Circuit Court for Harford County
Case No. 12-C-11-002150

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2276

September Term, 2016

FELICIA D. AMOS-HOOVER

v.

ANTONIO J. AMOS, SR.

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

JJ.

Opinion by Beachley, J.

Filed: March 2, 2018

Pro se appellant, Felicia Amos-Hoover ("Felicia"), and her now ex-husband, appellee Antonio Amos, Sr. ("Antonio") were divorced pursuant to a judgment of absolute divorce issued by the Circuit Court for Arlington County, Virginia, on April 8, 2011. On May 17, 2011, that court modified its judgment regarding the visitation exchanges of their minor child, A.A. These judgments were enrolled in Maryland shortly thereafter, and from what we can glean from the voluminous record, in the five years subsequent to their divorce, Felicia and Antonio have engaged in nearly continuous litigation in Maryland seeking various modifications and sanctions. In 2016, the Circuit Court for Harford County held a six-day trial on both Antonio's fourth amended petition to modify custody, visitation, and child support, and Felicia's first amended counter-petition to modify custody and visitation. On March 10, 2017, the trial court issued two orders, one dealing with child support and the other dealing with custody and visitation. The trial court maintained primary physical custody with Felicia as contained in the Virginia Order. As to legal custody, the court kept joint legal custody as provided in the Virginia Order, but awarded tie-breaking decision-making authority to Felicia during the school year and to Antonio during the summer. Felicia appeals those court orders, and presents the following issues for our review:

> 1. Did the court err as a matter of law and/or abused [sic] its discretion and also violate Mother's constitutional right to due process of law and equal protection of the law, by ordering Mother to participate in a child custody evaluation prior to a complaint being filed in the court for custody and prior to Mother having the ability to answer any complaint once filed in court?

2. Did the court err as a matter of law, by denying Mother's motion to dismiss or in the alternative, motion for summary judgment regarding the claims in Father's 2nd amended complaint filed on June 6, 2013, when Father did not file a response to Mother's motion as required by Md. Rule 2-501(b), and the court denied Mother's motion on the grounds that the material facts were in dispute, although no answer was filed disputing the material facts and Mother's motion did not demonstrate facts were in dispute?

3. Did the trial court err as a matter of law and also violate Mother's constitutional rights to equal protection of the law and constitutional right to due process of the law, by sua sponte denying summary judgment motions filed by Mother at a motions hearing, before Father's response was due, which made the Father immune from filing a response in compliance with Md. Rule 2-501(b) to the summary judgment motions, and at the same time prohibited Mother from utilizing summary judgment motions in compliance with Md. Rule 2-501(a)?

4. Did the trial court err as a matter of law by denying Mother's motion for summary judgment regarding Father's claim that Mother and the minor child's Step-Father, both use corporal punishment to physically abuse the child with the purpose of intimidating the minor child and alienating the minor child from Father?

5. Did the trial court err as a matter of law, by not applying Maryland law concerning modifying an existing custody order, when the trial court overruled Mother's counsels [sic] repeated objections to Father presenting evidence for the best interest standard in Father's case in chief at trial, without first establishing what the material change in circumstances was, and when the trial court never made a finding of what Father's material change in circumstances was to modify the parties [sic] existing order concerning custody, and when Father never produced evidence of a material change in circumstances which impacted the welfare of the minor child at the close of Father's case in chief?

6. Did the trial court err as a matter of law and/or abuse its discretion, by preventing the court appointed psychologist from having to comply with Mother's request to have copies of Mother's own medical records sent directly to Mother's Expert witness for trial, when such a request is authorized by Md. Code Ann., Health-General Sections 4-307(e)(3)?

7. Did the trial court err as a matter of law and/or abuse its discretion, and also violate Mother's constitutional right to due process of the law and equal protection of the law, by not allowing Mother's psychological expert to receive Mother's medical records/raw data testing from the court appointed psychologist, Dr. Gombatz, and for the Mother's expert not to review Father's raw data testing that was court ordered for the purpose of the custody litigation?

8. Can a trial court retroactively impose an unknown deadline to designate an expert witness for trial on the first day of trial on the merits and then exclude an expert witness at trial, when the court would not rule on a motion requesting the court to set a specific date to designate an expert witness for trial, and if so, is this a violation of a party's constitutional right to due process of the law and equal protection of the law and an abuse of discretion?

