Circuit Court for Howard County
Case No. 13-C-17-111078

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 83, 2273

September Term, 2023

JARED ROSS

v.

JENNIFER ROSS

Berger,
Tang,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: July 8, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Jared Ross ("Mr. Ross") and appellee, Jennifer Ross ("Mrs. Schwab") [1] were granted an absolute divorce in December 2019 and have been engaged in continuous litigation since. This consolidated appeal arises out of the Circuit Court for Howard County following the most recent finding of contempt against Mr. Ross for failure to make child support and alimony payments owed to Mrs. Schwab, and judgments related to the modification of the parties' amended custody order. On February 10, 2023, the court entered an order holding Mr. Ross in contempt for failing to pay $38,000 of the alimony and child support. Mr. Ross filed a motion to alter or amend and noted an appeal. The court denied the motion, and Mr. Ross noted the present appeal.

The merits trial began in June 2023. Mr. Ross was awarded physical custody of the children after the parties entered a consent order on September 28, 2023. On December 11, 2023, the court entered an order finding Mrs. Schwab in contempt for various actions and ordered the outsider reverse piercing of the corporate veil of MKB Ross, LLC -- the corporation Mr. Ross set up to receive payments from his employer -- for the sole purpose of collecting child support arrearages owed to Mrs. Schwab. The court ordered Mrs. Schwab to pay Mr. Ross $1,071 per month in child support, and ordered that alimony terminate at the end of December 2021 due to Mrs. Schwab's remarriage. The court denied additional requests by Mr. Ross to retroactively modify the alimony or child support. A second appeal followed and was consolidated with the appeal from the contempt finding.

[1] Jennifer Ross married Joshua Schwab in December 2021. We will refer to her as Mrs. Schwab throughout, even when describing events prior to her remarriage.

QUESTIONS PRESENTED

Mr. Ross presents four questions for our review, which we have recast and rephrased as follows:[2]

I. Whether the trial court erred in declining to consolidate the contempt with the merits trial and failing to retroactively modify alimony and child support.

II. Whether the court erred in declining Mr. Ross's request for a jury trial for the civil contempt proceedings.

III. Whether the court erred in finding Mr. Ross had willfully avoided making payments.

[2] Mr. Ross phrased the questions as follows:

1. Whether the court erred by failing to adjudicate Mr. Ross's requests to modify its original alimony and child support awards based on his adverse circumstances and Mrs. Schwab's improved circumstances, including receiving substantial financial support from her live-in paramour and her family, yet almost immediately adjudicating Mrs. Schwab's contempt petition for unpaid support under these same orders?
2. Whether Mr. Ross was entitled to a jury trial on Mrs. Schwab's petition for contempt based on his failure to pay $160,771.61 allegedly owed under orders for child support and alimony, and demanding his incarceration until he purged his purported contempt by paying the entirety of such alleged arrearages?
3. Whether the evidence was sufficient for the court to find that Mr. Ross had acted willfully to disobey orders to pay specified amounts of child support and alimony, and that Mr. Ross had the ability to make such payments?
4. Whether the court erred by ordering the reverse piercing of the "corporate shield" of MKB Ross, LLC, the limited liability company organized by Mr. Ross that received commissions from the real estate brokerage for which he was an agent?

IV. Whether the court erred in ordering the outsider reverse piercing of the corporate veil of Mr. Ross's LLC.

For the following reasons, we answer the first three questions in the negative finding no error by the trial court. We hold, however, that the trial court erred in ordering the outsider reverse piercing of the corporate veil of MKB Ross, LLC. We, therefore, vacate the decision of the trial court only with respect to its order of the outsider reverse piercing of the corporate veil, and remand to enter judgment against Mr. Ross in the amount of $38,000.

BACKGROUND

Parties' History

Mr. Ross and Mrs. Schwab were married in November 2003. They share three children, born in 2006, 2007, and 2010. Mr. Ross filed a complaint for limited divorce on April 6, 2017, requesting sole physical and legal custody of the children. On August 11, 2017, Mrs. Schwab filed a counter-complaint for limited divorce requesting that she be awarded sole legal and physical custody of the children, and that Mr. Ross be ordered to pay child support, alimony, and any attorney's fees. The court appointed a best interest attorney for the children in April 2018. In October 2018, the parties amended their pleadings to request an absolute divorce. The merits hearing took place over an extended period, and in September 2019, the court issued a custody order which granted Mrs. Schwab sole physical and legal custody of the children, with Mr. Ross permitted visitation.

On December 20, 2019, the court entered a judgment of divorce and an amended custody order, with Mrs. Schwab retaining custody and Mr. Ross permitted visitation. The

court also imposed conditions including: requiring Mrs. Schwab to abide by various alcohol monitoring programs and attend Alcoholics Anonymous meetings; requiring either party to notify the other and abide by the requirements of § 9-106 of the Family Law Article if relocating; prohibiting either party from making or exposing the children to derogatory remarks about the other parent; and prohibiting either parent from allowing romantic partners to stay overnight with the children for one year. The court awarded Mrs. Schwab child support of $6,000 per month, rehabilitative alimony of $4,000 per month for 18 months, $3,000 per month for the subsequent 18 months, $38,593.16 in alimony arrearages, half the proceeds from the sale of the family home, a monetary award of $312,936, and attorney's fees of $80,000. In determining the amounts of the payments, the court considered Mr. Ross's income the previous three years and projected that Mr. Ross's income for 2019 would be $483,048. This was based, in part, on the commissions he received in previous years from his employer, CBRE: Global Commercial Real Estate Services, where he had been employed as a "commercial real estate broker" since 2017.

