Circuit Court for Harford County
Case Nos. 12-C-18-000685 & 12-C-15-003443

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 2210 & 2211 (Consolidated)
September Term, 2019

HUHRA HOMES, LLC

v.

M.W. PRIDE, INC.

HUHRA HOMES, LLC, ET AL.

v.

SEAN M. MCLAUGHLIN, ET AL.

Berger,
Arthur,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: September 10, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

These consolidated appeals arise from two unrelated civil cases[1] whose paths crossed in the Circuit Court for Harford County. Although the cases are separate actions in the circuit court, Huhra Homes, LLC, is a common party in interest in each appeal and,[2] as we shall explain, Huhra Homes and M.W. Pride, Inc. each have their attention fixed on $100,000 that had been deposited to the circuit court registry.

Despite the convoluted factual and procedural history of the cases, resulting from the curious commingling of two unrelated cases, the sole issue before this Court is the efficacy of the grant of a post-judgment enforcement motion filed by a judgment creditor, appellee, M.W. Pride, seeking ancillary relief by enjoining Huhra Homes' counsel from disbursing the funds that had been released to him from the circuit court's registry.

Appellants ask this Court to determine whether the circuit court erred in prematurely granting M.W. Pride's motion seeking ancillary and injunctive relief.[3] Answering in the

[1] In *Huhra Homes, LLC v. McLaughlin* (*McLaughlin* case), 12-C-15-003443, involving a mechanics lien, Huhra Homes received a judgment for damages and a separate judgment for attorney's fees against the McLaughlins. We affirmed those judgments in an unreported opinion. *See McLaughlin v. Huhra Homes, LLC*, No. 962, Sept. Term, 2017 (filed July 1, 2019).

In *M.W. Pride, Inc. v. Huhra Homes, LLC* (*M.W. Pride* case), 12-C-18-000685, a default judgment was entered in favor of M.W. Pride and against Huhra Homes.

[2] This appeal concerns only the cross-filed post-judgment enforcement motions filed by M.W. Pride, Inc., appellee, against Huhra Homes, LLC and its counsel, Edward J. Brown, appellants. The McLaughlins are not parties to this consolidated appeal.

[3] Appellants' question, as presented in their brief:

> Did the Court err in prematurely granting an unsupported Motion for Ancillary Relief and issuing an injunction against non-parties over whom the Court did not possess jurisdiction as they were never served, and when the

affirmative, we will vacate the court's order and remand for further appropriate proceedings.

I. BACKGROUND

The unnecessary confusion caused by the commingling of the two unrelated cases appears to be the result of the unusual approach taken by both M.W. Pride and Huhra Homes in their post-judgment enforcement efforts in the respective cases. Nonetheless, despite M.W. Pride's cross-filing of identical motions in each case, which resulted in duplicitous and conflicting orders, we are primarily focused on the orders entered in *Huhra Homes, LLC v. McLaughlin*. As we will explain, there is no appealable order entered in the *M.W. Pride* case that is ripe for appellate review.[4]

Although the parties do not challenge the underlying facts and circumstances of the appeals, we shall provide the necessary factual background for each case in an effort to untangle, as best we can, the confusion created in the circuit court and the issues raised on appeal.

Huhra Homes, LLC v. McLaughlin – No. 2211/19

In 2017, Huhra Homes, represented by Edward J. Brown and The Law Office of Edward J. Brown, LLC, prevailed in a mechanic's lien action in the Circuit Court for

> party/alleged judgment debtor had also not been served nor mailed a copy of the Motion?

(Footnote omitted).

[4] The court initially prematurely granted M.W. Pride's identical cross-filed motions for ancillary relief in both cases; however, the next day in the *McLaughlin* case, the order was stricken, *sua sponte*, as prematurely granted but was not stricken in the *M.W. Pride* case.

Harford County against Sean and Cindy McLaughlin for damages and attorney's fees. The judgments entered against the McLaughlins included $24,144.15 in damages, $63,818.50 in attorney's fees, $4,150.00 for expert costs and $1,575.68 in expenses. Huhra Homes promptly began post-judgment enforcement efforts to collect on the two judgments. However, the McLaughlins noted an appeal and, pursuant to a court order, deposited a $100,000 cash *supersedeas* bond with the registry of the court, thereby halting collection efforts.