9. Did the trial court err as a matter of law and also commit plain err [sic], by ruling that it gave no weight nor considered an existing agreement between the parties because it was forged by necessity as stated by the trial court, because Father was no longer happy with the consent order, as opposed to giving the consent agreement full faith and credit?

10. Did the trial court err as a matter of law and/or abused [sic] its discretion, by not finding that a material change in circumstances existed based on Mother's 1st amended counter-petition to modify Father's visitation, legal custody, and other relief?

11. Did the trial court err as a matter of law and/or abused [sic] its discretion, by modifying the child support order, when no material change of circumstances existed to modify the support order, and by vacating the child support arrears that were awarded and affirmed by the Court of Special Appeals No. 2588, Sept. Term 2013?

12. Did the trial court err as a matter of law and/or abused [sic] its discretion, by not awarding Mother attorney's fees and costs, when the facts demonstrated that Father did not prove any claims in Father's 4th amended complaint and abused its discretion by not awarding any attorney fees from Father's 1st amended complaint that Judge Waldron dismissed in March 2013?

We conclude that the trial court did not err, and affirm.

ANTONIO'S MOTION TO DISMISS APPEAL

Before addressing the issues on appeal, we first consider Antonio's motion to dismiss Felicia's appeal for violating the requirements of a record extract under Maryland Rule 8-501 and for prematurely filing her appeal under Rule 8-202.

Record Extract Violation

Antonio correctly notes that Rule 8-501(c) requires the record extract to contain "all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal." We are not unsympathetic to Antonio's contention—Felicia's record extract does not contain all parts necessary for the determination of her arguments on appeal. Notably absent from the record extract are any of Antonio's filings, including his petitions, as well as various other relevant documents needed to address Felicia's arguments, including relevant court orders. Additionally, some pages of the extract are insufficiently labeled so as to be useful. According to the index for the extract, pages 52 to 99 contain "Excerpts from Transcript of Merits Trial held on 9/26-29/16 & 12/20-21/16 before Hon. Judge Angela Eaves," but Felicia has failed to link the excerpts to a specific day of trial. For example, page 57 of the record extract appears to be page 56 of one of the six days of trial, but there is no date on the page. Page 58 of the extract is page 154 of one of the six days of trial, but again there is no date of trial linked to the excerpt.

In *McAllister v. McAllister*, this Court explained that in the face of a Rule 8-501(c) violation, typically, we should not dismiss the appeal. 218 Md. App. 386, 399 (2014). Instead, "For an appellate court, the 'preferred alternative' is always 'to reach a decision

on the merits of the case.'" *Id*. (quoting *Joseph v. Bozzuto Mgmt. Co*., 173 Md. App. 305, 348 (2007)). We also noted that "this Court typically will not dismiss an appeal, even in the face of noncompliance with Rule 8-501, unless the appellee sustains prejudice." *Id*. Here, Antonio submitted his own record extract—an extract which lacks a table of contents, and, like Felicia's extract, contains numerous unlabeled transcript excerpts. Not only does Antonio not allege prejudice in his motion to dismiss, but his own record extract is even less helpful than Felicia's. Accordingly, we will not dismiss Felicia's appeal because of the deficiencies in her record extract.

Premature Appeal

Antonio also argues that we should dismiss Felicia's appeal as premature—that she appealed before the court issued a final judgment. According to the transcript, at the close of the trial on December 21, 2016, the trial court ordered joint legal custody with Felicia retaining primary physical custody, and made specific determinations as to tie-breaking authority, visitation, and phone access. Notably, the court stated that it had not made a decision regarding child support, and that it might need "to do some extrapolations." Felicia noted her appeal on December 22, 2016, after the court ruled from the bench, but before it issued its March 10, 2017 written orders concerning the issues of custody, visitation, and child support.

Because the court did not rule on all outstanding issues on December 21, 2016, the court did not issue its final judgment on that day. "A 'final judgment' is a judgment that 'disposes of all claims against all parties and concludes the case.'" *Doe v. Sovereign Grace*

Ministries, Inc., 217 Md. App. 650, 660 (2014) (quoting *Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 241 (2010). Generally, a party has thirty days to appeal from a court's judgment, and a party may not appeal from a judgment that is not final. Maryland Rule 8-202(a); Md. Code (1973, 2013 Repl. Vol.) § 12-303 of the Courts and Judicial Proceedings Article ("CJP").

