

Circuit Court for Baltimore County
Case No. 03-C-18-006459

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1881

September Term, 2019

JOSEPH A. SNIADACH

v.

NATIONWIDE MUTUAL INSURANCE
COMPANY, ET AL.

Graeff,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned)

JJ.

Opinion by Kenney, J.

Filed: July 26, 2021

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

This appeal arises from the dismissal of a motor tort and breach of insurance contract action as a sanction pursuant to Md. Rule 2-433. In the Circuit Court for Baltimore County, Joseph Sniadach, D.O., appellant, sued Paula Townsend, appellee, for negligence related to a motor vehicle accident, and his auto insurer, Nationwide Mutual Insurance Company (“Nationwide”), appellee, for breach of contract. Nationwide and Townsend moved to dismiss the complaint as a sanction for alleged discovery violations. The circuit court held a hearing, continued the motion to dismiss to a later date, and orally ordered Dr. Sniadach to meet certain discovery obligations in advance of an extended discovery deadline. The court also admonished Dr. Sniadach not to contact appellees’ expert witnesses or attorneys directly. Less than two months later, Nationwide filed a supplemental motion to dismiss, alleging that Dr. Sniadach had failed to comply with the court’s directives. The court held a hearing and dismissed the complaint with prejudice.

On appeal, Dr. Sniadach presents four questions,¹ which we have condensed and rephrased as one: Did the trial court err or abuse its discretion by granting the motion to dismiss?

¹ Dr. Sniadach asks:

1. Do Maryland Rules 2-432 and 2-433 require discovery orders to be written to be enforceable?

FACTS AND PROCEEDINGS

On February 6, 2016, Dr. Sniadach and Ms. Townsend were involved in a serious car accident that resulted in Dr. Sniadach’s car flipping over, pinning him inside. Among other injuries, he lost consciousness and suffered a concussion. Prior to the accident, Dr. Sniadach practiced as an anesthesiologist at Good Samaritan Hospital for 15 years. He has not returned to work since.

On June 29, 2018, Dr. Sniadach filed suit against Ms. Townsend for negligence and against Nationwide for breach of its insurance contract with him, specifically a \$500,000 underinsured motorist coverage and a \$3,000,000 umbrella policy.

On December 10, 2018, Nationwide served upon Dr. Sniadach a notice that it had scheduled him for two independent medical examinations: an approximately 7-hour neuropsychological exam with Jack Spector, Ph.D., on January 10, 2019 (“NP IME”), and a basic individual medical examination (“IME”) with Robert Salzman, M.D. the

(...continued)

2. Do Maryland Rules 2-432 and 2-433 allow a circuit court to impose a sanction of dismissal of the case for failure to comply with an order that is not related to discovery obligations but rather prohibited conduct?

3. Did the circuit court abuse its discretion by dismissal of the case for the violation of an unwritten order that purportedly prohibited contact with a former expert witness that no longer was designated as an expert in the case?

4. Did the circuit court abuse its discretion by dismissal of the case for an alleged violation of a putative order when there was no actual discovery violation; no willful, contemptuous or egregious conduct, no obstruction, no delay and no prejudice suffered by Appellees?

following afternoon. No objection was raised by Dr. Sniadach through his counsel. On January 10, 2019, Dr. Sniadach appeared for his NP IME, but stayed for only 1 hour and 45 minutes, and unilaterally cancelled the IME scheduled for the next day. According to Dr. Sniadach's attorney, Dr. Sniadach developed a severe headache and a bout of irritable bowel syndrome during the pre-interview with Dr. Spector's technician and had to leave. Dr. Sniadach called Dr. Spector and left him a voicemail explaining this and received a return voicemail from Dr. Spector suggesting that they arrange a time to speak to arrange a rescheduled examination.

Nationwide rescheduled the NP IME for January 22, 2019, and the IME for January 30, 2019. Dr. Sniadach did not appear for his NP IME on January 22, 2019, apparently because he and his attorney were unaware of the appointment. His attorney asked to reschedule the January 30, 2019 IME because counsel was not available that day. Nationwide's attorney advised Dr. Sniadach's attorney that the IME would last just 15 minutes. Dr. Sniadach's attorney did not respond to that correspondence and Dr. Sniadach did not appear for the January 30, 2019 IME.

