Circuit Court for Baltimore City
Case No. 24-C-18-005879

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1107

September Term, 2021

BY GRACE, INC, ET AL.

v.

DARRYL BRAXTON, ET AL.

Wells, C.J.,
Leahy,
Tang,

JJ.

Opinion by Leahy, J.

Filed: August 2, 2022

Appellants are two substance abuse rehabilitation centers—By Grace, Inc. ("By Grace") and I'm Still Standing By Grace, Inc. ("Still Standing")[1]— and Pamela Dukes, the chief executive officer of both entities. They filed the underlying action in the Circuit Court for Baltimore City against two former employees—Darryl Braxton and Daniel Threat, Jr., M.D.[2]—and Issaiah House, an in-patient substance abuse treatment center owned and operated by Mr. Braxton that at one time employed Dr. Threat (collectively, the "Appellees"). The Appellants sought preliminary and permanent injunctive relief and asserted claims for breach of non-competition and non-solicitation agreements and tortious interference. After the circuit court imposed discovery sanctions against Appellants prohibiting them from introducing certain evidence against Mr. Braxton and Issaiah House, the court dismissed the breach of contract and tortious interference counts against those parties. It subsequently denied the injunctive relief as moot. The case against Dr. Threat for breach of a non-compete clause in his employment contract was tried to a jury, which returned a verdict in favor of Appellants on liability but found that Appellants did not sustain any resulting economic loss.

On appeal, Appellants raise three issues,[3] which we have combined and rephrased as two:

[1] In their brief, Appellants occasionally refer to Still Standing as "I'm Still Standing ***With*** Grace, Inc." For consistency, we use the corporate name filed with the Maryland Department of Assessments & Taxation.

[2] Dr. Threat did not file a brief in this Court.

[3] Appellants' brief does not include a "Questions Presented" section, but the three sections of argument are divided as follows:

I. Did the circuit court err by precluding Appellants from introducing any evidence of damages against Mr. Braxton and Issaiah House as a sanction for discovery violations, resulting in the dismissal of their claims?

II. Did the circuit court err by denying a belated motion to admit an exhibit pertaining to damages or, in the alternative, was the verdict on damages against the weight of the evidence?

Discerning no error in the circuit court's determinations, we affirm the judgment.

BACKGROUND

By Grace, an outpatient methadone clinic, and Still Standing, a 45-bed inpatient substance abuse treatment center, are located across the street from each other on East Patapsco Avenue in Southeast Baltimore City. Ms. Dukes owns and operates both centers. For over two years, Mr. Braxton and Dr. Threat were employed by By Grace and/or Still Standing. After Mr. Braxton and Dr. Threat resigned, Mr. Braxton began working at a nearby drug rehabilitation center operated by Concerted Care Group[4] and then began operating Issaiah House, a six-bed inpatient drug rehabilitation center in Southwest Baltimore City. He hired Dr. Threat to work for him.

I. The lower court erred in dismissing plaintiffs' claims against Daryll Braxton and Issaiah House.

II. The evidence presented to the jury properly established damages as a result of Dr. Threat's breach of contract held by plaintiffs.

III. The lower court erred in limiting plaintiffs' evidence in proving damages.

[4] Concerted Care Group was named as a defendant in the original complaint, but Appellants later dismissed their claims against the entity.

The Second Amended Complaint

In October 2018, Ms. Dukes, By Grace,[5] and Still Standing filed this lawsuit. The operative complaint is the second amended complaint, filed on February 22, 2019, which named the Appellants as plaintiffs and the Appellees as defendants. It alleged the following facts:

By Grace and Still Standing hired Mr. Braxton on November 1, 2015 to act as the program director for both centers. His employment contract included a non-competition clause, providing that during his employment he would not own, operate, manage or be employed by "any business similar" to By Grace and Still Standing. A non-solicitation clause provided that Mr. Braxton would not solicit or contact any other employees of By Grace or Still Standing to induce them to end their employment or association with those businesses.

