Circuit Court for Montgomery County
Case No. C-15-CV-23-3182

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 268

September Term, 2025

ELIZABETH M. GINEXI, *et al.*

v.

LIBERTY MOUNTAIN RACE TEAM, INC.

Arthur,
Kehoe, S.
Beachley, Donald E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 6, 2026

*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).

Elizabeth Ginexi filed, in the Circuit Court for Montgomery County, a civil complaint against Liberty Mountain Race Team, Inc. ("LMRT") alleging negligence. The complaint stemmed from an incident in which Ginexi was injured when she collided with another skier, Austin Ma, who was an LMRT member, while the two were skiing at Liberty Mountain Resort in Pennsylvania.

During the subsequent proceedings, LMRT filed two relevant motions: (1) a motion seeking sanctions against Ginexi's attorney, Edward Brown, related to his behavior during a deposition; and (2) a motion for summary judgment, in which LMRT argued that Ginexi was precluded from recovery because she had assumed the risk of her injuries pursuant to Pennsylvania's Skier's Responsibility Act. After holding a hearing on both motions, the court granted summary judgment in favor of LMRT but held its ruling on the sanctions motion *sub curia*. After Ginexi noted a timely appeal, the court entered a separate order granting LMRT's motion for sanctions and ordering Brown to pay $1,500 to LMRT. Brown then joined Ginexi in her appeal.

In this appeal, Ginexi has filed a brief challenging the court's order granting summary judgment, and Brown has filed a separate brief challenging the court's order awarding sanctions. In their respective briefs, Ginexi presents four questions for our review, and Brown presents three questions. For clarity, we have rephrased both parties' questions and have consolidated them into two questions:

1. Did the circuit court err or abuse its discretion in granting summary judgment in favor of LMRT?

2. Did the circuit court err or abuse its discretion in sanctioning Brown?

For reasons to follow, we hold that the court did not err or abuse its discretion in granting summary judgment or in sanctioning Brown. Accordingly, we affirm the court's judgments.

BACKGROUND

In the morning hours of February 27, 2022, Ginexi, a ski instructor employed and working at Liberty Mountain Resort in Pennsylvania, was skiing toward one of the resort's ski lifts when she was struck by another skier, 12-year-old Austin Ma, who had been descending one of the ski slopes. At the time, Ma was skiing as a member of LMRT's "under 14" racing program. Ginexi suffered injuries to both knees as a result of the collision.

On August 18, 2023, Ginexi, a resident of Montgomery County, Maryland, filed a complaint in the circuit court against LMRT, Ma, and Ma's parents. Ginexi alleged that, at the time of the collision, Ma had been skiing without proper education, training, and supervision. Ginexi alleged, among other things, that LMRT was negligent in failing to properly train, supervise, and equip Ma.

Motion to Compel and Motion for Sanctions

On October 25, 2024, Ginexi and her attorney, Brown, appeared for a deposition at the offices of LMRT's attorney, Jessica Butkera. Also present was counsel for the Mas, Mark Klemens. That deposition, which was video recorded, ended abruptly for reasons discussed in greater detail below. Following Ginexi's deposition, LMRT filed a motion for sanctions against Brown.

Motion for Summary Judgment – Pennsylvania's Skier's Responsibility Act

Around the time that it filed its motion for sanctions, LMRT also filed a motion for summary judgment. In that motion, LMRT argued that Ginexi's claim was barred by Pennsylvania's Skier's Responsibility Act (hereinafter the "Act").[1] Under the Act, a skier is deemed to have assumed the risk of a particular injury if: (1) the skier was engaged in the sport of downhill skiing when the injury occurred; and (2) the injury arose out of a risk inherent to the sport of skiing. *Chepkevich v. Hidden Valley Resort, L.P.*, 607 Pa. 1, 21 (2010). LMRT argued that Ginexi's claim fell within the purview of the Act and that, consequently, summary judgment should be granted in LMRT's favor.

Ginexi countered that summary judgment was inappropriate, for several reasons. First, Ginexi argued that the Act was inapplicable because she was an employee of the ski resort, not a patron. Second, Ginexi argued that, even if the Act were applicable, her injury did not fall within the meaning of the Act because the risk she encountered was not "inherent" to the sport of skiing. Ginexi further argued that, if her injury did fall within the meaning of the Act, LMRT still needed to prove that she knowingly and voluntarily encountered the specific risk that caused her injury, which in her case was an inexperienced and improperly outfitted skier whom LMRT had failed to properly supervise. Finally, Ginexi argued that LMRT's "discovery misconduct" prejudiced her and made summary judgment inappropriate.

[1] Although the parties disagree whether the Act is applicable here, they do not dispute that Pennsylvania law applies.

Dismissal of Ma Defendants

In January 2025, Ginexi voluntarily dismissed her claims against the Mas.[2] The matter thereafter proceeded with LMRT as the sole named defendant.

Orders Granting Summary Judgment and Awarding Sanctions

On March 13, 2025, the court held a hearing on LMRT's motion for sanctions and its motion for summary judgment. At the conclusion of the hearing, the court granted summary judgment in favor of LMRT. The court found that Ginexi was engaged in the sport of downhill skiing at the time of her injury and that the injury was caused by an inherent risk of the sport. The court found, therefore, that Ginexi's claim was barred by the Act.

As for LMRT's request for sanctions, the court held the matter *sub curia*. The court stated that it wanted to review the video recording of Ginexi's deposition before ruling.

On April 21, 2025, after Ginexi noted her appeal from the court's order granting summary judgment, the court entered an order granting LMRT's request for sanctions against Brown. Following that order, Brown joined Ginexi in this pending appeal. Additional facts will be supplied as needed below.

I.

As noted, in this appeal Ginexi challenges the court's order granting summary judgment, and Brown challenges the court's order awarding sanctions. For clarity, we will

[2] We were advised at oral argument that Ginexi subsequently filed a separate action against the Mas in the Circuit Court for Montgomery County.

address each party's claim separately, beginning with Ginexi's challenge to the court's summary judgment order.

STANDARD OF REVIEW – SUMMARY JUDGMENT

"In Maryland, a court shall grant summary judgment only if 'there is no genuine dispute as to any material fact and … the party in whose favor judgment is entered is entitled to judgment as a matter of law.'" *George v. Baltimore County*, 463 Md. 263, 272 (2019) (quoting Md. Rule 2-501(f)). "In an appeal from the grant of a defendant's motion for summary judgment, we review the facts and all inferences drawn from those facts in the light most favorable to the plaintiff." *Gurbani v. Johns Hopkins Health Systems Corp.*, 237 Md. App. 261, 267 (2018). "Whether summary judgment was granted properly is a question of law." *George*, 463 Md. at 272 (quoting *Lightolier, a Division of Genlyte Thomas Grp. LLC v. Hoon*, 387 Md. 539, 551 (2005)).