On February 4, 2019, Nationwide filed a motion to compel the examinations and for sanctions, alleging the above-stated facts. By then, Nationwide had rescheduled the NP IME for February 25, 2019, and the IME for March 8, 2019. It requested that the court order Dr. Sniadach to appear for the examinations and to reimburse Nationwide for fees occasioned by his early departure from and cancellation of previously scheduled IMEs.

Dr. Sniadach opposed the motion, alleging that because of injuries sustained in the accident, including a concussion and injuries to his cervical and lumbar spine, he now suffers from post-concussion syndrome, major depressive disorder, chronic pain disorder, acute renal failure, migraines, anxiety, decreased concentration, irritability, and cardiac pain. He attached a Social Security Administration decision finding him disabled as of the date of the motor vehicle accident and detailing his impairments. He argued that Nationwide's motion should be denied and that the parties should negotiate a mutually agreeable date for the IMEs.

By order entered March 14, 2019, Nationwide was directed to propose two new dates for each examination within a set timeframe and Dr. Sniadach was directed to select one of the dates for each. Dr. Sniadach selected April 10, 2019 for his IME and April 15, 2019 for his NP IME. The court entered an order on April 2, 2019, directing him to appear on those dates.

Dr. Sniadach appeared for his IME on April 10, 2019, but did not appear for his NP IME on April 15, 2019.

On April 23, 2019, Nationwide moved to dismiss the complaint based on this missed examination and further alleged that Dr. Sniadach had been “stone-walling all attempts to take his deposition in this matter.” Most recently, he had not shown up for his scheduled deposition on March 19, 2019, and had failed to complete his rescheduled deposition on March 25, 2019 and again on April 8, 2019. On the latter two occasions, Dr. Sniadach appeared for the deposition, but left early and/or was uncooperative.

Nationwide attached to its motion the transcript of the April 8, 2019 incomplete deposition in which Dr. Sniadach held forth for over 50 pages about his views about the deposition and the legal system while no question was pending. He also did not produce any of the documents requested by Nationwide. He ended the deposition prematurely around 4 p.m., stating that he was unable to concentrate or understand the questions due to post-concussion syndrome. He took issue with the subject matter of the questions, which he deemed irrelevant to his case.

Ms. Townsend joined Nationwide's motion to dismiss.

Nationwide supplemented its motion to dismiss on May 2, 2019, alleging that Dr. Sniadach's medical expert did not appear for his May 1, 2019 deposition, nor did Dr. Sniadach's attorney.² Nationwide supplemented its motion to dismiss for a second time on May 28, 2019, alleging that Dr. Sniadach and his attorney had failed to appear for settlement conference on May 23, 2019.

On June 27, 2019, the circuit court held a hearing on Nationwide's and Townsend's motion to dismiss, as supplemented. At the hearing, Nationwide's attorney argued, based upon the above stated facts, that Dr. Sniadach was obstructing discovery. Dr. Sniadach's attorney responded that his client was unable to sit through an entire day

² Dr. Sniadach opposed the motion to dismiss and the supplemental motion to dismiss, but his responses were deficient under Md. Rule 20-203 because they failed to comply with Md. Rule 20-201(e), which pertains to the electronic filing of multiple submissions filed together, and were not corrected. In his deficient responses, Dr. Sniadach stated for the first time that he had spoken directly to Dr. Spector on two occasions.

of neuropsychological testing and had reached out to Dr. Spector in advance of the April 15, 2019 appointment:

Being a doctor, he is fully and completely aware of this neurological testing. He knows it is a full day procedure. He contacted the doctor, Dr. Spector, and explained to Dr. Spector what his problems were. Dr. Spector tells him, Mr. Sniadach, I'm fully aware of and have had clients and patients who have those sort of difficulties and what I do is I break it down into two days and we can do that for you. And Mr. Sniadach said that would be fine. Dr. Spector says I will contact Nationwide and clear that with them and I will get back to you. Never got back to him.

