "with an eye toward disincentivizing the unlawful movement of children across state borders[.]" *Id.* at 578.

Because we are called upon to construe the UCCJEA, we shall set forth the rules of statutory construction. "The paramount object of statutory construction is the ascertainment and effectuation of the real intention of the Legislature." *Andrews & Lawrence Pro. Servs., LLC v. Mills*, 467 Md. 126, 149 (2020) (quotation marks and citation omitted). "The starting point of any statutory analysis is the plain language of the statute, . . . viewed in the context of the statutory scheme to which it belongs." *Kranz v. State*, 459 Md. 456, 474 (2018) (quotation marks and citations omitted). '"If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction."' *Noble v. State*, 238 Md. App. 153, 161 (2018) (quoting *Espina v. Jackson*, 442 Md. 311, 322 (2015)). If, on the other hand, words of a statute are ambiguous, "a court must resolve the ambiguity by searching for legislative intent in other indicia, including the history of the legislation or other relevant sources intrinsic and extrinsic to the legislative process." *Id.* at 162 (quotation marks and citation omitted).

The UCCJEA defines a "[c]hild custody determination" as "a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child[,]" and "includes a permanent, temporary, initial, and modification order." FL § 9.5-101(d)(1)-(2). We have recognized that the UCCJEA prohibits concurrent

jurisdiction between two states to limit the occurrence of different states creating competing custody awards. *Harris v. Melnick*, 314 Md. 539, 550 (1989). The authority to make an initial custody determination[6] is exclusive to a single state and, similarly, only a single state may possess authority to modify an existing custody determination. *Pilkington*, 230 Md. App. at 579.

The instant case involves the modification of a child custody order initially entered by the Horry County Family Court and later enrolled in the circuit court in Maryland. The word "[m]odification" "means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination." FL § 9.5-101(l).

As we have stated, the instant case involves the modification of a registered child custody determination of a court of South Carolina. Such modifications are addressed in FL § 9.5-306, which provides:

> (a) *Granting relief.* – A court of this State may grant any relief normally available under the law of this State to enforce a registered child custody determination made by a court of another state.
>
> (b) *Modification*. – A court of this State shall recognize and enforce, but may not modify, except in accordance with Subtitle 2 of this title, a registered child custody determination of a court of another state.

[6] "Initial determination" is defined as "the first child custody determination concerning a particular child." FL § 9.5-101(i).

Subtitle 2 of the UCCJEA addresses jurisdiction.[7] FL § 9.5-203 allows a court of this State to modify a child custody determination made by a court of another state when:

> a court of this State has jurisdiction to make an initial determination under § 9.5-201(a)(1) or (2) of this subtitle and:
>
> (1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under § 9.5-202 of this subtitle or that a court of this State would be a more convenient forum under § 9.5-207 of this subtitle; or
>
> (2) a court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

Section 9.5-201(a)(1) and (2), which generally govern jurisdiction to make an initial determination, provide:

> (a) *Grounds for jurisdiction*. – Except as otherwise provided in § 9.5-204 of this subtitle, a court of this State has jurisdiction to make an initial child custody determination only if:
>
> (1) this State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State;
>
> (2) a court of another state does not have jurisdiction under item (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under § 9.5-207 or § 9.5-208 of this subtitle, and:
>
> (i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

[7] The UCCJEA's key provisions controlling when a state presented with a custody action may exercise jurisdiction are set forth in FL §§ 9.5-201 through -204. Section 9.5-201 governs initial jurisdiction, § 9.5-202 governs exclusive, continuing jurisdiction, § 9.5-203 governs jurisdiction to modify an existing custody order, and § 9.5-204 governs temporary emergency jurisdiction.

> (ii) substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships[.]

A child's home state is defined in FL § 9.5-101(h) as:

> (1) the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months, including any temporary absence, immediately before the commencement of a child custody proceeding; and
>
> (2) in the case of a child less than 6 months of age, the state in which the child lived from birth with any of the persons mentioned, including any temporary absence.

"Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination." FL § 9.5-201(c).