On July 1, 2019, this Court filed an unreported opinion in the *McLaughlin* appeal, affirming the judgments in favor of Huhra Homes. The mandate was docketed in the circuit court on August 6, 2019.

***M.W. Pride, Inc. v. Huhra Homes, LLC* – No. 2210/19**

On July 30, 2018, in an unrelated lawsuit, M.W. Pride sought and obtained a default judgment against Huhra Homes in the amount of $171,005.08. After Huhra Homes failed to respond to several requests for post-judgment enforcement, M.W. Pride directed its efforts to Clint Huhra, the principal of Huhra Homes.

The Overlap of Interests and Commingling of the Two Cases

It was at this point that M.W. Pride's post-judgment enforcement efforts began to be overlapped by, and later commingled with, the unrelated *McLaughlin* case. We note at the outset that neither party sought intervention pursuant to Maryland Rule 2-214. The parties appear to have been unaware of the opinion of this Court in *Voge v. Olin*, 69 Md. App. 508, 512 (1986), where we said:

> The phrase "custodia legis" means in the custody or control of the law. The effect of placing given property in the custody of the court in one proceeding is to preclude action in another subsequent proceeding which would affect the property's disposition. The proper course for complainants seeking to affect the disposition of property in *custodia legis* is to intervene in the initial action….

(Internal citation omitted). Nor were the parties apparently aware of our opinion in *Quillens v. Parker*, 171 Md. App. 52, 64-65 (2006), reiterating that:

> "The reason for the rule forbidding the interference of a third party with the possession of the court is that 'when a court acquires jurisdiction of goods, chattels, or money, in one case, the orderly process of the court requires that it shall be permitted to determine the rights of the parties in that case without interference or interruption of a conflicting jurisdiction or a separate and distinct action or proceeding.'"

(Citations omitted).

On August 7, 2019, the day after the *McLaughlin* mandate was docketed in the *McLaughlin* case in the circuit court, M.W. Pride filed, in its case against Huhra Homes, a request for a writ of garnishment to be issued to the Clerk of the circuit court. That garnishment was aimed at the proceeds of the *McLaughlin supersedeas* bond. On the following day, August 8, the court issued the writ of garnishment for service on: "CIRCUIT COURT FOR HARFORD COUNTY c/o JAMES J. REILLY, CLERK", and on August 19, the writ was served via certified mail directed to the Attorney General of Maryland, Brian E. Frosh. There is nothing in the record to suggest that any notice of the garnishment was noted or docketed in the *McLaughlin* case.

On August 14, Huhra Homes filed a notice of Assignment of [its] Judgment in the *McLaughlin* case, notifying the court that, earlier in June,[5] it had partially assigned the attorney's fees and expenses judgment to the Law Office of Martin H. Schreiber II, LLC[6] and the Law Office of Edward J. Brown, jointly.

Also on August 14, prior to the service of M.W. Pride's garnishment on the Attorney General, Mr. Brown entered a special appearance on behalf of Huhra Homes in the *M.W. Pride* case and moved to quash the garnishment and to vacate the default judgment entered against Huhra Homes, requesting a hearing on both motions. M.W. Pride responded to both motions on August 23 and 26, respectively.[7] On August 27, Hon. Paul W. Ishak stamped the motion to vacate the default judgment with the notation, "SET FOR HEARING." There is no record of a hearing on this motion having ever been scheduled or held.

[5] The Assignment states that it was entered into on June 6, 2019; however, only Mr. Schreiber's signature line is dated, and it provides that it was executed by him on June 13, 2019.

[6] Mr. Schreiber and his law firm represented Huhra Homes in the *McLaughlin* case prior to Mr. Brown entering his appearance but withdrew his appearance prior to trial because Huhra Homes had failed to pay his fees pursuant to the terms of their representation agreement.

[7] On September 16, in the *M.W. Pride* case, Huhra Homes filed a motion to strike M.W. Pride's response to its motion to vacate the default judgment and requested disqualification of counsel and sanctions. M.W. Pride then responded to Huhra Homes' motion to strike and request for disqualification and sanctions on September 26. On October 16, Hon. Paul W. Ishak stamped the motion to strike and request for disqualification and sanctions, noting that it was: "To be heard at the motions hearing." There is no record of any hearing on these motions having ever been scheduled or held.