A year later, on November 5, 2016, Mr. Braxton signed a separate "Non-Compete Agreement" with Still Standing, agreeing that he would not directly or indirectly engage in any business competing with Still Standing within a ten-mile radius during his employment with them *and* for a period of two years after the end of his employment. He further agreed not to solicit any clients from Still Standing or induce its employees to leave their jobs "[f]or a period of two years after the effective date of this Agreement."

[5] The complaint originally named "By Grace Counseling Services, LLC" as a plaintiff. However, that entity forfeited its charter, and Mr. Braxton and Issaiah House moved to dismiss the complaint on that ground. The circuit court granted the motion to dismiss with leave to amend. By Grace, Inc. was then substituted as the proper plaintiff in the first amended complaint.

Mr. Braxton formally resigned from By Grace on February 4, 2018. He ceased working for Still Standing the same day. His non-competition agreement expired on February 5, 2020.

Within days, Mr. Braxton started working for Concerted Care Group, which operates multiple substance abuse treatment facilities in Baltimore City, all located within ten miles of By Grace and Still Standing. He left his job at Concerted Care Group on May 1, 2018.

After he resigned from Concerted Care Group, Mr. Braxton began operating Issaiah House, located less than ten miles from By Grace and Still Standing, and, later, Issaiah House I, which also is located within ten miles of By Grace and Still Standing.[6]

According to Appellants, Mr. Braxton's actions caused 60 clients of By Grace and/or Still Standing to transfer to Concerted Care Group and/or Issaiah House for treatment.

Dr. Threat started working for By Grace and Still Standing as medical director in 2015. In addition to a non-compete agreement in his employment contract, he signed an annual "Non-Compete Agreement" from 2015 through 2018. Under the terms of the most recent agreement, he was prohibited from competing with By Grace and Still Standing for the duration of his employment and for three years after the termination of his employment within a 15-mile radius of Baltimore City.

[6] Mr. Braxton incorporated Issaiah House and applied for a license for it while he still worked for By Grace and Still Standing.

In early summer 2018, while he still was employed by By Grace and Still Standing, Dr. Threat began providing services to Issaiah House. He resigned from By Grace and Still Standing on July 24, 2018. His non-competition agreement expired three years later, on July 25, 2021.

In Count I, Appellants sought an emergency temporary restraining order and preliminary and permanent injunctive relief enjoining Mr. Braxton, Dr. Threat, and Issaiah House from: 1) communicating with or soliciting clients or employees of By Grace and Still Standing; 2) employing their employees; and 3) providing the same services as those entities. In Count II, Appellants alleged that Mr. Braxton and Issaiah House tortiously interfered with contracts made between By Grace and Still Standing, on the one hand, and Dr. Threat, on the other. They sought damages of six million dollars. Count III asserted claims against Mr. Braxton and Dr. Threat for breach of the non-competition and non-solicitation agreements between them and By Grace and/or Still Standing and sought six million dollars in damages.

Appellants filed a motion seeking emergency injunctive relief simultaneous with the filing of the second amended complaint, which was denied.

The Discovery Disputes

For purposes of this section and the next, we shall refer to Mr. Braxton and Issaiah House collectively as Mr. Braxton, and we shall refer to Appellants collectively as By Grace, except when necessary to distinguish between them. On August 15, 2019, the court

issued a pre-trial scheduling order that, among other things, established December 15, 2019 as the discovery deadline and scheduled trial to commence on April 15, 2020.

At the end of October and in early November 2019, Mr. Braxton served three sets of interrogatories and three sets of requests for production of documents on counsel for By Grace.

The day *after* the discovery deadline, on December 16, 2019, Mr. Braxton moved to compel discovery and for sanctions, alleging that By Grace had not responded to any discovery and that, despite an agreement that its counsel would draft a joint motion to extend the discovery deadline to permit the parties to engage in settlement discussions, she had not done so.

While that motion was pending, on January 3, 2020, By Grace moved to modify the scheduling order to extend the discovery deadline until February 10, 2020. It also moved to dismiss the motion to compel and for sanctions.