DISCUSSION – SUMMARY JUDGMENT

In this appeal, Ginexi challenges the court's order granting summary judgment in favor of LMRT pursuant to the Skier's Responsibility Act. Before discussing the specifics of her argument, we will set forth the relevant legal framework regarding the Act.[3]

[3] Ginexi relies heavily on *Ashmen v. Big Boulder Corporation*, 322 F.Supp.3d 593 (M.D. Pa. 2018), but we have omitted any discussion of that case, for several reasons. As a United States District Court case, the decision has no precedential value. *See NASDAQ OMX PHLX, Inc. v. PennMont Securities*, 52 A.3d 296, 303 (Pa.Super.Ct. 2012) ("Our law clearly states that, absent a United States Supreme Court pronouncement, the decisions of federal courts are not binding on Pennsylvania state courts[.]"). And, although such decisions may be relied upon for their persuasive value, any reliance is unnecessary here, as there is sufficient precedent from the Pennsylvania courts to decide the instant issue. *See Commonwealth v. Manivannan*, 186 A.3d 472, 483-84 (2018) (noting that

The Skier's Responsibility Act (the "Act")

Historically, civil claims for negligence in Pennsylvania were subject to the doctrine of assumption of risk. *Hughes v. Seven Springs Farm, Inc.*, 563 Pa. 501, 504-05 (2000). The general principle behind the doctrine is that "[a] plaintiff who voluntarily assumes a risk of harm arising from the negligent or reckless conduct of the defendant cannot recover for such harm.'" *Id.* at 505 (quoting Restatement Second of Torts, § 496A).

In 1978, the Pennsylvania General Assembly enacted the Comparative Negligence Act, which effectively supplanted the doctrine of assumption of risk in favor of a system of recovery based on comparative negligence. *Id.* at 504. Under the new statute:

> In all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff or his legal representative where such negligence was not greater than the causal negligence of the defendant or the defendants against whom recovery is sought, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

42 Pa.C.S.A. § 7102(a).

Two years later, the Pennsylvania General Assembly enacted the Skier's Responsibility Act (the "Act"), which amended the comparative negligence statute as it

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Pennsylvania courts may rely on courts of other jurisdictions "[w]hen confronted with a question heretofore unaddressed by the courts of this Commonwealth"). Finally, *Ashmen*, citing *Hughes*, accepted the principles we apply in this case—that an inherent risk in downhill skiing is one that is "common, frequent, and expected." 322 F. Supp. 3d at 598. *Ashmen* distinguished *Hughes* by determining "that the simple fact that snowmaking equipment is essential to the sport is insufficient on its own to establish that collision with such equipment is a common, frequent, and expected risk." *Id.* at 399. *Ashmen* has little relevance to a collision between two skiers as alleged in the present case.

pertained to negligence actions involving injuries arising from downhill skiing. *Hughes*, 563 Pa. at 504-05. That amendment provides:

> **(c) Downhill skiing -**
>
> (1) The General Assembly finds that the sport of downhill skiing is practiced by a large number of citizens of this Commonwealth and also attracts to this Commonwealth large numbers of nonresidents significantly contributing to the economy of this Commonwealth. It is recognized that as in some other sports, there are inherent risks in the sport of downhill skiing.
>
> (2) The doctrine of voluntary assumption of risk as it applies to downhill skiing injuries and damages is not modified by subsections (a) and (a.1).

42 Pa.C.S.A. § 7102(c).

Hughes v. Seven Springs Farm, Inc.

In *Hughes v. Seven Springs Farm, Inc.*, Pennsylvania's highest state appellate court, the Supreme Court of Pennsylvania, applied the Act in determining whether summary judgment was appropriately granted in a negligence action. *Hughes*, 563 Pa. at 503-04. There, the plaintiff, while skiing towards a ski lift at the Seven Springs Mountain Resort in Pennsylvania, was struck and injured by another skier descending the slope behind the plaintiff. *Id.* The plaintiff later filed suit against the resort, and, after the resort moved for summary judgment, the court granted summary judgment on the ground that the plaintiff had assumed the risk of her injuries. *Id.* at 502-03.

On appeal, the Superior Court of Pennsylvania, Pennsylvania's intermediate appellate court, reversed and remanded the case for trial. *Id.* at 503. The Superior Court concluded, among other things, that summary judgment was inappropriate because it could

not determine as a matter of law whether the plaintiff's injury was caused by an inherent risk of skiing or whether the plaintiff was engaged in the sport of downhill skiing at the time of the collision. *Id.*

The Supreme Court of Pennsylvania granted review "to examine whether [the assumption of risk] doctrine bars a suit brought against a ski resort by a skier who, while skiing towards the ski lift through a common area at the base of the mountain, is struck and injured by another skier coming down that mountain." *Id.* at 504. The Supreme Court ultimately answered that question in the affirmative and reversed the Superior Court's judgment. In so doing, the Supreme Court discussed the basic principles behind the assumption of risk doctrine and noted that the doctrine had been the subject of some criticism in certain contexts. *Id.* at 505-09. The Supreme Court noted that those criticisms were due in large part to the view that "'assumption of risk' was merely 'duplicative of the more widely understood concepts of scope of duty and contributory negligence.'" *Id.* at 506-07 (quoting *Rutter v. Northeastern Beaver County Sch. Dist.*, 496 Pa. 590, 612 (1981)). The Supreme Court concluded that, regardless of the difficulties the assumption of risk doctrine had presented in other areas, cases involving injuries occurring at "sporting events or amusement facilities have tended to speak in terms of whether the injury suffered resulted from a risk 'inherent' in the activity in question; if it did, then the defendant was under no duty to the plaintiff, and the suit could not go forward." *Id.* at 508.

In light of those principles, the *Hughes* court held that, in the plaintiff's case, application of the Act involved a two-part inquiry:

> First, this Court must determine whether [the plaintiff] was engaged in the sport of downhill skiing at the time of her injury. If that answer is affirmative, we must then determine whether the risk of being hit from behind by another skier while skiing towards the ski lift at the base of the slope is one of the "inherent risks" of downhill skiing, which [the plaintiff] must be deemed to have assumed under the Act. If so, then summary judgment was appropriate because, as a matter of law, [the plaintiff] cannot recover for her injuries.

Id. at 510.

Applying that test to the plaintiff's case, the Supreme Court concluded that the defendant was entitled to summary judgment as a matter of law. *Id.* at 513. As part of that analysis, the Supreme Court rejected the plaintiff's claim that she was not engaged in the sport of downhill skiing but rather was "propelling herself towards the ski lift at the base of the mountain following a downhill run." *Id.* at 510. The Supreme Court declared that, to accept the plaintiff's argument, it "would have to interpret the Act, as well as the sport of downhill skiing, in an extremely narrow, hyper-technical and unrealistic manner." *Id.* The Supreme Court reasoned that "the sport of downhill skiing encompasses more than merely skiing down a hill" and includes other activities "directly and necessarily incident to the act of downhill skiing." *Id.* The Supreme Court also reasoned that "the risk of colliding with another skier at the base of a ski slope is one of the 'common, frequent and expected' risks 'inherent' in downhill skiing." *Id.* at 511. The Supreme Court noted that "other skiers are as much a part of the risk of downhill skiing, if not more so, than the snow and ice, elevation, contour speed and weather conditions," and "[t]he possibility that one skier may collide with another in this common area at the base of the slope is one of the

common risks of the sport of downhill skiing." *Id.* at 511-12. *Hughes* therefore held that the defendant "had no duty to protect [the plaintiff] against this inherent risk." *Id.* at 512.