On January 8, 2020, Mrs. Schwab filed a petition for contempt against Mr. Ross, alleging that he failed to make the court-ordered child support and alimony payments. On February 3, 2020, the court entered an earnings withholding order, directing Mr. Ross's employer, CBRE, to withhold and forward support payments due to Mr. Ross's failure to pay. In turn, Mr. Ross petitioned for contempt against Mrs. Schwab on February 29, 2020, alleging that she failed to produce the children for visits, made derogatory remarks about Mr. Ross to the children, and allowed her romantic partner, Joshua Schwab, to stay overnight while the children were present. Mrs. Schwab petitioned for contempt again on

March 30, 2020, alleging Mr. Ross failed to make mortgage payments on the family home. On April 2, 2020, Mr. Ross petitioned for contempt and requested a modification of child support, alimony, and custody of the children. On September 9, 2020, Mrs. Schwab requested that Mr. Ross fulfill the $392,936 judgment against Mr. Ross that still had not been satisfied. Mrs. Schwab petitioned to eliminate Mr. Ross's visits on October 5, 2020.

On October 13, 2020, the court again entered judgment against Mr. Ross for $392,936. On June 22, 2021, the magistrate recommended that Mr. Ross be found in contempt for failure to pay $86,975.41 in child support and alimony. Both parties filed exceptions to the recommendations of the magistrate, and the court held the matter *sub curia*. On July 29, 2021, Mr. Ross formed a business, MKB Ross, LLC, where he was the sole owner, member, director, and employee. Beginning in January 2022, Mr. Ross directed his earnings from CBRE to MKB Ross, LLC.

Mr. Ross again petitioned for contempt and modification of custody, visitation, and support on February 18, 2022. In his petition, Mr. Ross alleged that the parties' financial situations had changed significantly, and a modification of child and spousal support was required. Additionally, Mr. Ross alleged that alimony should be terminated because Mrs. Schwab began living with Mr. Schwab almost immediately following the divorce, and they were ultimately married in December 2021. A hearing on the merits of Mr. Ross's petition was scheduled for June 2023. The court entered a writ of garnishment of wages on March 18, 2022, to which CBRE responded requesting dismissal, noting that "Jared Ross is an LLC" and was not employed by CBRE.

Proceedings Giving Rise to the Present Appeal

On August 19, 2022, Mrs. Schwab filed a motion to pierce the corporate veil of MKB Ross, LLC in an effort to recover outstanding child support and alimony, arguing that Mr. Ross created MKB Ross, LLC to direct his earnings from CBRE to purposefully evade the earnings withholding order and writ of garnishment that had been served on CBRE. Mr. Ross responded, arguing that he was a "Qualified Real Estate Agent" of CBRE, not an employee, and that CBRE encouraged Qualified Real Estate Agents to "form [their] own business entity to receive [their] CBRE commissions and other compensation, while providing for tax-withholding and other benefits as [their] employer." As such, CBRE paid Mr. Ross's commissions to MKB Ross, LLC, which in turn paid Mr. Ross his net salary after withholding certain taxes and support to Mrs. Schwab. Mr. Ross noted that a court should only order the piercing of the corporate veil in "exceptional circumstances."

On September 21, 2022, Mrs. Schwab petitioned for contempt alleging Mr. Ross failed to make alimony and child support payments totaling $160,771.61. In the petition for contempt, Mrs. Schwab requested that Mr. Ross be incarcerated until he purged the contempt against him. In his response, Mr. Ross requested that the contempt petition be denied. Mr. Ross also requested that should the court proceed with a hearing, that he be provided with "all protections and procedures required by the Maryland Rules and Due Process of Law, including his Constitutional right to a jury trial" because Mrs. Schwab had demanded that he be incarcerated. Mr. Ross also requested that the hearing on Mrs. Schwab's contempt petition be consolidated and heard with the contempt and modification hearing that was already scheduled for June 2023. The court heard Mrs. Schwab's

contempt petition on January 17, 2023, declining to postpone the hearing to the already-scheduled June 2023 trial. In addition, the court denied Mr. Ross's motion to dismiss the contempt petition, thereby denying Mr. Ross's request for a jury trial.

On February 10, 2023, the court entered an order holding Mr. Ross in contempt for failing to pay $38,000 of the alimony and child support. Mr. Ross filed a motion to alter or amend and noted an appeal. The court denied the motion, and Mr. Ross noted another appeal. The merits trial took place over the course of 18 days between June 5, 2023, and November 13, 2023. The parties settled the custody dispute on September 28, 2023, with Mr. Ross receiving physical custody of the children.

On December 11, 2023, the court entered an order finding Mrs. Schwab in contempt for allowing Mr. Schwab to spend the night within the first year, denying Mr. Ross visitation, exposing the children to derogatory remarks about Mr. Ross, and moving the children to Virginia without providing written notice to Mr. Ross. The court pierced the corporate veil of MKB Ross, LLC -- the corporation Mr. Ross set up to get paid by his employer sometime after the court ordered garnishment of his wages -- only for the purpose of collecting child support arrearages. The court further ordered Mrs. Schwab to pay Mr. Ross $1,071 per month in child support, and ordered that alimony owed to Mrs. Schwab terminate at the end of December 2021 due to Mrs. Schwab's remarriage. The court denied additional requests by Mr. Ross to modify the alimony and denied legal fees. This second appeal followed.

