UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1887

September Term, 2016

KEITH WILLIAMS

v.

MARITZA SKELTON
(F/K/A MARITZA SKELTON-WILLIAMS)

Reed,
Friedman,
Moylan, Charles E., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.
Concurring opinion by Friedman, J.

Filed: July 13, 2017

The appellant, Keith Lamont Williams ("the Father"), and the appellee, Maritza Skelton ("the Mother"), were married in 1993. One child, Maya, was born of that union in February of 2007. Maya is now ten years of age. The Mother and Father separated in June of 2011 and have lived apart since then. They were formally divorced by the Circuit Court for Howard County in March of 2013.

A separation agreement between the parties was incorporated but not merged with the Judgment of Divorce. Pursuant to that agreement, the Mother and Father were granted joint legal custody of Maya, with "tie-breaking" authority awarded to the Mother. The Mother and the Father were awarded shared physical custody of Maya during the school year. During the summer recess, each parent would have custody of Maya for a period of approximately five weeks. Even during the school year, moreover, the Father would have a significant share of Maya's physical custody. During the initial period of at least partially shared physical custody, each parent was responsible for Maya's support for the time when Maya was with that parent. Subject to special provisions for holidays and birthdays, the Father would pick Maya up from school on Wednesday. Every other week, he would have Maya with him on that evening and he would then deliver her to school on Thursday morning. On alternating weeks, he would keep Maya until Sunday afternoon, at which time he would return Maya to her Mother. On each of those weeks, he would be responsible for taking Maya to school and picking her up on Thursday and Friday.

This arrangement apparently worked well at the time of the divorce and in its immediate aftermath. Maya and her Mother moved to Ellicott City, where Maya attended school. Eventually, however, the Father moved from the marital home in Columbia to

Bowie. Maya and her Mother subsequently moved to Rockville. After the move, Maya started school in the Rockville area. It was the resulting problem of getting Maya to and from school that generated the primary change in material circumstances.

The litigation now before us commenced when the Mother, in October of 2015, filed a complaint in the Howard County Circuit Court requesting a modification of the custody arrangement and an award of child support from the Father.

Following a full hearing on September 19, 2016, Judge Alan M. Wilner (retired, specially assigned) granted the Mother's request for a modification of the physical custody arrangement. In his very full and thorough 19-page Memorandum Opinion, filed on October 7, 2016, Judge Wilner summarized the basis for the Mother's request for the modification.

> This proceeding commenced in October 2015, when Mother filed a complaint for modification of custody and child support. The complaint was based on allegations of three principal changed circumstances. One was that Father's move to Bowie increased the travel time from his home to Maya's school in Rockville, which required Maya to get up much earlier in the morning in order to get to school on time on Thursdays and Fridays. The second was that, at the suggestion of the teachers at Maya's former school in Columbia, Maya underwent a psychological evaluation and was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and General Anxiety Disorder (GAD), which required greater structure and predictability in her life. Among other things, the evaluator recommended participation in extracurricular activities, groups, and clubs, but Father had failed to follow these recommendations. Finally, Mother complained that Father had failed to contribute to the costs of uninsured medical expenses for Maya.

(Emphasis supplied).

The Contentions

On this appeal, the Father contends:

1. that the court erroneously abused its discretion by barring him from testifying and from presenting evidence as a sanction for violating his discovery obligation; and

2. that Judge Wilner abused his discretion in granting the Mother's Motion for Reconsideration.

The Discovery Violation

On March 7, 2016, the Mother served the Father with discovery requests, including both interrogatories and Requests for Production of Documents. The Father utterly failed to respond in any fashion. The Mother followed up by sending letters to the Father on April 11, 2016 and again on April 19, 2016, in an attempt to resolve the discovery dispute. The Father again failed to respond. On May 12, 2016, the Mother filed a Motion to Compel Discovery along with a Motion to Shorten the Time to Respond. The trial court ordered the Father to respond within five days. Once again, the Father failed to do so. On May 27, 2016, Judge Mary M. Kramer entered an order striking the appearance of counsel for the Father.

On May 31, 2016, Judge Kramer granted the Mother's Motion to Compel Discovery and for Sanctions and ordered the Father to comply with that order within fifteen days. The Father again failed to respond properly to the court's order. Accordingly, the Mother, on June 16, 2016, filed a Motion for Discovery Sanctions.