By order entered March 3, 2020, the court granted the motion to compel. It *ordered* By Grace to "produce full and complete executed Answers to Interrogatories and Responses to Request[s] for Production of Documents within ten (10) business days" of the order, March 17, 2020. (Emphasis added). The court denied the motion to extend the discovery deadline as moot and denied the motion to dismiss the motion to compel. The motion for sanctions was "**DENIED at this time**" but the order noted that By Grace's "failure to comply with this Order may result in the imposition of sanctions." (Emphasis in original).

On March 17, 2020, By Grace's attorney made an ex parte request for an extra week to produce the discovery. Counsel was directed to include opposing counsel on her request and, upon doing so, was granted a one-week extension.

At the end of the one-week extension, By Grace's attorney again emailed the judge's chambers, this time including opposing counsel, to request an additional ten days to respond, until April 3, 2020. She explained that COVID-19 disruptions were making it difficult for her to work with her client. Mr. Braxton opposed the extension. The record does not reflect a ruling on this request.

On April 3, 2020, By Grace's attorney sent unexecuted answers to interrogatories to counsel for Mr. Braxton. She sent responses to the requests for production a week later.

On April 29, 2020 and May 14, 2020, counsel for Mr. Braxton sent counsel for By Grace lengthy deficiency letters regarding the answers to interrogatories and responses to requests for production, respectively, including that the interrogatories were not executed. By Grace's attorney initially responded on May 14 that she had "given [Mr. Braxton] all of the information that I have." She subsequently stated on May 22 that she was working on responding to the deficiency letters. She did not provide executed answers to interrogatories or respond to the deficiency letters in May or June.

On July 14, 2020, Mr. Braxton moved for sanctions. He asserted that By Grace still had not produced executed answers to interrogatories as required by Md. Rule 2-421(b), did not respond meaningfully to numerous interrogatories, and failed to provide discoverable documents requested by him. To give one example, Mr. Braxton requested

copies of the federal and state tax returns for the years 2015 through 2020 for By Grace, Still Standing, and Ms. Dukes. In response to each request, counsel stated that the documents would be provided, but they were not. By Grace likewise stated that it would provide responsive documents to a request seeking the annual gross billing figures for By Grace and Still Standing but did not.

On July 20, 2020, the court issued a supplemental pre-trial scheduling order arising from the emergency closures due to COVID-19. Because the discovery deadline had "passed . . . before the emergency closure of the [c]ourt[,]" the order provided that additional discovery only would be permitted by motion and for good cause shown. The trial was reset for May 12, 2021.

On or about August 10, 2020, appellants served on counsel for Mr. Braxton executed answers to interrogatories. The deficiencies were not addressed, however.

The next day By Grace moved to dismiss the motion for sanctions. It maintained that it had provided voluminous discovery and would supplement its responses to correct deficiencies by August 31, 2020. Given that trial was ten months away, it argued that sanctions would be inappropriate because Mr. Braxton was not prejudiced by the delays.

The December 22, 2020 Sanctions Hearing

The court held a remote hearing on the motion for sanctions. Counsel for Mr. Braxton argued that he had been prejudiced by appellants' failure to provide financial records, tax returns, the cost to hire a new medical director, and documentation of the loss of clients allegedly occasioned by the breaches of Mr. Braxton's contracts and/or his

tortious interference. Counsel listed all the unanswered and/or incomplete answers to interrogatories and requests for production.

Counsel for By Grace responded that her clients had responded to discovery after the March 3, 2020 order, but that Mr. Braxton was seeking an "overwhelming amount of information," as reflected in the 42-page deficiency letter with respect to the requests for production.

The court asked counsel for By Grace whether it was accurate that Appellants had not responded to some requests beyond stating that the answer or documents would be provided. By Grace's attorney responded that that was correct, adding that there was some "financial information" that she was trying to get from her client and that there also were interrogatories to which the only response was that the information would be provided later. The court asked counsel when she expected to be able to provide the missing discovery. She responded that due to the pandemic, her client was behind schedule but that she anticipated completing discovery within 30 days.