In order to appeal from the final judgment in this case, Felicia would have needed to note an appeal within thirty days of the court's March 10, 2017 orders. Because she only noted an appeal on December 22, 2016, before the court had resolved all outstanding issues—namely child support—we conclude that Felicia's appeal was interlocutory. CJP § 12-303(3)(x), however, permits a party to appeal from an order changing the terms of custody and care of a child, despite that order not being a final judgment. Because the court granted tie-breaking authority and slightly modified visitation and access, Felicia's claims regarding custody and visitation are timely under CJP § 12-303(3)(x). We will not, however, review any arguments regarding child support.

FACTUAL AND PROCEDURAL BACKGROUND

We are sympathetic to the hurdles one faces when filing a *pro se* appeal. It is challenging to craft a cogent legal argument, and to present that argument within the constraints of the rules for preparing an appellate brief. But the record in this case consists of seven transcripts and twelve volumes, and "[w]e cannot be expected to delve through the record to unearth factual support favorable to [the] appellant." *Rollins v. Capital Plaza*

Assocs., *L.P.*, 181 Md. App. 188, 201 (2008) (quoting *von Lusch v. State*, 31 Md. App. 271, 282 (1976)). Against this backdrop, we shall address the issues that we are able to.

As previously noted, the parties were divorced in Virginia by a court order dated April 8, 2011. After that order was enrolled in Maryland, Antonio filed a petition to modify custody, visitation, and child support, which he subsequently amended numerous times. Felicia also filed a petition seeking to modify custody and visitation. The trial on these issues took place from September 26-29, 2016, and December 20 and 21, 2016, after which Felicia appealed. We shall provide additional facts as necessary to address the issues on appeal.

DISCUSSION

I. Ordering Felicia to participate in a custody evaluation

Felicia's first contention on appeal is that the court violated her constitutional rights to due process and equal protection by ordering her to participate in a custody evaluation after the court dismissed Antonio's first petition to modify custody, but prior to Antonio filing an amended petition. According to her extract, Felicia filed a motion to vacate the order for the custody evaluation on May 13, 2013.

We will not address this issue because Felicia not only failed to provide the court's order resolving this issue in her record extract, but she also failed to identify where in the record the court addressed the issue. *See id*. Furthermore, Felicia failed to provide any legal support for her argument beyond quoting the Fourteenth Amendment to the U.S. Constitution. Even assuming the court did err in ordering the custody evaluation, we fail

to see how this prejudiced Felicia in light of the fact that Antonio amended his petition, and that the matter ultimately went to trial on the issue of custody, thereby making a custody evaluation relevant to the court's ultimate decision.

II. Denying Felicia's Motion to Dismiss or Motion for Summary Judgment as to Antonio's Second Amended Petition

Felicia next argues on appeal that the trial court erred as a matter of law in denying her motion to dismiss or, in the alternative, for summary judgment as to Antonio's second amended petition to modify. Specifically, Felicia argues that the trial court erred in denying her motion because there were no material facts in dispute, and because Antonio did not file a response to her motion as mandated by Rule 2-501(b), which pertains to summary judgment.

The Court of Appeals has explained Rule 2-501 and the summary judgment standard as follows:

> Maryland Rule 2-501 indicates that a motion for summary judgment is appropriate on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. . . . When reviewing the grant or denial of a motion for summary judgment we must determine whether a material factual issue exists, and all inferences are resolved against the moving party. [E]ven where the underlying facts are undisputed, if those facts are susceptible of more than one permissible inference, the choice between those inferences should not be made as a matter of law, but should be submitted to the trier of fact.

Miller v. Bay City Prop. Owners Ass'n, Inc., 393 Md. 621, 631 (2006) (internal citations and quotation marks omitted). In reviewing a trial court's decision to deny summary judgment, the Court of Appeals has stated,

> [O]rdinarily no party is entitled to a summary judgment as a matter of law. It is within the discretion of the judge hearing the motion, if [she] finds no uncontroverted material facts, to grant summary judgment or to require a trial on the merits. It is not reversible error for [her] to deny the motion and require a trial. As indicated, *a trial court may even exercise its discretionary power to deny a motion for summary judgment when the moving party has met the technical requirements of summary judgment*. Thus, on appeal, the standard of review for a denial of a motion for summary judgment is whether the trial judge abused its discretion and in the absence of such a showing, the decision of the trial judge will not be disturbed.

