Circuit Court for Baltimore County
Case No. 03-C-18-008435

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2546

September Term, 2019

ARTHUR SHEFLYAND

v.

DIANA SHEFLYAND

Kehoe,
Berger,
Reed,

JJ.

Opinion by Reed, J.

Filed: December 21, 2020

*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.

Arthur Sheflyand ("Appellant") and Diana Sheflyand ("Appellee") were married on June 11, 2015 in Baltimore County, Maryland and their daughter was born in September 2015. The parties separated on October 26, 2017. The parties followed an "informal equal shared custody arrangement" pending a custody ruling. On January 31, 2020, the Circuit Court for Baltimore County granted Appellant an absolute divorce from Appellee, ordering that Appellant's custody with the parties' minor daughter be set to "every other weekend beginning at 6:00 p.m. on Friday evening until 6:00 p.m. on Sunday evening." It is from this order that Appellant files his timely appeal. In doing so, Appellant presents the following questions for our review, which we have rephrased for clarity[1]:

I. Did the trial court abuse its discretion by issuing a discovery sanction that precluded Appellant from introducing evidence of child support and custody without examining if such evidence would be relevant to the best interest of the child?

II. Did the trial court abuse its discretion in calculating Appellant's income to determine child support?

For the following reasons, we answer these questions in the negative and affirm the decision of the trial court.

FACTUAL & PROCEDURAL BACKGROUND

i. Marriage and Separation

---

[1] Appellant presents the following questions:

1. In issuing its discovery sanction, did the trial court fail to consider the best interest of the child before precluding Appellant from introducing relevant evidence and mounting a defense?
2. Did the trial court abuse its discretion in calculating the Appellant's income for the purposes of calculating child support?

Arthur Sheflyand ("Appellant") and Diana Sheflyand ("Appellee") were married on June 11, 2015 in Baltimore County, Maryland and their daughter was born in September 2015. The parties separated on October 25, 2017 following a physical altercation between the parties and Appellant's parents. The parties continued to engage in sexual relations until July 2018.

ii. Procedural History

Appellee filed a Complaint for Absolute Divorce, or in the Alternative, Limited Divorce and Other Related Relief on August 23, 2018, alleging acts of verbal and physical abuse by Appellant as well as controlling behavior. Appellant filed a Counter-Claim on December 26, 2018 that denied Appellee's allegations of abuse and, instead, claimed instances of aggressive behavior and drug allegations against Appellee. However, these allegations were stricken from Appellant's complaint and placed under court seal by the Honorable Judge Paul Hanley in the Circuit Court for Baltimore County on the grounds that Appellee is a licensed pharmacist and Judge Hanley felt such allegations were malicious and lacked credibility.

Appellee served Appellant with discovery requests on October 19, 2018. Despite numerous letters and discussion between counsel, Appellant failed to respond, and Appellee filed a Motion for Sanctions and to Compel Discovery on February 8, 2019. Appellant filed an Answer to Plaintiff's Motion for Sanctions on February 24, 2019 in which he noted his responses were being forwarded to Appellee's counsel. Appellee then filed a Response to Defendant's Answer to Motion for Sanctions on February 26, 2019 arguing that Appellant's responses were "deficient" based on the following:

> Defendant failed to answer four (4) Interrogatories in their entirety, while the Answers to other Interrogatories were woefully deficient. In addition, Defendant has failed to provide adequate and meaningful responses to the document requests. Out of the one hundred and ten (110) document requests, Defendant only forwarded two (2) income tax returns, along with portions of account statements for three (3) credit card accounts and one (1) bank account. This is regardless of his Answers to Interrogatories indicating that he has (an unknown number of) accounts with five (5) different banks in addition to seven (7) different credit card accounts. In his Response to Request for Production of Documents, Defendant actually indicated that he will be providing documents to satisfy no less than forty-four (44) of the Requests, yet to date, he has only provided partial responses to three (3) of those Requests.