The court interjected:

Normally an expert doesn't discuss scheduling matters with a litigant. I'm getting the sense that your client's profession may somewhat impair his ability to fully appreciate the consequence of some of his behaviors in the legal setting because this is not a medical procedure we are going through here. This is not an operation. This is preparation for trial in a courtroom where lawyers – it is a world – as you know, we try a lot of medical malpractice cases in this building. And it is like another planet to a physician. Completely different world.

After some further discussion, counsel for Nationwide agreed that it would be a reasonable accommodation to allow Dr. Sniadach to take the NP IME over two days.

The trial judge determined to extend the discovery deadline, which expired on the day of Dr. Sniadach's incomplete deposition; to order Dr. Sniadach to submit to the NP IME and complete his deposition within a set period; and to "continue" the motion to dismiss, explaining: "if there continues to be obstructive type of behavior or lack of cooperation on the part of [Dr. Sniadach] after that, then it would seem to me that we probably have exhausted all of our other remedies and I may be in a position where I would have to grant the motion to dismiss."

Nationwide’s counsel emphasized that it was “very inappropriate and unorthodox” for Dr. Sniadach to contact its expert witness directly and noted that he also had contacted counsel’s office directly. The court agreed, stating, “He should not be contacting *anyone directly*.” (Emphasis added.) It further admonished Dr. Sniadach:

So you understand you can’t do that again. This is the legal system. You can’t contact counsel for the Defendant directly. You do all of that through your attorney. And it also protects you, because anything you say to her potentially is admissible in court and could be used against you.

Dr. Sniadach replied, “Yes, Your Honor.”

The court determined to extend the discovery deadline to September 27, 2019, and directed Nationwide to determine if Dr. Spector had availability over two days to examine Dr. Sniadach within the following three months, noting that it wanted to “bend over backwards to give [Dr. Sniadach] every opportunity to comply because the sanction for not complying [was] going to be fatal to this case. Fatal.” Nationwide’s attorney responded that she would try to schedule the NP IME with Dr. Spector over two days, but that if he was unavailable, she would “have to get another expert.” In addition, Dr. Sniadach was directed to make his medical expert available for deposition. The court directed Nationwide’s counsel “to draft the order[,]” and set the continued motion to dismiss in for a hearing in October 31, 2019.

On July 8, 2019, Nationwide filed a second proposed order³ that extended discovery to October 20, 2019, and that directed Dr. Sniadach’s attendance at his two-day NP IME on October 19–20, 2019 with David Schretlen, Ph.D., completion of his deposition, and production of his expert for a deposition. The proposed order was not entered by the court.

On August 13, 2019, Nationwide filed a third supplement to its motion to dismiss. It asserted that Dr. Sniadach had contacted Dr. Spector directly by telephone on August 5, 2019, and questioned him about “his upcoming [NP] IME” and about Nationwide’s “choice of experts.” Dr. Sniadach also had directly contacted Nationwide. Given Dr. Sniadach’s “highly inappropriate . . . attempt to obstruct the discovery process[,]” Nationwide asked the court to dismiss the action with prejudice.

Dr. Sniadach opposed Nationwide’s motion, arguing that the order “issued” by the court following the June 27, 2019 hearing⁴ did not direct him to refrain from contacting Dr. Spector (or any other expert witness). Further, he asserted that less than two weeks after that hearing, Nationwide scheduled his NP IME with Dr. Schretlen and filed an amended expert designation substituting Dr. Schretlen in place of Dr. Spector. For that

³ The first proposed order, filed on July 1, 2019, provided that discovery would be extended through September 27, 2019 and that Dr. Sniadach would attend a two-day NP IME with Dr. Spector before that date. It otherwise was identical to the amended proposed order and stated, “CC: All counsel” at the bottom. This order also was not entered by the court.

⁴ As noted, that order was not entered by the court.

reason, Dr. Sniadach contends that he did not view Dr. Spector as being an expert in the case at the time of his recent contact with him.

Meanwhile, on August 19, 2019, Dr. Sniadach's second attorney moved to withdraw from the case. His request was granted on September 12, 2019, and Dr. Sniadach was notified to employ new counsel.