Dashiell v. Meeks, 396 Md. 149, 164-65 (2006) (internal citations, footnote, and quotation marks omitted) (emphasis added). We note that in the context of family law cases, the grant of summary judgment will be an infrequent occurrence due to the likelihood of genuine disputes of material fact. Here, the trial court denied Felicia's motion for summary judgment, holding that, "the court believes that there are obviously material disputes of fact to the issues raised in this case and any motion for summary judgment would be denied."

We initially note that, under *Dashiell*, the trial court could have found no genuine dispute of material fact and still properly denied summary judgment. *Id*. Nevertheless, we agree with the trial court that there were obvious material disputes of fact which rendered summary judgment inappropriate. In his verified second amended complaint for modification, Antonio, under penalty of perjury, alleged that modification as to custody and visitation was necessary because: 1) the Visitation Center where exchanges occur would close, preventing the exchange from taking place; 2) Felicia had not been contacting Antonio regarding emergencies, and Antonio wished to participate in decision-making; 3) Antonio was not getting access to A.A. during the summer as contemplated by the order;

4) Felicia was inflexible regarding the rescheduling of visitation for the Father's Day holiday; 5) Felicia prevented Antonio from contacting A.A. by phone or related communication, an issue not contemplated in the divorce decree; 6) the parties could not agree on tie-breaking authority regarding educational decisions; and 7) Felicia interfered with Antonio's visitation access, causing him to miss scheduled time with A.A. Felicia's motion for summary judgment appeared to concede that there were disputes of fact when she wrote in her memorandum that "the assertions made by [Antonio] lack validity and candor as to the alleged events that have occurred in this matter."

Aside from her tacit admission, however, Felicia's motion for summary judgment clearly demonstrates a genuine dispute of material fact. For example, in her motion, Felicia contended that during the summer, Antonio kept A.A. longer than provided for in the Virginia Order. But in his complaint, Antonio alleged that during the summer, Felicia kept A.A. longer than provided for in the order. This dispute concerning summer visitation clearly constitutes a genuine dispute of material fact. Other instances of factual disputes include: Felicia claimed that there were no issues with the exchange taking place at the Visitation Center; and that Felicia and Antonio agreed to work together to make a decision regarding A.A.'s schooling, but that Antonio had failed to follow-up with Felicia on this issue. Because it is clear from the motion that the parties did not agree upon material facts, summary judgment would have been improper. Accordingly, the court did not err in denying Felicia's motion on this ground.

Felicia also contends that the court erred in denying summary judgment because Antonio did not respond to her motion as required by Rule 2-501(b). That portion of the rule provides:

> A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

We do not read section (b) of the Rule as requiring a party to file a response. Instead, the plain meaning makes clear that if a party does respond, that response must be in writing, and must identify the disputed material facts. Felicia provides no legal support for her proposition that a party *must* file a response to a motion for summary judgment, and "we . . . will not '*seek out law to sustain [her] position.*'" *Rollins*, 181 Md. App. at 202 (quoting *von Lusch*, 31 Md. App. at 285). In short, the pleadings generated issues of material fact concerning A.A.'s custody, and therefore the trial court did not err in denying Felicia's motion for summary judgment.

III. Denying Felicia's Motion for Summary Judgment as to Antonio's Fourth Amended Petition

Felicia next argues that the trial court erred in denying her motion for summary judgment as to Antonio's fourth amended petition to modify custody, visitation, and child support. In doing so, she incorporates her legal argument from Part II, *supra*. As stated above, we disagree that Rule 2-501(b) requires a party to file a written response to a motion

for summary judgment, and we again note that under *Dashiell*, a trial court may properly deny summary judgment even when there is no genuine dispute of material fact. 396 Md. at 164-65. Keeping these principles in mind, we conclude that the court did not err in denying summary judgment.

In his verified fourth amended petition, Antonio sought sole legal and primary physical custody, as well as a change in child support. In seeking sole legal and primary physical custody, Antonio alleged that: Felicia limited his contact with A.A., including his telephone access; that Felicia prevented him from being involved in A.A.'s daycare planning, including refusing to list Antonio as an emergency contact; that Felicia used corporal punishment, as well as other means, to alienate A.A. from Antonio; and that because Felicia artificially depressed her income, and because daycare costs had diminished, Antonio's child support obligation should be reduced.