The trial court entered an Order granting Appellee's Motion for Sanctions and to Compel Discovery on April 22, 2019. In doing so, the trial court ordered Appellant to "fully and completely respond to [p]laintiff's discovery requests" within 10 days. Failure to comply would allow Appellee to "refile her request for sanctions." Appellee alleged that Appellant failed to provide sufficient discovery responses despite "two written notices as to the deficient responses and three telephone calls between counsel." Thus, Appellee filed a second Motion for Sanctions on May 31, 2019 noting Appellant "failed to provide basic income and financial information" and "any documentation of his work schedule, which is relevant to both his income and custody." Appellant filed his Answer to Appellee's Motion for Sanctions on June 17, 2019, asserting that "his answers to interrogatories and document production [was] sufficiently responsive and he requested a hearing on the outstanding discovery motion." As this discovery dispute occurred, the parties shared equal custody of their daughter.[2]

[2] Appellant described the shared custody arrangement of the parties' daughter as "Monday, Friday, Saturday, Sunday one person, Tuesday, Wednesday, Thursday the other

After an evidentiary hearing on August 1, 2019 before the Honorable Sherrie Bailey of the Circuit Court for Baltimore County, Appellee's Motion for Sanctions was granted and Appellant was ordered to comply with discovery by August 11, 2019 or his failure to comply would preclude him "from presenting testimony and/or evidence at trial related to the issues pertained in Plaintiff's Motion for Sanctions." Appellee received supplemental discovery responses from Appellant on August 7, 2019 but found "those responses were still deficient" and filed a third Motion for Sanctions.[3] Appellant filed his Answer to Plaintiff's Motion for Sanctions on September 23, 2019 "alleging that his responses had been substantial and satisfactory." On October 21, 2019, the trial court granted Appellee's third Motion for Sanctions. As a result, an order was issued barring Appellant from presenting any evidence on the issues of alimony, child support, income, employment, property, custody and visitation.[4]

---

parent and then we, it switches the next week. So it's a four day three day schedule and then a three four day schedule." While Appellee did not deny that the parties followed such arrangement, she testified that "[a]ppellant implemented the schedule and forced [her] to follow the schedule without her agreement." Appellee further testified that the parties struggled to co-parent and Appellant rejected her requests to change the custody schedule on several occasions.

[3] "Appellee noted that Appellant had failed to provide multiple Bank of America statements which were missing from his original production, any evidence of his work schedule, any paystubs other than one from April 2019 and one from June 2019, as well as any cancelled checks, deposit slips, or withdrawal slips from his many bank accounts."

[4] On October 21, 2019, the trial court granted Appellee's third Motion for Sanctions which provided in relevant part:

> ORDERED, that Defendant shall pay Plaintiff's attorney's fees in the amount to be determined by trial judge $________, by way of cash, check, or money order, directly to Plaintiff by no later than thirty (30) days from the date of

iii. Trial

Appellant filed a Motion for Reconsideration of the trial court's October 21, 2019 Order which Appellee filed a Response to on October 24, 2019. In her response, Appellee conceded that the final paragraph of the Order, precluding Appellant from introducing evidence or defenses as to custody and visitation, should be vacated but that the remainder of the Order should be upheld. The Honorable Judge Paul Hanley agreed and allowed Appellant to present evidence on the issue of custody and visitation while upholding the remainder of the October 21, 2019 Order. Trial proceeded on November 5, 2019 and both parties introduced several exhibits and witnesses.