On September 5, three weeks after filing the motions to quash the garnishment and to vacate the default judgment in the *M.W. Pride* case, both of which were still pending, Mr. Brown, on behalf of Huhra Homes, and with the consent of counsel for the McLaughlins, filed in the *McLaughlin* case a joint request pursuant to Rule 16-202,[8] for an order to disburse the $100,000 from the court's registry to "the Law Offices [sic] of Edward J. Brown Trust Account." The motion was granted the next day. A check was issued by the Clerk on September 9, releasing the funds to the Brown law firm, and was claimed by a representative of the firm that same day.

On September 10, upon learning that the funds had been disbursed, counsel for M.W. Pride, Elizabeth H. Thompson, entered her appearance in the *McLaughlin* case and cross-filed several motions in both cases under a consolidated case caption,[9] including: a motion to vacate the court order disbursing the funds from court's registry; a motion to

[8] Rule 16-202 provides for the payment of money into court and, in sub-section (b) for the disbursement of such funds "only upon order of the court."

[9] The case caption for counsel's entry of appearance in the *McLaughlin* case, while incorrectly identifying the defendants in that case, correctly identifies M.W. Pride's interest in the unrelated case as a non-party judgment creditor. However, each of M.W. Pride's subsequently filed motions and proposed orders contained an improper consolidated case caption of the two unrelated cases that repeated the misnomer incorrectly identifying the defendants in the *McLaughlin* case. *See* Rule 1-301(a) (prescribing the form of court papers and requiring that: "Every pleading and paper filed shall contain a caption setting forth (1) the parties or, where appropriate, the matter, (2) the name of the court, (3) the assigned docket reference, and (4) a brief descriptive title of the pleading or paper which indicates its nature."). It is unclear from the record under what authority M.W. Pride was acting in filing duplicate motions under a consolidated case caption, seeking the same relief, in two unrelated cases, one of which it was not a party to, when, *in fact, there had been no order for consolidation of the cases*. Nor, is it clear why the Clerk's office accepted the improperly cross-filed motions under the purported consolidation caption.

shorten the time to respond to the motion to vacate;[10] a motion for ancillary relief and order directing counsel (the Brown firm) to hold the funds in a trust account; and a motion to shorten time to respond to the motion for ancillary relief.

In the *McLaughlin* case, on the same day the motions were filed, Hon. Kevin J. Mahoney granted both motions to shorten Huhra Homes' response time to "within five (5) days of the date of th[e] Order." In what we assume to have been an oversight, Judge Mahoney also granted at that time the motion for ancillary relief and entered a show cause order directing Huhra Homes to show cause by September 16, if served by September 11, resulting in the Clerk's issuance of a writ of summons to accompany the show cause order. However, on the following day, Judge Mahoney ordered that the order granting the motion for ancillary relief be "STRICKEN pending response."[11] Also, on September 11, Huhra Homes filed in the *McLaughlin* case a release of the liens entered on the McLaughlins' property.

Having failed to serve the writs of summons and show cause orders prior to their expiration, M.W. Pride requested and received a reissuance of both, in each case. Judge Mahoney issued a new show cause order in both cases, requiring service to be made by

[10] In the *M.W. Pride* case, the motion to shorten the response time for the motion to vacate the disbursement was not filed, leaving in place the standard 15-day period for response pursuant to Rule 2-311(b).

[11] As previously mentioned, the September 10 order prematurely granting the motion for ancillary was not stricken in the *M.W. Pride* case.

September 16 and a response by September 20. No service of the reissued documents was timely made, nor was a response timely filed.

On September 17, in only the *McLaughlin* case, Judge Mahoney granted (1) the motion to vacate disbursement of the funds previously held in the court's registry and (2) the motion for ancillary relief, enjoining Mr. Brown and his law firm from disbursing the funds received "until further Order of the Court." By that time the funds may have already been disbursed by the Brown firm. Later that same day, appellants filed a motion to strike or in the alternative, a preliminary opposition to M.W. Pride's motion to vacate the disbursal order,[12] along with three supporting affidavits, and a motion to strike or in the alternative opposition to M.W. Pride's motion to shorten time.