The court made the following findings. Discovery responses were due, and the discovery deadline passed in December 2019, before the start of the COVID-19 emergency closures. Also before the emergency closures, the court ordered By Grace to produce fully executed discovery responses by March 17, 2020. Despite granting By Grace an extension of that deadline, it did not submit its initial discovery responses until April 3, 2020 and April 10, 2020, respectively, and the interrogatories were unexecuted. The responses also were deficient in many respects, as was addressed in the deficiency letters. In the motion

to dismiss the motion for sanctions, By Grace asserted that all the deficiencies would be addressed by August 31, 2020, nearly ten months before trial. Four months later, the deficiencies had not been corrected, and trial was five months away.

The court opined:

> So I'm not sure what is going on here. I mean, there is a reason that we have the Maryland Rules. So there is a reason that the Maryland Rules have time limitations. There's the reason that the [c]ourt passes Orders for discovery. There's a reason that the [c]ourt counts upon Counsel's representations in terms of the amount of time within which they will do a task or not do a task. This thing has been going on and on and on and on. And the fact that it's by the Plaintiff, you are – and when I say "you," [counsel for By Grace], clearly I'm not speaking about you[] personally, but the party that brings the lawsuit, that then doesn't do what it needs to do to move the lawsuit forward, meanwhile, the party that's being sued has it hanging over them, are paying counsel. The thing just keeps dragging on and dragging on in a substantial lawsuit, and being sued for $6 million is a substantial lawsuit. This is not a [d]istrict [c]ourt action, that five months is not that long a period to prepare for trial, especially if you have other cases on the docket, and especially when we are in the midst of COVID and when things start moving, things are going to move very quickly with a lot of cases that everyone has had backed up.

The court determined to hold the matter *sub curia* to review the record and apply the factors enunciated in *Taliaferro v. State*, 295 Md. 376, 390-91 (1983), to determine if sanctions were warranted and, if so, the appropriate sanction to impose. The court emphasized that the "more information" that By Grace provided soon after the hearing would be a "favorable factor[.]"

Later that day, the court requested that counsel for Mr. Braxton submit a "simple list" of all the interrogatories and requests for production submitted to By Grace; the

response received, if any; and if the response was deficient. Mr. Braxton submitted a 43-page list on January 18, 2021.

On January 29, 2021, By Grace sent counsel for Mr. Braxton unexecuted responses to the deficiency requests.

By order dated February 11, 2021, the court granted the motion for sanctions. It ordered that By Grace, Still Standing, and Ms. Dukes were prohibited from introducing at trial "any of the information set forth in their unexecuted interrogatories" mailed on April 3, 2020 and "any evidence regarding damages[.]"

On February 23, 2021, *twelve days after* the court granted the motion for sanctions, By Grace executed the responses to the deficiency requests.

On March 5, 2021, By Grace moved for reconsideration of the sanctions order. That motion was denied by order entered March 29, 2021.[7]

Dismissal of Claims Against Mr. Braxton and Issaiah House

On May 5, 2021, the circuit court held a status conference "to determine what claims, if any, remain for trial and if the trial properly is a jury or a non-jury trial." The following day, it issued a memorandum opinion and order dismissing certain claims and scheduling a hearing. The court reasoned that the sanctions order barred Appellants from introducing evidence of damages against Dr. Braxton and Issaiah House but did not bar them from introducing evidence against Dr. Threat. Because Appellants could not prove any entitlement to relief against Dr. Braxton and Issaiah House under Counts II and III of

[7] Appellants noted an interlocutory appeal from the order denying their motion for reconsideration. This Court dismissed that appeal as premature.

the second amended complaint, the court dismissed Count II in its entirety and Count III against Dr. Braxton and Issaiah House. The court granted a motion to postpone the trial of the remaining claim against Dr. Threat.

With respect to the requested injunctive relief, the court reasoned that the claim likely was moot against Mr. Braxton and Issaiah House because the restrictive period under Dr. Braxton's employment contract ended on February 4, 2020. It was "almost moot" against Dr. Threat because, at the latest, the restrictive period under his employment contract would end on July 24, 2021. The court scheduled a non-evidentiary hearing for May 12, 2021 to hear argument as to Appellants' entitlement to injunctive relief.

On that date, the court heard argument and ruled that the injunctive relief requested against Mr. Braxton and Issaiah House was moot because the period of the non-compete agreement had expired and dismissed Count I of the second amended complaint as to them. The court granted Appellants' counsel's oral motion for an order of default against Dr. Threat, ruled that Count I and Count III could proceed against him, and set a trial date for August 18, 2021 on the damages claims.