Appellant testified about his relationship with the parties' daughter at the time of

---

this Order; and it is further
ORDERED, that Defendant be barred from presenting any evidence or making any defense related to the issue of alimony, as a result of his failure to provide adequate discovery responses; and it is further
ORDERED, that Defendant be barred from presenting evidence or making any defense related to the issue of child support, as a result of his failure to provide adequate discovery responses; and it is further
ORDERED, that Defendant be barred from presenting any evidence or making any defense related to the issue of his income, as a result of his failure to provide adequate discovery responses; and it is further
ORDERED that Defendant be barred from presenting any evidence or making any defense related to the issue of his employment, as a result of his failure to provide adequate discovery responses; and it is further
ORDERED, that Defendant be barred from presenting any evidence or making any defense related to the issue of property, whether marital property or non-marital property, as a result of his failure to provide adequate discovery responses; and it is further
ORDERED, that Defendant be barred from presenting any evidence or making any defense related to the issues of custody and/or visitation, as a result of his failure to provide adequate discovery responses.

trial and his belief that a change in custody would negatively affect her. Appellant introduced several exhibits during his testimony including photos of Appellant and his daughter on Halloween and photos of Appellant's family with his daughter. Appellant testified to and introduced exhibits of the daycare his daughter attended when she was in his custody, Smile Daycare. Appellant also testified about the allegations from his Counter-Claim that Appellee stole and used prescription drugs from her New York employer. Appellee denied all of Appellant's allegations, testifying that the unit she worked on did not have any narcotics and she never had any conversations admitting to drug abuse.

Appellant testified about Appellee's aggressive behavior towards him including an alleged incident where Appellee ran over Appellant's foot with her vehicle during a custody exchange. Appellant also testified to the altercation on October 25, 2017. Specifically, Appellant testified that after finding a bottle of pills he approached Appellee about it, and she became agitated and hostile. Appellee had already found a home to move into, as the parties were separating, and settlement was to take place the following day. Appellant further testified that Appellee was the initial aggressor, that she assaulted both of his parents, and that after he denied her pleas not to call the police, she bit him. Appellant testified that he did not call police and once Appellee calmed down, he and his parents helped Appellee pack so she could stay at her relative's house.

Appellant's mother, Diana Sheflyand, testified that Appellant is a "great father" and detailed the activities he does with his daughter. Mrs. Sheflyand also testified that Appellant's daughter is attached to him as Appellee is not around much, refuses to care for her child, that the child would hit Appellee, and did not want to stay with her. The trial

court also heard testimony from Appellant's father, Mr. Gregory Sheflyand, who testified that Appellant is a good father and the shared custody arrangement was in the child's best interest. Appellant's parents also testified that Appellee was the initial aggressor in the altercation that occurred October 25, 2017. The trial court also heard testimony from Appellee and her witnesses.

Similarly, Appellee testified about aggressive behavior and instances of abuse from Appellant. Specifically, Appellee testified that Appellant choked her when they were preparing for their daughter's first birthday because he did not like how she spoke to him while company was present. Appellee also testified about the altercation on October 25, 2017. Appellee testified that, to the contrary, she was the one "attacked" by Appellant and his parents before they kicked her out of the home. Appellee detailed that Appellant and his parents wanted to talk to her, so she used her cell phone to record the conversation. Appellee testified further that once the three knew she was recording, they all surrounded her, took the phone, and Appellant snapped the phone in half. Then Appellee testified that Mrs. Sheflyand blocked the doorway and would not let Appellee leave the room to grab her personal phone from upstairs. Appellee testified that she made it upstairs to her bag containing her personal phone but Appellant and his parents assaulted her as she was in a fetal position on the floor. From there, Appellee testified that she bit Appellant on the leg and he and his parents made her admit to doing so in a video after threatening that she would go to jail. Appellee testified that she packed her belongings and went to stay with family friends. The domestic violence coordinator of the SAFE Program at Mercy Hospital, Norma Ferraro, testified that Appellee "confided in her" about the altercation on October

25, 2017.

Appellee testified that Appellant continued to exhibit controlling behavior after they separated. Appellee testified that Appellant would not share custody with Appellee unless she agreed to make the recordings admitting her fault on October 25, 2017 and pay his mother to babysit, that he dictated the shared custody arrangement despite her objections, and he made her buy a home despite her desire to rent. Appellee also testified that upon returning from Appellant's care, her daughter was distant, ran away from her, and refused to be held by her in Appellant's presence.