On September 18, orders granting the two motions were entered on the docket in the *McLaughlin* case. On September 25 and October 17, Huhra Homes filed in the *McLaughlin* case motions to strike/vacate the court's September 17 orders granting ancillary relief and vacating the disbursement order, respectively, and requested a hearing on both. M.W. Pride filed its response to the motion to strike the order granting ancillary relief on October 9. And, on October 15 and November 5,[13] Judge Ishak stamped both motions, "To be heard on the open motions hearing date[,]" and "Set for hearing[,]" respectively.

[12] M.W. Pride filed its response to Huhra Homes' motion to strike/preliminary opposition to the motion to vacate the disbursement on September 26.

[13] It is unclear from the record why Huhra Homes' October 17 motion to vacate the court's order vacating the disbursement was reviewed by Judge Ishak on November 5, while this appeal was pending, and a stay was in place.

No hearing having been held, or even scheduled, and the appeal period due to expire on October 17, Huhra Homes filed notices of appeal and moved to stay in both cases.

II. DISCUSSION

Standard of Review

We have explained that:

> Ordinarily, a decision of a circuit court regarding the grant or denial of injunctive relief will not be disturbed on appeal absent an abuse of discretion. If, however, the decision is based on a ruling of law the trial court must "exercise its discretion in accordance with correct legal standards."

Gleneagles, Inc. v. Hanks, 156 Md. App. 543, 550 (2004) (internal citations omitted), *aff'd,* 385 Md. 492 (2005). We have explained the appropriate standard accorded rulings of law concerning a trial court's application of statutes and the Maryland Rules:

> This Court utilizes a *de novo* standard to analyze questions regarding a circuit court's interpretation of statutory provisions. *Maryland-National Capital Park and Planning Comm'n v. Anderson,* 395 Md. 172, 181 (2006); *Moore v. State,* 388 Md. 446, 452 (2005). "Although the factual determinations of the circuit court are afforded significant deference on review, its legal determinations are not." *Goss v. C.A.N. Wildlife Trust, Inc.,* 157 Md. App. 447, 456 (2004). "Where the order involves an interpretation and application of Maryland statutory and case law, we must determine whether the lower court's conclusions are 'legally correct' under a *de novo* standard of review." *Walter v. Gunter,* 367 Md. 386, 392 (2002).

Powell v. Breslin, 195 Md. App. 340, 346 (2010), *aff'd,* 421 Md. 266 (2011).

Premature Rulings

We will not decide any issue unless it was properly raised in, or decided by, the circuit court. Rule 8-131(a). However, it is within our discretion to do so if we find such is "necessary or desirable." *Id*.

In these cases, as conceded by counsel at oral argument, the circuit court prematurely granted both motions. While our primary focus is on the court's order granting the motion for ancillary relief, we note that the court's order granting the motion to vacate the disbursement was ruled on prior to the expiration of the response deadline in contravention of Rule 2-311(b). *See Miller v. Mathias*, 428 Md. 419, 445–46 (2012). Thus, the timely-filed response thereto was not considered by the court in its ruling on that motion. Moreover, no action was taken by the court to reconsider the premature rulings once it was put on notice of the errors in the parties' subsequent filings. Thus, none of the challenges now asserted on appeal were ever ruled on by the circuit court. Nor was there a finding of whether, or not, counsel may have disbursed the funds while having knowledge of the court's grant of the motion to vacate.

The Motion for Ancillary Relief

As this Court clarified in *McKinney v. State Deposit Ins. Fund Corp*., 99 Md. App. 124, 136 (1994):

> It is important to note that we are *not* deciding here the ultimate fate of the disputed funds, … or which of these two parties may eventually be entitled to them. … All we are deciding today is whether the order entered by the circuit court pursuant to Md. Rule 2-651 was validly issued.

Requests for ancillary relief in aid of enforcement of a judgment are governed by Rule 2-651, which provides in relevant part that:

> Upon motion and proof of service, a court in which a judgment has been entered or recorded may order such relief regarding property subject to enforcement of the judgment as may be deemed necessary and appropriate to aid enforcement of the judgment pursuant to these rules[.] … The motion shall be served on the person against whom the order is sought in the manner provided by Chapter 100 of this Title for service of process to obtain personal

> jurisdiction and if that person is not the judgment debtor, a copy of the motion shall be mailed to the judgment debtor's last known address.