On October 15, 2019, the court held a hearing on the continued motion to dismiss. Nationwide's attorney represented to the court that "days after" the June 27, 2019 hearing, Dr. Sniadach called Dr. Spector "numerous times trying to have conversations" and harassed him "to the point where we can no longer call Dr. Spector as an expert in this case[.]" Dr. Sniadach also contacted Nationwide directly in a "long correspondence." Dr. Sniadach had attended his continued deposition on September 16, 2019, but it remained open because he had not provided medical records he said he would produce.

Ms. Townsend's counsel adopted Nationwide's arguments.

Mr. Sniadach represented himself at the hearing.⁵ When he attempted to discuss events that preceded the June 27, 2019 hearing, the court emphasized to him repeatedly

⁵ Mr. Sniadach appeared with an attorney who had not entered her appearance and was seeking under Md. Rule 2-131(b) to represent him on the "limited basis" to argue for a 30-day stay to permit Dr. Sniadach to hire new counsel. That Rule permits an attorney to "enter an appearance limited to participation in a discrete matter or judicial proceeding" if he or she enters a notice of appearance coupled by a signed acknowledgment of the scope of the limited representation. After hearing extensive argument, the court denied the attorney's request to appear on Mr. Sniadach's behalf at the hearing.

that it did not want to revisit the facts established at the prior hearing and to address only his conduct from “June 27th until today.” He explained that he was scheduled for his NP IME the following week. With respect to his contact with Dr. Spector, Dr. Sniadach admitted contacting Dr. Spector but denied having harassed him. The trial judge emphasized that she ordered him to have no contact with Dr. Spector. Dr. Sniadach responded that he did not understand that there was an order prohibiting contact with the expert. As he understood it, the court was looking out for his interests because if he spoke to a defense expert or to Nationwide directly, what he said could be used against him. He added that he did not contact Dr. Spector until after he learned that the NP IME would be conducted by a different neuropsychologist, and he believed that he was then free to speak to Dr. Spector. He also asserted that his attorney authorized him to contact Dr. Spector. Later, he stated that he had called Dr. Spector because he wanted to schedule the NP IME “sooner.”

Nationwide’s attorney responded that Dr. Spector was its “initial expert” but “because Dr. Sniadach contacted him repeatedly, [Dr. Spector] didn’t feel comfortable . . . going through with the [NP IME.]” She represented that Dr. Sniadach called Dr. Spector three times after the June 27, 2019 hearing and that the conversations were “very inappropriate” and made Dr. Spector “very uncomfortable.”

The court ruled as follows:

The Maryland Rule 2-433 does permit the Court to impose a sanction of dismissal for failure to comply with discovery obligations under the rules.

This is an extremely serious sanction. And, therefore, it’s not taken lightly. When the case was assigned to me, and I scheduled a hearing on the

original motion to dismiss, it became very clear that there had been a long history of what appeared to be not just a failure, but a discovery – but a refusal to comply, which concerned me.

However, because of the gravity of the sanction, I wanted to give the Plaintiff another opportunity to comply. I had continued the motion until October 31st thinking that – and extended the discovery deadline until September 27th, which is past, thinking that once it was explained in open court by a judge to the Plaintiff, that the Plaintiff might understand the gravity of his obligations and the consequences that could result from a failure to comply with discovery.

I then received another motion from the defense that greatly concerned me. So we moved the date of the hearing up until today because not only were there allegations that the Plaintiff was not in compliance, it concerned the Court that there was efforts, additional efforts to contact the defense expert and to, in other ways, obstruct the whole process.

This is not a – these violations, none of them have been technical violations. In many cases, sanctions are imposed for a failure to comply with discovery. Often, they involve not timely filing the appropriate answers to discovery[] requests or providing records and that sort of thing.

And even those are considered not technical. *This goes beyond a failure to comply. It's an absolute refusal to comply coupled with what is clear to the Court are attempts to obstruct the discovery process.*

There was no question in my mind that it was made extremely clear to the Plaintiff on June 27th that he was not to contact the defense expert at all. And, yet, I hear now from the Defendant that he didn't think that was an Order. It couldn't have been clearer.

And that, again, because he's a physician he should be able to contact another physician, which was something that was offered on his behalf back in June. And it was explained to him that you are not in your – in a medical environment now. This is a legal environment. And you can't do that when the other physician is a designated expert from the defense.