On November 22, 2019, after reviewing the evidence and testimony, Judge Hanley issued an oral opinion from the bench on custody and visitation. The trial court found the parties lived close to each other and maintained equally stable homes for the child. The trial court also found Appellant was "extremely controlling towards" Appellee. With respect to the altercation on October 25, 2017, the trial court found that Appellant and his parents attacked Appellee and "accosted [her] for no reason." The trial court also concluded that the child's distant and aggressive behaviors towards Appellee after leaving Appellant's care were "very real observations of a child suffering a lot of stress over a change in care providers." The trial court concluded further that if there were no issues with the child before she left Appellant's care then her "acting out behavior, at least to the level described by the [Appellee], would not be occurring."

Although the trial court found both parties "sincere in their request for custody" it concluded Appellant was "not a fit and proper person to have care and custody of the child." Accordingly, the trial court ordered, effective December 1, 2019, Appellee have

sole legal custody and primary physical custody and Appellant have visitation every other weekend with exchanges at the Baltimore County Precinct in Pikesville. The trial court observed that it would be in error to preclude Appellant from introducing any evidence as to child support and thus Appellant could offer evidence and testify to his income and employment.

Appellant testified to his employment as a home healthcare provider and introduced his long form financial statement to establish an income of $2,480 per month. Appellant then introduced Defendant's Exhibit 52, a compilation of documents from his employer including paystubs, 1099 forms, and bank transfers. Appellant testified that he even provided homecare services for his grandfather. Appellant also introduced his 2017 and 2018 tax returns. Additionally, Appellant testified to Plaintiff's Exhibit 15 and 16, which included earning statements, employment records, and work schedules subpoenaed from Appellant's employer. Appellant further testified that his employment as a home healthcare provider was his only source of income.

Appellee testified that Appellant bills for hours he does not work by clocking in and out using the time stamp on a "key fob" device meant for the patient. Specifically, Appellee alleged that Appellant used his grandfather's key fob to bill for caring for him when he was not even there. Appellee introduced photographs of Appellant in New York during dates and times he was clocked in at his job. When questioned by counsel regarding this discrepancy, Appellant testified that he took his grandparents with him on the dates and times highlighted by Appellee.

Appellee testified further that Appellant was buying and selling items on Craigslist

for a profit. Appellee introduced over one thousand listings from Craigslist that were posted by Appellant. Appellee also alleged that Appellant was soliciting stolen gift cards and store credit cards via Craigslist. When questioned by counsel on this allegation, Appellant testified that he primarily posted "motor vehicles" on Craigslist and other listings were on behalf of people with "limited language skills or limited computer skills" and he made no profit from them. Appellee also testified that Appellant received his grandparents' adult diapers from Medicare for free and would sell them for a profit.

Appellee went on to introduce Plaintiff's Exhibit 19; a chart that tracked deposits and withdrawals from the parties' joint checking account between June 2016 and October 2017 and categorized deposits into Appellant's paychecks, Appellee's paychecks, and other deposits which Appellee testified were cash deposits made by Appellant.[5] Appellee testified that the chart reflected a total of $60,346.00 in non-paycheck deposits by Appellant. When questioned about Plaintiff's Exhibit 19, Appellant testified that although he could not specify the source of the deposits without his notes, such funds were a compilation of checks and cash his parents loaned him to build up his account to qualify for a mortgage. Appellant's father, Mr. Sheflyand, testified the same. Appellee alleged Appellant co-mingled funds with his parent's funds to hide his money.

iv. Judgment of Absolute Divorce

After hearing all the evidence and testimony, on December 13, 2019, the trial court made its ruling on the remaining issues, including child support. The trial court found

[5] The chart was created by Appellee and office of counsel for Appellee using Bank of America documents received pursuant to Appellant's subpoena.