Crews v. Seven Springs Mountain Resort

In *Crews v. Seven Springs Mountain Resort*, 874 A.2d 100 (Pa.Super.Ct. 2005), the Superior Court of Pennsylvania decided whether the Act barred a claim for injuries sustained when a skier was struck from behind by a snowboarder who was under the influence of alcohol. *Id.* at 100-01. There, the plaintiff filed a negligence claim against the ski resort, alleging that the snowboarder, a high school student, had been drinking at the resort; that underage drinking had occurred at the resort on prior occasions; and that the resort failed to adequately monitor conduct on its premises. *Id.* at 102. After the resort filed a motion to dismiss claiming that the complaint was barred by the Act, the court dismissed the action on the pleadings. *Id.* 101-02.

On appeal, the plaintiff argued that dismissal pursuant to the Act was inappropriate because being struck by an intoxicated skier was not an "inherent" risk to the sport of skiing. *Id.* at 102. The Superior Court agreed and reversed. *Id.* at 102-05. The Superior Court noted that, under *Hughes*, a defendant had no duty to protect a plaintiff from an "inherent risk" of skiing and that, in that case, the Supreme Court concluded that colliding with another skier was an inherent risk. *Id.* at 103-04. Distinguishing *Hughes*, the Superior Court declared in *Crews* that "the collision was not merely with another skier, which would have thus made the collision a 'common risk of downhill skiing;' the collision was with an underage drinker on a snowboard." *Id.* at 104. The Superior Court, citing two out of state

cases involving skiers who had been drinking, reasoned "that an 'inherent risk' is one that cannot be removed without altering the fundamental nature of skiing." *Id.* at 104-05. The Superior Court concluded that the risk of colliding with an underage drinker "is not one inherent to skiing" and therefore was not covered by the Act. *Id.* at 105.

Chepkevich v. Hidden Valley Resort, L.P.

Five years later, in *Chepkevich v. Hidden Valley Resort, L.P.*, 607 Pa. 1 (2010), the Supreme Court of Pennsylvania revisited the Act in evaluating the propriety of a trial court's order granting summary judgment to a defendant ski resort. In that case, the plaintiff was injured while skiing with her family at the Hidden Valley Resort. *Id.* at 3. At the time of her injury, the plaintiff was attempting to board a ski lift with her six-year-old nephew when she asked the lift operator to stop the lift so that she and her nephew could safely board. *Id.* at 4. The operator agreed, but, as the plaintiff and her nephew got on the lift, the lift did not stop, and the plaintiff and her nephew fell and were injured. *Id.* at 4. The plaintiff sued the resort, alleging that the resort, through its employee lift operator, was negligent. *Id.* The resort later moved for summary judgment, arguing, among other things, that the plaintiff had assumed the risk of her injuries under the Act. *Id.* at 4-5. The trial court ultimately disagreed and found that, under *Crews*, the plaintiff had not assumed "the risk of lift operator negligence" because that risk was "not inherent to skiing" and because that "specific risk 'could be removed without altering the fundamental nature of skiing.[.]'" *Id.* at 5-6. The court did, however, grant summary judgment in favor of the resort on a

separate issue related to a Release that had been signed by the plaintiff when she purchased her season pass to ski at the resort. *Id.* at 6-7.

After the plaintiff appealed, the Superior Court reversed and remanded on the separate issue related to the enforceability of the Release. *Id.* at 7-13. In so doing, the Superior Court briefly addressed the Act and the Supreme Court's decision in *Hughes*, finding that *Hughes* was distinguishable because it "did not involve a claim of negligent operation of a lift operator[.]" *Id.* at 9 (citations and quotations omitted). The Superior Court did not discuss or rely upon *Crews*. *Id.*

Following the Superior Court's decision, the Supreme Court of Pennsylvania granted review on several issues, including whether the Superior Court had erred "in failing to affirm summary judgment on the ground that injuries incurred while boarding a ski lift are inherent to the sport and [the plaintiff] assumed the risk, as a matter of law." *Id.* at 14. The resort argued that the Act barred the plaintiff's suit because her injuries arose out of an inherent risk of skiing, as discussed in *Hughes*. *Id.* at 17. The resort further argued that *Hughes* had "expressly counseled against a narrow reading of the Act, and that [the Supreme Court] should apply that general principle to [its] interpretation of what risks are inherent to the sport of skiing." *Id.* at 18. The plaintiff countered that the Act was inapplicable because "not all risks encountered by a skier can fairly be said to be inherent in the sport" and because, under *Crews*, "lift operator negligence can be 'removed' from skiing without altering the fundamental nature of the sport[.]" *Id.* at 19.

In evaluating the parties' claims, the Supreme Court noted that the Act "preserved the common law assumption of risk defense" as to downhill skiing injuries. *Id.* at 20-21. The Supreme Court noted that the assumption of risk defense, in the context of sports and places of amusement, had been described "as a 'no-duty' rule, *i.e.*, as the principle that an owner or operator of a place of amusement has no duty to protect the user from any hazards inherent in the activity." *Id.* The Supreme Court explained that its decision in *Hughes* "made clear that this 'no-duty' rule applies to the operators of ski resorts, so that ski resorts have no duty to protect skiers from risks that are 'common, frequent, and expected,' and thus 'inherent' to the sport of downhill skiing." *Id.* at 21. The Supreme Court reiterated that its decision in *Hughes* had established a "two-part inquiry for determining whether a skier assumed the risk of a particular injury, asking first whether the skier was engaged in the sport of downhill skiing at the time of the injury, and second, whether the injury arose out of a risk inherent to the sport of skiing." *Id.*

Applying those principles to the facts of the case, the Supreme Court held that the resort was entitled to summary judgment. *Id.* at 24-25. In reaching that decision, the Supreme Court noted that it had "not addressed the Act since *Hughes*, but the Superior Court has done so, and it applied a much narrower definition of 'inherent risks' in *Crews*[.]" *Id.* at 22. After briefly discussing the *Crews* decision, the Supreme Court declared that, "[f]or purposes of our decision here, we need not ultimately determine whether we agree with the decision in *Crews* or with the limitation that *Crews* seems to have placed upon our holding in *Hughes*." *Id.* (footnote omitted). The Supreme Court stated, rather, that "[i]t is

enough to state, consistently with *Hughes*, that boarding and riding a ski lift are inherent to the sport of downhill skiing and inherently dangerous activities, the most obvious danger of which – a risk that is common, frequent and expected – is undoubtedly falling from the lift." *Id.* at 22-23. The Supreme Court went on to endorse a broad application of the Act:

> Indeed, the clear legislative intent to preserve the assumption of the risk doctrine in this particular area, as well as the broad wording of the Act itself, dictates a practical and logical interpretation of what risks are inherent to the sport. It would frustrate the purpose of the Act were we to hold that it mandates a broad reading of the "sport of skiing," but simultaneously requires a narrow definition of what risks are "inherent" to that sport. We therefore reject [the] argument that [the plaintiff] did not assume the "specific risk" involved here. We hold instead that [the plaintiff's] action for damages arises out of the "general risk" of falling from a ski lift, which is an inherent risk of skiing from which Hidden Valley owed no duty of protection, and thus is barred by the Act.

Id. at 24-25 (internal citations omitted).

