UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 602

September Term, 2016

MICHELLE BOURDELAIS

v.

JOHN DURNIAK

Nazarian,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: February 3, 2017

This is an appeal from a June 10, 2016 order by the Circuit Court for St. Mary's County (as we will explain, earlier orders are not before us) in a several years-long custody dispute between Michelle Bourdelais ("Mother") and her former husband, John Durniak ("Father"). The June 10 order followed a hearing after which the court (1) held Mother in contempt for violating an earlier order, (2) modified the operative custody order, (3) denied Mother's motion to recuse the judge, and (4) awarded attorney's fees to Father. We vacate the custody modification, but affirm the remaining decisions.

I. BACKGROUND

Mother and Father were divorced in Virginia, but they and their litigation later moved to Maryland, and they have battled ferociously over the custody of their two children, S and K, ever since. The longer-term history has been recounted in earlier appeals to this Court, *see, e.g.*, *Bourdelais v. Durniak*, No. 1154, Sept. Term 2015 (Md. App. Apr. 8, 2016); *Bourdelais v. Durniak*, No. 2389, Sept. Term 2013 (Md. App. Dec. 4, 2014), and we need not recount it again here. Because of the volume and intensity of the litigation, the case was specially assigned to a judge from a neighboring county who sits by designation in St. Mary's County.

In *Bourdelais*, No. 2389, slip op. at 1, we vacated the parties' original Maryland custody order and remanded for further proceedings. In response, the circuit court conducted an evidentiary hearing in May and June 2015 and, on June 24, 2015, entered a new custody order that awarded sole legal and physical custody to Father and created a visitation schedule for Mother. In an understatement, Mother states in her brief that "[t]he June Order did not fully resolve the parties' disputes," and new litigation ensued, both in

the circuit court (and in the Circuit Court for Anne Arundel County).[1] These included a petition by Father to find Mother in contempt, motions by Mother to amend the custody order, and others. The court resolved a group of motions on July 23, 2015, but further proceedings ensued, including a show cause order, dated November 17, 2015, directed to Mother in response to allegations that she had had third parties contact the children's therapists in violation of prior orders.

A. The January 28, 2016 Hearing And Related Orders And Motions

On January 28, 2016, the Circuit Court for St. Mary's County held a hearing to address, among several other issues, a Petition to Modify Visitation and the November show cause order. At the end of the hearing, the judge modified the custody order from the bench "to provide for supervised access by [Mother]." On the following day, the court issued a written order (and distributed it to the parties that afternoon) that reiterated the custody modification it made from the bench that required supervision during each of Mother's visits with the children. The court filed the written order on February 4.

Mother responded on February 5, 2016 with a Motion for Reconsideration (or in the Alternative Motion for a New Trial). The court denied that motion on February 25, 2016. On April 4, 2016, the circuit court received a Motion for En Banc Review, which the court denied on May 16, 2016 as untimely.

B. The May 13, 2016 Hearing And June 10 Order

[1] All references to "the circuit court" or "the court" are to the Circuit Court for St. Mary's County; the Anne Arundel proceedings are not before us.

In the meantime, the circuit court issued a new Show Cause Order on February 26, 2016, directing Mother to show cause why she shouldn't be found in further contempt for making contact with the children without supervision, in violation of the February 4 Order. The court consolidated this show cause proceeding with a variety of other pending motions, including a Motion to Recuse that Mother had filed, and convened a hearing on May 13, 2016.

The hearing began with testimony from Brenda Winecke, a St. Mary's Recreation and Parks employee who supervises a school aftercare program in which K was enrolled. Ms. Winecke testified that Mother came to the aftercare program on February 12, 2016, and had unsupervised contact with her. After Ms. Winecke got off the stand, Joshua Lynch, an assistant principal for St. Mary's County Public Schools, testified that Mother visited S's school on January 29, 2016, and had unsupervised contact with her during lunchtime.

The court ruled from the bench and found that Mother had had unsupervised contact with both children. Based on those findings, the court concluded that Mother had violated the February 4 Order and held her in constructive civil contempt. The court used those same findings as grounds to modify Mother's visitation pursuant to Md. Code (1984, 2006 Repl. Vol.), § 9-105 of the Family Law Article ("FL"), specifically to prohibit overnight visitation. The court also denied the motion to recuse.