And it was all explained why. And so I am convinced that was a very willful violation from my Order on his [sic]. The reason that the [IME] has not been conducted is because of the communication between the Plaintiff and the defense's designated expert in that the Plaintiff continued to call the expert more than once and engaged in, over the course of time what I believe to have been harassment of the defense expert.

He did, however, appear for the deposition. But that, in itself, is not sufficient. These are very, very serious violations of the Court's Order that it really amounts to obstruction on the part of this Plaintiff.

The prejudice to the defense has been enormous. Not only to their ability to raise – put forth a defense, which has been made impossible, but

also the expenditure of time, effort, and money in setting things up only to have them canceled at the last minute or to have experts interfered with in this way.

And while there may be psychological issues right now that are driving the Plaintiff's behavior, he has had not one, but three different attorneys. And every one of those lawyers is very capable of dealing with those issues if, in fact, his condition significantly impaired his ability to cooperate with discovery.

So I am persuaded in this case that [the] rare sanction of dismissal is appropriate. And, accordingly, this matter is dismissed with prejudice.

(Emphasis added.)

The circuit court entered an order dismissing the case, and Dr. Sniadach noted this timely appeal.⁶

DISCUSSION

A. Contentions of the Parties

Dr. Sniadach contends that the trial court abused its discretion by dismissing his complaint for several interrelated reasons. First, he emphasizes that the trial court did not enter a written order following the June 27, 2019 hearing and that the oral direction given to him during that hearing was not clear and unambiguous. He argues that this is especially so given that Nationwide subsequently amended its expert designations to

⁶ On June 10, 2021, this Court remanded this case to the circuit court without affirmance or reversal for the limited purpose of the entry of a written judgment memorializing the dismissal of Dr. Sniadach's complaint. On June 25, 2021, the circuit court issued a judgment dismissing the complaint with prejudice, which was entered on the docket on June 28, 2021. Pursuant to Md. Rule 8-602(f), Dr. Sniadach's notice of appeal, which was filed after the circuit court ruled from the bench but before it issued a written judgment, shall be treated as having been filed on the same day, but after, the entry of the judgment on the docket.

substitute Dr. Schretlen in place of Dr. Spector. Second, even if Dr. Sniadach violated the court's directive by contacting Dr. Spector, he maintains that this contact was not a failure of discovery or a failure to obey an order compelling discovery and, consequently, was not sanctionable under Rule 2-433. Third, Dr. Sniadach contends, applying the principles set out by this Court in *Rubin v. Gray*, 35 Md. App. 399, 400–01 (1977), that his conduct was not so egregious as to justify the extreme sanction of dismissal.

Nationwide responds that the trial court's oral directives at the June 27, 2019 hearing were clear and that there is no Maryland authority for the proposition that an oral discovery order is unenforceable. It maintains that Dr. Sniadach's "continuous failures of discovery" plainly were sanctionable under Rule 2-433 and that his most recent contact with Dr. Spector was but one example of the numerous failures cited by the court in ruling on the motion to dismiss. It asserts that Dr. Sniadach's repeated, obstructive conduct satisfies all the factors set out in *Rubin* and warranted imposition of the ultimate sanction.

Ms. Townsend adopts Nationwide's arguments. She further contends that Dr. Sniadach's case was dismissed not because of one isolated contact with Dr. Spector on August 5, 2019, but for repeated, substantial discovery failures. The absence of a written order following the June 27, 2019 hearing is not significant, in Ms. Townsend's view, because the court continued the hearing on the motion to dismiss and gave Dr. Sniadach specific instructions on the steps he needed to take to avoid dismissal of his case as a discovery sanction. She further asserts that the absence of a written order was not

preserved for our review because Dr. Sniadach never argued at the October 15, 2019 hearing that it was dispositive or that it prevented him from complying with the court’s directives.