Analysis

Father argues that the circuit court did not have jurisdiction under FL § 9.5-201(a)(1) or (2) because, at the time of service of process and at the time of trial, he and S.E. were residents of South Carolina. He maintains that the time for determining residency was not at the time the modification proceeding was commenced. He does not suggest, however, another time at which residency should be determined. In support of his argument, Father points to the use of the word "presently" in FL § 9.5-203(2) and notes that the statute does not include the phrase "at the commencement of the proceeding." Father's arguments are not persuasive.

The circuit court had subject matter jurisdiction to modify the custody determination initially made by the Horry County Family Court and later registered in the circuit court. Mother's motion for modification of custody was filed on 23 May 2022. There is no dispute

that at that time, neither party nor S.E. resided in South Carolina.[8] Father had resided in Maryland since at least 27 February 2020, the date on which he filed his request to register

[8] The Comment to Section 203 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) provides:

> This section complements Section 202 and is addressed to the court that is confronted with a proceeding to modify a custody determination of another State. It prohibits a court from modifying a custody determination made consistently with this Act by a court in another State unless a court of that State determines that it no longer has exclusive, continuing jurisdiction under Section 202 or that this State would be a more convenient forum under Section 207. The modification State is not authorized to determine that the original decree State has lost its jurisdiction. **The only exception is when the child, the child's parents, and any person acting as a parent do not presently reside in the other State.** In other words, a court of the modification State can determine that all parties have moved away from the original State. The court of the modification State must have jurisdiction under the standards of Section 201.

UNIF. CHILD CUSTODY & ENF'T ACT (1997) § 203 cmt., 9(1A) U.L.A. 516 (2019) (emphasis added).

Comment 2 to Section 202 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) provides that "[c]ontinuing jurisdiction is lost when the child, the child's parents, and any person acting as a parent no longer reside in the original decree State." It further provides:

> Thus, unless a modification proceeding has been commenced, when the child, the parents, and all persons acting as parents physically leave the State to live elsewhere, the exclusive, continuing jurisdiction ceases.
>
> The phrase "do not presently reside" is not used in the sense of a technical domicile. The fact that the original determination State still considers one parent a domiciliary does not prevent it from losing exclusive, continuing jurisdiction after the child, the parents, and all persons acting as parents have moved from the State.
>
> If the child, the parents, and all persons acting as parents have all left the State which made the custody determination prior to the commencement

(continued…)

the South Carolina child custody order in the circuit court. Mother had resided in Maryland since at least 14 September 2020, when she filed her petition for contempt in the circuit court. Father admitted that he moved with S.E. to Murrells Inlet in Horry County, South Carolina, on 1 June 2022. The date of commencement of the action is the starting point in determining the child's home state. There is no dispute that, on the date of the commencement of the modification proceeding, S.E. and both parties had lived in Maryland for more than six months. Accordingly, Maryland was S.E.'s home state under the UCCJEA. FL § 9.5-201(a)(1). The court in South Carolina was not S.E.'s home state and it did not have jurisdiction under FL § 9.5-201(a)(1).

> of the modification proceeding, considerations of waste of resources dictate that a court in State B, as well as a court in State A, can decide that State A has lost exclusive, continuing jurisdiction.
>
> * * *
>
> Jurisdiction attaches at the commencement of a proceeding. If State A had jurisdiction under this section at the time a modification proceeding was commenced there, it would not be lost by all parties moving out of the State prior to the conclusion of proceeding. State B would not have jurisdiction to hear a modification unless State A decided that State B was more appropriate under Section 207.
>
> Exclusive, continuing jurisdiction is not reestablished if, after the child, the parents, and all persons acting as parents leave the State, the non-custodial parent returns. As subsection (b) provides, once a State has lost exclusive, continuing jurisdiction, it can modify its own determination only if it has jurisdiction under the standards of Section 201. If another State acquires exclusive continuing jurisdiction under this section, then its orders cannot be modified even if this State has once again become the home State of the child.

UNIF. CHILD CUSTODY & ENF'T ACT (1997) § 202 cmt., 9(1A) U.L.A. at 511-12.