Appellee's "gross monthly income, for calculation of child support purposes is $10,947.00." Although the court noted it would not be calculating child support guidelines that day, it encouraged counsel to submit an agreement and if contested, then a hearing and ruling on it could be scheduled later. While the trial court noted Appellant's 2018 income as a home healthcare worker was $32,314.00, it found his testimony regarding income "to be entirely false." After considering Appellant's financial documents and additional deposits reflected by Plaintiff's Exhibit 19, the trial court concluded Appellant's minimum earnings "had to be $50,000 per year." Thus, the trial court concluded Appellant's "minimum amount for child support purposes, cannot be less than $82,314 a year and that is the amount [the court] is attributing to him in calculation of his child support obligation." Appellant seeks appellate review of this child support calculation and the October 21, 2019 discovery sanction.

STANDARD OF REVIEW

We review a trial court's determination of custody and child support for abuse of discretion. *Santo v. Santo*, 448 Md. 620, 625 (2016) (citing to *Petrini v. Petrini*, 336 Md. 453, 470 (1994)) See also *Jackson v. Proctor*, 145 Md. App. 76, 90 (2002). This deferential standard accounts for the trial court's unique "opportunity to observe the demeanor and the credibility of the parties and the witnesses." *Id*. Similarly, when a discovery violation is present in a child support and custody matter, we review the trial court's enforcement of sanctions for abuse of discretion. *A.A. v. Ab.D.*, 246 Md. App. 418 (2020) There is an abuse of discretion where "'no reasonable person would take the view adopted by the [trial] court' or when the court acts 'without reference to any guiding principles.'" *Santo*, 448 Md. at

625-26. Further, we acknowledge that "[i]t is a bedrock principle that when the trial court makes a custody determination, it is required to evaluate each case on an individual basis in order to determine what is in the best interests of the child." *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013) (citing to *Gillespie v. Gillespie*, 206 Md. App. 146, 173 (2012)). "[P]rocedural defects should not be corrected in a manner that adversely impacts the court's determination regarding the child's best interest." *A.A.,* 246 Md. App. at 446.

DISCUSSION

A. Parties' Contentions

First, Appellant contends that implementation of the circuit court's October 21, 2019 Order which barred him from "presenting any evidence or making any defense related to the issues" to be decided at trial, namely child support, failed to consider the best interest of the parties' child and was an abuse of discretion. Specifically, Appellant argues the trial court should have allowed him to proffer what the evidence would show and whether it would be relevant to the best interest of the child before implementing the discovery sanction. Appellant asserts that the trial court overemphasized its finding that he "underreported his income" and failed to properly assess the parties' ability to cooperate before limiting his visitation. Appellant argues that a proper sanction for his discovery deficiencies was an award of counsel fees, which was implemented and satisfied, negating the necessity of the October 21, 2019 Order.

Second, Appellant contends the trial court abused its discretion in calculating his income for child support. Appellant argues that the trial court's calculation of roughly $82,000 as his income for purposes of child support "was not based in the evidence deduced

at trial and was punitive in nature." Appellant also asserts that the trial court offered no explanation of its calculation. Appellant contends that the decision of the trial court should be remanded with instructions that he comply with the October 21, 2019 Order and once all relevant discovery is provided, the merits of the entire case be reheard.

Appellee contends that the trial court did not abuse its discretion in implementing the October 21, 2019 Order of discovery sanctions and the trial court properly analyzed the best interest of the parties' child before doing so. Appellee argues that the October 21, 2019 Order was modified so that Appellant was permitted to introduce testimony and evidence with regards to custody and child support. Specifically, Appellee asserts that Appellant could testify and present evidence of his employment, income, and child-care expenses through his financing statement and several exhibits that documented payments related to the child's expenses. Appellee contends further that the trial court conducted a proper best interest of the child analysis utilizing the factors outlined in *Montgomery County v. Sanders*, 38 Md. App. 406, 420 (1977) and *Taylor v. Taylor*, 306 Md. 290, 304-310 (1986). Appellee argues that Appellant misrepresents the parties' ability to cooperate and undermines the necessity of the October 21, 2019 Order.