STANDARD OF REVIEW

"When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence." Md. Rule 8-131. We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id*. "A factual finding is clearly erroneous if there is no competent and material evidence in the record to support it." *Anderson v. Joseph*, 200 Md. App. 240, 249 (2011).

"When a trial court decides legal questions or makes legal conclusions based on its factual findings, we review these determinations without deference to the trial court." *Caldwell v. Sutton*, 256 Md. App. 230, 263 (2022). A court's interpretation of the Maryland Rules is one such legal conclusion which we review *de novo*. *Xu v. Mayor of Balt.*, 254 Md. App. 205, 211 (2022).

DISCUSSION

I. The trial court did not err in declining to consolidate the contempt hearing with the merits trial, or in declining to retroactively modify or terminate alimony or child support.

Mr. Ross first alleges that the court erred in declining to consolidate the contempt and merits trials. Mr. Ross further contends that the court erred in denying his petition to retroactively modify child support and alimony based on the parties' financial situations coupled with his allegation that following the granting of absolute divorce Mrs. Schwab immediately began living with Mr. Schwab in a "marriage type relationship" in violation of the divorce order. Inasmuch as both the decision to consolidate the contempt and merits hearings, as well as the decision to retroactively modify child support and alimony, are

discretionary actions, we must determine whether the court abused its discretion in denying Mr. Ross's requests.

A. The trial court did not err in declining to consolidate the contempt and merits trials.

On February 18, 2022, Mr. Ross petitioned for contempt and modification of custody and support determinations. The court set a hearing on the merits to begin June 2023. On September 22, 2022, Mrs. Schwab petitioned for contempt. In response to Mrs. Schwab's September 22 contempt petition, Mr. Ross requested that the court "consolidate this proceeding [] with the 14[-]day merits trial, and postpone the resolution of any disputed matters necessary to resolve Mrs. Schwab's contempt petitions until such hearing." Mr. Ross's response was effectively a motion to postpone the contempt hearing. At the January 17, 2023 hearing, Mr. Ross argued in favor of postponing the contempt hearing to June, particularly because he sought to modify and reduce the amount that he owed in arrears. Mrs. Schwab responded that Mr. Ross was required to obey the current support order, and his continuous refusal to make payments was apparent and should be heard immediately since any payment that Mrs. Schwab had received had been recouped from Mr. Ross's garnished wages rather than his willing compliance with previous court orders. The court declined to postpone the hearing and consolidate it with the contempt and merits hearing scheduled for June, and it decided to hear Mrs. Schwab's contempt petition on January 17, 2023. The court found Mr. Ross in contempt for failure to pay $38,000 in child support and alimony.

A trial court's decision to postpone or consolidate multiple actions, and, particularly, a petition for contempt with another hearing, is governed by Maryland Rule 2-508 and Maryland Code (1973, 2020 Repl. Vol.) Section 1-202 of the Courts and Judicial Proceedings Article ("CJP"). Maryland Rule 2-508(a) provides: "On motion of any party or on its own initiative, the court *may* continue or postpone a trial or other proceeding as justice may require." (Emphasis added). CJP § 1-202 provides in part: "A petition filed prior to actual adjudication of contempt *may* be consolidated in the discretion of the court and heard with a citation for contempt, if the petition is at issue and ready for disposition in accordance with the practice in the court in which the matter is pending." (Emphasis added). As such, both Maryland Rule 2-508 and CJP § 1-202 indicate that the court may postpone and consolidate actions when it sees fit but is by no means required to do so. The decision to postpone an action is an entirely discretionary action. *Das v. Das*, 133 Md. App. 1, 31 (2000) ("[W]hether to grant a continuance is in the sound discretion of the trial court, and unless [the court] acts arbitrarily in the exercise of that discretion, [its] action will not be reviewed on appeal."). As we have indicated time and time again,

> [a]n abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court[ ] ... or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court [ ] ... or when the ruling is violative of fact and logic."

Sibley v. Doe, 227 Md. App. 645, 658 (2016) (quoting *Bacon v. Arey*, 203 Md. App. 606, 667 (2012). The court heard arguments from both parties regarding whether the contempt hearing should be postponed. Considering all of the pertinent facts, and particularly Mr. Ross's repeated refusal to comply with the order, the court denied Mr. Ross's request to

postpone and consolidate the contempt action with the merits trial. Under these circumstances, the trial court did not abuse its discretion in opting to resolve Mrs. Schwab's contempt petition.

B. The trial court did not err in declining to modify child support.

On December 11, 2023, following the merits hearing, the court declined to retroactively modify Mr. Ross's child support obligations. Mr. Ross argues that this was in error. As support, Mr. Ross contends that the trial court failed to give appropriate consideration to Mr. Schwab's residing with Mrs. Schwab and possibly contributing to the family's finances, the financial contributions from Mrs. Schwab's family, an incorrect calculation based on Mr. Ross's estimated income which he argues was far greater than his actual income at the time, and reductions in Mr. Ross's present income and ability to pay.