Although the Supreme Court did not expressly consider the viability of *Crews* in the body of its opinion, it did include a footnote in which it stated that *Crews* was "distinguishable on its facts" because it "involved alleged underage drinking on the defendant's property," which were circumstances "that may lead to liability on various grounds, for very important public policy reasons." *Id.* at 22 n.14. The Supreme Court stated, therefore, that "the decision in *Crews* may be construed as aimed at a certain salutary result but with an insufficient attention to teachings from this Court." *Id.* The Supreme Court also stated that, by defining "inherent risk" in the manner that it did, "*Crews* encourages plaintiffs to plead cases to define the risks that led to their injuries in a narrow, hyper-technical manner." *Id.* The Supreme Court explained that such an approach "fails

to account for the 'no-duty' rule and is contrary to the legislative intent to preserve the assumption of risk defense for downhill skiing." *Id.* Finally, the Supreme Court endorsed the principle that "inherent risks are those that are 'common, frequent, or expected' when one is engaged in a dangerous activity, and against which the defendant owes no duty to protect." *Id.*

Bell v. Dean

In *Bell v. Dean*, 5 A.3d 266 (Pa.Super.Ct. 2010), the Superior Court of Pennsylvania applied the Act to an action brought by a skier against another skier. There, the plaintiff was skiing down a slope at Ski Roundtop, a recreational ski area in Pennsylvania, when he was struck by a snowboarder who was traversing the same slope. *Id.* at 267. According to the plaintiff, at the time of the collision the snowboarder had been "traveling at a high speed down the steeper 'headwall' of the expert slope while failing to keep a proper lookout[.]" *Id.* The plaintiff sued the snowboarder ("defendant") for negligence. *Id.* The trial court grant summary judgment in favor of the defendant. *Id.*

On appeal, the issue before the Superior Court was "whether the court erred as a matter of law in finding that colliding with a snowboarder who is travelling at a high speed down a steep expert slope while not keeping a proper lookout or snowboarding under control or within the limits of his abilities is an inherent risk of downhill skiing[.]" *Id.* at 268. The Superior Court ultimately answered that question in the negative and affirmed the court's judgment. *Id.* at 273. Preliminarily, the Superior Court addressed the fact that the negligence action was brought against a fellow patron of the resort, rather than against

the resort itself. *Id.* at 269. The Superior Court noted that prior cases had only applied the Act in negligence actions involving suits brought against ski resort owners or operators. *Id.* After reviewing the Act, the Superior Court determined that "nothing in the Act's language precludes its application to negligence actions between patrons (whether they be skiers or snowboarders) of the ski resort or ski area." *Id.* The Superior Court reasoned, in other words, that "the Act cannot be said to apply only to negligence actions brought by patrons against ski resort owners and operators," but rather "the Act simply retains the common law doctrine of assumption of risk 'as it applies to downhill skiing injuries.'" *Id.* (quoting 42 Pa.C.S.A. § 7102(c)(2)). The Superior Court concluded that "[t]he Act and the 'no duty' common law doctrine of assumption of risk, which it preserves, therefore, apply equally as a potential bar to negligence actions between patrons and ski resorts and between two or more patrons of a ski resort." *Id.*

The Superior Court's opinion discussed *Hughes*, *Crews*, and *Chepkevich*. *Id.* at 269-71. The Superior Court determined that the plaintiff's argument that he did not assume the "specific risk" of the defendant's negligent snowboarding was "essentially the same argument rejected by our Supreme Court in *Chepkevich*." *Id.* at 271-72. The Superior Court then rejected that argument, explaining that, pursuant to *Chepkevich*, the plaintiff's injury arose not from "the 'specific risk' of another skier or snowboarder's alleged negligence," but rather from "the 'general risk' of colliding with another skier or snowboarder." *Id.* The Superior Court concluded that the plaintiff's "attempt to narrowly define the risk from which his injury arose" was unavailing. *Id.*

In addition, the Superior Court, citing *Hughes*, noted that other skiers and snowboarders, each of whom "is of varying age, coordination, and skill," are a significant part of the sport of downhill skiing. *Id.* at 272. The Superior Court determined that general allegations of negligence, like those raised by the plaintiff, "could serve as the basis upon which many skiing or snowboarding collisions occur." *Id.* The Superior Court reasoned that, were it to accept the plaintiff's argument, it "would effectively carve out a broad exception to our Supreme Court's clear directive in *Hughes* that collisions among skiers and snowboarders are common, frequent, and expected and, therefore, risks inherent to the sport of downhill skiing that skiers and/or snowboarders like [the plaintiff] assume under the Act." *Id.* The court declined to carve out such an exception.

Finally, the Superior Court rejected the plaintiff's argument that an affirmance "would somehow act as a bar to all claims arising out of collisions on a ski slope, thus leading to an absurd level of disorder on the ski slopes of the Commonwealth." *Id.* (internal quotations omitted). The Superior Court explained that, not only did the plaintiff's argument overlook its decision in *Crews*, but, more importantly, "neither the Act's language nor the decisions cited herein lend credence to [the plaintiff's] fear[.]" *Id.* at 272-73. The Superior Court noted that, pursuant to *Hughes* and *Chepkevich*, "plaintiffs are barred by the Act from recovery for injuries sustained while engaged in the sport of downhill skiing where the injury arises from an inherent risk of skiing, defined as those risks that are common, frequent, or expected." *Id.* at 273 (internal citations and quotations

omitted). The Superior Court concluded that "[o]ur Supreme Court has, therefore, clearly defined, as a matter of law, the scope within which recovery is barred and permitted." *Id.*

The Instant Case

Returning to the instant case, Ginexi argues that summary judgment was improperly granted pursuant to the Act, for several reasons. First, Ginexi contends that the Act was inapplicable to her claim against LMRT because, at the time of her injury, she was an employee and not a patron of the resort. Second, Ginexi contends that, even if the Act were applicable, the general principles of assumption of risk still applied, which meant that LMRT was required to show that she knowingly and voluntarily assumed the risk and that she was subjectively aware of that risk. Ginexi argues that LMRT failed to make such a showing for summary judgment purposes because there was a factual dispute as to whether she knowingly and voluntarily assumed the specific risk at issue here, which was the "gross misconduct by LMRT" in failing to properly equip and supervise an inexperienced skier. Ginexi argues that LMRT also failed to prove, pursuant to *Crews*, that the specific risk at issue could not be removed without altering the fundamental nature of skiing.

LMRT argues that summary judgment was properly granted because, under *Hughes*, Ginexi was engaged in the sport of downhill skiing at the time of her injury and her injury was caused by an "inherent" risk of the sport, *i.e.*, as skier-on-skier collision. LMRT contends that Ginexi's status as an employee of the resort is immaterial and that Ginexi's focus on the "specifics" of her collision with Ma is misguided and has been rejected by the Pennsylvania courts. Lastly, LMRT argues that it was not required to make any additional

showing, including that Ginexi was subjectively aware of the risk, before the court could grant summary judgment as a matter of law pursuant to the Act.

As discussed in greater detail below, we hold that Ginexi's claim fell within the ambit of the Act and was therefore subject to the two-part test set forth in *Hughes*. Pursuant to that test, we are convinced that Ginexi's claim was barred as a matter of law and that the court properly granted summary judgment.