On July 18, 2016, Judge Timothy J. McCrone entered a Discovery Sanctions Order against the Father pursuant to Maryland Rule 2–433(d). Along with other sanctions, that Order provided:

> **ORDERED**, that the Defendant be prohibited from presenting evidence or testifying at any trial, treating Plaintiff's assertions on the issues of contempt, custody access, child support, and legal fees as established for the purposes of this action.

(Emphasis supplied).

More than 30 days after the effective date of that Order, the Father filed an untimely Motion for Reconsideration of the Sanctions Order. The Mother nevertheless filed an Opposition to the Motion to Reconsider. On September 15, 2016, the court denied the Father's Motion for Reconsideration. The merits hearing in that case began four days later on September 19, 2016.

Maryland Rule 2–433, dealing with "Sanctions" for discovery violations, provides, in pertinent part:

> **(a) For Certain Failures of Discovery.** Upon a motion filed under Rule 2–432 (a), the court, if it finds a failure of discovery, may enter such orders in regard to the failure as are just, including one or more of the following:
>
> (1) An order that the matters sought to be discovered, or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim of the party obtaining the order;
>
> (2) An order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(Emphasis supplied).

In his Memorandum Order, Judge Wilner made mention of the Sanctions Order.

> Mother filed interrogatories in which she asked the normal questions regarding Father's assets, liabilities, income, expenses, employment status, and child care plans, which was supplemented by a demand for the production of documents regarding the same matters. Father declined to provide that information or to produce documents that were requested, and, after several unsuccessful attempts to force him to do so, the court entered an order barring him from introducing any evidence in this proceeding and declaring that the facts alleged by Mother shall be taken as established. Aside from being allowed to ask some clarifying questions on cross-examination of Mother, he presented no defense.

(Emphasis supplied).

The Sanction

It is beyond dispute that the sanction imposed on the Father for violating his discovery obligation is one authorized by the Maryland Rules of Civil Procedure. It is also beyond dispute that the decision of whether to impose a sanction and the decision of what sanction to impose is a decision entrusted to the wide discretion of the trial judge. The sanctions provided by the Maryland Rule are obviously not unconstitutional per se and no Maryland case or academic authority has remotely suggested that they might be. When it comes to the exercise of discretion, moreover, reviewing courts are extremely deferential to the decision of the trial judge. It is rare to find an abuse of discretion and such a finding is generally reserved for those instances where the discretionary call results in a clear injustice.

The Father, however, is undertaking to convince us that the imposition of this particular sanction in this particular case was an abuse of discretion. In his effort to do so, the Father is cherry-picking isolated sentences from Rolley v. Sanford, 126 Md. App. 124,

727 A.2d 444 (1999) and Flynn v. May, 157 Md. App. 389, 852 A.2d 963 (2004). Neither case, however, is truly apposite to the case before us. As we probe for an abuse of discretion, let us see whether justice was truly outraged by the application in this case of what is ordinarily a perfectly acceptable sanction for a deliberate discovery violation.

A. A Trial Restriction Versus No Trial At All

In neither Rolley v. Sanford nor Flynn v. May was there a trial on the merits. That alone makes their analogy to this case very tenuous. In Rolley, a mother had sought an increase in child support for her two children. The mother, however, failed to comply with her discovery obligation. At a hearing before a Domestic Relations Master, the Master, at the request of the father, recommended that the mother's entire case be dismissed because of the mother's "failure to provide the requested discovery." 126 Md. App. at 125–26. The circuit court adopted the Master's recommendation and there was no trial. Id.

Flynn v. May did not even involve discovery nor so much as mention the subject of sanctions for discovery violations. It was from start to finish a default judgment case. It is totally inapposite. It involved a suit by a father to transfer the custody of a young child from the mother to the father and to require, moreover, the mother to pay child support to the father. The defendant mother, proceeding pro se, failed to adequately respond to the suit. This Court, 157 Md. App. at 393, described her default.

> [T]he bottom line was that the Mother's answer was never officially received by the court because of the lack of certification of service. As far as the Mother was concerned, she had answered; but officially her ineffectual attempt was a non-answer. Accordingly, the Father on June 3 filed a Request for Order of Default against the Mother because of her "failure to plead as provided by the Maryland Rule."

(Emphasis supplied).

The mother suffered a judgment by default against her. There was no trial on the merits, but she nonetheless lost the custody of her son and was ordered to pay child support. As this Court noted, 157 Md. App. at 392:

> The decision to proceed *pro se* was a serious tactical mistake on her part with, as this case illustrates, potentially grievous consequences.