In *McKinney*, we explained that "[f]or the order to be valid under the Rule, a court must find that there was a judgment entered in that court and that the property at issue is subject to enforcement of that judgment." 99 Md. App. at 136. The Rule also requires that a party seeking such relief must first file with the court a motion requesting ancillary relief and proof that service of the motion was effectuated on the appropriate party(ies) or person(s) against whom relief is sought and that a copy was also mailed to the judgment debtor. *See* Rule 2-651. Only then may the court act.

Appellants' challenges to the court's grant of ancillary relief are based largely on allegations of a lack of service of process, asserting that "[t]he Court erred in prematurely granting an unsupported Motion for Ancillary Relief and issuing an injunction 'pending further order of this Court' against non-parties over whom the Court did not possess jurisdiction as they were never served, and when the party/alleged judgment debtor had also not been served nor mailed a copy of the Motion, as required by Md. Rule 2-651."

M.W. Pride does not dispute that service was not properly effectuated, but argues instead that "[Mr.] Brown has effectively waived service of process by filing motions and seeking relief[,]" and that "[M.W.] Pride met this Court's test for the granting of an Order for Ancillary Relief in Aid of Enforcement."

Service of Process and Proof of Service

As this Court explained in *McKinney*:

> The Rule, we think, needs to be read in a common sense manner. So long as the person holding the property and making claim to it has proper notice and

> the opportunity for a hearing and so long as the judgment creditor makes a reasonable, *prima facie* showing that the property is or may be subject to the judgment, the court may afford what is essentially an interlocutory form of relief.…

99 Md. App. at 137–38.

Our reference to "proper notice" in *McKinney* as being a prerequisite to action by the court on a motion is drawn from the "proof of service" requirement of Rule 2-651. The Rule reinforces the importance of service, and proof thereof, by setting out the purpose of the service requirement and how it is to be made. *See* Rule 2-651. Pursuant to the Rule, service is required to be made "on the person against whom the order is sought" and "in the manner provided by Chapter 100 of this Title for service of process…." Rule 1-202(x) defines "process" as "any written order issued by a court to secure compliance with its commands or to require action by any person and includes a summons, … or other writ." In the instant matter, the "process" included the court's show cause order for the motion for ancillary relief and the corresponding writ of summons. The stated purpose of the service requirement is "to obtain personal jurisdiction" over the person against whom the relief is being sought. Rule 2-651. As an additional requirement, the rule requires that "if that person is not the judgment debtor, a copy of the motion shall be mailed to the judgment debtor's last known address." *Id*.

It is clear from the record, as conceded by M.W. Pride at oral argument, that service of process was not properly effectuated on Mr. Brown or his law firm. Despite conceding the lack of service, M.W. Pride contends that Mr. Brown has "without a shadow of a doubt, effectively waived service of process and submitted to the circuit court's jurisdiction."

M.W. Pride relies on *Peay v. Barnett*, 236 Md. App. 306 (2018), wherein we addressed the issue of waiver of service with respect to a default judgment and cited favorably the "two-tier" test for waiver by implication from *U.S. to Use of Combustion Sys. Sales, Inc.* (*Combustion Systems*) *v. E. Metal Products & Fabricators, Inc.*, 112 F.R.D. 685 (M.D.N.C. 1986), requiring a plaintiff to make "a good faith effort to serve under the rules governing service of process[,]" and that the defendant "must have 'actual knowledge of the commencement of the action and his … duty to defend.'" 236 Md. App. at 330 (quoting *Combustion Systems*, 112 F.R.D. at 688–89).

Applying the test from *Combustion Systems*, M.W. Pride avers that Mr. Brown's waiver of service of process is supported by five[14] representations of "facts" that: 1) it made "three good-faith attempts to serve Brown"; 2) Mr. Brown "is a Maryland licensed attorney

[14] In its brief, M.W. Pride made seven numbered representations of asserted "facts", two of which are inaccurate. The first inaccurate assertion claimed that "On September 17, 2019, [Mr.] Brown filed the Defendant's Motion to Strike Plaintiff's Response to Motion to Vacate and for Disqualification of Counsel and For Sanctions in *Huhra Homes, LLC v. Sean McLaughlin, et ux.*" No such motion was filed in the *McLaughlin* case; only in the *M.W. Pride* case.