Analysis

A.

We begin our analysis with Ginexi's employment argument, which we find unpersuasive. To begin with, that argument is based entirely on two cases, *Jara v. Rexworks Inc.*, 718 A.2d 788 (Pa.Super.Ct. 1998) and *Staub v. Toy Factory, Inc.*, 749 A.2d 522 (Pa.Super.Ct. 2000), that have nothing to do with the Act. *Jara* involved a products liability action brought by a maintenance worker against a conveyor belt manufacturer after the worker was injured when the belt he was working on malfunctioned. *Jara*, 718 A.2d at 790-91. *Staub* involved a negligence action brought by a roofer against several construction contractors after the roofer was injured when he fell through a hole in a roof on which he had been working. *Staub*, 749 A.2d at 524-25. In both cases, the Superior Court held that assumption of risk as an affirmative defense was heavily disfavored, if not completely unavailable, in the employment context because an employee generally cannot be said to have voluntarily assumed a risk of his employment where an employee is required to encounter the risk in order to keep his job. *E.g. Staub*, 749 A.2d at 527-32;

Jara, 718 A.2d at 794-95. Accordingly, the *Staub* court reversed the grant of summary judgment, concluding "that in a negligence context, where an employee is required to encounter a risk in order to perform his job, reasonable minds could differ as to whether the employee 'deliberately and *with awareness of specific risks inherent in the activity* nonetheless engaged in the activity that produced the injury.'" 749 A.2d at 529-30 (emphasis added). The court held that "[a] trial court should not, therefore, decide the issue as one of duty or lack thereof; instead, the issue should go to the jury as one of comparative negligence." *Id.* at 530.

These principles are inapplicable in the present case. Here, our focus is the two-part test set forth in *Hughes*: 1) was the plaintiff engaged in the sport of downhill skiing at the time of her injury?; and 2) did the injury result from an inherent risk of skiing, defined as those risks that are "common, frequent, or expected?" Thus, the *Staub* court's analysis of the "specific risk inherent in the activity" is at odds with the Supreme Court's analysis in *Hughes* and *Chepkevich* that there is no duty as to an inherent risk of skiing.[4] Moreover, the Pennsylvania legislature expressly provided that "[t]he doctrine of voluntary assumption of risk as it applies to downhill skiing injuries and damages is not modified" by the enactment of comparative negligence in Pennsylvania. 42 Pa. C.S.A. § 7102(c). Because the Supreme Court has expressly interpreted the downhill skiing carve-out in the

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[4] In a ski accident case under the Skier's Responsibility Act, a federal court in Pennsylvania distinguished *Staub* and related cases, concluding that appreciation of specific risk is only relevant after determining that the "no duty" rule is inapplicable. *Quan Vu v. Ski Liberty Operating Corp.*, 295 F. Supp. 3d 503, 509 (M.D. Pa. 2018).

comparative negligence statute in *Hughes* and its progeny, we are persuaded that the analysis in *Staub* and *Jara* is inapplicable to this case. Indeed, the Superior Court's analysis of the assumption of the risk doctrine in *Staub* and *Jara* would be at odds with the Supreme Court's broad application of the doctrine in *Hughes* and *Chepkevich* and the Superior Court's own application in *Bell*. In *Bell*, the court held that the Act applied equally to claims brought against other skiers, such that, in a skier-on-skier collision, the other skier, like the resort, would have "no duty" to the injured skier, provided the two-part *Hughes* test was met.[5] *Bell*, 5 A.3d at 269. Given that, were we to hold that Ginexi's employment status exempted her from the Act, we would be saying that, had Ginexi simply been another patron, Ma would have had no duty, but because Ginexi was an employee of the resort, Ma did have a duty. Absent a clear directive from the Pennsylvania legislature or its appellate courts, we decline to adopt a separate standard for ski resort employees who are injured as a result of an inherent risk of skiing.

B.

Having determined that the Act is applicable, we now turn to the *Hughes* test. As discussed, that test involves a two-part inquiry. First, we must determine whether Ginexi "was engaged in the sport of downhill skiing at the time of her injury." *Hughes*, 563 Pa. at 510. If so, we must then determine whether Ginexi's injury was caused by "one of the

[5] This holding also directly refutes Ginexi's suggestion that there needed to be some formal relationship between her and LMRT in order to trigger the no duty rule. There was no relationship, aside from their relationship as fellow skiing participants, between the plaintiff and defendant in *Bell*, yet the Superior Court held that the no duty rule was applicable.

'inherent risks' of downhill skiing[.]" *Id.* If we answer both questions in the affirmative, then, as a matter of law, Ginexi cannot recover for her injury. *Id.*

Ginexi does not dispute that she was engaged in the sport of downhill skiing at the time of her injury, and we agree. The sole question, then, is whether Ginexi's collision with Ma was an "inherent risk" of the sport. As previously noted, an inherent risk is one that is "common, frequent, and expected" in the sport of downhill skiing.[6] *E.g. Hughes*, 563 Pa. at 511; *Chepkevich*, 607 Pa. at 22-23.

We hold that Ginexi's collision with Ma was an inherent risk of downhill skiing. Both the Supreme Court of Pennsylvania (*Hughes*) and the Superior Court of Pennsylvania (*Bell*) have made plain that collisions such as the one between Ginexi and Ma are a common, frequent, and expected risk of downhill skiing. *E.g. Hughes*, 563 Pa. at 511-12; *Bell*, 5 A.3d at 272. As the Supreme Court explained in *Hughes*, and as the Superior Court later expounded upon in *Bell*, other skiers of varying ages and skill levels are a significant part of the sport of downhill skiing, and those skiers are as much a part of the risk of downhill skiing, if not more so, than environmental factors such as the snow, contour of the slope, and weather conditions. *Id.* The most obvious danger of other skiers – a danger that is common, frequent, and expected – is a collision, and anyone who partakes in the

[6] We do not accept Ginexi's reliance on *Crews* for the proposition that, for a risk to be "inherent," it must be one that cannot be removed without altering the fundamental nature of skiing. That proposition was more or less rejected by the Supreme Court of Pennsylvania in *Chepkevich*. *Chepkevich*, 607 Pa. at 22 n. 14. Moreover, the Superior Court, which decided *Crews*, had the opportunity to reassert that proposition in *Bell*, but instead chose to defer to the Supreme Court's language that an "inherent risk" is one that is "common, frequent, and expected." *Bell*, 5 A.3d at 273.

sport of downhill skiing should anticipate that such a danger may present itself. *Id.* By engaging in the sport of downhill skiing, Ginexi assumed the inherent risk of colliding with another skier. As such, her claim was, as a matter of law, precluded by the Act.