According to her brief, Felicia responded with three separate motions for summary judgment: 1) on the issue of interference with visitation; 2) on the issue of denial of phone access; and 3) on the issue of daycare disagreements. The trial court denied Felicia's motions for summary judgment at a hearing on August 18, 2016, finding genuine disputes of material fact.

Under *Dashiell*, even if the court had not found a dispute of material facts, the trial court would not have abused its discretion in denying summary judgment. *Id*. Moreover, in custody cases, the court is tasked with making decisions in the best interest of the child. It would be atypical for the court to grant summary judgment as to specific factual claims

within the custody case. Indeed, such a practice would likely be antithetical to judicial economy. We see no error in the court's denial of summary judgment.

IV. Denying Felicia's Motion for Summary Judgment Regarding Child Abuse and Alienation

Felicia next argues that the trial court erred in denying her motion for summary judgment specifically as to the issue of abuse and alienation. Specifically, Felicia notes that at the August 18, 2016 hearing, the trial court asked Antonio's counsel if there were any documents in existence relating to physical abuse. Antonio's trial counsel responded, "Not that I am aware of, your Honor." As stated in Part III *supra*, the trial court denied Felicia's motion for summary judgment. For the same reasons explained in Parts II and III, we affirm the trial court's denial of Felicia's motions for summary judgment. We also discern no prejudice to Felicia because the court did not find that Felicia abused A.A.

V. Incorrectly Construing the Law for Modification of Custody

Felicia next claims that the trial court erred in permitting Antonio to argue that it was in A.A.'s best interest to modify custody without first determining that there had been a material change in circumstances. Felicia correctly notes that

> When presented with a request for a change of, rather than an original determination of, custody, courts employ a two-step analysis. First, the circuit court must assess whether there has been a "material" change in circumstance. If a finding is made that there has been such a material change, the court then proceeds to consider the best interests of the child as if the proceeding were one for original custody.

McMahon v. Piazze, 162 Md. App. 588, 594-95 (2005) (internal citations and quotation marks omitted).

Here, the trial court *denied* Antonio's request for sole legal and primary physical custody. Instead, the trial court maintained joint legal custody, with Felicia retaining primary physical custody, as provided in the Virginia Order. Thus, even assuming, as Felicia argues, that "the trial court erred as a matter of law when it allowed [Antonio] to present a case for the best interest part of the two-step analysis to modify custody, prior to first having to establish that there was a material change in circumstances," Felicia suffered no harm from this alleged error because the court did not modify legal or primary physical custody. To the extent that Felicia alleges that the trial court erred in granting tie-breaking authority, and in making minor alterations to the visitation schedule, we shall address those issues in Part X, *infra*.

VI. Disclosure of Psychologist's Raw Data to Felicia

According to Felicia's Motion to Disclose Raw Data from Psychological Test, the trial court ordered both Felicia and Antonio to undergo psychological testing to help the court resolve the issue of parental fitness. In her motion, Felicia sought to have the psychologist provide *Antonio's* "raw data" from that testing so that she could use that information at trial. The trial court denied Felicia's motion to produce the raw data. On appeal, Felicia argues that Md. Code (1982, 2015 Repl. Vol.) § 4-307(e)(3) of the Health – General Article ("HG") allows *her own* raw data to be released directly to her expert for trial preparation purposes. That section provides:

> (3)(i) A recipient who has been the subject of a psychological test may designate a psychologist licensed under Title 18 of the Health Occupations Article or a psychiatrist licensed under Title 14 of the Health Occupations Article to whom a health care provider may disclose the medical record.

(ii) The recipient shall:

1. Request the disclosure authorized under this paragraph in writing; and
2. Comply with the provisions of § 4-304 of this subtitle.

Felicia did not request the release of her own raw data in her motion below. Felicia's motion specifically requested Antonio's raw data, but she now argues that "the court erred by denying [her] request for [her] own medical record[.]" Because she failed to raise the issue of the release of her own records in her motion, she cannot raise this issue for the first time on appeal. Md. Rule 8-131(a).

VII. Felicia's Motion to Reconsider the Court's Decision Regarding the Psychologist's Raw Data

Following the court's decision not to disclose raw data, Felicia filed a subsequent motion which she described as a motion for reconsideration. "An appeal from the denial of a motion asking the court to exercise its revisory power is governed by the abuse of discretion standard." *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc*., 194 Md. App. 375, 397 (2010) (citing *In re Adoption/Guardianship of Joshua M*., 166 Md. App. 341, 351 (2005)). "An abuse of discretion . . . should only be found in the extraordinary, exceptional, or most egregious case." *Id*. at 398 (internal quotation marks omitted) (quoting *Wilson v. John Crane, Inc.,* 385 Md. 185, 199 (2005)). We see nothing extraordinary, exceptional, or egregious in the trial court's decision to deny the motion for reconsideration. Because we afford trial courts a highly deferential standard in this context, we decline to hold that the

trial court abused its discretion in denying Felicia's motion for reconsideration concerning the psychologist's raw data.