Later in the hearing, the court heard testimony from Mother regarding her ability to pay attorney's fees. After determining that Mother had the ability to pay, the judge awarded attorney's fees to Father. The court issued a written order reflecting the May 13

findings on June 10, 2016. The June 10 Order further specified a purge for the contempt finding, that Ms. Bourdelais must "submit[] to psychological evaluation with a professional to be appointed or referred by the Court."

Mother filed a timely Notice of Appeal.

II. DISCUSSION

We have five issues to resolve.[2] We address *first* whether matters decided during the January 28, 2016 hearing or the orders immediately following it have been preserved

[2] Mother phrases the issues as follows in her brief:

> 1. Was the Court clearly erroneous or did he abuse his discretion when holding the Appellant in contempt for actions of third parties and by delegating, to the Appellee, provisions regarding the Appellant's supervised visitation?
>
> 2. Was the Court clearly erroneous or did he abuse his discretion when sanctioning the Appellant by modifying her visitation from unsupervised to being supervised by the Appellee's chosen supervisor?
>
> 3. Was the Court clearly erroneous or did he abuse his discretion when modifying the Appellant's visitation pursuant to Family Law Article of the Maryland Annotated Code, Section 9-105, when the facts presented were merely about issues raised in the Court's sua sponte issuance as to the show cause dated November 23, 2015?
>
> 4. Did the Trial Court Committ Legal Error, on January 28, 2016 and May 13, 2016 by Punishing the Appellant, Mother, in a Constructive Civil Contempt Hearing?
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> 5. Was the Trial Court clearly erroneous when it punished the Appellant, Mother, by effectively cutting off the children from the Appellant, with an illegal modification of the custody order?

for review. From there, Mother contends *second* that the court erred in finding her in contempt, and *third*, contests the decision to modify custody pursuant to FL § 9-105. *Fourth*, Mother asserts that the specially assigned judge should have recused himself from the case. And *finally*, Mother asks that we reverse the attorneys' fee award.

A. Standards of Review

We review the contempt finding against a two-part standard:

> The decision of whether to hold a party in contempt is vested in the trial court. This Court will only reverse such a decision upon a showing that a finding of fact upon which the contempt was imposed was clearly erroneous or that the court abused its discretion in finding particular behavior to be contemptuous. Ordinarily, in a review of contempt proceedings, this Court does not weigh the evidence; rather, we merely assess its sufficiency.

Droney v. Droney, 102 Md. App. 672, 683–84 (1995) (citations omitted). A similar structure applies to custody determinations—we review fact findings for clear error, legal determinations *de novo*, and the final decision for abuse of discretion. *In re Yve S.*, 373

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6. Did the Trial Court abuse its discretion when denying the Appellant's Motion to Recuse Judge after the Appellant had filed judicial complaints against the trial judge, which were being investigate and the Trial Judge was properly subpoenaed to testify on May 13, 2016?

7. Did the Trial Court abuse its discretion by denying the Appellant, mother's, due process rights after she made repeated requests for a hearing on the Appellee's contempt of the custody order by denying the Appellant's visitation with the minor children?

Md. 551, 586 (2003); *Van Schaik v. Van Schaik*, 200 Md. App. 126, 133 (2011) (citing *Karsenty v. Schoukroun*, 406 Md. 469, 502 (2008)). "Where a case involves the application of Maryland statutory and case law," this Court must determine whether the trial court's "conclusions are 'legally correct' under a *de novo* standard of review." *Clancy v. King*, 405 Md. 541, 554 (2008) (quoting *Walter v. Gunter*, 367 Md. 386, 392 (2002)) (italics added).

"We review a trial judge's decision to recuse (or not) for an abuse of discretion." *Bishop v. State*, 218 Md. App. 472, 491 (2014) (citations omitted). "[T]he person seeking recusal bears a 'heavy burden to overcome the presumption of impartiality.'" *Id*. (quoting *Karanikas v. Cartwright*, 209 Md. App. 571, 579 (2013)). And likewise, "[a] court's decision to award attorney's fees generally is reviewed under an abuse of discretion standard." *Henriquez v. Henriquez*, 185 Md. App. 465, 475–76 (2009) (citations omitted), *aff'd*, 413 Md. 287 (2010). "If the court gives proper consideration to the statutory factors and the circumstances of the case, an award of attorney's fees will not be reversed 'unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong.'" *Id*. at 476 (quoting *Collins v. Collins*, 144 Md. App. 395, 447 (2002)).