Appellee also contends that Appellant's argument suggesting he was unable to present evidence of his income is without merit. Appellee asserts that Appellant had opportunity to present evidence of his income through his financing statement and tax returns. Appellee also contends that Appellant's other activities, such as dealings on Craigslist, reselling Medicare adult diapers, and other items qualified as other income for purposes of child support. Further, Appellee asserts that the trial court was within its

discretion to find Plaintiff's Exhibit 19 persuasive and that Appellant lacked credibility to attribute additional income in the amount of $50,000.00 to the $32,214.00 figure given by Appellant.

B. Analysis

i. Discovery Sanction

Generally, this Court reviews a trial court's discovery sanction in a civil case under an abuse of discretion. *Rodriguez v. Clarke*, 400 Md. 39,57 (2007) On the motion of a discovering party, the trial court may impose immediate sanctions if it finds "failure of discovery" against the failing party. Md. Rule 2-433(a). Such sanctions include:

> (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; or
> (3) An order striking out pleadings or parts thereof, or staying further proceeding until the discovery is provided, or dismissing the action or any part thereof, or entering a judgment by default that includes a determination as to liability and all relief sought by the moving party against the failing party if the court is satisfied that it has personal jurisdiction over that party.

Md. Rule 2-433(a). When a party fails "to obey an order compelling discovery," the trial court may impose further sanctions under Md. Rule 2-433(c):

> If 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, including one or more of the orders set forth in section (a) of this Rule. If justice cannot otherwise be achieved, the court may enter an order in compliance with Rule 15-206 treating the failure to obey the order as a contempt.

Even in the absence of a particularized rule or statute, trial courts inherently have the power

"to definitively and effectively administer and control discovery." *Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru, Inc*., 195 Md. App. 583, 596 (2010). But when reviewing discovery sanctions in the context of a child custody case, "we must be satisfied that the court has applied the best interests of the child standard in its determination." *A.A.*, 246 Md. App. at 441.

Appellant cites to our recent decision in *A.A. v. Ab.D*., 246 Md. App. 418 (2020) to argue the trial court abused its discretion in barring him from presenting certain evidence before allowing him to proffer whether such evidence would be relevant to determining the best interests of the minor child. In that case, the Mother failed to properly and fully respond to discovery requests for a custody modification hearing and, as a result, the trial court barred Mother from offering testimony and evidence outside of her Answers to Interrogatories. *A.A.*, 246 Md. App. at 418. We held the trial court in that case erred when it excluded evidence as a discovery sanction without first examining whether that evidence could have assisted in its determination of the children's best interests. *Id*. at 448-49. While Appellant was initially precluded from presenting testimony and evidence relevant to child support and custody under the October 21, 2019 Order, that sanction was modified out of consideration for the best interests of the child. First, the final paragraph of the order precluding evidence and testimony regarding custody and visitation was stricken, allowing Appellant to present evidence and testimony on those matters. The trial court also acknowledged that it would be in error to preclude Appellant from presenting evidence as to child support:

TRIAL COURT: My reading of the two cases would indicate that, at least

> in part, [Appellant Counsel]'s position may very well be correct. That, to preclude his client from putting on evidence, any evidence as to current income, may very well be something prohibited by the appellate decisions, since the child support really belongs to the child and I think I'm to look at other means of dealing with non-disclosures of financial information and things like that.

The trial court confirmed its decision that "under the cases and under the statute, [Appellant] can put on evidence regarding income for child support purposes". Appellant did in fact introduce evidence and testimony related to child support through his long form financial statement, paystubs, bank transfers, 1099 forms and tax returns.