In claiming that summary judgment was improperly granted, Ginexi insists that the "risk" at issue here, which she could not have expected and which was not "inherent" to the sport, was LMRT's gross misconduct in failing to properly equip and supervise an inexperienced skier. The problem with that argument is that it is essentially the same argument that was considered and rejected, first by the Supreme Court in *Chepkevich*, and later by the Superior Court in *Bell*. In *Chepkevich*, the Supreme Court refused to accept the plaintiff's claim that she did not assume the "specific risk" of the lift operator's negligence when she fell from the ski lift; instead, the Supreme Court determined that the plaintiff's cause of action arose out of the "general risk" of falling from the lift, which was an inherent risk of downhill skiing. *Chepkevich, L.P.*, 607 Pa. at 24-25. Similarly, in *Bell*, the Superior Court rejected the plaintiff's attempt to narrowly define her claim as arising from the specific risk of another skier or snowboarder's negligence, and instead held that the injury arose from the general risk of colliding with another skier or snowboarder. *Bell*, 5 A.3d at 271-72. In both cases, as in *Hughes*, Pennsylvania's appellate courts endorsed a broad reading of the Act, and we see no reason to deviate from that approach here. Otherwise, we "would effectively carve out a broad exception to [the] Supreme Court's clear directive in *Hughes* that collisions among skiers and snowboarders are common,

frequent, and expected and, therefore, risks inherent to the sport of downhill skiing that skiers … assume under the Act." *Id.*

To be sure, there is precedent, namely *Crews*, to suggest that not every claim arising out of a collision between two skiers will be precluded by the Act. But that case involved a very specific issue – underage drinking on resort property – that, as the Supreme Court noted in *Chepkevich*, "may lead to liability on various grounds, for very important public policy reasons" and that "may be construed as aimed at a certain salutary result but with an insufficient attention to teachings from this Court." *Chepkevich*, 607 Pa. at 22 n. 14. Furthermore, the Superior Court could have, in *Bell*, relied upon *Crews* in analyzing the Act under circumstances similar to those presented here, yet that court ultimately affirmed the granting of summary judgment based on *Hughes* and *Chepkevich*. *Bell*, 5 A.3d at 272-73. In so doing, the Superior Court emphasized that, in those cases, the Supreme Court had "clearly defined, as a matter of law, the scope within which recovery is barred and permitted." *Id.* Again, we see no reason to deviate from those holdings, which firmly establish that the risk at issue here was "inherent" to the sport of skiing.

For those reasons, Ginexi's insistence that LMRT needed to show that she was subjectively aware any "specific risk" is misguided. The problem with Ginexi's argument is her focus on the specific risk of LMRT's negligence, which, as discussed, is not at issue. The issue here is whether Ginexi's injury was caused by the general risk of a skier-on-skier collision, which it was, and whether that risk is one of the inherent risks of downhill skiing, which it is. When we view Ginexi's argument with a focus on the general risk of a skier-

on-skier collision, it becomes clear that Ginexi's claim was properly disposed of at summary judgment, as no reasonable person could conclude that Ginexi, an experienced ski instructor, was unaware that "other skiers" are a potential risk to persons engaged in the sport of downhill skiing.

C.

Ginexi raises a second set of arguments that concern the propriety of the court's summary judgment order but that do not involve the Act. First, Ginexi claims that LMRT's "discovery misconduct," which included failing to appear at depositions and failing to provide substantive answers to interrogatories, prejudiced her "abilities to determine and present a full factual record, and thus summary judgment should have been denied pursuant to Maryland Rule 2-501(d)." Second, Ginexi claims that, because LMRT failed to provide any facts in discovery regarding the defense of assumption of risk, LMRT should have been found to have waived any assumption of risk defense pursuant to Maryland Rule 2-501(c).

We need not discuss these arguments in any detail, as they have no discernible merit. Ginexi's first argument is premised upon the general notion that, because the evaluation of "LMRT's gross and many deviations" in causing her injury was an "inherently factual determination," and because there was evidence that LMRT "grossly deviated in many relevant respect [sic] from established custom," summary judgment should not have been granted, particularly in light of LMRT's "discovery misconduct," which prevented "a full factual record." That notion is flawed, in large part because, as discussed above, the

"specific risk" of LMRT's negligence was more or less irrelevant to the court's determination of whether Ginexi's injury was caused by the general risk of a skier-on-skier collision. Even so, Maryland Rule 2-501(d) states, in relevant part, that if a party opposing a motion for summary judgment files an affidavit and "the court is satisfied from the affidavit … that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted[.]" Clearly, the court did not find that ordering additional discovery was necessary before making a determination on LMRT's summary judgment motion. The court did not abuse its discretion on this point.

As for Ginexi's waiver argument, we remain unpersuaded. First, Ginexi's reliance on Rule 2-501(c) is misplaced. That rule states that, when a party files an affidavit in support of or in response to a motion for summary judgment, the affidavit "shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit." We fail to see how that rule would operate as a waiver of LMRT's assumption of risk defense. Furthermore, Ginexi is wrong in suggesting that, to preserve the assumption of risk defense, LMRT was required to provide specific facts in support of the defense in its answers to interrogatories. LMRT properly raised the defense in its answer to Ginexi's complaint, as required by Maryland Rule 2-323. Although LMRT subsequently refused to provide specific facts in support of that defense in its answers to interrogatories, it did state, in those same answers, that it was reserving the right to raise

the assumption of risk defense. In any event Ginexi was not prejudiced in any way by LMRT's failure to provide such discovery because the present facts, viewed in a light most favorable to Ginexi, support the entry of summary judgment under Pennsylvania law. Under the circumstances, the court did not abuse its discretion in considering LMRT's affirmative defense of assumption of risk. *See Woolridge v. Abrishami*, 233 Md. App. 278, 294-300 (2017).

II.

We now turn to Brown's challenge to the court's order sanctioning him for his behavior at Ginexi's deposition. Before doing so, we will set forth the relevant facts and procedural background.

Ginexi's Deposition

On October 25, 2024, Ginexi and Brown appeared for a deposition at the offices of LMRT's attorney, Jessica Butkera. The deposition was video recorded.

After an initial 45 minutes of relatively routine questioning, Butkera began asking Ginexi more specific questions about her understanding of the risks inherent in skiing. During that portion of the questioning, which lasted another 45 minutes, Brown lodged dozens of speaking objections and, at several points, precluded Ginexi from answering questions without providing a reasonable explanation as to why either the question or Ginexi's answer was improper. At other points, Brown engaged in generally obstructive behavior, including: telling Butkera to rephrase her questions; arguing with Butkera about the relevant law; stopping the questioning to chastise Butkera regarding the phrasing of her

questions; accusing Butkera, without a proper foundation, of not acting in "good faith;" and forcing Butkera to explain the purpose of her questions before allowing Ginexi to answer.

Toward the end of that portion of the questioning, Butkera, clearly frustrated with Brown's obstructive behavior, appeared to raise her voice while questioning Ginexi. Brown then accused Butkera of not being professional. When Butkera subsequently tried to move the process along by encouraging Ginexi to answer a question, Brown admonished Butkera to "respect the process" and suggested that she was not "follow[ing] any of the other rules."

A short time later, Butkera showed Ginexi a resignation letter that Ginexi had written to her employer in 2014 regarding allegations of harassment. When Butkera asked for the letter to be marked as an exhibit, Brown interjected and inquired as to whether the letter had been produced in discovery. Butkera responded that the letter had not been produced because the document was already in Ginexi's possession, given that she had written the letter. When Butkera attempted to resume her questioning of Ginexi, Brown refused to allow the deposition to proceed and demanded that the parties engage in a "good faith" discussion about why the letter was not produced. Brown also demanded that he be given time to "do a little more research" about the letter. The parties ultimately agreed to go off the record to accommodate Brown's requests.