B. The Decisions Made During Or Immediately After The January 28, 2016 Hearing Are Not Before Us.

First, Mother seeks to challenge decisions made either from the bench at the close of the January 28, 2016 hearing or in the written orders immediately following it. We cannot, though, because they were not preserved.

A party initiates an appeal in this Court by filing a notice of appeal, which "[e]xcept as otherwise provided in this Rule or by law, . . . shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." Md. Rule 8-202(a). The onset of the thirty-day period is delayed by certain post-trial motions until those motions are resolved:

> when a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534.

Md. Rule 8-202(c).

That's what happened here. After the court ruled against her following the January 28 hearing, Mother filed a timely Motion for Reconsideration (or in the Alternative for a New Trial) on February 5, which tolled her appeal period. The court denied her motion for reconsideration on February 25, which started the appeal period anew. Under Rule 8-202(c), then, Mother's notice of appeal was due 30 days from February 25, or March 28 (March 26 fell on a Saturday). She didn't file one until June 2, 2016.

This was not just an oversight. In the time between the February 25 order and the June 2 notice of appeal, Mother actually had hoped to have the circuit court review the January 28 hearing decisions *en banc*. *See* Md. Rule 2-551(b). But her Motion for En Banc Review was rejected by the circuit court on May 12 as untimely—the court determined that it did not receive the motion until April 4, and the deadline was 10 days from the February 25 order, or March 7 (March 6 was a Sunday). *Id.* Mother claims that

the Motion for En Banc Review received by the circuit court on April 4 was a copy of the original that had, in fact, been filed on March 1, and that the original was lost by the court. In support of that argument, Mother attached United States Postal Service tracking information and a receipt to the April 4 copy of the motion for *en banc* review.

We don't know one way or the other what happened, but this is not a problem we can solve. There is no timely notice of appeal to this court from the decisions flowing from the January 28 hearing. Had Mother succeeded in securing *en banc* review of those decisions, she would have no appeal from the *en banc* court's decision—the *en banc* review *would have been* her appeal. So Mother really is asking us to find, as a matter of fact, that the circuit court erred in failing to credit her with a timely *en banc* filing. Even under that scenario, we still wouldn't have the merits of the January 28 hearing's decisions before us. The most she could hope for is a remand for the *en banc* review that never happened. We have doubts about whether there would be any point to an *en banc* review of those decisions in light of the further litigation on the same issues in the time since. But the practical question aside, we cannot find clear error on the part of the circuit court in determining the date of Mother's motion for *en banc* review, and the decisions for which she sought *en banc* review are not preserved for appellate review in this Court.

C. The Circuit Court Did Not Abuse Its Discretion In Finding Mother In Contempt.

Second, Mother alleges that the circuit court's decision to find her in contempt—decisions the court articulated during hearing on May 13, 2016 and by written order on June 10, 2016—was improper. We disagree.

Civil contempt proceedings are remedial in nature. *Arrington v. Dep't of Human Res.*, 402 Md. 79, 93 (2007). "'[R]emedial' in this context means to coerce compliance with court orders . . . or to issue ancillary orders for the purpose of facilitating compliance or encouraging a greater degree of compliance with court orders." *Dodson v. Dodson*, 380 Md. 438, 448 (2004). "In the case of a civil contempt, the order shall specify how the contempt may be purged." Md. Rule 15-207(d)(2). "Courts may be creative in constructive civil contempt cases in fashioning reasonable purges and enforcing non-compliance with them." *Arrington*, 402 Md. at 104. Civil contempt must be proven by a preponderance of the evidence. *State v. Roll*, 267 Md. 714, 728 (1973).

The court found Mother in contempt for violating the February 4 Order. That order had directed Mother not to visit the children outside of the established visitation hours, but the hearing evidence revealed that she did so anyway. The judge found, as a matter of fact, that Mother went to S's school on January 29, 2016 and had lunch with her unsupervised, and that she went to K's aftercare program on February 12, 2016 and had unsupervised contact with her.[3] Mother disagrees with the court's (earlier) decision to require her visitation to be supervised and, as we will address below, challenges the court's authority to modify visitation pursuant to FL § 9-105. But there isn't any serious dispute that her visitation was required to be supervised at the relevant points in time and that the evidence presented at the May 13 hearing demonstrated, by more than a preponderance of

[3] It's true that the January 29 unsupervised visit occurred before February 4, when the order was filed. But it followed the January 28 hearing, during which the court made the same order from the bench, before memorializing it.

the evidence, that she had violated that order. We see no basis on which to disturb the circuit court's factual findings or its decision to hold Mother in contempt.