The modification of child support is governed by Maryland Code (1988, 2019 Repl. Vol.) Section 12-104 of the Family Law Article ("FL"). Although a court may modify a child support award following a showing of a "material change of circumstance," FL § 12-104(a), "[t]he court may not retroactively modify a child support award prior to the date of the filing of the motion for modification." FL § 12-104(b). "The decision to make a child support award retroactive to the filing of the second complaint is a matter reserved to the discretion of the trial court." *Petitto v. Petitto*, 147 Md. App. 280, 310 (2002).

At trial, the court heard arguments about the parties' current financial situations, and particularly, Mr. Ross's ability to pay. The court made specific findings of fact regarding Mr. Ross's income at various points over the prior three years, and additionally stated that Mr. Ross's testimony regarding his income was not credible. As Mr. Ross points out in

his brief, Mrs. Schwab alleged in her contempt petition that Mr. Ross owed a total of $160,771.61 in both outstanding alimony and child support. Even so, the trial court ordered that Mr. Ross make child support and alimony arrearage payments of only $38,000. Furthermore, the trial court did find that a "material change in circumstances" occurred, namely the transfer of custody of the children from Mrs. Schwab to Mr. Ross, and ordered that Mrs. Schwab pay Mr. Ross $1,071 per month in child support. We cannot say that the court's failure to retroactively modify the child support owed by Mr. Ross was an abuse of discretion.

C. The trial court did not err in declining to modify or terminate alimony at an earlier date.

The court declined to modify Mr. Ross's alimony obligations. In its December 11, 2023 order, the court stated "that any alimony award from Plaintiff to the Defendant, as described in the Judgment of Absolute Divorce dated December 20, 2019, terminated at the end of December, 2021, and any additional request by Plaintiff to modify and/or terminate alimony is hereby denied." Mr. Ross argues that the court erred in declining to modify alimony because immediately following the grant of absolute divorce, Mr. Schwab began cohabitating with Mrs. Schwab, in direct violation of the divorce order which specifically prohibited the overnight visits of paramours for one year following the divorce.

The modification of alimony is governed by FL § 11-107, which provides: "the court may modify the amount of alimony awarded as circumstances and justice require." The termination of alimony is governed by FL § 11-108. Alimony terminates upon the remarriage of the recipient. FL § 11-108(2). "An alimony award will not be disturbed on

appeal unless the trial court abused its discretion or rendered a judgment that was clearly wrong." *Reuter v. Reuter*, 102 Md. App. 212, 229 (1994). Thus, although the termination of Mrs. Schwab's alimony award is statutorily required, the retroactive modification is a decision that lies within the sound discretion of the trial court.

Mr. Ross argues that Mrs. Schwab's "marriage type relationship" with Mr. Schwab began shortly after the divorce was granted, and therefore, he should not have been required to pay alimony to Mrs. Schwab. Notably, FL § 11-108 only addresses actual remarriage, and does not provide that "alimony cannot be awarded, or, if awarded, terminates, or must be terminated, if the recipient lives in a 'marriage type relationship' with another person." *Whittington v. Whittington*, 172 Md. App. 317, 341–42 (2007). Although the presence of a marriage type relationship is a factor for the court to assess when considering the financial status of the recipient, a marriage type relationship "does not preclude an award of alimony." *Id*. at 342. As noted above, the decision to retroactively modify alimony or terminate the alimony at an earlier date is subject to the discretion of the trial court. The court considered the financial positions of both parties, and did not find that Mrs. Schwab's residence with Mr. Schwab prohibited the receipt of alimony payments. We cannot say that the court abused its discretion in declining to retroactively modify or terminate the alimony award.

II. The trial court did not err in denying Mr. Ross's request for a jury trial for the constructive civil contempt proceedings.

Mr. Ross contends that he was entitled to a jury trial at the January 17, 2023 contempt hearing because Mrs. Schwab had demanded that he be incarcerated until he

purge the contempt against him. Mrs. Schwab disagrees, arguing that individuals subject to constructive civil contempt actions -- as Mr. Ross was here -- are not entitled to a jury trial.

Contempt may be categorized as either "direct," when it is "committed in the presence of the judge presiding in court or so near to the judge as to interrupt the court's proceedings," or "constructive," when it occurs in any other circumstance. Md. Rule 15-202. "An obligor's failure to pay court-ordered support payments can constitute constructive contempt." *Bradford v. State*, 199 Md. App. 175, 193 (2011). Once it is determined if the contempt is direct or constructive, the court must determine whether the contempt is either criminal or civil. *Fisher v. McCrary Crescent City, LLC*, 186 Md. App. 86, 114 (2009) (citing *State v. Roll*, 267 Md. 714 (1973)). Although the actions giving rise to either type of contempt may be the same, "the purpose of civil contempt is to coerce present or future compliance with a court order, whereas imposing a sanction for past misconduct is the function of criminal contempt." *Dodson v. Dodson*, 380 Md. 438, 448 (2004) (citing *Roll*, 267 Md. at 728, 730). As such, a civil contempt sanction is remedial in nature, while a criminal contempt sanction serves a punitive purpose. *Sayed A. v. Susan A.*, 265 Md. App. 40, 77 (2025).