When the proceedings resumed, Butkera again presented the letter and asked Brown if he was going to let Ginexi answer questions about the letter. After Brown again

suggested that there needed to be a "good faith" discussion, Butkera reminded Brown that the parties had taken a break for that reason. Brown then insisted that he could not make a decision until Butkera made a proffer as to the relevancy of the document and provided a better explanation as to why the document was not produced. When Butkera provided responses to Brown's inquiries, Brown refused to accept those responses and continued demanding that the parties have a "good faith" discussion.

After this prolonged exchange, which lasted approximately 40 minutes, Butkera asked Brown if he was "going to let the witness answer questions." Brown responded that he would "consider it." At that point, Butkera declared that she was suspending the deposition to seek intervention from the court. Brown then accused Butkera of "blackmail" and insisted that the deposition proceed. When Butkera reiterated that she was making the decision to suspend the deposition and seek court intervention, Brown again accused Butkera of engaging in blackmail and stated that she could "either go forward or you're done." When Brown continued arguing and continued insisting that the deposition had to proceed, Butkera asked, several times, for Brown to respect her decision. Despite those pleas, Brown continued arguing and continued accusing Butkera of acting in bad faith. When Butkera asked Brown to "kindly leave" the office, Brown refused. After several minutes of continued arguing by Brown, the deposition ended, and Brown left the office.

Motion to Compel and Motion for Sanctions

Following Ginexi's deposition, LMRT filed two relevant motions concerning the

deposition: a "Joint Defense Motion to Compel Depositions"[7] (hereinafter the "Motion to Compel") and a "Motion for Order Compelling Discovery and For Sanctions" (hereinafter the "Motion for Sanctions"). In the Motion to Compel, LMRT, citing the events that arose during Ginexi's deposition, asked that Ginexi be compelled to make herself available for another deposition. In the Motion for Sanctions, LMRT, while discussing in more detail Brown's behavior during Ginexi's deposition, asked that Ginexi be compelled to finish her deposition and that Brown be sanctioned in an amount "which shall be determined by Rule 2-433(e)."

On November 26, 2024, the court entered an order granting LMRT's Motion to Compel and ordering that Ginexi make herself available for another deposition. The court did not rule on LMRT's request for sanctions.

Brown subsequently filed, on behalf of Ginexi, a responsive motion opposing LMRT's request for sanctions. Brown claimed that LMRT had committed a discovery violation in failing to disclose Ginexi's letter. Brown argued that LMRT's "discovery misconduct" was the reason Ginexi's deposition ended early.

Hearing

On March 13, 2025, the court heard argument on LMRT's Motion for Sanctions. At that hearing, LMRT noted the following in support of its request for sanctions: that Brown's obstructive behavior during the deposition resulted in only 80 minutes of actual

[7] LMRT was joined in the motion by Ma and Ma's parents, who were still named defendants at the time. As noted, the instant action was ultimately dismissed against those defendants.

questioning, even though the parties were together for over four hours; that, during the questioning, Brown objected 79 times and that many of those objections were "improper speaking objections;" that Brown coached Ginexi with her testimony; that Brown requested breaks to conduct legal research and contact a friend regarding case law; and that Brown forced opposing counsel into a prolonged discussion about whether or not he would let Ginexi answer questions. LMRT also noted that Brown exhibited unprofessional behavior toward Jessica Butkera, LMRT's counsel, including: putting his hand in front of Butkera's face to get her to stop talking; talking to her and about her in a condescending manner; and criticizing her knowledge of the law. Based on that alleged behavior, LMRT argued that the court should issue sanctions against Brown for the cost of the deposition, the cost of the transcript, and the time spent preparing the motion for sanctions.

Brown responded that his obstruction of the deposition was a direct result of LMRT's blatant and wrongful withholding of the resignation letter that Ginexi had purportedly written in 2014. Brown maintained that, because the letter included a complaint about sexual harassment, he suspected, but did not know, that the letter was potentially "protected." Brown contended that, because he had not seen the letter before and was unsure of its "protected" nature, he asked for a brief suspension of the deposition so that he could conduct some research into the matter. Brown insisted that he merely wanted to resolve that issue before proceeding and that it was opposing counsel that acted unprofessionally.

The court ultimately decided to hold the matter *sub curia*, stating that it wanted to review the video recording of Ginexi's deposition before ruling.

Order Awarding Sanctions

On April 21, 2025, the court entered an order granting LMRT's request for sanctions against Brown. In that order, the court noted that "the discovery portion of this Motion has already been granted by previous Court order." The court then found that Brown had "caused significant delay through his actions and behavior at Plaintiff's deposition." The court ordered Brown to pay "$1,000 for deposition costs, including attorneys' fees" and "$500 for the cost of Defendant's counsel preparing and arguing this motion."

STANDARD OF REVIEW – DISCOVERY SANCTIONS

We review the court's decision to impose discovery sanctions for abuse of discretion. *Muffoletto v. Towers*, 244 Md. App. 510, 540 (2020). For reversal to be warranted under that standard, the court's decision "must be 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.'" *Valentine-Bowers v. Retina Group of Washington, P.C.*, 217 Md. App. 366, 378 (2014) (quoting *Wilson v. John Crane, Inc.*, 385 Md. 185, 198-99 (2005)). Purely legal issues, however, are reviewed *de novo*. *Adventist Healthcare, Inc. v. Mattingly*, 244 Md. App. 259, 274 (2020).

DISCUSSION – DISCOVERY SANCTIONS

Parties' Contentions

Brown contends that the court's imposition of sanctions was erroneous on the merits. Brown argues that it was improper for the court to sanction him "for protecting his client from opposing counsel's wrongful withholding of privileged documentation." Brown insists that he had substantial justification for opposing the request for sanctions, and he contends that his instructions to Ginexi not to answer questions during her deposition were justified by LMRT's "deposition ambush" regarding the undisclosed document. Brown argues, therefore, that the court's sanctions order should be reversed.

In addition to challenging the court's sanctions order on substantive grounds, Brown raises two procedural claims that he argues necessitate reversal. First, Brown contends that the court failed to hold a hearing before issuing sanctions, as required by Maryland Rule 2-433(d). Second, Brown contends that LMRT failed to file a verified statement of costs and expenses, as required by Maryland Rule 2-433(e).

LMRT contends that the court acted within its broad discretion in sanctioning Brown for his behavior during Ginexi's deposition. LMRT argues that neither of Brown's procedural claims warrants reversal.