In this case, by salutary contrast, a trial on the merits was not aborted. Although evidentiary strictures were placed on the Father, to be sure, a trial on the merits was nonetheless held before Judge Wilner on September 19, 2016. The trial transcript covers 202 pages in the Record Extract. Judge Wilner, moreover, carefully questioned the witnesses for the Mother. At the close of the trial, counsel for the Father was permitted extensive argument. By no stretch of the imagination, moreover, did Judge Wilner ignore the best interest of Maya as his controlling criterion. In his 19-page Memorandum Opinion, he makes it clear, for over two pages, that the "Controlling Legal Principle" is the best interest of the child. As he concludes that section of his opinion, he observes:

> Applying that principle, the principal issues here are (1) whether Mother has shown a material change in circumstance since the 2013 judgment was entered, and (2) if so, whether any change causes it now to be in Maya's interest to alter arrangement incorporated by reference into that judgment.

There is no remote analogy between the trial on the merits in this case and the non-trials in Rolley v. Sanford and Flynn v. May. A trial upon the merits was conducted. No decision was made by procedural default. Justice was not outraged.

B. A Basic Switch In Custody Versus Little More Than A Scheduling Modification

A key factor in whether discretion has been abused is that of whether the decision has subjected a child to severely detrimental consequences. Although Flynn v. May was a default judgment case not involving sanctions for discovery violations, it nonetheless offers a stark contrast with the present case in terms of the impact of a decision on a child. As a result of the decision in Flynn v. May, a seven-year-old boy, who had lived his entire life with his mother, had his physical custody transferred to his father without a trial on the merits nor so much as any consideration of the merits. The transfer was exclusively because of a procedural default by the mother. This Court, 157 Md. App. at 411, described the impact of the decision on the seven-year-old boy.

> Since the day of his birth, Bryant had been in the primary physical custody of his Mother. To be, at seven years of age, suddenly taken from his Mother, uprooted from his home, displaced from his neighborhood, and removed from his school certainly represented at least as much trauma to him as that represented by the failure to enjoy an increase in child support that was not to be countenanced in Rolley v. Sanford.

(Emphasis supplied). That is precisely the sort of thing that might strike a reviewing court as outrageous and, therefore, a likely candidate for an abuse of discretion.

In the present case, by happy contrast, Maya did not suffer a change in custody from one parent to the other. Technically, a shared physical custody arrangement was formally changed to one of primary physical custody in the Mother during the school year. The Father lost custody on alternating Thursdays and Fridays. On the other hand, he was awarded additional custodial days on weekends. For all practical purposes, the parents

shared residential custody. Whether Judge Wilner formally changed the legal status of the residential custody or merely modified the scheduling to accommodate better the scholastic day is a matter of no concern to us. Either characterization would fit within his discretionary range. What strikes us as of far more significance than any formal or technical change in the legal terminology is that the change, however it is formally characterized, was arranged exclusively for the benefit of Maya herself, both in terms of her transportation to and from school and in promotion of her full participation in extracurricular activities during the after-school hours.

Once the marital home in Columbia was dissolved, the respective distances to Maya's new school from the Father's home and from the Mother's home became a change in circumstance having a potentially dispositive influence on Maya's custody on school days. Judge Wilner's Memorandum Opinion discusses this factor.

> Upon the sale of the marital home in Columbia, Father moved to Bowie and Mother moved to Rockville. When they each moved to his/her new location is not clear. Mother testified that Bowie is approximately 26 miles from Maya's new school, that a "Map Quest" computer search indicated that it takes 38 minutes to drive that distance in the morning, and that it takes an hour-and-a-half to drive back in the afternoon. She added that it takes Maya about 35 minutes to get ready for school in the morning and that school begins at 7:50 a.m.
>
> This is the basis of her first alleged change in circumstance – that on the two school days that Father needs to drive Maya to school (every Thursday and every other Friday), Maya has a very long day; she needs to get up very early on those days and may not get home until late in the afternoon. Mother testified that Maya appears agitated, tired, and unfocused when Mother picks her up from school (presumably on every other Thursday).

> This is a changed circumstance. When the parties lived in the marital home and Maya went to a nearby school in Columbia, she did not have such a long commute.

(Emphasis supplied).

Significantly more was involved, however, than Maya's simply being transported to and from school. Judge Wilner referred to Maya's psychological evaluation.