Nor is the contempt order defective for lack of an appropriate purge provision, as an earlier contempt order had been. The purge contained in the June 10 written order required Mother to "submit[] to psychological evaluation with a professional to be appointed or referred by the Court." This flows fairly and logically from previous orders directing Mother to submit to an evaluation with a professional appointed or referred by the court, an order with which she had not complied. The purge, therefore, "facilitat[es] compliance or encourage[es] a greater degree of compliance with court orders." *Dodson*, 380 Md. at 448.[4]

D. The Circuit Court Erred In Modifying Custody.

Mother contends *third* that the circuit court improperly modified her custody order. She argues that the custody modification made from the bench on May 13 and in the June 10 Order was a sanction for contempt, and that this Court's recent opinion in *Kowalczyk v. Bresler*, __ Md. App. __, No. 2188, Sept. Term 2015 (filed December 2, 2016)—which, to be fair, had not been decided at the time the circuit court made these decisions—confirms as much. We disagree that the custody modifications were a contempt sanction—the circuit court made them in a separate paragraph of the order before the contempt finding—

[4] This finding of contempt had no accompanying sanction, despite the confusion between the parties about the legal authority for other actions taken by the circuit court judge in this case. Though a contempt finding and sanction without a purge is impermissible, Md. Rule 15-207(d)(2), it is fine for a court to make a contempt finding and impose a purge (more as a formality) without imposing a sanction.

but agree that § 9-105 does not authorize a modification of custody under these circumstances.

We review statutory construction questions *de novo*. *Clancy*, 405 Md. at 554. In construing the purpose of a statute, "our goal is to identify and effectuate the legislative intent underlying the statute." *Dep't of Health & Mental Hygiene v. Kelly*, 397 Md. 399, 419 (2007) (citing *Oakland v. Mountain Lake Park*, 392 Md. 301, 316 (2006); *In re Anthony R.*, 362 Md. 51, 57 (2000)). To accomplish this, "we first examine the plain language of the statute, and if the plain language of the statute is unambiguous and consistent with the statute's apparent purpose, we give effect to the statute as it is written." *Oakland*, 392 Md. at 316. However, the "statutory language is not to be read in isolation, but in light of the full context in which it appears." *In re Anthony R.*, 362 Md. at 57–58 (quoting *Stanford v. Md. Police Training & Corr. Comm'n*, 346 Md. 374, 380 (1997) (internal quotations omitted)).

FL § 9-105, titled "Unjustified denial or interference with visitation granted by order," permits a court to take certain steps in response to a party's interference with the other's visitation rights:

> In any custody or visitation proceeding, if the court determines that a party to a custody or visitation order has unjustifiably denied or interfered with visitation granted by a custody or visitation order, the court may, in addition to any other remedy available to the court and in a manner consistent with the best interests of the child, take any or all of the following actions:
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> (1) order that the visitation be rescheduled;

> (2) modify the custody or visitation order to require additional terms or conditions designed to ensure future compliance with the order; or
>
> (3) assess costs or counsel fees against the party who has unjustifiably denied or interfered with visitation rights.

The question here is whether Mother "has unjustifiably denied or interfered with visitation granted by a custody or visitation order." The Code does not define "visitation," but the cases refer to "visitation" or "visitation rights" as time with children granted to a party or parties that do not have primary physical custody or the greater share of the responsibility to care for her. *See, e.g.*, *Hutchins v. Compton*, 917 A.2d 680, 682-83 (D.C. 2007) (discussing various custody and visitation arrangements under Maryland family law); *Taylor v. Taylor*, 306 Md. 290, 296–97 (1986) (simplifying the semantic confusion in family law jurisprudence); *Gillespie v. Gillespie*, 206 Md. App. 146, 174–75 (2012) (granting visitation in the absence of primary physical custody). And the remedies § 9-105 authorizes seem consistent with this reading. Section 9-105(1), rescheduled visitation, makes up for visits lost due to improper denial or interference; (2) authorizes the court to modify custody or visitation if warranted, and (3) allows the court to shift the financial burden of the party's non-compliance.