It is well settled that a party in a constructive civil contempt action is not entitled to a jury trial. *See, e.g.*, *Bryant v. Howard Cnty. Dept. of Soc. Servs. ex rel. Costley*, 387 Md. 30, 47–48 (2005) ("A defendant in a constructive civil contempt action is not entitled to a jury trial.") (citing *Dodson*, 380 Md. at 453); *Lee v. State*, 56 Md. App. 613, 623 (1983) *overruled on other grounds by Cherry v. State*, 62 Md. App. 425 (1985) ("There is no right

to a jury trial in civil contempt proceedings."). Conversely, a defendant in a constructive criminal contempt action is entitled to a jury trial. *See, e.g., Dorsey v. State*, 356 Md. 324, 348 (1999) (holding that defendants who were held in constructive criminal contempt for failure to pay child support obligations were entitled to a jury trial); *Ashford v. State*, 358 Md. 552, 567 (2000) (holding that "in any circuit court criminal case . . . a defendant is entitled to a jury trial if the offense charged is subject to imprisonment").

In its order, the court noted that this was a "proper [] civil contempt proceeding" and that "[t]he proceeding and any sanction the Court may impose is intended to coerce compliance with an order to pay child support and spousal support rather than to punish [Mr. Ross] for failing to pay that support." Despite the abundant case law instructing that a party is only entitled to a jury trial in a constructive criminal contempt action, Mr. Ross argues that he was entitled to a jury trial in this contempt proceeding. Mr. Ross alleges that the distinction between civil and criminal contempt is merely "hair-splitting," and because Mrs. Schwab "demanded his indefinite incarceration" until he paid the outstanding alimony and child support awards, he was entitled to a jury trial.[3]

The purpose of a constructive criminal contempt finding is to punish the party for his or her noncompliance with a court order. In contrast, the purpose of a constructive civil

[3] Throughout his brief, Mr. Ross refers to the proceedings in this case as "civil contempt," arguing that the principle allowing for a jury trial in constructive criminal contempt proceedings "should apply with equal force to civil contempt[]." At oral argument, Mr. Ross instead contended that the January 17, 2023 proceeding was actually a criminal contempt action, and the labeling of the action as civil should not be determinative of his right to a jury trial. For the reasons discussed above, including the intention to coerce compliance and the inclusion of a purge provision, this was a constructive civil contempt proceeding.

contempt finding is to coerce the party into complying. This is why civil contempt sanctions "must provide for purging." *Dodson*, 380 Md. at 449. As such, "[o]nly a civil contemnor with the present ability to purge, and who chooses not to pay, may be incarcerated." *Rawlings v. Rawlings*, 362 Md. 535, 567 (2001). *See also Jones v. State*, 351 Md. 264, 277 (1998) ("Imprisonment of the civil contemnor is conditional. It is based entirely upon the contemnor's continued defiance, and thus, the civil contemnor is said to hold the keys to the jailhouse door, and may terminate the incarceration any time he or she satisfies the purge provision.") (internal quotations and citations omitted).

In her petition for contempt, Mrs. Schwab urged the court to find Mr. Ross in contempt for failure to pay child support, requested that the court "order that [Mr. Ross] may purge his contempt by paying [Mrs. Schwab] that entirety of the arrearage owed by [Mr. Ross] to [Mrs. Schwab] for his court ordered child support payments," and requested that Mr. Ross "serve jail time until he purges the contempt against him." The court entered an order finding Mr. Ross in contempt for failure to pay $38,000 in outstanding child support and alimony payments, and set a purge of $19,000. The court did not order Mr. Ross's incarceration. Inasmuch as the underlying proceeding was a constructive civil contempt proceeding, Mr. Ross was not entitled to a jury trial. Finding no other procedural error with the contempt proceedings of January 17, 2023, we hold that that the court did not err in denying Mr. Ross's request for a jury trial.

III. The trial court did not err in finding Mr. Ross in contempt for his failure to make his court-ordered child support and alimony payments.

Mr. Ross next contends that the trial court erred when it found him in constructive civil contempt on February 10, 2023 for failing to pay child support and alimony. Mr. Ross argues that the court's finding that he had willfully disobeyed court orders was not supported by the evidence, particularly in the court's finding that he had the past and present ability to pay the ordered support amounts. Mrs. Schwab disagrees, contending that the court did not err, as it properly considered Mr. Ross's ability to pay and his behaviors, such as the creation of MKB Ross, LLC, which indicated he was willfully evading his support obligations.

Maryland Rule 15-207(e) delineates the conditions under which a court may make a finding of constructive civil contempt based on an alleged failure to pay spousal or child support. Maryland Rule 15-207(e) provides in pertinent part:

> (2) *Petitioner's Burden of Proof*. Subject to subsection (3) of this section, the court may make a finding of contempt if the petitioner proves by clear and convincing evidence that the alleged contemnor has not paid the amount owed, accounting from the effective date of the support order through the date of the contempt hearing.
>
> (3) *When a Finding of Contempt May Not Be Made*. The court may not make a finding of contempt if the alleged contemnor proves by a preponderance of the evidence that (A) from the date of the support order through the date of the contempt hearing the alleged contemnor (i) never had the ability to pay more than the amount actually paid and (ii) made reasonable efforts to become or remain employed or otherwise lawfully obtain the funds necessary to make payment, or (B) enforcement by contempt is barred by limitations as to each unpaid spousal or child support

> payment for which the alleged contemnor does not make the proof set forth in subsection (3)(A) of this section.
>
> (4) *Order.* Upon a finding of constructive civil contempt for failure to pay spousal or child support, the court shall issue a written order that specifies (A) the amount of the arrearage for which enforcement by contempt is not barred by limitations, (B) any sanction imposed for the contempt, and (C) how the contempt may be purged. If the contemnor does not have the present ability to purge the contempt, the order may include directions that the contemnor make specified payments on the arrearage at future times and perform specified acts to enable the contemnor to comply with the direction to make payments.