> As noted, in January 2014, Maya underwent a psychological evaluation at the suggestion of her teachers and was diagnosed with ADHD and GAD. Although it appears that Father participated in the evaluation to the extent of supplying information, Mother accompanied Maya to the three two-hour testing session, and Father did not return his parent rating forms.

The recommended treatment to improve Maya's psychological health heavily involved school and various extracurricular activities. The Father, however, declined, on his days of custodial responsibility, to provide the necessary assistance. Judge Wilner described the situation.

> Mother's overarching complaint is that Father has done little or nothing to help deal with the problem – that he has failed to engage Maya in structured extra-curricular activities, that he has failed to support Maya in her own efforts to engage in such activities, and that, in some ways, he has thwarted Mother's efforts in that regard. There is ample evidence to support those complaints.
>
> Maya has taken an interest in karate, violin, swimming, drawing, and building with Legos, and the uncontroverted evidence is that Father has done little or nothing to support her in those activities. She has developed special skills in karate. Her classes are on Monday and Wednesday. Mother takes her to the class on Monday, but Father has refused to take her to the Wednesday class. On one occasion, Mother advised him that Maya had qualified to take a test for a purple belt, that the test was on a Saturday that he would have Maya with him, and that Maya had worked very hard to compete for the belt. She asked if he would take her or, in the alternative, if she could have the child that day so she would be able to take her, and he refused.

> On another occasion, Mother advised Father of a "back-to-school" event at Maya's school and asked him to attend. He refused. He was the only parent who failed to attend. He was advised of a "splash party" for the children at Maya's school on a day he had her. He refused to take her. Maya was the only child who did not attend. Rather than engage Maya in any constructive way during his time with her, Maya apparently spends most of that time watching television and playing video games by herself. Father has not enrolled her in any extra-curricular activities after school on Wednesdays, Thursdays, or Fridays, or on weekends when she is in his care.

(Emphasis supplied).

It was primarily the Father's failure to support Maya's participation in a wide range of extracurricular activities that prompted the Mother to seek to change the shared physical custody to the awarding of primary physical custody to her.

> Although no one has suggested that Maya needs to be occupied in some structured activity every minute of her day, this refusal to participate in activities that Maya herself has chosen or enjoys disrupts the attempt at providing structure for the child, at promoting the development of social skills through positive interaction with other children and with both parents. Father has refused to engage in mediation regarding these issues and, according to Mother, has refused as well to allow her to speak with Maya by telephone when the child is with him over the weekend. He has refused to contribute to the cost of summer camp, as the agreement (and the judgment) require. That obligation is contingent on his being employed, but he has refused to supply any information regarding his employment status and, on one occasion, claimed that he was unemployed when records obtained from his employer revealed that he was employed and simply lied in order to escape his obligations.
>
> To remedy this, Mother seeks sole custody of Maya, subject to visitation by Father as directed by the Court, along with an order for child support in accordance with the Maryland Child Support Guidelines, counsel fees and costs of the proceeding, and such other relief as the nature of her cause may require.

(Emphasis supplied).

Judge Wilner carefully considered and commented on each of the 13 considerations recommended by the Court of Appeals in Taylor v. Taylor, 306 Md. 290, 508 A.2d 964 (1986) and reemphasized in Santo v. Santo, 448 Md. 620, 141 A.3d 74 (2016). The court's decision was as to be expected.

> Having considered the relevant factors in light of the evidence presented, the Court concludes that changed circumstances have been proved and, in light of Maya's needs, it is in her best interest to modify the present shared custody arrangement and award sole legal and physical custody of the child to Mother, subject to reasonable visitation by Father.

Judge Wilner explained that this change will ease the basic problem of Maya's getting to and from school in a more feasible fashion.

> Father's home in Bowie is about 26 miles from Maya's school in Rockville. There was no evidence regarding the distance from his home to Mother's home, but the Court will assume that it is roughly the same. As noted, that has created some inconvenience for Maya in getting to school when in Father's care. If Maya were with Mother during the school year and Father's visitation were limited to weekends (and holidays and other special days), that inconvenience would be eliminated.

(Emphasis supplied).

More significantly, the change in physical custody should alleviate the difficulties that had inhibited Maya's participation in extracurricular activities.

> If shared custody is maintained, Maya's school and social life, subject to changes due to her increasing maturity, likely will remain what it is. If, subject to appropriate visitation, Mother were to have sole custody, there will, in the Court's view, be increased opportunities to enhance the expansion of Maya's horizon and social and intellectual development, which should reflect positively on her school experience.