VIII. Denying Felicia's Expert from Testifying

On December 4, 2015, Felicia filed a Motion to Schedule a Deadline for Designation of Expert Witnesses and Reports. In her motion, Felicia noted that the merits hearing was scheduled for February 22 and 23 of 2016, and requested that the court establish a deadline for the designation of experts. Apparently, the merits hearing was rescheduled for late September, 2016, and according to Felicia, the court never ruled on her motion.

On August 18, 2016, the court held a hearing on various outstanding motions, including the request for a discovery deadline. There, the court stated that September 1, 2016, would be the discovery deadline. The court admonished the parties that,

> There will be no more discovery and nothing new served on either side by the other side after September 1. Anything that already has been served needs to be answered, produced by September 1.
>
> Let me suggest this. I am not inviting anybody to serve something on August 29th that needs to be complied with by September 1. That would be ridiculous. I think that you all already know what information you need for a custody case. I can't imagine what else either side might need that you have not already thought of. Honestly, it's a custody case.

Prior to the merits hearing, Antonio moved *in limine* to exclude Viola Vaughn, one of Felicia's designated experts. Antonio's counsel told the court that he first learned that Felicia intended to use Vaughn as an expert on September 1, 2016, at 4:00 p.m., and that this notice did not afford him sufficient time to depose Vaughn prior to trial. Felicia's

counsel responded that the renewed designation of experts was submitted by the deadline of September 1.

In granting the motion to exclude the witness, the trial court explained that "September 1st was not just merely a deadline by which to get it all in . . . . It was the [c]ourt's deadline to provide both parties with an opportunity to get everything done that needed to be done. So September 1 is absolutely too late to designate an expert witness . . . . So the witness is excluded."

On appeal, Felicia argues that "[t]he court never ruled on [her] motion and never set a specific deadline to designate an expert for trial." She contends that, "[t]he trial court's ruling violated [her] constitutional right to due process as [she] was never put on notice of a deadline for designating an expert for trial." We note that, despite her contention, the trial court did, in fact, set a specific deadline for all discovery issues—it did so at the August 18, 2016 hearing.

Here, the trial court found that Felicia disregarded the spirit of its September 1 deadline, and excluded Felicia's witness as a sanction. We perceive no error. Antonio would have been entitled to depose Felicia's expert, but the late designation precluded any deposition because it would have violated the trial court's discovery order. Our Court has held that, "In imposing sanctions for discovery failures, a trial court has 'considerable latitude.'" *Peterson v. State*, 196 Md. App. 563, 586 (2010) (quoting *Warehime v. Dell*, 124 Md. App. 31, 43 (1998)). "Disqualification of witnesses is a sanction expressly within the discretion of the court." *Id*. To the extent Felicia alleges a violation of her

constitutional rights, she has provided no legal support. Because of the trial court's broad discretion on the issue of discovery sanctions, we conclude that the court did not err.

IX. Giving the Virginia Order Full Faith and Credit

In her ninth argument on appeal, Felicia argues that,

> the trial court erred as a matter of law and/or abused its discretion when it did not give the parties [sic] orders from the State of Virginia their full faith and credit and the trial court committed plain error as there was no evidence the parties' agreement was forged by necessity.

We decline to address this issue because Felicia provides no legal authority for her contention, and because it is not clear what error she is alleging, or how the alleged error affected the outcome of the trial. Although we are sympathetic to her *pro se* status, we will not craft Felicia's appellate arguments for her. *Elec. Store, Inc. v. Cellco P'ship*, 127 Md. App. 385, 405 (1999) ("Further, it is not this Court's responsibility to attempt to fashion coherent legal theories to support appellant's sweeping claims.").