Trial on Claims Against Dr. Threat

By order of June 30, 2021, the circuit court vacated the order of default entered against Dr. Threat, and he answered the second amended complaint. The case against him was tried to a jury on August 18 and 19, 2022. In the Appellants' case, they called five witnesses: Ms. Dukes; three former clients of By Grace and Still Standing; and a former addictions counselor for By Grace and Still Standing.

Ms. Dukes testified that she hired Dr. Threat in 2015 to work at By Grace and Still Standing. At By Grace, Dr. Threat took medical histories for patients, performed physical examinations, and determined methadone dosing. At Still Standing, he performed physical examinations and prescribed medications for inpatient clients of the program. He signed a non-compete agreement when he was hired and annual renewal non-compete agreements. In the most recent agreement, signed on March 26, 2018, he agreed not to compete with the business of By Grace or Still Standing during his employment or for three years after the end of his employment within a 15-mile radius of Baltimore City.

In spring 2018, Ms. Dukes confronted Dr. Threat about whether he was working for Issaiah House, which is located within the non-compete radius and provides inpatient drug rehabilitation services. He admitted that he was and, on July 24, 2018, submitted his letter of resignation to By Grace and Still Standing. Despite giving 60 days' notice, according to Ms. Dukes, Dr. Threat worked no more than one or two days after submitting his letter of resignation.

She explained that a medical doctor was required to oversee By Grace and Still Standing under the terms of their licensure. When Dr. Threat left, she did not have a physician in place for about 30 days. Consequently, she could not admit any new patients during that period. She had paid Dr. Threat $40 per hour to work at By Grace, but the physician she hired to replace Dr. Threat demanded an hourly rate of $250 per hour.

Ms. Dukes testified that she lost approximately 60 clients at By Grace because of Dr. Threat's departure.[8] On average, she billed $808 for each client of By Grace over the course of 30 days. From that figure, she calculated a loss of around $45,000 for the loss of 60 clients.

At Still Standing, Ms. Dukes testified that she was unable to admit between 10 and 18 clients for the month that she was without a medical director. She estimated that she billed $63,000 per client for "the duration of their treatment" at Still Standing. She did not have any records of discharges or transfers from Still Standing during that period.

During her testimony, Ms. Dukes handwrote the above figures on two large pieces of paper positioned on an easel. Counsel for Appellants did not mark the papers as an exhibit or move them into evidence during trial.

On cross-examination, Ms. Dukes testified that she did not know how much total revenue By Grace and Still Standing earned in 2017 or 2018 and could not quantify how much her revenue dropped, if at all, following Dr. Threat's departure. She could not recall exactly when the physician she hired to replace Dr. Threat began working for her, but she believed it was around August 17 or August 20, 2018.

[8] Ms. Dukes's testimony about the number of clients she lost varied widely. At one point, she said she lost 25-30 clients. At another point she said it was 60 clients. Later in her testimony she claimed it was 70 or more.

Appellants introduced into evidence transfer and discharge records from By Grace during the period around when Dr. Threat resigned that show 42 clients were discharged from By Grace between July 18, 2018 and August 20, 2018. Fifteen of those clients transferred to Concerted Care. The record does not reflect why the other 27 clients were transferred.

Timothy Cravens, a former client of By Grace and, later, Still Standing, testified that Dr. Threat prescribed him methadone to treat his opioid addiction. In April or May of 2018, Mr. Cravens began working for Issaiah House. He recalled that Dr. Threat began working for Issaiah House in late May of 2018. Four or five former patients of By Grace and/or Still Standing later were patients of Issaiah House during the time that Mr. Cravens worked there.

At the close of Appellants' case, Dr. Threat moved for judgment, arguing that Ms. Dukes failed to prove damages caused by his breach of the non-compete agreement. The court denied the motion at that juncture.