(Emphasis supplied).

This very reasonable adjustment in school day scheduling is a far cry from the dramatic uprooting from custody, that had always been in the mother, to the father, who had never had custody, that this Court found to be so offensive in Flynn v. May, 157 Md. App. at 411. It is the qualitative difference between a mere exercise of discretion and a clear abuse of discretion.

C. Maya's Advantage Versus Maya's Disadvantage

The Father stubbornly balks at accepting the hard truth that he is properly subject to severe sanctions for his discovery violations. His argument, in his brief, seems focused on Maryland Rule 2–433's sanctions themselves, as if they were per se of questionable propriety.

> The Court sanctioned the Appellant by refusing to allow him to participate in this modification of custody case in direct contradiction to established Maryland law.
>
> The trial court denied Appellant the right to present any evidence as to his fitness as a parent or his relationship with the minor child. Instead, the Court relied solely on all evidence presented by Appellee.
>
> The "ultimate" sanction, also loosely called "the civil death penalty" was imposed on Appellant for his failure to respond to discovery. As a result, the evidence related to the best interest of the child was not fully considered, and the best interests of the minor child were never gleaned by the trial court, which constituted a total abrogation of the Court's most serious responsibility.

In putting on his case, the Father was, to be sure, placed at a severe disadvantage. That, however, was to be expected. To place someone who deliberately violates the discovery rules at such a trial disadvantage is the very purpose and the intended function of Rule 2–433. The only child custody case wherein the imposition of such a sanction has

been held to be an abuse of discretion is Rolley v. Sanford, supra. The Father would like to read Rolley to stand for the broad proposition that sanctions for discovery violations are never permitted in cases involving child custody under any circumstances. It held no such thing, of course. Rolley was clear, 126 Md. App. at 130–131, that sanctions for discovery violations are generally permissible, except in the rare case that there has been an actual abuse of that discretion.

> Under Rule 2–433(b), "[i]f a person fails to obey an order compelling discovery, the court, upon motion of a party and reasonable notice to other parties and all persons affected, may enter such orders in regard to the failure as are just...." The remedies contemplated by this rule are left to the discretion of the court and cannot be overturned absent an abuse of that discretion. Billman v. State of Maryland Deposit Insurance Fund Corporation, 86 Md. App. 1, 8–9, 585 A.2d 238, *cert. denied*, 502 U.S. 909, 112 S. Ct. 304, 116 L. Ed. 2d 247, 323 Md. 1, 590 A.2d 158 (1991). A decision constitutes an abuse of discretion if it is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable."

(Emphasis supplied).

Kimberly Rolley herself was a mother who was petitioning for an increase in child support for her two children. Because of her inadequate response to her discovery obligation, her petition was dismissed. There was no trial or hearing on the merits. The two children did not receive any increase in child support. That was the critical factor in the finding of an abuse of discretion in that case. "[T]his case ultimately involves not Rolley but the welfare of her two children by Sanford." 126 Md. App. at 131. The Rolley finding of an abuse of discretion was based on the adverse impact of the sanction on innocent third persons, to wit, the two children.

> Where there exists a discovery violation in a child support matter, as always, the best interest of the child is paramount and a trial court must exhaust every available remedial step to enforce discovery before the extreme sanction of dismissal may be ordered. We shall not suffer the obdurate conduct of a recalcitrant parent, stepparent, or custodian to deprive children of their right to adequate support.

126 Md. App at 131 (emphasis supplied).

The abuse of discretion finding was based on the fact that the children were "deprive[d] . . . of their right to adequate support." A careful reading of Rolley would also reveal that the finding of abuse did not turn upon the trial judge's decision after a hearing on the merits but upon "the extreme sanction of dismissal." The Father here is not reading the case very closely. Even in Flynn v. May, which was not a child custody case, it was not a change of custody following a hearing on the merits that was the abuse of discretion, but "the award of a change of custody by default, without a hearing on the merits[.]" 157 Md. App. at 391. Even when dealing with a judgment by default, Flynn v. May made it clear that there is a critical difference between punishing a "dilatory litigant" and hurting an innocent party.

> The party suffering the loss has, in major measure, brought it upon himself. The appropriateness of the procedure is far less clear-cut, however, when a party possibly hurt by the sanction is one other than the dilatory litigant and when what is at stake is something other than dollars.