We interpret the word "presently" as used in FL § 9.5-203(2) to refer to the date the modification proceeding was commenced. To interpret the word "presently" as Father suggests, would undermine the general purpose of the UCCJEA. We cannot sanction Father's interpretation of the statutory scheme which would permit one parent to deprive subject matter jurisdiction to a court in the minor child's home state by moving the child to another state in response to, or in anticipation of, a petition for modification by the other parent. We must interpret the UCCJEA so as not to sanction the tactical movement of children to another state. Moreover, we take note of FL § 9.5-201(c), which provides specifically that "[p]hysical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination." Father's mere presence in South Carolina with S.E. is not the determining factor under the statutory scheme. Because both parents and the child left South Carolina and resided in Maryland for about two years prior to the filing of Mother's petition for modification, the court in South Carolina lost exclusive, continuing jurisdiction. Maryland was the child's home state and the proper state to exercise jurisdiction over Mother's petition for modification.

II.

Father next contends that the circuit court abused its discretion by refusing to vacate the order of default, refusing to stay enforcement of the order of default until an evidentiary hearing could be held, and limiting his ability to present evidence with regards to the best interests of the child. Specifically, he maintains that the court abused its discretion in refusing to permit him to engage in discovery and to consider "any adverse evidence that might be solely in possession of [Mother]" including "current information like [S.E.'s]

report cards, correspondence from teachers, CPS reports, criminal charges, stability issues, substance or alcohol abuse, or any of the other myriad facts faulty parents might try to hide from the scrutiny of the court." Father asserts that "[d]efaults in child custody cases only hurt children[,]" and that the circuit court's decision not to allow him to challenge Mother's evidence simply because he was in default was an abuse of discretion and not in S.E.'s best interests. We disagree.

Standard of Review

When reviewing child custody cases, we utilize three interrelated standards when evaluating a court's holdings:

> "When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Second], if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion."

Kadish v. Kadish, 254 Md. App. 467, 502 (2022) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding rules or principles. *Santo v. Santo*, 448 Md. 620, 625-26 (2016).

In considering a motion to modify custody, the circuit court must engage in a two-step process. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). First, the court must determine whether there has been a material change in circumstances, which is a change that affects the welfare of the child. *Id*. If such a change is found, "the court then proceeds

to consider the best interests of the child as if the proceeding were one for original custody." *Id*. (quotation marks and citation omitted). In determining the best interests of the child, the court is guided by the factors set forth in *Montgomery County Department of Social Services v. Sanders*,[9] 38 Md. App. 406, 420 (1978), and *Taylor v. Taylor*, 306 Md. 290, 304-11 (1986).[10] "The light that guides the trial court in its determination, and in our review, is the best interest of the child standard, which is always determinative in child custody disputes." *Santo*, 448 Md. at 626 (quotation marks and citation omitted).

Default Judgments

A review of Maryland's default judgment procedure is helpful to understanding the procedural posture of this case. Pursuant to Maryland Rule 2-613, a plaintiff may seek a default judgment against a defendant who fails to plead. This Court has explained that obtaining a default judgment involves a two-step process. *Peay v. Barnett*, 236 Md. App.

[9] In *Sanders*, we identified ten non-exclusive factors to be considered in determining the best interests of a child: (1) fitness of the parents; (2) character and reputation of the parties; (3) desire of the natural parents and agreements between the parties; (4) potentiality of maintaining natural family relations; (5) preference of the child; (6) material opportunities affecting the future life of the child; (7) age, health, and sex of the child; (8) residences of parents and opportunity for visitation; (9) length of separation from the natural parents; and (10) prior voluntary abandonment or surrender. 38 Md. App. at 420.

[10] In *Taylor*, the Supreme Court of Maryland set forth thirteen non-exclusive factors, including some that overlap with the factors set forth in *Sanders*. Those factors are: (1) capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; (2) willingness of parents to share custody; (3) fitness of parents; (4) relationship established between the child and each parent; (5) preference of the child; (6) potential disruption of child's social and school life; (7) geographic proximity of parental homes; (8) demands of parental employment; (9) age and number of children; (10) sincerity of parents' request; (11) financial status of the parents; (12) impact on state or federal assistance; and (13) benefit to parents. 306 Md. at 304-11.