In his case, Dr. Threat testified that he handed in his letter of resignation with his 60-day notice on July 24, 2018 and continued working at By Grace and Still Standing up until August 16, 2018, when Ms. Dukes told him not to return. By then, she had hired a medical director to replace him. He acknowledged that he began working for Issaiah House in June 2018, while he still worked for By Grace and Still Standing, explaining that Ms. Dukes had cut his hours. He denied that he ever solicited clients of By Grace or Still Standing to come to Issaiah House. He worked at Issaiah House until August 2018, when he moved to Richmond, Virginia.

Ms. Dukes was recalled in rebuttal. She identified paystubs for the physician she hired to replace Dr. Threat that showed that he received his first paycheck in September 2018 for the pay period beginning September 9, 2018.

At the close of all the evidence, Dr. Threat renewed his motion for judgment. He argued that there was no evidence that any damages resulted from his breach of the non-compete agreement. After hearing extensive argument, the court ruled that despite having serious reservations that Appellants had adduced any non-speculative evidence of damages caused by Dr. Threat's breach of his non-compete agreement, it would allow the case to go to the jury.

Before the court instructed the jurors, counsel for Appellants asked the court if she could move into evidence the two pieces of paper upon which Ms. Dukes wrote the billing figures to which she also testified. Counsel for Mr. Braxton and Issaiah House objected, arguing that the average billing figures represented on the exhibit were speculative and would mislead the jurors. The court denied the request to admit the papers, ruling that it was a demonstrative aid during Ms. Dukes' testimony and that counsel could use it as such during her closing argument, but that it is not admissible in evidence.

The court instructed the jurors, as pertinent, that Appellants' damages were "the profits the Plaintiffs would have made had the contract been performed" and could be "arrived at [by] deducting [from lost revenues] the amount that it would have cost the Plaintiff[s] to have performed the contract."

In closing, Appellants argued that the evidence showed that By Grace lost $101,000 in revenue because 15 clients transferred to another center in the month after Dr. Threat resigned. Dr. Threat responded that those clients transferred to Concerted Care, a center where Dr. Threat never worked. He also emphasized that without evidence of By Grace's

and Still Standing's total revenues and expenses, the jurors could not calculate lost profits occasioned by Dr. Threat's admitted breach of the non-compete agreement.

The jurors deliberated for approximately 90 minutes before returning a verdict. They answered "Yes" to the first question on the verdict sheet, finding that Dr. Threat breached his employment contract and non-compete agreement, but "No" to the second question, asking whether Appellants "sustained economic damages as a result" of that breach. Consequently, they did not answer the third question, asking them to quantify the damages.

This timely appeal followed. We shall include additional facts in our discussion of the issues.

DISCUSSION

I.

Discovery Sanctions

A. Parties' Contentions

Appellants contend that the trial court abused its discretion by excluding evidence of damages as a discovery sanction, which effectively imposed the ultimate sanction of dismissal. In their view, because they initially filed answers to the written discovery requests in April 2020 and responded to the deficiency letters in February 2021, three months before trial, Mr. Braxton and Issaiah House were not prejudiced by the discovery failures.

Mr. Braxton and Issaiah House respond that application of the *Taliaferro* factors reveals that the discovery sanction was warranted. They point to the repeated and flagrant violations of the deadlines in the scheduling order and orders of the court; the failure to cure the violations despite numerous opportunities; the lack of any reasonable explanation for the dilatory conduct, which the trial court found preceded the beginning of the COVID-19 pandemic; and the severe prejudice occasioned by the delays, including legal expenses, time, and the inability to assess the strength or weakness of Appellants' claim that they incurred six million dollars in damages.

B. Standard of Review

"Circuit courts have 'very broad discretion' to determine whether sanctions should be imposed." *Muffoletto v. Towers*, 244 Md. App. 510, 542 (quoting *Pinsky v. Pikesville Recreation Council*, 214 Md. App. 550, 590 (2013)), *cert. denied*, 469 Md. 276 (2020). We review a trial court's factual findings relative to a discovery sanction for clear error. *Cumberland Ins. Grp. v. Delmarva Power*, 226 Md. App. 691, 698 (2016). We review for abuse of discretion the trial court's ultimate decision "to impose, or not impose, a sanction for a discovery violation." *Dackman v. Robinson*, 464 Md. 189, 231 (2019). "An abuse of discretion occurs 'where no reasonable person would take the view adopted by the [trial] court,' 'when the court acts without reference to any guiding rules or principles,' or when the court's 'ruling is clearly against the logic and effect of facts and inferences before the

court.'" *State v. Alexander*, 467 Md. 600, 620 (2020) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)).