But although the unjustified denial or interference to which the statute refers would seem to refer to the rights of a parent without primary physical custody—in this case Mother, not Father—the plain language of the statute does not itself preclude the possibility that the parent with visitation rights could be interfering with the custodial parent's right to spend time with the children (or, perhaps, even the visitation rights of another non-

custodial party, such as grandparents). And when "the language is subject to more than one interpretation, it is ambiguous, and we resolve that ambiguity by looking to the statute's legislative history, case law, and statutory purpose." *Barbre v. Pope*, 402 Md. 157, 173 (2007) (citations omitted).

In this instance, the legislative history suggests that § 9-105 is meant to protect the parent with visitation from interference by the parent with primary physical custody. *See* SENATE JUDICIAL PROCEEDINGS COMMITTEE FLOOR REPORT, H.B. 886, 408th Sess. (Md. 1994); SENATE JUDICIAL PROCEEDINGS COMMITTEE BILL ANALYSIS, H.B. 886, 408th Sess. (Md. 1994); FISCAL NOTE, H.B. 886, 408th Sess. (Md. 1994). The background section of the Senate Judicial Proceedings Committee Floor Report provides a key insight: "[t]he sponsor also indicated that testimony before the House Judicial Committee cited legions of examples of custodial parents interfering with visitation rights." FLOOR REPORT, H.B. 886. The author of the bill (the sponsor) testified that the bill was necessary in order to protect noncustodial visitation rights from interference by custodial parents. *See id*. And most of the legislative history documents frame visitation as a "right" of the parent without primary physical custody.[5]

Case law interpreting and applying FL § 9-105 has been scant, but (though consistent with our reading of the legislative history) hasn't presented the precise question

[5] The word "right" was taken out of the final edit of the bill (just before it was presented to the governor for signing), but it appears the deletion was only for purposes of succinctness. H.B. 886, 408th Gen. Assemb., Reg. Sess. (Md. 1994) (as approved by the Governor).

we face here. *See Van Schaik*, 200 Md. App. At 140 (ordering a parent with primary physical custody to pay attorney's fees to a parent without primary physical custody after interfering with the latter's visitation rights pursuant to FL § 9-105(3)); *Lapides v. Trabbic*, 134 Md. App. 51, 59 (2000) (mentioning in dicta that a father without primary physical custody could have pursued remedies under § 9-105 against a mother who interfered with the father's visitation rights). But our recent decision in *Kowalczyk* presents a close analogy. In that case, the circuit court found the mother to be communicating with her child in violation of a custody order. *Kowalczyk*, slip op. at 3. The court found the mother in contempt for violating the custody order, then imposed, as a sanction for contempt, a temporary modification to the custody order (pursuant to FL § 9-105) prohibiting any contact between mother and child "until further order of the Court." *Id*. (quotations omitted). We found several problems with the order:

1) We found that the § 9-105 modification operated, incorrectly, as a punitive contempt sanction. Civil contempt sanctions may not be punitive; they must be "generally remedial in nature, and are intended to coerce future compliance." *Id*., slip op. at 4 (quoting *Marquis v. Marquis*, 175 Md. App. 734, 745–46 (2007)).

2) We found that the circuit court did not set a purge provision. *Id*., slip op. at 5 ("There was no way for appellant to perform some act and thereby avoid the sanction."). "Any order imposing a penalty in a civil contempt action must include a purging provision with which the contemnor has the present ability to comply." *Id*. (citing *Elzey v. Elzey*, 291 Md. 369, 374 (1981)).

3) We noted that § 9-105 is "directed at a party who interferes with another party's right of visitation," and that "[t]hat is not what occurred here." *Id*., slip op. at 8.

4) And we noted that the circuit court made no findings regarding the best interests of the child. *Id*. Slip op. at 8–9. "Section 9-105 itself requires that

> a modification be consistent with the best interests of the child." *Id*., slip op. at 8; *see also* FL § 9-105.

We concluded *Kowalczyk* by saying that "[a]t the minimum, the court had to find that suspending all visitation was not contrary to the best interests of the child." *Id.*, slip op. at 9.