306, 317-18 (2018). The first step involves an order of default. Once the time for a defendant to plead has expired, a plaintiff may request in writing that the court enter an order of default. Md. Rule 2-613(b). After the court enters an order of default, the clerk must issue notice to the defendant that the order of default has been entered and that the defendant may move to vacate the order within thirty days of its entry. Md. Rule 2-613(c). The notice must be mailed to the defendant at the address stated in the request and to the defendant's attorney, if any. *Id*. The court may also provide for additional notice to the defendant. *Id*.

Rule 2-613(d) provides:

> [t]he defendant may move to vacate the order of default within 30 days after its entry. The motion shall state the reasons for the failure to plead and the legal and factual basis for the defense to the claim.

"If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action and that it is equitable to excuse the failure to plead, the court shall vacate the order." Md. Rule 2-613(e).

The second step of the process involves a default judgment. If the defendant does not file a motion to vacate within thirty days, or if a motion to vacate is filed, but the court denies it, upon request the court "may enter a judgment by default that includes a determination as to the liability and all relief sought, if it is satisfied (1) that it has jurisdiction to enter the judgment and (2) that the notice required by section (c) of [Rule 2-613] was mailed." Md. Rule 2-613(f). Subsection (f) further provides:

> If, in order to enable the court to enter judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the

> court, may rely on affidavits, conduct hearings, or order references as appropriate, and, if requested, shall preserve to the plaintiff the right to trial by jury.

Md. Rule 2-613(f).

An order of default is a prerequisite for a default judgment. *Pomroy v. Indian Acres Club of Chesapeake Bay, Inc.*, 254 Md. App. 109, 121 (2022) ("[A] court cannot issue a default judgment . . . without first issuing an order of default and giving the defaulting party an opportunity to vacate that order."). An order of default is interlocutory in nature and may be revised by the court at any time up until a final judgment is entered. Md. Rule 2-613(g). *See also Holly Hall Publ'ns, Inc. v. Cnty. Banking & Tr. Co.*, 147 Md. App. 251, 261 (2002) (noting that an order of default is an interlocutory order subject to the broad general discretion of the court); *Michaels v. Nemethvargo*, 82 Md. App. 294, 298-300 (1990) (stating same). The entry of a default judgment in compliance with Rule 2-613 "is not subject to the revisory power under Rule 2-535(a) except as to the relief granted."[11] Md. Rule 2-613(g).

[11] Maryland Rule 2-535(a) addresses a trial court's revisory power and provides:

> On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

Rule 2-534 provides:

(continued…)

A defaulting party who does not file a motion to vacate that is denied subsequently, cannot file a motion to alter or amend a judgment pursuant to Md. Rule 2-534 for the purpose of contesting liability and cannot appeal that judgment in order to contest liability. *Franklin Credit Mgmt. Corp. v. Nefflen*, 436 Md. 300, 325-26 (2013) ("Permitting a defaulting party to lie in wait, after having failed to timely respond to a complaint and also to move to vacate a default order would permit the default procedure under Rule 2-613 to be nullified."). *See also Att'y Grievance Comm'n v. Thomas*, 440 Md. 523, 549 (2014) ("[A]n order of default determines liability conclusively, and such a determination may be set aside only if the defendant moves successfully to vacate the order.").

Default judgments are not meant to be a punitive sanction for noncompliance with procedural regulations. *Holly Hall*, 147 Md. App. at 262 (citing *Royal Ins. Co. of Am. v. Miles & Stockbridge, P.C.*, 133 F. Supp. 2d 747, 768 (D. Md. 2001)). Rather, they function as a party's admission of liability where the party fails, without excuse, to respond to the allegations in a properly served complaint. *Att'y Grievance Comm'n v. Ward*, 394 Md. 1, 19 (2006) (citing *Holly Hall*, 147 Md. App. at 261-62). That said, "the Maryland Rules and caselaw contain a preference for a determination of claims on their merits; they do not

> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

favor imposition of the ultimate sanction absent clear support." *Holly Hall*, 147 Md. App. at 267. As a result, courts usually should '"exercise their discretion in favor of a defaulting party"' and allow a case to proceed on the merits if the party shows that it has a meritorious defense and excusable error. *Id.* at 263 (quoting *Royal Ins. Co.*, 133 F. Supp. 2d at 768).