Thus, for a court to properly find a party in contempt, the petitioner must prove, by clear and convincing evidence, that the alleged contemnor failed to make support payments, and the contemnor must be both able to pay the required amount, and willfully neglecting to make required payments. *See Arrington v. Human Resources*, 402 Md. 79, 97 (2007) ("If the petitioner proves that the defendant failed to pay the amount owed and the defendant fails to prove . . . that he or she could not have paid more than was paid . . . the court may find the defendant in contempt.").

Pursuant to the December 20, 2019 judgment, Mr. Ross had been ordered to pay $6,000 per month in child support and $4,000 per month for the first 18 months and $3,000 per month for the following 18 months in alimony support, which terminated December 25, 2021 due to Mrs. Schwab's remarriage. The child support obligation terminated on September 28, 2023, when Mr. Ross was granted physical custody of the children. Neither party contends that Mrs. Schwab did not present clear and convincing evidence to prove that Mr. Ross had failed to make his support payments. Md. Rule 15-207(e)(2). As a

result, the burden shifted to Mr. Ross to prove by a preponderance of the evidence that from the date of the support order through the date of the contempt hearing, he "never had the ability to pay more than the amount [he] actually paid," and that he "made reasonable efforts to become or remain employed or otherwise lawfully obtain the funds necessary to make payment" of support to Mrs. Schwab. Md. Rule 15-207(e)(3).

The court found that Mr. Ross failed to pay $38,000 due under the support order, and "failed to prove by a preponderance of the evidence either defense allowed under Rule 15-207(e)(3)." The court found Mr. Ross in contempt and ordered that he may purge the contempt finding by paying $19,000, finding that Mr. Ross was "presently able to meet that purge and has willfully refused or failed to do so." The court stated as follows:

> The court does not find [Mr. Ross] to be credible in his testimony with respect to his finances or ability to pay. The Court reaches this conclusion based on [Mr. Ross's] demeanor on the witness stand, evasiveness in answering questions, lack of evidence of tax returns to corroborate his testimony, as well as the suspicious timing of the creation of [Mr. Ross's] company one week after being recommended for contempt by a Magistrate.
>
> As such, this Court finds that at several points, [Mr. Ross] has had the money to pay his obligations, but has failed to do so.

Mr. Ross specifically contends that the court erred in finding that he had willfully violated the court's order during the period in which he underpaid the alimony and child support, and that he had both the past and present ability to make the support payments. Mr. Ross claims that prior to December 31, 2021, CBRE withheld all appropriate amounts from his wages for support payments, and beginning in January 2022 when Mr. Ross

directed his payments to MKB Ross, LLC, it did the same. At the January 17, 2023 contempt proceedings, Mr. Ross testified that in 2022, he received $204,139 in payments from MKB Ross, LLC. Mr. Ross could not say how much MKB Ross, LLC received in payments from CBRE, but acknowledged it was more than $204,139 because MKB Ross, LLC also needed to pay business expenses. Mr. Ross could not state how much MKB Ross, LLC retained in excess of what was paid out to Mr. Ross.[4] Mr. Ross contends that he has significant debts, and he does not have the ability to pay the outstanding $38,000 in support payments, and that his failure to make the outstanding payments is solely because he has never made the income the court projected when it determined the appropriate support obligations in December 2019.

Mrs. Schwab contends that Mr. Ross demonstrated an ability to pay, citing the income that he received from MKB Ross, LLC in 2022, and alleges that Mr. Ross claimed certain expenses on his financial statement that he is not actually paying. Mrs. Schwab further contends that Mr. Ross's diminished earnings is willful, implying that he is hiding funds by funneling payments from CBRE to MKB Ross, LLC, and notes that Mr. Ross has not provided direct payments for his support obligations and instead payments must be garnished from his wages.

"The decision to hold a party in contempt is vested in the trial court." *Cnty. Comm'rs for Carroll Cnty. v. Forty W. Builders, Inc.*, 178 Md. App. 328, 394 (2008). We

[4] Mr. Ross's 2022 tax return indicated that the net income for MKB Ross, LLC was $51,212, seemingly indicating that MKB Ross, LLC did not pay out to Mr. Ross the full amount that it received in compensation for Mr. Ross's work as a "qualified real estate agent" for CBRE.

"will only reverse such a decision upon a showing that a finding of fact upon which the contempt was imposed was clearly erroneous or that the court abused its discretion in finding particular behavior to be contemptuous." *Id*.

Critically, constructive civil contempt is for the purposes of coercing a party to comply with a court order. "[N]ormally in a constructive civil contempt action there cannot even be a finding or adjudication that the defendant is in contempt unless the defendant has the *present* ability to comply with the earlier court order or with the purging provision." *Dodson v. Dodson*, 380 Md. 438, 450 (2004). "The only exception to this general rule [requiring a present ability to comply] is set forth in Maryland Rule 15-207(e), which permits a finding of contempt, and the issuance of certain court orders, where a defendant has failed to comply with spousal or child support orders under conditions specified in the Rule." *Id*. at 451. Thus, even if a contemnor does not have the present ability to pay the total amount owed, he or she may still be found in contempt. *See, e.g.*, *Rawlings v. Rawlings*, 362 Md. 535, 544 (2001) ("Rule 15-207(e) . . . authorizes the court to make a finding of constructive civil contempt even though the alleged contemnor may not have the present ability to pay the ordered child support.").