The circuit court's modification to the custody order here does not suffer the first, second, or fourth of the defects we identified in the *Kowalczyk* order. This court did not modify the custody order as a contempt sanction—it modified custody in a separate paragraph, before the contempt finding, that cited FL § 9-105: "ORDERED, the Court finds, pursuant to Family Law 9-105, [Mother] has unjustifiably interfered with the above custody/visitation Order. [Mother]'s existing visitation is modified in the best interests of the children as follows: [Mother] shall have supervised visitation but not to include overnights." The contempt finding made in the May 13 hearing and June 10 Order came with no sanction unto itself, but nevertheless contained an appropriate purge provision. *See Elzey*, 291 Md. at 374. And unlike *Kowalczyk*, the court here did find the custody modification consistent with the best interests of the children.

It's possible, perhaps, that a court could find that a non-custodial parent who interfered with the custodial parent's time with children has interfered with the custodial parent's "visitation" rights; the absence of a specific definition of "visitation" might not preclude such a reading of FL § 9-105. But we don't need to reach that far here. There is no allegation that Mother's behavior ate into Father's time with the children—Mother's defiance of the custody order took the form of her manufacturing unsupervised "visitation"

opportunities at school and child care. As such, we hold that the circuit court erred in modifying the custody rights of Mother, the non-custodial parent, pursuant to FL § 9-105. To affirm this custody modification would require us to find that a statute authorizing courts to remedy interference with visitation reaches a non-custodial parent who uses self-help measures to *expand* her visitation rights, a leap that neither the language nor the legislative history of the statute permits us to make. And therefore, we vacate the portion of the June 10 Order eliminating Mother's overnight visitation. This means that the June 24, 2015 custody order, as modified by the February 4, 2016 Order, is reinstated as the operative custody order unless and until the circuit court decides otherwise.

E. The Court Properly Denied Mother's Motion To Recuse.

Mother argues *fourth* that we should reverse the circuit court's decision not to recuse itself from this case. She points to Rule 15-207(b), the court's *sua sponte* Show Cause Orders, her own subpoena seeking to compel the judge to testify, and the "numerous Judicial Complaints" she has levied against the judge personally. We see no abuse of discretion here.

The first theory falls quickly. A judge is required to disqualify himself under Rule 15-207(b) when he "reasonably expects to be called as a witness at any hearing on the [contempt] matter." Mother contends that such an expectation arose in this case when she served a subpoena on the judge in response to the court's *sua sponte* show cause orders. But a party cannot force the disqualification of a judge simply by serving a subpoena on a judge who has ruled against her—that would invite total chaos. The issue is whether, for

whatever reason, the judge has a reasonable expectation of testifying. And since the record reveals no evidence whatsoever that this judge had any knowledge about this case or the parties outside of what he learned in the course of presiding, he was not compelled by Rule 15-207(b) to disqualify himself.

More broadly, a judge's determination of whether he should recuse himself is governed by the Maryland Code of Judicial Conduct. *See Bishop*, 218 Md. App. At 492–93. The Code "directs judges to take or avoid actions that would undermine the public's confidence in a proceeding," *id.* at 492, and requires judges to "avoid conduct that would create in reasonable minds *a perception of impropriety*." Md. Rule 16-813, Maryland Code of Judicial Conduct, Rule 1.2 (2013) (emphasis added). "It is because judges occupy a distinguished and decisive position that they are required to maintain high standards of conduct." *Jefferson-El v. State*, 330 Md. 99, 106 (1993) (citations omitted).

That said, trial judges could be forced off the bench with relative ease if avoiding the slightest perception of impropriety was the only consideration in a recusal decision. There is an important, competing consideration: a judge's "Responsibility to Decide":

> Although there are times when disqualification is necessary or appropriate to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge *not use disqualification to avoid cases that present difficult, controversial, or unpopular issues*.

Rule 2.7, Comment (emphasis added). In *Boyd v. State*, the Court of Appeals established the test for determining whether "a perception of impropriety" would exist in "reasonable minds" sufficient to justify recusal:

> The test to be applied is an objective one which assumes that a reasonable person *knows and understands all the relevant facts*. . . . [J]udges determine appearance of impropriety—not by considering what a straw poll of the only partly informed man-in-the-street would show—but by examining the record facts and the law, and then deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge. (Emphasis in original).