We review a court's denial of a motion to vacate an order of default for abuse of discretion. *Id*. at 267. As we have already noted, an abuse of discretion occurs when no reasonable person would take the view adopted by the trial court or the trial court acts without any guiding rules or principles. *Santo*, 448 Md. at 625-26.

Default Judgments in Child Custody Cases

Default judgments in child custody cases are treated differently because the best interest of the child is of paramount importance and the child has an "indefeasible right" to have the custody determination made only after a full evidentiary hearing involving both parents. *Flynn v. May*, 157 Md. App. 389, 408-10 (2004). In *Flynn*, we considered whether the award of a change of custody by default, without a hearing on the merits, constituted an abuse of discretion. In that case, the father filed a petition seeking primary custody of the parties' six-year-old child and child support. *Id.* at 391-92. The mother was served with a copy of the father's petition. *Id.* at 392. Proceeding in proper person, the mother filed a responsive pleading, but failed to include a certificate of service. The clerk of the court provided a poorly-worded notice advising the mother of the need to file a certificate of service, but mother never did. *Id.* The father requested an order of default, which the court granted. *Id.* at 393. The order of default notified the mother that she had thirty days in which to move to vacate the order. It also directed that "'testimony to support the

allegations of the Complaint be taken before one of the Standing Masters of this Court.'" *Id.* at 394-95.

A hearing was scheduled "on the 'issues of custody, visitation and child support (Default).'" *Id.* at 395. The mother appeared at the hearing with five witnesses who were prepared to testify on her behalf. *Id*. The court determined that neither the mother nor any of her witnesses would be permitted to testify and that the mother would not be permitted to offer evidence of any kind. *Id*. No information was offered with respect to the fitness of either parent. *Id.* at 397. "The sum total of the information about [the child] consisted of 1) his age and 2) his gender." *Id*. The court awarded custody to the father and ordered the mother to pay child support. *Id.* at 397-98. The mother subsequently obtained counsel and filed a motion to alter or amend the judgment, which was denied. *Id.* at 399.

We held that the circuit court abused its discretion in ordering a change in custody. In reaching that conclusion, we examined the broad discretion set forth in Rule 2-613(f) and noted that it "is a sweeping grant of discretionary authority[.]" *Id.* at 404. We also stated that "child custody is quintessentially a ground on which technicality and justice may be in stark collision." *Id.* After examining the development of the default judgment concept, which arose out of tort cases, we concluded that where there is "a single unbifurcatable issue, an analogy to how default judgment is handled in the context of tort cases is impossible. . . . [D]efault judgment cannot substitute for a full evidentiary hearing when a court, in order to determine custody, must first determine the best interest of the child." *Id.* at 407. We stated:

> As sorely tempted as we are to hold flatly that the default judgment procedure of Maryland Rule 2-613 is not applicable to child custody disputes, it is not necessary to go so far. We are content to hold that, at the hearing on August 1, 2003, the trial court, in the circumstances of this case, abused its discretion when it ordered a change in the primary physical custody of [the child] without permitting witnesses to testify or other evidence to be offered. We nevertheless note that it is impossible for us to conjure up a hypothetical in which a judgment by default might ever be properly entered in a case of disputed child custody. We are not hereby transforming our dicta into a holding. We are, however, unabashedly adding deliberate weight to the dicta. Our comments are not random, passing, or inadvertent.

Id. at 411-12.