Analysis

"In Maryland, the rules of discovery, governed by Chapter 400 of Title 2 of the Maryland Rules, 'were deliberately designed to be broad and comprehensive in scope.'" *Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru, Inc.*, 195 Md. App. 583, 595 (2010)

(quoting *Ehrlich v. Grove*, 396 Md. 550, 560 (2007)). Those rules include mechanisms for addressing discovery disputes and prescribing sanctions for failures of discovery. *Id.* at 596. Under Rule 2-403, a court, on motion, "may enter any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense[.]" Md. Rule 2-403(a). Under Rule 2-432, a court, on motion, may enter immediate sanctions for complete failures of discovery, such as when a party fails to appear at a deposition, or it may enter an order compelling discovery following insufficient discovery responses, such as when a deponent fails to answer a question asked during a deposition. Md. Rule 2-432(a) and (b). If a motion under either rule is granted, the court, after opportunity for hearing, may require the attorney for the person whose conduct necessitated the motion "to pay to the moving party the reasonable costs and expenses incurred in obtaining the order, including attorneys' fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust." Md. Rule 2-433(d). In the event that such a motion "contains a request for an award of costs and expenses, including attorneys' fees, the request shall (1) include, or (2) be separately supported by, a verified statement in conformance with Rule 1-341(b)." Md. Rule 2-433(e). A party may, with the approval of the court, "defer the filing of the supporting statement until 15 days after the court determines the party's entitlement to costs and expenses, including attorneys' fees." *Id.*

Although those rules provide an express method through which the court may control the discovery process, the court's power over that process is not limited to those

particular rules. As we have explained, "[w]hen there is a claim of failure of discovery, the circuit court has broad discretion to fashion a remedy based on a party's failure to abide by the rules of discovery." *Gallagher*, 195 Md. App. at 596. Even where "the precise action taken by the circuit court is not specifically prescribed by a rule or statute, the court has the ability, in general, to 'definitively and effectively [] administer and control discovery, as the Maryland Rules contemplate.'" *Id.* (quoting *North River Ins. Co. v. Mayor and City Council of Baltimore*, 343 Md. 1, 82 (1996)). "In other words, in addition to having been granted specific powers under the discovery rules, the circuit court also has the inherent power to control and supervise discovery as it sees fit." *Id.* That inherent authority "includes the power to sanction lawyers for improper conduct before the court." *Wilson v. N.B.S., Inc.*, 130 Md. App. 430, 455 (2000).

We addressed such a sanction in *Mullaney v. Aude*, 126 Md. App. 639 (1999). In that case, a male attorney made several sexist remarks to a female opposing counsel during a deposition. *Id.* at 644-45. Counsel later filed a motion for protective order and request for sanctions against the attorney. *Id.* at 646-47. The court ultimately granted the motion and ordered the attorney to pay $1,500 in fees. *Id.* at 647-48.

On appeal, the attorney argued that his comments, which included referring to opposing counsel as "babe" and suggesting that she was "a bimbo," were not sexist and did not disrupt the discovery process. *Id.* at 645, 653. We disagreed and held that the award of sanctions was an appropriate exercise of the court's discretion. *Id.* at 653-59. In so doing, we noted that "[t]he absence of civility and respect exhibited by lawyers towards

one another has been for years the subject of significant concern for bar and bench leaders," and we reasoned that the legal profession is diminished "when the ill feeling that may exist between litigants carries over into the conduct and demeanor demonstrated by one lawyer toward another[.]" *Id.* at 653-54. We further noted that, although "scorched earth strategies" and "take no prisoners' litigators" were in vogue, trial courts "have an obligation to step in and say it is unacceptable," particularly in the context of depositions, where "there is no referee, no umpire, no judge to call a halt to the ad hominem attacks, the harassment, the abuse that too many lawyers today think is required in the service of their clients." *Id.* at 654 (citations and quotations omitted). After discussing in greater detail the specific problem of gender bias in the legal profession and how the attorney's sexist remarks exacerbated that problem, we concluded that the court had a proper basis for awarding attorneys' fees. *Id.* at 654-59.

Against that backdrop, we hold that the court in the instant case did not abuse its discretion in sanctioning Brown for his behavior at Ginexi's deposition. Brown's obstructive behavior presented a significant obstacle to the orderly administration of Ginexi's deposition, such that LMRT was left with little choice but to end the deposition prematurely and file a motion to compel and for sanctions. Not only that, but Brown's behavior was, at times, unprofessional and abusive. Such behavior included chastising opposing counsel regarding the phrasing of her questions, questioning opposing counsel's knowledge of the law, interrupting opposing counsel's questioning without a proper foundation, forcing counsel to engage in prolonged discussions and to provide answers to

Brown's questions before allowing the proceedings to continue, refusing to accept opposing counsel's responses or respect counsel's decision to end the deposition, accusing opposing counsel of blackmail, and refusing opposing counsel's repeated requests that he leave the office. We agree with Brown that Butkera had an obligation to produce the resignation letter in discovery. Nevertheless, the record shows that Brown's objectionable behavior began well before LMRT confronted Ginexi with the letter. The record demonstrates that Brown's behavior far exceeded any reasonable response to LMRT's alleged discovery violation and, while perhaps not as overt as the remarks at issue in *Mullaney*, represented the sort of uncivil and disrespectful conduct that we condemned in that case. Accordingly, the court did not abuse its discretion in sanctioning Brown.

As for Brown's procedural claims, we remain unpersuaded. First, Brown's claim that the court did not hold a hearing is unsupported by the record. The court did hold a hearing on March 13, 2025, at which Brown presented argument in opposition to LMRT's motion for sanctions. That hearing comported with the rules and due process. *Wilson*, 130 Md. App. at 456. To the extent that Brown is arguing that the court was required to enter an order compelling discovery before holding that hearing, the record shows that such an order was entered in November 2024. In fact, the court referenced that order in its order for sanctions.

As for Brown's claim that LMRT was required to file a verified statement of expenses before the court could enter its sanctions award, we do not agree that the lack of such a filing was fatal to the court's sanctions order. On this point, our decision in

Mullaney v. Aude is instructive. In that case, the sanctioned attorney, in addition to arguing that the award of sanctions was improper, argued that the evidence was insufficient to support the dollar amount of the court's award. *Mullaney*, 126 Md. App. at 663. We ultimately held that the amount was justified even though no verified statement of expenses was submitted.[8] *Id.* at 663-65. We noted that the trial court "based the fee amount on the time spent in the courtroom, plus its assessment of how long it would reasonably take to prepare the motion for protective order." *Id.* at 663. We explained that the amount of a sanctions award "may be determined from those factors" and was "historically left to the trial judge's 'own knowledge of the case and the legal effort and expertise required.'" *Id.* at 663-64 (quoting *Jenkins v. Cameron & Hornbostel*, 91 Md. App. 316, 337 (1992)). We noted that, "[i]n a more complicated case, where the award is based on extensive work performed outside the courtroom, and the work produced is not directly visible to the judge, a court should have detailed time records and a description of work performed." *Id.* at 664. In that case, however, we concluded that, given the relatively small amount at issue, "the court acted within its discretion in determining the award without specific time records." *Id.*

[8] As in *Mullaney*, Brown's reliance on *Davis v. Davis*, 97 Md. App. 1 (1993) is misplaced. *Mullaney*, 126 Md. App. at 664-65. In *Davis*, we held that the trial court did not abuse its discretion in refusing to award attorneys' fees because the party requesting the fees did not supply the requisite information to justify such an award. *Id.* In this case, as in *Mullaney*, the court "did exercise its discretion to award fees based on information before it that was sufficient to determine the amount of a reasonable award." *Id.* at 665. Neither decision constitutes an abuse of discretion. *Id.*

We reach a similar conclusion here. Given the relatively small amount of the award, we hold that the court did not abuse its discretion in determining the award based on its own knowledge of the case rather than specific time records.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

The correction notice(s) for this opinion(s) can be found here:

https://www.mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0268s25cn.pdf