B. Standard of Review

Rule 2-433 vests in the trial court broad discretion to impose sanctions for a “failure of discovery” or a failure “to obey an order compelling discovery.” Md. Rule 2-433(a) & (c); *see also Rodriguez v. Clarke*, 400 Md. 39, 56 (2007) (“Trial judges are vested with great discretion in applying sanctions for discovery failures.”). 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). Dismissal as a

sanction is reserved for “cases of egregious misconduct such as ‘wil[l]ful or contemptuous’ behavior, ‘a deliberate attempt to hinder or prevent effective presentation of defenses or counterclaims,’ or ‘stalling in revealing one’s own weak claim or defense.’” *Manzano v. S. Md. Hosp.*, 347 Md. 17, 29–30 (1997) (quoting *Rubin*, 35 Md. App. at 400–01).

C. Analysis

We begin with the absence of an entered order encompassing the court’s directive at the June 27, 2019 hearing. Unquestionably, such an order would have been preferable and was apparently intended. But Dr. Sniadach did not raise this issue in his opposition to Nationwide’s third supplement to its motion to dismiss⁷ or at the hearing on that motion.⁸ Ordinarily, we will not address non-jurisdictional issues that were not “raised in or decided by the trial court.” Md. Rule 8-131(a). A central purpose of that Rule is to require a party to make known to the trial court his or her position, “so that the trial court can pass upon, and possibly correct any errors in the proceedings[.]” *Robinson v. State*, 404 Md. 208, 216, (2008) (quoting *Fitzgerald v. State*, 384 Md. 484, 505 (2004)). Dr. Sniadach did not give the trial court an opportunity to do so in this case. For this reason, this argument is not preserved for our review. But had it been, Dr. Sniadach would fare no better.

⁷ Dr. Sniadach was represented by counsel at that juncture.

⁸ It appears that, at this point in the proceedings, he understood the second proposed order, to which he had not objected, to be the “issued” order.

The trial court did not rule upon the motion to dismiss at the June 27, 2019 hearing, but instead continued the hearing on that motion to a later date, and, in doing so, the court directed Dr. Sniadach to meet his outstanding discovery obligations in the interim in an effort to avoid dismissal. Dr. Sniadach and his attorney, who later withdrew, were clearly on notice of those obligations. Further, the court's directions to Dr. Sniadach that he refrain from contacting defense experts or any represented parties directly were not, as he suggests in his brief, analogous to an injunction and subject to the requirements of Rule 15-502(e). Nor was this a contempt action for failure to comply with an order compelling discovery under Rule 2-433(c). Rather, the court reinforced the basic ground rules of litigation that are ordinarily enforced by lawyers in the representation of their clients. It appears in this case, however, that Dr. Sniadach's lawyers could not control his conduct.

We now turn to Dr. Sniadach's related arguments that the circuit court did not clearly and unambiguously prohibit him from contacting a defense expert witness and, even if it did, that the August 5, 2019 contact occurred at a time when Dr. Spector was no longer Nationwide's designated expert in the case. The record, in our view, belies the former argument. The trial judge made abundantly clear to Dr. Sniadach at the June 27, 2019 hearing that he was prohibited from contacting "directly" any party or expert witness on the defense side. Dr. Sniadach affirmed on the record that he understood the court's instruction to him. If Dr. Sniadach was uncertain about whether he could or could

not contact Dr. Spector, he could have consulted his attorney, who still represented him on August 5, 2019.⁹

Additionally, it was not for Dr. Sniadach to determine if Nationwide had, by substituting a new neuropsychologist for his examination, ended its engagement with Dr. Spector. As Nationwide points out, Dr. Spector had been supplied with information about Dr. Sniadach's claims and his office had completed a partial NP IME on January 10, 2019. Dr. Sniadach's representation at the October 15, 2019 hearing that he contacted Dr. Spector because he hoped to schedule the NP IME "sooner" undermines his position that he did not believe that Dr. Spector remained involved in the case. In short, Dr. Sniadach was not free to contact Dr. Spector simply because of the amended expert designation.