In *Wells v. Wells*, 168 Md. App. 382 (2006), we considered again the default judgment process and a child's indefeasible right to have his or her best interests considered at a full evidentiary hearing. *Wells* arose out of a divorce and child custody action filed by the father. At the time the case was initiated, the parties lived together in the marital home, which had been purchased prior to the marriage by the father. 168 Md. App. at 386. The mother failed to file an answer. *Id*. The father filed a motion for order of default, but the mother did not file a response. *Id.* The court issued a notice of default order that was mailed to the mother at the marital home. *Id.* The mother did not file a motion to set aside the default order. *Id.* A hearing before a master was scheduled and notice was mailed to each party at the marital home, but the mother did not appear at the hearing. *Id.* The father appeared with counsel and several witnesses. *Id.* The master issued findings and recommendations including that the mother had committed adultery, that an absolute divorce be granted on that ground, that the father was a fit and proper person to have custody of the parties' minor child, that the mother should pay child support in a specified

amount, and that the father should be granted use and possession of the home. *Id.* at 387-88. A copy of the master's findings and recommendations was mailed to the mother at the marital home. *Id.* at 388. Thereafter, the court entered a judgment of absolute divorce that adopted the master's findings and recommendations. *Id.*

Eight days later, the mother, through counsel, filed a motion to vacate the order of default and a motion for a new trial or to alter or amend the judgment of absolute divorce. *Id.* She alleged that she had been served with the complaint and summons, but that the father told her it was a settlement agreement. *Id.* The parties decided to stay together and not to separate. *Id.* The father told the mother to "'tear up the papers[]' because he wanted to work on their marriage[,]" and the parties resumed their marital relations. *Id.* at 388-89. Other than the complaint and summons, the mother did not receive any documents from the court. *Id.* at 389. According to the mother, three days after the judgment of absolute divorce was entered, a deputy sheriff arrived at the marital home, told her that she and her husband were no longer married, and that she would have to vacate the premises. *Id.* At that time, the father told her that there was mail awaiting her on the dining room table. That mail included correspondence from the court. *Id.*

The following day, the mother returned to the marital home with some friends to pack up her belongings. *Id.* They found a box that contained other pieces of unopened mail addressed to the mother. *Id.* The mother asserted that the father had been '"usurping"' her mail. *Id.* The mother maintained that the father had procured the judgment of divorce by fraud and that she had a meritorious defense to both the grounds for divorce and the claim for custody. *Id.* at 389-90. In support of her motion to alter or amend, the mother argued

that justice mandated opening the judgment to receive additional evidence about the child's best interests and other issues. Ultimately, the circuit court denied the mother's motions without a hearing. *Id.* at 391.

On appeal, the mother argued that the trial court abused its discretion in denying her motion for new trial and to vacate the default judgment. We held that the trial court abused its discretion in denying the mother's "motion to vacate the default judgment as to all issues except the decision to grant a divorce." *Id.* at 396. "With respect to the issue of divorce, the [trial] court abused its discretion by denying the motion without holding an evidentiary hearing and making a factual finding on the issue of fraud." *Id.* We explained our holding as follows:

> To the extent that the "liability and damages" dichotomy that derives from actions at law and underlies the default judgment concept and procedure has an analogy in domestic litigation, which is in all respects equitable, the issues of divorce and annulment fall on the "liability" side and the issues that flow from divorce or annulment fall on the "damages," or in equitable terms, "remedy" side. It is only after the court has granted an absolute or limited divorce, or an annulment, so that the parties no longer will be functioning as a marital unit, that it may grant relief to address the consequences that come from that change in status.
>
> * * *
>
> The extra imprimatur of finality for default judgments, under Rule 2-613(g), does not apply to decisions about relief. In a divorce case, "relief" encompasses child custody, visitation, support, alimony, distribution of marital property, use and possession, and counsel fees. A judgment by default that decides any such issue is subject to the court's broad revisory powers, under Rules 2-535(a) and 2-534, on the issue or issues so decided.

Id. at 396-97.

We concluded that the denial of the mother's "motion to vacate the default judgment on the issues of child custody, support, visitation, use and possession, equitable distribution, and alimony was a clear abuse of discretion." *Id.* at 397. Relying on *Flynn*, we noted that the child "had an indefeasible right to have his best interests considered in a full evidentiary hearing" and that a "'default judgment cannot substitute'" for such a hearing "'when a court, in order to determine custody, must first determine the best interest of the child.'" *Id.* (quoting *Flynn*, 157 Md. App. at 407).