Appellant argues that although his long form financial statement was admitted into evidence, its admissibility was limited to show income and precluded Appellant from establishing expenses he incurred on behalf of the child. We are not persuaded by this argument. In fact, Appellant admitted Defendant's Exhibit 55 and Defendant's Exhibit 63 which were checks of Appellant's childcare related expenses. Appellant also testified that he pays $450.00 per month for the child's daycare. We agree with Appellee that under F.L. §12-204(l)(1), the only considerations relevant to child support in this case are incomes of the parties, work related childcare expenses, extraordinary medical expenses, and health insurance. Because Appellee carries the minor child on her health insurance policy and the child has no extraordinary medical expenses, Appellant only needed to provide evidence and testimony to his income and childcare related expenses, which he did.

Appellant also cites to our decision in *Rolley v. Standford,* where we overturned the trial court's dismissal of a child support case due to the Mother's failure to disclose her tax

returns. 126 Md. App. 124, 131 (1999). While we did note in that case that "a trial court must exhaust every remedial step to enforce discovery before the extreme sanction of dismissal may be ordered," the present case is quite distinguishable. *Id*. at 131. First, as Appellee highlights, there was no dismissal. Second, Appellant was restricted by the October 21, 2019 Order only after failing to comply with orders to provide discovery responses twice. Finally, the restrictions of the October 21, 2019 Order were modified so that Appellant could present evidence and testimony related to his employment, income, custody and child support despite his failure to comply with Appellee's discovery requests. Thus, we agree with Appellee that remedial steps were exhausted by the trial court without reaching the extreme sanction of dismissal.

Appellant then cites to *Flynn v. May* where we held the trial court "abused its discretion when it ordered a change of primary physical custody of [the parties' child] without permitting witnesses to testify or other evidence to be offered." 157 Md. App. 389, 411 (2004). However, Appellant's use of this case is misplaced because he did in fact have witnesses, his parents, testify and present evidence related to custody. Appellant was not precluded like the party in *Flynn*, rather, the trial court did not find the testimony from him or his witnesses credible. Similarly, Appellant's reliance on *Wells v. Wells* where we held the trial court abused its discretion when it denied Mother's Motion to Vacate a Judgment of Default without first holding an evidentiary hearing to assess allegations that the default was obtained by fraud is misplaced. 168 Md. App. 382, 896 (2006). In *Wells*, we emphasized that without an evidentiary hearing, the trial court could not have fairly assessed the parties' credibility. *Wells*, 168 Md. App. at 399. In the present case, the trial

court exercised its unique ability to hear the testimony of the witnesses firsthand and determine their credibility. The trial court was well within its discretion to point out "character issues" within Appellant's testimony and to find his parent's testimony with respect to Appellee not credible.

We also find Appellant's argument that the trial court "made no real attempt to ascertain the parties' ability to cooperate" without merit. It is clear to this Court, just as it was to the trial court, that the parties are unable to cooperate. From the testimony regarding the altercation on October 25, 2017 to testimony of Appellant dictating the custody arrangement and where Appellee would live, the trial court had adequate evidence that the parties could not maintain shared legal custody. Contrary to Appellant's belief, the holding in *Santo v. Santo* does not stand for the proposition that trial courts must award joint legal custody even when parties cannot effectively communicate. 448 Md. 620, 141 (2006). As Appellant himself highlights, "[t]here is no litmus paper test that provides a quick and relatively easy answer to custody matters." *Montgomery County v. Sanders*, 38 Md. App. 406, 419 (1977). Rather, assessing the best interest of the child "involve[s] a multitude of intangible factors that oftentimes are ambiguous" and it is the obligation of the fact finder to assess those factors in awarding custody. *Sanders*, 38 Md. App. at 419.