Contempt findings must provide for a chance for the contemnor to purge the contempt by paying a specified amount. If the contemnor does not have the present ability to satisfy the purge provision, "the [contempt] order may include directions that the contemnor make specified payments on the arrearage at future times and perform specified acts to enable the contemnor to comply with the direction to make payments." Md. Rule 15–207(e)(4).

We review for clear error the facts relied upon by the trial court to determine whether a party was in contempt. *Cnty. Comm'rs for Carroll Cnty.*, 178 Md. App. at 394. The court found that Mr. Ross was not credible in his testimony regarding his finances or ability, past or present, to pay his outstanding support obligations. We defer to the trial court's determination of credibility because it has "the opportunity to gauge and observe the witnesses' behavior and testimony" throughout the proceedings. *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001) (quoting *Ricker*, 114 Md. App. at 592). It is "not our role, as an appellate court, to second-guess the trial judge's assessment of a witness's credibility." *Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020). The parties offered extensive evidence regarding Mr. Ross's current income, including, at minimum, an income in 2022 of $204,169, and Mr. Ross's current expenses and financial state. The court found that Mr. Ross had the present ability to meet the purge amount of $19,000. Based on this record, the trial court's determination of Mr. Ross's present ability to pay was not clearly erroneous.

The willfulness of the alleged contemnor's frustration of a court order "must be established by evidence, and cannot simply be 'assumed.'" *Dorsey v. State*, 356 Md. 324, 352 (1999). However, "evidence of an ability to comply, or evidence of a defendant's conduct purposefully rendering himself unable to comply [with a court order], may, depending on the circumstances, give rise to a legitimate inference that the defendant acted with the requisite willfulness[.]" *Id.*

Mr. Ross alleges that his failure to comply was not willful, as he is simply unable to comply with the order due to his inability to pay. The trial court was not convinced. Not

only did the court find that Mr. Ross had the present ability to pay, the court also expressed concern about the "suspicious timing of the creation of [Mr. Ross's] company [MKB Ross, LLC], one week after being recommended for contempt by a Magistrate." The court heard testimony that the creation of MKB Ross, LLC was merely to streamline taxes and deductions and was encouraged by CBRE, but also heard that Mr. Ross began his employment with CBRE in 2017 and did not create MKB Ross, LLC until 2021. To the court, the timing of the creation of MKB Ross, LLC indicated that Mr. Ross's failure to comply with his court ordered support obligations was willful. This finding was not clearly erroneous. As such, the court did not abuse its discretion in finding Mr. Ross's failure to pay child support contemptuous.

IV. The trial court erred in ordering the outsider reverse piercing of the corporate veil of MKB Ross, LLC for the purpose of collecting child support arrearages.

Finally, Mr. Ross contends that the court erred when it ordered the outsider reverse piercing of the corporate veil of MKB Ross, LLC for the purposes of recovering his outstanding child support obligations. In the December 11, 2023 order, the court found as follows:

> (1) that MKB Ross, LLC was organized for the purpose of avoiding [Mr. Ross's] legal obligations; (2) [Mr. Ross] is failing to observe the sanctity of the corporate entity, by treating corporate assets as his own; and (3) that the "alter ego" doctrine applies to this matter, in that [Mr. Ross] and MKB Ross, LLC are one and the same.

The court further found:

> by clear and convincing evidence, that the corporate veil of MKB Ross, LLC shall be, and hereby is, pierced by [Mrs. Schwab] for the sole purpose of collecting any child support

> arrearages due herein, and specifically not for any outstanding alimony, monetary award or attorney's fees.

At the time the court entered its order, Mr. Ross had been determined to have accumulated arrearages of $38,000. Of note, although the trial court found that the creation of MKB Ross, LLC was "suspicious," it did not make a particular finding that MKB Ross, LLC's existence was to perpetuate fraud, only that Mr. Ross sought to avoid his legal obligations.

Piercing the corporate veil is "[t]he judicial imposition of personal liability on otherwise immune corporate officers, directors, or shareholders for the corporation's wrongful acts." *Piercing the Corporate Veil*, Black's Law Dictionary (12th ed. 2024). Thus, when a corporation commits wrongful acts, those to whom the corporation is indebted may be permitted to pursue recovery against the shareholders, officers, and directors in certain circumstances. Conversely, reverse piercing of the corporate veil is "[t]he judicial imposition of liability on a corporation for the wrongful acts of an officer, director, or shareholder who is using the corporation as a shield." *Reverse Piercing the Corporate Veil*, Black's Law Dictionary (12th ed. 2024).

There is similarly a distinction between "insider" and "outsider" reverse veil-piercing. "Insider reverse piercing applies when the controlling [member or shareholder] urges the court to disregard the corporate entity that otherwise separates the [member or shareholder] from the corporation." *Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375, 385 (4th Cir. 2018) (internal quotation marks omitted). Conversely, outsider reverse piercing "applies when an outside third party, frequently a creditor, urges a court to render a company liable in a judgment against its member." *Id*. at 386; *C.F. Trust, Inc. v. First*

Flight Ltd. Partnership, 306 F.3d 126, 134 (4th Cir. 2002) ("Outsider reverse veil-piercing extends this traditional veil-piercing doctrine to permit a third-party creditor to 'pierce[ ] the veil' to satisfy the debts of an *individual* out of the corporation's assets.").