Analysis

In the case before us, the circuit court found that Father had been "duly served" with the petition to modify custody, that he failed to file an answer, that he was sent a notice of the order of default and a notice of a hearing on the default, and that he "willfully and knowingly failed to participate in the modification matter[.]" Although the circuit court denied Father's motion to vacate the default judgment and other motions,[12] it recognized also our holdings in *Flynn* and *Wells* and the need for an evidentiary hearing to determine the best interests of S.E. The court, however, subjected that evidentiary hearing to certain limitations resulting from Father's "contumacious disregard for [the] Court's proceedings" and his willful and knowing failure to participate in the case prior to the entry of judgment.

The court expressed its concern that vacating the default judgment and granting a stay of the final judgment would relieve Father of his procedural obligations and allow him to assert his litigation rights at a whim. The limitations imposed by the court included that

[12] As Mother recognizes properly, Father sought to vacate, stay, and alter or amend the default judgment. He did not file a motion to vacate the interlocutory order of default.

Mother would not have to present again evidence that had been presented at the prior hearing and that there would be a presumption that the prior ruling was correct. In addition, Father had waived his right to file a counterclaim and was prohibited from doing so because the default judgment had not been vacated. Further, Father could rebut Mother's evidence, but was prohibited from conducting discovery because he had waived that right by his willful and knowing failure to participate in a timely fashion. Mother, however, was permitted to propound discovery upon Father.

Father maintains that the court punished him for his procedural deficiencies and was "either unaware or unconcerned with what evidence it might be refusing to consider." He argues that the default judgment procedure, and the limitations imposed on him, impacted adversely the court's ability to determine the best interests of S.E. He urges us to hold, as a matter of law, that the default judgment procedure has no applicability in child custody cases. The specific facts of this case do not require us to go so far. The circuit court did not abuse its discretion in fashioning a remedy to Father's willful and knowing failure to participate in the underlying proceedings in a timely fashion that included a hearing to determine the best interests of S.E.

The requirement that the best interest of the child remains paramount in custody cases extends to procedural issues and discovery violations. *Rolley v. Sanford*, 126 Md. App. 124, 131 (1999). *See also Flynn*, 157 Md. App. at 391 (noting that the scope of court's discretion to address discovery violations is limited in a child custody case because in such cases "the very object of the suit is [the child] whose best interest transcends that of either formal litigant"). The instant case does not involve a discovery violation, but a complete

failure by Father to participate in the case in a timely fashion. Nevertheless, cases addressing discovery sanctions in child custody cases offer some guidance.

In *Kadish v. Kadish*, we explained recently that "[i]n a child custody case, the discretion of the trial court to exclude evidence is not only measured by the potential prejudice to the parties, but is constrained by a court's 'absolute and overriding obligation to conduct a thorough examination of all possible factors that impact the best interests of the child.'" 254 Md. App. at 495 (quoting *A.A. v. Ab.D.*, 246 Md. App. 418, 444, *cert. denied*, 471 Md. 75 (2020)). Accordingly, our standard of review concerning discovery sanctions is altered slightly in a child custody case:

> Normally, we evaluate a trial court['s] discovery sanction in a civil case through a well-defined lens – abuse of discretion. *Rodriguez v. Clarke*, 400 Md. 39, 57 (2007); *see also Das v. Das*, 133 Md. App. 1, 15 (2000) ("Abuse of discretion occurs 'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'" (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994))). However, before we look through that lens in a child custody case, we must be satisfied that the court has applied the best interests of the child standard in its determination. When the custody of children is the question, "the best interest[s] of the children is the paramount fact. Rights of father and mother sink into insignificance before that." *Kartman v. Kartman*, 163 Md. 19, 22 (1932).

A.A., 246 Md. App. at 441.