"The available sanctions [for a discovery violation] range from striking out pleadings to dismissal, and the decision whether to invoke the 'ultimate sanction' is left to the discretion of the trial court." *Valentine-Bowers v. Retina Grp. of Wash., P.C.*, 217 Md. App. 366, 378 (2014) (citing Md. Rule 2-433; other citation omitted). A party need not engage in "'willful or contumacious behavior' . . . to justify imposing sanctions." *Id.* (quoting *Warehime v. Dell*, 124 Md. App. 31, 44 (1998)).

C. **Analysis**

As a threshold matter, we agree with Appellants that the circuit court's February 11, 2021 order precluding them from introducing any evidence of damages amounted, as a practical matter, to a dismissal of their claims for breach of contract and tortious interference even though those claims were not dismissed until the entry of the May 6, 2021 order. Because we conclude that the circuit court did not abuse its broad discretion by ruling that the ultimate sanction was warranted in this case, we shall affirm the order dismissing those claims as a consequence of the discovery sanction.

In assessing the gravity of a party's discovery violations, a circuit court should consider what are commonly known as the *Taliaferro* factors and "whether the sanctioned violations were 'persistent and deliberate' before imposing sanctions." *Muffoletto*, 244 Md. App. at 542 (quoting *Att'y Grievance Comm'n of Md. v. Kent*, 447 Md. 555, 577 (2016)). In *Taliaferro v. State*, the Court of Appeals explained:

> Principal among the relevant factors which recur in the opinions are whether the disclosure violation was technical or substantial, the timing of the ultimate disclosure, the reason, if any, for the violation, the degree of prejudice to the parties respectively offering and opposing the evidence, whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance. Frequently these factors overlap. They do not lend themselves to a compartmental analysis.

295 Md. 376, 390-91 (1983). The circuit court need not discuss each factor, which are interrelated and often overlap. *Muffoletto*, 244 Md. App. at 542. It follows that "[w]e do not look at each incident in isolation, but rather at the entire history and context of the case[.]" *Valentine-Bowers*, 217 Md. App. at 380.

In this case, after granting Appellants multiple extensions of time to comply with discovery requests and orders, at the December 22, 2020 hearing, the trial court made findings that amply supported its decision to impose a severe sanction that effectively ended the case against Mr. Braxton and Issaiah House. We explain.

(1) Whether the disclosure violations were technical or substantial

The disregard of discovery deadlines is a substantial violation. *Muffoletto*, 244 Md. App. at 544-45; *see also Valentine-Bowers*, 217 Md. App. at 380 ("Disregard of discovery deadlines constitutes a 'substantial violation' because the plaintiff, as the party initiating suit, has an affirmative duty to move her case toward trial[.]"). Here, the court found that Appellants had not complied with numerous discovery deadlines imposed by the scheduling order and later by the court in its order compelling discovery, which plainly were substantial violations.

(2) The timing of the ultimate disclosure

When the court held the hearing on the motion for sanctions, it confirmed with counsel for Appellants and for Mr. Braxton and Issaiah House that there still were numerous outstanding discovery requests for which no response had been provided, including requests that were highly relevant to Appellants' claim for damages, such as the requests for tax returns and other financial records reflecting billing of clients. Appellants did not correct those deficiencies until February 23, 2021, well after the hearing on the motion for sanctions and just three months before trial. As in *Valentine-Bowers*, the incomplete and "woefully inadequate" responses to discovery were a basis upon which "the circuit court could readily have decided that the case needed to end." 217 Md. App. at 383-84.