In describing the standard for permitting the piercing of the corporate veil, the Supreme Court of Maryland has stated as follows:

> "[T]he most frequently enunciated rule in Maryland is that although the courts will, in a proper case, disregard the corporate entity and deal with substance rather than form, as though a corporation did not exist, shareholders generally are not held individually liable for debts or obligations of a corporation except where it is necessary to prevent fraud or enforce a paramount equity."

Bart Arconti & Sons, Inc. v. Ames-Ennis, Inc., 275 Md. 295, 310 (1975). "Thus, a Maryland court may pierce the corporate veil only based on fraud or proof that it is necessary to enforce a paramount equity." *Residential Warranty Corp. v. Bancroft Homes Greenspring Valley, Inc.*, 126 Md. App. 294, 306–07 (1999).

"This standard has been so narrowly construed that neither this Court nor the [Supreme Court of Maryland] has ultimately 'found an equitable interest more important than the state's interest in limited shareholder liability.'" *Serio v. Baystate Properties, LLC*, 209 Md. App. 545, 559–60 (2013) (quoting *Residential Warranty Corp*., 126 Md. App. at 307 n. 13).

As both parties acknowledge, Maryland courts have never addressed the outsider reverse piercing of the corporate veil. Mrs. Schwab cites several other states which permit the outsider reverse piercing of the corporate veil, and encourages us to extend the doctrine to permit the outsider reverse piercing of MKB Ross, LLC for the purpose of recovering

Mr. Ross's outstanding child support obligations. Mr. Ross contends that the corporate veil of an LLC may not be pierced, even in the traditional sense. Even if it may, he further contends that Mrs. Schwab failed to prove that the outsider reverse piercing of MKB Ross, LLC was "necessary to prevent fraud or enforce a paramount equity." Assuming without deciding whether outsider reverse piercing of the corporate veil of an LLC is authorized, we hold that the trial court erred in ordering the specific outsider reverse piercing of the corporate veil of MKB Ross, LLC.

Our review of Maryland case law on the doctrine of corporate veil-piercing reveals an incredibly high bar that creditors must meet for a court to order that a corporation be liable for the actions of its stockholders or subsidiaries. *See, e.g.*, *Hildreth v. Tidewater Equip. Co., Inc.*, 378 Md. 724, 734 (2003) ("Because piercing the corporate veil is founded on equity, 'where no fraud is shown, the plaintiff must show that an inequitable result, involving fundamental unfairness, will result from a failure to disregard the corporate form.'") (citation omitted); *Residential Warranty Corp.*, 126 Md. App. at 307 ("Despite the proclamation that a court may pierce the corporate veil to enforce a paramount equity, arguments that have urged a piercing of the veil 'for reasons other than fraud' have failed in Maryland courts.") (citation omitted); *Dixon v. Process Corp.*, 38 Md. App. 644, 645–46 (1978) ("[W]oe unto the creditor who seeks to rip away the corporate facade in order to recover from one sibling of the corporate family what is due from another in the belief that the relationship is inseparable, if not insufferable, for his is a herculean task.").

"Maryland is more restrictive than other jurisdictions in allowing a plaintiff to pierce a corporation's veil." *Residential Warranty Corp.*, 126 Md. App. at 309. Although

Maryland courts have continuously reiterated the validity of the paramount equity rationale, our appellate courts have not permitted the piercing of the corporate veil absent a finding of fraud. *Qun Lin v. Cruz*, 247 Md. App. 606, 641 (2020); *see also*, *Bart Arconti & Sons, Inc.*, 275 Md. at 311–12 ("Nor are we aware of any Maryland case where . . . the Court has allowed the corporate entity to be disregarded merely because it wished to prevent an 'evasion of legal obligations'—absent evidence of fraud or similar conduct.").

Considering the specific facts of this case, and absent an express finding of fraud by the trial court, or case law to the contrary, we cannot say that Mr. Ross's creation of and diverting of funds to MKB Ross, LLC constitutes such a paramount inequity to justify the outsider reverse piercing of the veil.

CONCLUSION

We hold that the trial court did not err in consolidating the January 17, 2023 contempt hearing with the merits hearing in June 2023; declining to retroactively modify its previous child support and alimony awards against Mr. Ross; denying Mr. Ross's request for a jury trial for the January 17, 2023 contempt proceedings; and finding Mr. Ross in contempt for failing to make support payments in the amount of $38,000. We hold, however, that the court erred in ordering the outsider reverse piercing of the corporate veil of MKB Ross, LLC, for the purposes of recovering the outstanding child support owed to Mrs. Schwab. As such, we vacate solely the court's order granting the outsider reverse piercing of the corporate veil of MKB Ross, LLC, and remand with instructions to enter judgment in favor of Mrs. Schwab in the amount of $38,000. All other findings of the trial court are otherwise affirmed.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED, IN PART, AND VACATED, IN PART. COSTS TO BE PAID 3/4 BY APPELLANT AND 1/4 BY APPELLEE.