X. Denying Mother's Petition to Modify Custody and Visitation

Felicia's most substantial argument on appeal is that the trial court erred in failing to modify the Virginia Order regarding custody and visitation in accordance with her amended petition. The Virginia Order granted: joint legal custody; primary physical custody to Felicia; unsupervised visitation for Antonio on the first, second, and third weekends in each month with four weekends; unsupervised summer visitation for Antonio based on the public school calendar; and that all exchanges of custody take place at the Visitation Center of Baltimore County. In her amended petition, Felicia argued that Antonio was mentally unstable and therefore unfit for unsupervised visitation. She sought

to eliminate Antonio's unsupervised visitation, and a reduction of the visitation permitted in the Virginia Order. She also requested sole legal custody of A.A.

At the conclusion of trial, the court denied Felicia's petition for sole legal custody and her request for reduced visitation, finding both Antonio and Felicia fit to parent A.A. Felicia now argues that she "did provide sufficient proof of the claims contained within [her] 1st amended counter-petition, and the trial court erred as a matter of law and/or abused its discretion by making erroneous findings in this case and by misapplying legal principles only to [Felicia] and not to [Antonio]."

"[A]n appellate court does not make its own determination as to a child's best interest; the trial court's decision governs, unless the factual findings made by the lower court are clearly erroneous or there is a clear showing of an abuse of discretion." *Gordon v. Gordon,* 174 Md. App. 583, 637–38 (2007). "If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002). "[A]buse of discretion may arise when 'no reasonable person would take the view adopted by the [trial] court' or when the court acts 'without reference to any guiding rules or principles.'" *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (quoting *In Re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). Accordingly, we will affirm the trial court's custody decision provided that its factual findings are not clearly erroneous, and that its ultimate decision is not an abuse of discretion.

As stated in Part V, *supra*, in deciding whether to modify a custody order, the trial court should employ a two-step analysis: first it must determine whether there has been a "material" change in circumstances; if the court finds a material change, it then proceeds to consider the best interests of the child as if it were the original custody proceeding. *McMahon*, 162 Md. App. at 593-94. A material change is one which affects the welfare of the child. *Id*. at 594. The moving party bears the burden of showing that it is in the child's best interests to modify the custody order. *Gillespie v. Gillespie*, 206 Md. App. 146, 171-72 (2012).

Here, the trial court articulated its findings as to the fitness of the parents as follows:

> As I indicated I think both parties are fit in this case to parent in their own individual households. I have not heard that [A.A.] lacks the basics – food, clothing, shelter, medical care and education. . . .
>
> Dr. Gombatz' [sic] evaluation indicated that [Antonio] was obsessive and had a narcissistic personality with obsessive and compulsive and histrionic features. For [Felicia], he said that she had obsessive and compulsive and histrionic personality traits. I find that both parties have acted in accordance with Dr. Gombatz's evaluation. The way they met, the way they chose to pursue their relationship, I think anybody looking from the outside in would have seen the recipe for disaster in the making in terms of this relationship with 23 years between them in age. The fact that [Felicia] lied about the fact that she was not only still married but that she was, in fact, residing with her husband, and that her husband put out a missing person's report on her. Both were each other's fourth marriages. Fourth. While [Antonio] believes that because he is significantly older that that's not unusual and that somehow, that somehow is more of a discredit to [Felicia], I don't believe that that's something that this [c]ourt finds makes either any better than the other. It's clear that the relationships that they have had in the past that were unsuccessful were as a result of what Dr. Gombatz opined. Neither wants to do the kind of self-reflection about their shortcomings either on their own or in therapy which would prevent them from making changes in their own lives rather than blaming each other for their shortcomings. . . .

> It is the parties' own testimony about their own behavior, the witnesses, and the evidence that they are presented [sic] here today which demonstrate to this [c]ourt that they acted consistent with Dr. Gombatz's opinions.
>
> Both parties need to be in therapy on their own to examine their shortcomings if not for their own benefit, for [A.A.]'s benefit.

Although the court noted its perceived shortcomings for each parent, it concluded that both parents were fit to provide the necessities of food, clothing, shelter, medical care and education. Regarding the court's determination to continue joint legal custody, rather than grant Felicia sole legal custody with reduced visitation for Antonio, the court explained,

> I have seen nothing to indicate that [A.A.] doesn't have anything but great affection and love for both of [A.A.'s] parents.
>
> The testimony of the witnesses in this case and even the manner in which both [Antonio] and [Felicia] testified about [A.A.] shows me that they both love [A.A.] and that that affection and love is returned.