321 Md. 69, 86 (1990) (emphasis in original) (quoting *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1313 (2d. Cir. 1988)). In *Jefferson-El*, the Court of Appeals reiterated the test in *Boyd* and, quoting *Surratt v. Prince George's Cty.*, 320 Md. 439, 468 (1990), stressed that recusal is mandated only where a member of the public might "*reasonably question*" the judge's impartiality. 330 Md. at 108 (emphasis in original).

This case does not present reasonable, or any, questions about the court's impartiality. The judge has been involved in this case only inside the courtroom—in no way has he behaved with impropriety, nor does he have any conflict of interest that impairs his impartiality. After this Court vacated the previous custody order, the court conducted a four-day evidentiary hearing to ensure that both parties could be fairly heard. And the court was well within its discretion to issue *sua sponte* show cause orders, *see, e.g.*, *Peterson v. Orphans' Court for Queen Anne's Cty.*, 160 Md. App. 137, 154–55 (2004), so long as the orders were, as these were, "sufficiently definite, certain, and specific in [their]

terms so that the party may understand precisely what conduct the order[s] require[]," *In re Dustin R.*, 445 Md. 536, 556 (2015) (quoting *Droney*, 102 Md. App. at 684).

Mother additionally alleges bias on Judge Hill's part as a natural consequence of the subpoena her counsel improperly served on Judge Hill, and the "numerous Judicial Complaints" that others have filed on her behalf against him with the Judicial Disabilities Commission. But we cannot and will not reward a party's collateral tactical attacks on a judge by treating them as evidence that the judge is biased and cannot hear the case without the appearance of impropriety. *See Regan v. State Bd. of Chiropractic Exam'rs*, 355 Md. 397, 414 (1999) ("[C]ourts have been most reluctant to find an appearance of impropriety on the basis of a litigant's actions."). The judge took Mother's recusal motion seriously, stepped off the bench to consider it, and acted well within his discretion in denying it.

F. The Circuit Court's Award Of Attorney's Fees To Father Was Proper.

Finally, Mother asks us to reverse the circuit court's award of attorney's fees to Father. The statutory elements of FL § 12-103 could have been spelled out more clearly, but we are comfortable that the court considered the elements properly and did so distinctly and apart from the contempt finding.

Section 12-103 is an exception to the "American rule" of attorneys' fees, which normally provides "that each party to a case is responsible for the fees of its own attorneys." *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 456 (2008) (quoting *Friolo v. Frankel*, 403 Md. 443, 456 (2008)). FL § 12-103 permits a court sitting in any child support or custody case to shift fees between parties when one of the parties has continued a court

battle gratuitously or excessively, without substantial justification. *See Wagner v. Wagner*, 109 Md. App. 1, 51–52 (1996) (affirming a trial court's decision to award fees to a husband forced to defend against his ex-wife's "countless machinations"). The statute requires the court to consider three elements—the parties' finances, needs, and whether the losing party's positions were substantially justified:

> (b) *Required considerations*. — Before a court may award costs and counsel fees under this section, the court shall consider:
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> (1) the financial status of each party;
>
> (2) the needs of each party; and
>
> (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.
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> (c) *Absence of substantial justification*. — Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party costs and counsel fees.

FL § 12-103. Although "the statute does not expressly mandate the consideration of reasonableness of the fees, this Court and the Court of Appeals have indicated that evaluation of the reasonableness of the fees is required." *Sczudlo v. Berry*, 129 Md. App. 529, 550 (1999); *see also Petrini*, 336 Md. at 467.

The court's award of fees to Father meets these requirements easily. Father filed a Petition for Show Cause Order and Contempt to enforce the February 4 Order, an order that the court found Mother violated. This case has a long history of violations and multiplicitous filings, nearly all by Mother. During the May 13 hearing, the court specifically analyzed Mother's financial circumstances, Father's needs, and the

reasonableness of a potential shifting of fees. And because Mother only disputes the assessment of the fees in the first instance and not the aggregate amount or individual component fees, all of which seem reasonable and justified, we see no abuse of discretion in the fact or amount of the fees awarded.

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY VACATED WITH REGARD TO THE CUSTODY MODIFICATION CONTAINED IN THE JUNE 10, 2016 ORDER AND AFFIRMED IN ALL OTHER RESPECTS. COSTS ALLOCATED 75% TO APPELLANT AND 25% TO APPELLEE.