157 Md. App. at 391 (emphasis supplied).

The clear message of Rolley v. Sanford and even the arguably indirect message of Flynn v. May is that whereas a change to the disadvantage of Maya might possibly constitute an abuse of discretion, a change to the disadvantage of the Father would not. The

Father's entire case, we note, depends on Rolley v. State and Flynn v. May. Our concern is not with the exercise of discretion but only with the abuse of discretion. They are by no means the same thing.

In the present case, by pleasant contrast with Rolley v. Sanford and Flynn v. May, Maya was not hurt or disadvantaged by Judge Wilner's decision. Everything was done, moreover, after a full hearing on the merits. The change in giving the Mother physical custody on the days that Maya was in school was exclusively made for Maya's benefit. She did not have her custody uprooted as in Flynn v. May. She was not denied child support as in Rolley v. Sanford. Every change that was made was to her advantage and not to her disadvantage. That does not constitute an abuse of discretion.

The Mother's Motion For Reconsideration

The Father's second and final contention will not detain us long. After Judge Wilner issued his Final Order, along with his Memorandum Opinion, on October 7, 2016, the Mother filed a Motion for Reconsideration, in which she sought a modest change in weekend custody. A hearing was held on that Motion on December 13, 2016. On December 28, 2016, the court issued an Amended Order granting the Mother's Motion for Reconsideration.

The Father's second contention challenges that action.

> The Trial Court Erred In Further Reducing Appellant's Physical Custody With The Minor Child Without Any Evidence From Appellant Related To The Best Interest Of The Child At The Time Of The Hearing On Appellee's Motion For Reconsideration.

On this contention, the Father ignores the most fundamental precept of appellate practice. The appellant carries the burden of proof when attacking the litigative status quo ante. Neither the appellee nor the Court has the burden to defend it. It needs no defense, because it is presumptively correct. There is, in law, the necessary and indispensable presumption that the trial judge did the right thing for the right reason. The burden is exclusively on the appellant to persuade the appellate court otherwise.

In his appellate brief, the Father's argument is limited to one-half of a single page. There are two short paragraphs consisting of four sentences in the declarative mood, simply recounting what was done procedurally. There is not a citation to a single case or statute or rule of court. There is no mention of academic authority. There is not even logical argument challenging the propriety of what was done.

It is not our job, from the bare bones of the docket entries, to construct an argument for the Father that he does not construct for himself. It is not our job to explain to the Father why and how what was done was done correctly. It is, rather, his job to persuade us why what was done was done incorrectly. He has not remotely done so. It is the appellant who loses the nothing-to-nothing tie.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

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Reed,
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Moylan, Charles E., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Concurring Opinion by Friedman, J.

Filed: July 13, 2017

It is my view that, in a case in which the standard is whether a given action is in the best interests of a minor child, a discovery sanction that precludes a party from eliciting evidence—despite being permitted by Rule 2-433—is always an abuse of discretion.[1]

The effect of such a discovery sanction is to prevent the Court from obtaining information that might influence its evaluation of the best interest of the child. It is easy to imagine a scenario in which one parent is precluded by a discovery sanction from producing evidence of the other parent's abuse. Worse, because we can't know what we can't know, the trial court might well not even know that it had precluded itself from considering evidence of abuse.

It is not my intention to pardon or condone the behavior of discovery violators. I wish that protecting minor children didn't have the collateral effect of providing a potential benefit to discovery scofflaws. I encourage trial courts to be creative in finding other sanctions to force recalcitrant discovery violators to participate in litigation.

Despite my view that the discovery sanction applied in this case was an abuse of the trial court's discretion, the harmless error standard still applies. *See Sumpter v. Sumpter*, 436 Md. 74, 82 (2013) ("Even when we find an abuse of discretion, this Court follows the maxim that appellate courts of this State will not reverse a lower court judgment for harmless error: the complaining party must show prejudice as well as error."). While I would find that the discovery sanction applied by Judge McCrone to have been an abuse of discretion, I would also find that, (1) because of the nature of the relief sought and

[1] It is not my view that such a review is compelled by our precedents. Rather I find myself persuaded by the logic of *Flynn v. May*, 157 Md. App. 389 (2004).

granted (as described by the majority, *supra* *8-9); and (2) because of Judge Wilner's careful elucidation of the facts despite the discovery sanction (*supra* *9-12), the error here was harmless.

As a result, I concur in the result only.