(3) The reason, if any, for the violation

The only reason offered by Appellants for their discovery failures was the COVID-19 pandemic. The circuit court found, however, that discovery was due *before* the pandemic started and that the motion to compel likewise was filed three months before the pandemic related closures. The lawsuit itself was filed in October 2018, more than a year before the start of the pandemic. Finally, Mr. Braxton and Issaiah House responded timely to all discovery served on them under the same conditions. The court reasonably found that the impact of COVID-19 did not justify the repeated failures to respond to discovery.

(4) The degree of prejudice to the parties respectively offering and opposing the evidence

As we have explained, "there is prejudice inherent in delaying a trial, because the memories and even the location of witnesses can become problematic when . . . the years go by." *Warehime*, 124 Md. App. at 49. The court found that a lawsuit seeking six million dollars in damages is a "substantial lawsuit" and to have that "hanging over" a defendant's head while plaintiffs fail to provide discovery for over a year was highly prejudicial. The court emphasized that the five months to prepare for a trial of that magnitude was "not that long," especially given that the COVID-19 emergency closures meant that once trials started up, cases would move very quickly. Significantly here, the failure to provide basic financial information until three months before trial prevented Mr. Braxton and Issaiah House from obtaining crucial information necessary to assess the strength or weakness of the claims and their potential defenses to the causes of action.

(5) Whether any resulting prejudice might be cured by a postponement

Because of the COVID-19 emergency court closures, trial had been postponed several times prior to the sanctions hearing, allowing Appellants ample time to comply with discovery. Appellants did not request more time to comply at the hearing on the motion for sanctions and did not suggest a postponement of the trial. Consequently, the court did not address this factor.

Consistent with our case law, "after examining the entire course of discovery and counsel's chronic inaction throughout," the circuit court imposed a severe discovery sanction that effectively ended the plaintiffs' case against two defendants. *Valentine-*

Bowers, 217 Md. App. at 379. The court's ruling in that regard was not "well removed from any center mark" this Court could imagine, but rather was fully justified by the utter disregard for discovery deadlines displayed by Appellants throughout this litigation. *Best v. Fraser*, 252 Md. App. 427, 434 (2021) (citations and quotations omitted).

II.

Jury Verdict on Damages

Appellants make two arguments relative to the jury's verdict on damages. First, they contend that Ms. Dukes's testimony was "more than sufficient to prove damages." Second, they argue that the trial court erred by denying their motion, made after the close of all the evidence, to move the two papers upon which Ms. Dukes wrote her calculations into evidence. Both arguments are without merit.

As factfinders, the jurors "'may believe or disbelieve, credit or disregard, any evidence introduced, and a reviewing court may not decide on appeal how much weight must be given to each item of evidence.'" *Qun Lin v. Cruz*, 247 Md. App. 606, 629 (2020). (cleaned up). "[A]lthough a trial court may set aside a verdict on the ground that it is against the weight of the evidence, we do not know of any case that has been reversed for an inadequate verdict." *Abrishamian v. Barbely*, 188 Md. App. 334, 347 (2009). Here, Appellants did not move for a new trial and, consequently, the circuit court had no occasion to exercise its discretion on the appropriateness of the verdict on damages.[9] It is not the

[9] Based upon the trial judge's comments during argument on the motion for judgment, it is abundantly clear that the court would not have been inclined to grant a motion for a new trial had one been made.

role of an appellate court to answer that question because it "requires assessment of credibility and assignment of weight to evidence." *Buck v. Cam's Broadloom Rugs, Inc*., 328 Md. 51, 60 (1992).

Second, the trial court did not abuse its broad discretion by denying Appellants' belated motion to admit into evidence the papers upon which Ms. Dukes wrote calculations during her testimony. The decision to admit or exclude evidence is committed to the sound discretion of the trial court. *Gasper v. Ruffin Hotel Corp. of Md., Inc*., 183 Md. App. 211, 224 (2008), *aff'd*, 418 Md. 594 (2011). The trial court did not abuse that discretion by concluding that the motion to admit the papers was untimely and, even if timely made, that the papers were a demonstrative aid for the jury and were not admissible in evidence. In any event, because the court permitted Appellants' counsel to use the papers during closing argument, they were able to refresh the jury's recollection as to the figures they relied upon for their damages calculations and, consequently, the verdict could not have been impacted by the decision to exclude the exhibit.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.