The second assertion stated that: "Also on September 17, 2019, [Mr.] Brown filed a Motion to Strike, or in the Alternative, Opposition to [M.W.] Pride's 'Motion to Shorten Time.' [M.W.] Pride's Motion to Shorten Time was filed simultaneously with [M.W.] Pride's Motion for Ancillary Relief in Aid of Enforcement." While Huhra Homes, through its counsel, Mr. Brown, did file a motion to strike/preliminary opposition with respect to M.W. Pride's motion to shorten time, M.W. Pride misrepresents as to which motion to shorten time the filing was directed. The two motions/oppositions filed by Huhra Homes on September 17 were directed toward challenging the motion to vacate the disbursement order and its corresponding motion seeking to shorten the response time in the *McLaughlin* case. To be sure, M.W. Pride's motion for ancillary relief and its corresponding motion to shorten time were filed simultaneously, however, they were filed several hours after it had previously filed the motion to vacate the disbursement and its corresponding motion to shorten time.

who was served with all Motions and Responses through the MDEC filing system as counsel of record …[;]" 3) Mr. Brown "was mailed copies of all court orders by the Clerk of the Circuit Court[;]" 4) "[Mr.] Brown took a Partial Assignment of the Judgment entered in *McLaughlin* …. [and] filed factual Affidavits in both actions …[;]" and 5) Mr. Brown filed in the *M.W. Pride*-case a motion to strike M.W. Pride's response to the motion to vacate the default judgment entered in that case. M.W. Pride's reliance on *Peay v. Barnett* and the test from *Combustion Systems* is misplaced.

We explained in *Peay*, "[t]he circuit court's decision '[w]hether a person has been served with process is essentially a question of fact.'" 236 Md. App. at 316 (quoting *Wilson v. Md. Dep't of Env't*, 217 Md. App. 271, 286 (2014)). The same is true for findings of waiver in the absence of proper service. 236 Md. App. at 327. Here, the court made no factual finding with respect to service or waiver thereof. Questions of fact are to be resolved by the fact finder, not by the appellate court. *See Neal v. State*, 191 Md. App. 297, 315 (2010).

Notwithstanding the absence of factual findings by the court concerning service or waiver thereof, M.W. Pride's reliance on its assertions of "facts" supporting waiver finding are also misplaced. First, M.W. Pride's proffer of "three good-faith" service attempts are not found in the record or otherwise to have been presented to the circuit court at the time of its ruling on the motion. The court could not find what did not exist before it. Second, service of M.W. Pride's motions through MDEC and of the court's orders on the motions through the Clerk's office or MDEC do not signify that Mr. Brown had ever been sent, or received, copies of the show cause orders or the writs of summons. Notably, it was the

court's show cause orders that provided the express deadline for which appellants were to respond. Lastly, M.W. Pride appears to conflate Mr. Brown's involvement in the *McLaughlin* case, as counsel for Huhra Homes and as a partial assignee of the judgment entered in that case, as being sufficient to waive service of a writ of summons and show cause order relating to the motion for ancillary relief.

The suggestion that the court's grant of ancillary relief, which required service and proof thereof, reflects that it implicitly found service to have been effectuated or waived is not supported by the record. *See Rankin v. Brinton Woods of Frankford, LLC*, 241 Md. App. 604, 610 (2019) (explaining that we review factual determinations "'using the clearly erroneous standard[,] … [and] we will not disturb the factual findings of the trial court [i]f there is any competent evidence to support th[ose] factual findings'" (quoting *Dickerson v. Longoria*, 414 Md. 419, 433 (2010))). Indeed, M.W. Pride's September 12 line requesting reissuance of the show cause orders and writs of summons would suggest an absence of service at that point. There ought to have been a finding, prior to the court's grant of the motion for ancillary relief, of proof of service or waiver. *See Morton v. Schlotzhauer*, 449 Md. 217, 232 (2016) (noting that "[a] court that fails to rectify a judgment based on a misunderstanding of the law applicable to the case or the procedural posture of the case, especially when that error is brought to its attention in a timely manner, abuses its discretion" (footnote omitted)).

Therefore, we shall vacate the circuit court's order granting ancillary relief as premature. We shall remand to that court for further appropriate proceedings.

ORDER GRANTING ANCILLARY RELIEF VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR HARFORD COUNTY FOR FURTHER PROCEEDINGS. COSTS ASSESSED EQUALLY TO THE PARTIES.