Finally, Appellant contends that there was no need for the October 21, 2019 Order and the custody ruling has limited his visitation similar to a parent found to have sexually abused their child. In *Arnold v. Naughton*, the Father sexually abused one of his children and was ordered to have biweekly supervised visits at the Department of Social Services for two hours. 69 Md. App. 427 (1985). In *John O. v. Jane O.*, the Father sexually abused

one of his children and was prohibited from having overnight visitation with the minor children. 90 Md. App. 406 (1992). This characterization is dramatic at best. The parties were determined to live close to each other with stable and appropriate homes. The trial court granted Appellant visitation "every other weekend beginning at 6:00 p.m. on Friday evening until 6:00 p.m. on Sunday evening" in addition to holidays and vacation time. Appellant maintains frequent and unsupervised access to the child unlike the fathers in the cases he cites to. As outlined above, Appellant's inexcusable violations of the previous orders to respond to discovery requests was properly sanctioned after exhausting other remedial options. Implementation of the October 21, 2019 Order with the exception that Appellant could present evidence and testimony related to child support and custody was not an abuse of discretion warranting reversal.

ii. Income Calculation

Appellant asserts that the trial court did not find his testimony about income credible because he was "so restricted in his ability to present evidence." Appellant argues further that the trial court had no basis for attributing an additional $50,000.00 to his income and that such a finding was "punitive in nature." We disagree. The trial court is given great deference in review of child support and custody determinations because it is uniquely situated to "observe the demeanor and the credibility of the parties and the witnesses." *Petrini v. Petrini,* 336 Md. 453, 470 (1994). The trial court heard testimony from Appellant as well as his witnesses regarding his income for the purpose of child support calculations. Appellant introduced evidence of his $32,314.00 income on his tax returns. Appellee introduced Plaintiff's Exhibit 19 which displayed non-paystub deposits made by Appellant

totaling $62,346.00 from June 2016 to October 2016. Appellant had the opportunity to present any evidence that he possessed related to income. In fact, Appellee presented evidence obtained through subpoenas of Appellant's income. Appellee testified Appellant made those cash and check deposits from his "dealings with craigslist and other sources." Appellant testified that the deposits were loans from his parents to build up his account to obtain a mortgage. The trial court explained that it did not find Appellant's testimony credible based on the deposits reflected in Plaintiff's Exhibit 19 and testimony that Appellant was engaged in other financial dealings outside his employment as a home healthcare worker. Appellant's argument that the trial court determined the $82,000 figure without reference to any evidence deduced at trial is baseless. Appellant again cites to *Rolley v. Sanford*, reemphasizing that "a trial court must exhaust every available remedial step to enforce discovery" before ordering a dismissal. 126 Md. App. at 131. Again, there was no dismissal in this case. Appellant was ordered twice by the trial court to comply with the discovery requests and failed to do so. These previous orders were attempts by the trial court to exhaust remedial measures before restricting Appellant more and in a manner that avoided the extreme consequence of dismissal.

CONCLUSION

Appellant was given many opportunities to communicate with counsel and Appellee to resolve his failures to comply with discovery requests. Despite multiple communications between counsel, Appellant left Appellee no choice but to seek the assistance of the courts, not once but twice. And twice, Appellant failed to comply with the trial court's orders. Thus, the October 21, 2019 Order precluding Appellant from presenting evidence and

testimony with respect to matters to be decided at trial was an appropriate sanction after exhausting other remedial steps to enforce discovery.

The trial court properly allowed Appellant to produce evidence and testimony with regards to custody and child support and in consideration of the child's best interest. Appellant presented testimony and evidence of his employment, income, and child related expenses. Appellee presented even more evidence of Appellant's income which had to be obtained through subpoena. Appellant was invited to produce any proof of income and offer explanation for such evidence. The trial court was well within its discretion to find Appellant's testimony not credible and determine his actual income was around $82,000 for child support purposes. Remand of this case with instruction for Appellant to comply with the October 21, 2019 Order would be futile and unnecessarily squander even more of the trial court's time than Appellant already has. Accordingly, we affirm the decision of the trial court.

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