In any event, contrary to Dr. Sniadach's central argument on appeal that his August 5, 2019 contact with Dr. Spector was the reason the trial court dismissed his case, the record reflects it was but one factor in that decision. To be sure, the court focused upon his post-June 27, 2019 conduct at the October 15, 2019 hearing, but his prior conduct had been thoroughly fleshed out at the earlier hearing and the trial court already had found "obstructive . . . behavior" and "lack of cooperation" on the part of Dr. Sniadach. By continuing the hearing on the motion to a later date, the court was not excusing Dr. Sniadach's discovery failures up until that point or in any way finding his

⁹ Dr. Sniadach argued at the October 15, 2019 hearing that his attorney authorized him to directly contact Dr. Spector. The trial court was free to reject that assertion as not credible. We note that Dr. Sniadach's attorney moved to withdraw from the case within weeks of the August 5, 2019 phone call to Dr. Spector.

past conduct to be inconsequential or insufficient to warrant dismissal of his case. To the contrary, the court, in its words, was “bend[ing] over backwards” to give Dr. Sniadach “every opportunity to comply.”

Despite this, Dr. Sniadach admitted at the October 15, 2019 hearing that he contacted Dr. Spector directly on August 5, 2019. He did not dispute the assertion by Nationwide’s attorney that he questioned Dr. Spector about matters related to his case. Nor did he dispute sending a lengthy “correspondence” to Nationwide, in contradiction of the trial court’s explicit direction that he not contact any party to the action directly.

Nationwide represented to the court that Dr. Sniadach’s repeated contact with Dr. Spector caused it to substitute Dr. Schretlen in his place for the examination, which remained scheduled on a future date. Dr. Sniadach maintains that this is not possible given that his August 5, 2019 phone call to Dr. Spector post-dated the amended expert designation. Nationwide argued, and the trial court found, however, that the repeated contacts *before* the substitution of Dr. Schretlen had necessitated that substitution. That finding was not clearly erroneous.

After determining that Dr. Sniadach had directly contacted a defense expert and a represented party since the June 27, 2019 hearing, the trial court ruled that dismissal was warranted as a sanction based upon *all* his obstructive conduct throughout discovery, which included: 1) not completing his NP IME with Dr. Spector on January 10, 2019; 2) the unilateral cancellation of his IME one day in advance on January 10, 2019; 3) not appearing for his rescheduled NP IME on January 22, 2019; 4) not appearing for his

rescheduled IME on January 30, 2019; 5) not appearing for his deposition on March 19, 2019; 6) not completing his deposition on March 25, 2019 and April 8, 2019; 7) not appearing for his NP IME on April 15, 2019, in violation of a court order compelling him to appear; and 8) Dr. Mellis not appearing for his deposition on May 1, 2019. These acts and omissions plainly were failures of discovery under Rule 2-433(a). Consequently, the court was empowered to impose any of a menu of potential sanctions, up to and including dismissal. *See* Md. Rule 2-433(a)(3).

In assessing the gravity of Dr. Sniadach's discovery violations, the trial court considered, as pertinent, what are commonly known as the *Taliaferro* factors:

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.

Taliaferro v. State, 295 Md. 376, 390–91 (1983). It reasoned that all the violations set out above were substantial rather than technical. It found that Nationwide and Ms. Townsend had been severely prejudiced by the failures of discovery because they had repeatedly prepared for and scheduled depositions and medical examinations that Dr. Sniadach (and, in one case, his designated medical expert) failed to attend or attended but failed to complete. In each instance, Nationwide and/or Ms. Townsend expended time and money. Hence, more than ten months after his NP IME originally was scheduled, Dr. Sniadach still had not been examined, preventing appellees from obtaining crucial information

necessary to assess the strength or weakness of his claims and their potential defenses to the causes of action.

In determining that the ultimate sanction was warranted, the court found that Dr. Sniadach's conduct went beyond "a failure to comply" and rose to the level of "an absolute refusal to comply coupled with what is clear to the Court are attempts to obstruct the discovery process." This finding was amply supported by evidence in the record and was not clearly erroneous. Consistent with our case law, which holds that dismissal as a discovery sanction "may be imposed for a deliberate attempt to hinder or prevent effective presentation of defenses or counterclaims, or for stalling in revealing one's own weak claim or defense[,]” the trial court did not abuse its broad discretion here by dismissing Dr. Sniadach's complaint based upon obstructionist conduct spanning more than ten months that prejudiced the defendants. *Rubin*, 35 Md. App. 399, 400 (1977).

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**