In her brief, Felicia provides various examples where she claims that the court treated her unfairly and therefore erred in its determination. Because in her amended petition Felicia sought sole legal custody and a restriction of Antonio's visitation due to Antonio's lack of mental fitness, we review the record for evidence to support the court's finding that Antonio was fit to provide care for A.A. As we will show, Dr. Gombatz's testimony supports the court's finding.

When asked about Antonio's ability to provide for A.A., Dr. Gombatz stated, "I had no indication that [Antonio] was unable to provide for the needs, physical needs to care for the child." In fact, Dr. Gombatz even testified that Felicia had "acknowledge[d] that [A.A.]

loves [Antonio]. [That she] told [Dr. Gombatz] '[A.A.] loves [Antonio] and looks forward to weekend time with him.' And she's never criticized [Antonio's] parenting and never asked the court to reduce time. But from her point of view, [Antonio] was the one saying negative things to the court." Dr. Gombatz adopted Antonio's trial counsel's contention that this was a case about the parents disliking each other, rather than a case about taking care of A.A.

The trial court relied on Dr. Gombatz's testimony to conclude that both parents were fit to care for A.A.'s needs. We cannot conclude that the court's decision to maintain physical and legal custody pursuant to the Virginia Order was an abuse of discretion.

Felicia also contends that the court erred in granting tie-breaking authority, and in slightly modifying visitation and access in ways she claims are unfavorable to her. Specifically, the court granted Felicia tie-breaking authority during the school year, but granted Antonio tie-breaking authority during the summer. Additionally, the court slightly modified Antonio's visitation schedule to alternating weekends from three weekends a month, but granted Antonio an additional overnight every other week.

In *McMahon*, we explained that,

> *[A]lthough there sometimes clearly exists no change in circumstance triggering a reevaluation of the custody arrangement*,
>
> > [i]n the more frequent case . . . there will be some evidence of changes which have occurred since the earlier determination was made. Deciding whether those changes are sufficient to require a change in custody necessarily requires a consideration of the best interest of the child. *Thus, the question of 'changed circumstances' may infrequently be a*

> *threshold question, but is more often involved in the 'best interest' determination*[.]

162 Md. App. at 594 (emphasis added) (quoting *McCready v. McCready*, 323 Md. 476, 482 (1991)).

Dr. Gombatz testified at trial that he "concluded, based upon [his] observation of [the parents] . . . that they are not able to co-parent together and the [c]ourt has to make a decision as to who would be in a better position to make decisions for [A.A.]" At the conclusion of the six-day trial, the court agreed, stating, "It is the parties' own testimony about their own behavior, the witnesses, and the evidence that they are [sic] presented here today which demonstrate to this [c]ourt that they acted consistent with Dr. Gombatz's opinions." According to the testimony and the court's observations, the parties were unable to co-parent pursuant to a strict legal custody award. The trial court implicitly found a material change in circumstances in this regard and therefore did not abuse its discretion by granting tie-breaking authority as indicated.

Regarding its decision to modify Antonio's visitation schedule, the court explained that "[its] objective also [was] to avoid too many transitions for A.A." The court was "not trying to lessen the time [A.A. would spend with each parent]. [The court was] trying to lessen the number of transitions." Because the court found that fewer visitation transitions were in A.A.'s best interests, we hold under *McMahon* that the trial court did not abuse its discretion by making relatively minor adjustments to the visitation schedule. *Id*.

XI. Child Support

Felicia next argues that the trial court erred in its determination of child support. As we explained *supra*, however, Felicia did not timely appeal the court's child support order. Accordingly, we will not address this issue.

XII. Attorney's Fees

Finally, Felicia argues that the trial court erred in denying her request for attorney's fees. We note that Md. Code (1984, 2012 Repl. Vol.) § 12-103(a) of the Family Law Article ("FL") permits a court to award attorney's fees that are just and proper. FL § 12-103(b) provides:

> Before a court may award costs and counsel fees under this section, the court shall consider:
>
> (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.

Felicia contends that, "the evidence in this record established a disparity of income between the parties" and that this disparity warranted an award of attorney's fees.

In her brief, Felicia failed to provide a single reference to the record or the extract providing evidence of her and Antonio's finances. Instead, Felicia simply recited the court's decision regarding the award of attorney's fees. As stated *supra*, "[w]e cannot be expected to delve through the record to unearth factual support favorable to [the] appellant." *Rollins* 181 Md. App. at 201. Accordingly, we decline to consider this issue.

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