In *A.A. v. Ab.D*, the father propounded discovery requests to the mother in connection with his motion to modify custody. *Id.* at 426. The father argued that the mother's responses were deficient and moved to compel further responses. *Id.* at 427. At the hearing on the request for modification, the father asked the court to exclude the testimony of the mother's witnesses for whom she had failed to provide contact information

and certain documentary evidence. *Id.* The court granted that request. *Id.* at 429. On appeal, we held that the trial court erred in failing to inquire as to the content of the testimony and evidence that the mother intended to offer so that it could determine its significance and potential impact on the best interests of the children. *Id.* at 448.

We held that the "supreme obligation [to consider the best interest of the child] may restrain the court's broad authority to exclude evidence as a discovery sanction." *Id.* at 444. As such, "procedural defects should not be corrected in a manner that adversely impacts the court's determination regarding the child's best interests." *Id.* at 446. Trial courts may not exclude evidence as a discovery sanction unless the court ascertains what evidence would be excluded and then decides that the evidence would not assist the court in applying the required factors set forth in *Sanders* and *Taylor* in determining the best interest of the child. *Id.* at 448-49. "[A] child's best interests are best attained when the court's decision is as well-informed as possible." *Id.* at 447. Any sanction imposed after such consideration is reviewed for abuse of discretion. *Id.* at 449.

We also stated in *A.A.*, that "[w]e do not condone the behavior of discovery violators and do not intend that protecting minor children have the collateral effect of giving discovery offenders a pass." *Id.* at 448. We wrote:

> We encourage trial courts to be creative in finding sanctions other than precluding evidence, but recognize that, even where a court exhausts other remedial steps to enforce discovery, sometimes the failure by obstinate parties and their counsel to follow the rules make more extreme sanctions necessary. When this occurs in a child custody case, the court's independent obligation to the child[ren] requires that, before ordering the exclusion of evidence as a sanction, the court should take a proffer or otherwise ascertain what the evidence is that will be excluded, and then assess whether that

> evidence could assist the court in applying the *Sanders-Taylor* factors in its determination of the best interests of the child[ren].

Id. at 448-49.

A.A. does not expand the universe of evidence that is admissible in a child custody case. Nor does it stand for the proposition that parties can violate discovery and scheduling order deadlines with impunity in custody cases. It certainly does not require that a party who refuses willfully and knowingly to participate in a modification proceeding be permitted to control the court and the timing of proceedings by demanding a new start to a case that has proceeded already to judgment.

In the instant case, the circuit court crafted the type of creative resolution suggested in *A.A.* when it barred Father from engaging in discovery, but also set a hearing to determine the best interests of S.E. Father was permitted to participate in that hearing and present witnesses and other evidence. If he felt there was some specific evidence that could be ascertained solely through discovery propounded to Mother, he could have raised that issue at the hearing and proffered the evidence's significance. The process established by

the circuit court provided a balance between protecting the court from litigants, like Father, who refuse willfully and knowingly to participate in a modification proceeding in a timely fashion, and the need to ascertain and consider the best interests of S.E.[13] We find no abuse of discretion by the circuit court and reversal is not required.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[13] Even if there was some error in the restrictions placed on Father, he would fare no better. It is not the policy of Maryland's appellate courts to reverse for harmless error. *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009) (holding that even when a trial court is found to have abused its discretion, Maryland's appellate courts will not reverse for harmless error). Although "there is no precise standard, a reversible error must be one that affects the outcome of the case, the error must be 'substantially injurious,' and '[i]t is not the possibility, but the probability, of prejudice' that is the focus." *In re Adoption/Guardianship of T.A., Jr.,* 234 Md. App. 1, 13 (2017) (quoting *In re Yve S.*, 373 Md. at 618). The circuit court granted Father a hearing at which he had an opportunity to present evidence pertaining to the best interests of S.E. Father failed to show at that time that his ability to present his case was so substantially injured that it affected the outcome. We conclude, therefore, that even assuming there was some error, it was harmless.

Oral argument in the present case occurred on 10 January 2024. Although counsel confirmed to us that the best interest hearing on 5 December 2023 occurred, there was no record before us fleshing-out what happened. If Father introduced evidence or presented arguments specifically as to how he was impacted adversely by the lack of discovery and how it bore on the best interests of S.E. (relative to what additional evidence Mother may have introduced), that is left for perhaps another day.