Circuit Court for Queen Anne's County
Case No. C-17-FM-17-000125

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1093

September Term, 2018

MICHAEL SCHNECK

v.

MELANIE SCHNECK

Fader, C.J.
Graeff,
Wells,

JJ.

Opinion by Wells, J.

Filed: July 3, 2019

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

The Circuit Court for Queen Anne's County granted Appellee, Melanie Schneck an absolute divorce from her husband, Appellant, Michael Schneck. In the judgment of absolute divorce, the court awarded Ms. Schneck custody of the parties' minor children, child support, a monetary award, and attorney's fees. The court also ordered the appointment of a trustee to sell the Schneck's marital home and evenly divide the proceeds of the sale between the parties, minus costs, among other things.

Mr. Schneck did not attend the merits hearing, he claims, in part due to his alleged addiction to drugs and alcohol. He petitioned the court for a new trial. The court granted his request only in so far as it set a hearing to establish a more accurate amount of child support. Mr. Schneck withdrew his request to modify child support at that hearing.

Mr. Schneck filed a timely appeal and asks two questions:

1. Did the trial court abuse its discretion by denying the Appellant's motion to alter and amend judgment, and request for new trial?
2. Did the trial court abuse its discretion by denying the Appellant's request to access funds to obtain counsel?

For the reasons that follow, we answer both questions in the negative. We, therefore, affirm the decision of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

During their 21-year marriage, Melanie and Michael Schneck acquired many of the badges of a successful and happy life. They had five sons, a house at 107 Terrapin Lane in Stevensville, cars, boats, and income from rental properties. They took several vacations each year with their children and by themselves. Both Ms. Schneck and Mr. Schneck had good jobs. She worked as a physical and occupational therapist, and he worked in the mortgage industry.

The Schnecks' marriage unraveled by degrees. No one disputes that this was due, in part, to Mr. Schneck's addiction to alcohol and drugs. He had been sober for 10 years, but during the last half of the Schnecks' marriage, he relapsed. At the hearing on the motion for new trial, Mr. Schneck's counsel proffered that Mr. Schneck turned to drugs and alcohol to deal with a flagging financial situation. Regardless the reason, neither party disputes Mr. Schneck started drinking again. Later, he started using cocaine too. Things got so bad that Ms. Schneck, with the help of Mr. Schneck's parents, pastor, and friends, staged an intervention. Mr. Schneck did not react well. He refused to get help.

At one point, Mr. Schneck physically hurt Ms. Schneck and she obtained an order of domestic violence protection against him. Criminal charges followed, and Mr. Schneck spent time in jail. During this same period, Mr. Schneck left his job and started a new career building spec houses. But he also stopped paying bills and the family's finances began to falter. As a result, the marital home fell into foreclosure. For Ms. Schneck, the

last straw came when, as she later recounted, she had to chase drug dealers away from the house. After that, she left with the three youngest boys and never returned.

Ms. Schneck filed for divorce. At the start of the proceedings, both Ms. Schneck and Mr. Schneck had attorneys. Mr. Schneck did not answer Ms. Schneck's discovery requests and failed to attend some court proceedings. Mr. Schneck's attorney eventually asked the circuit court to be released from representing him. The court granted the attorney's request; from that point on Mr. Schneck acted as his own counsel.

During the same time, Ms. Schneck asked the circuit court to prevent Mr. Schneck from unilaterally disposing of marital assets. She alleged that Mr. Schneck had sold various pieces of marital property and had depleted joint accounts. Mr. Schneck denied that he had done anything improper. The circuit court agreed with Ms. Schneck and issued an order that prevented either of the Schnecks from liquidating marital assets without the other's approval.

Mr. Schneck, by then acting as his own attorney, asked the court for permission to access marital assets. In his written request, Mr. Schneck listed seventeen reasons why he needed to obtain funds, some of which were: to catch up on the mortgage on the marital home, pay down debts associated with his business, pay off credit cards, and several other similar financial needs. His fourteenth reason, as he put it, was "an immediate cash disbursement from his IRA and PNC [account] to be used to obtain legal counsel should Defendant not be accepted into the pro-bono program." The court denied Mr. Schneck's request the same day he filed it.

The divorce hearing went forward as scheduled. Ms. Schneck, her attorney, and a witness were present. Mr. Schneck did not attend the hearing. After the divorce hearing, the judge, in a written set of findings, issued a judgment of absolute divorce. In the decree, the judge awarded Ms. Schneck legal and physical custody of the parties' minor children, ordered Mr. Schneck to pay child support, granted Ms. Schneck a $132,500.00 monetary award, divided the parties' marital property, appointed a trustee to sell the marital home, and granted Ms. Schneck's request for counsel fees, among other things.

Unprompted by either party, the circuit court amended the decree of divorce 21 days after it entered the original judgment. The only substantive change the court made was that the court clarified that the trustee was to disburse the "net" proceeds from the sale of the Schnecks' home to the parties in equal proportion, minus costs. The judge also corrected an error in the case number of a companion foreclosure case, otherwise the judgment of divorce was unaltered.[1]

After this, Mr. Schneck, with the help of a new attorney, asked the court for a new trial or to alter or amend the divorce decree. Appearing before a judge who did not preside at the merits hearing, Mr. Schneck argued that he could not afford to pay the court-ordered amount of child support and attorney's fees because he was not working and spent time in jail. He averred that the court did not consider what he had paid for his family's needs, his expenses, and his overall financial situation. Overlaying his arguments was Mr. Schneck's

[1] The circuit court stayed the pending foreclosure proceedings on the Schneck's marital home.

assertion that he did not fully understand the gravity of his situation because of his addiction.

Ms. Schneck argued that while Mr. Schneck might be an addict, he knew exactly what was happening. She contended that the judge who presided at the divorce hearing had sufficient information about the Schnecks and their finances to decide that Mr. Schneck could earn sufficient money to pay child support, any arrearage, as well as her attorneys' fees. She urged the court to deny Mr. Schneck's request.

After a hearing on Mr. Schneck's motion, the court issued a written memorandum and denied Mr. Schneck's request for a new trial on all issues, except child support. As a result, the circuit court ordered a new hearing for the court to take testimony from the parties and recalculate child support. At that child support hearing, Mr. Schneck dismissed his request and the court's original child support order remained in place.

DISCUSSION

I

Mr. Schneck argues that he is entitled to a new trial. His contention is that given his addiction, financial problems, and because he lacked "the guiding hand of counsel," he was denied the right to a fair divorce hearing. In support of his claim, he relies on the holdings in *Thodos v. Bland*, 75 Md. App. 700, 708 (1988) and *Wernsing v. General Motors Corp.*, 298 Md. 406, 419 (1984), although he does not explicitly explain why these cases

are applicable in this instance.[2] Nevertheless, in his brief, Mr. Schneck insists that the circuit court's denial of a new trial was a "miscarriage of justice." He also argues that his "substantial" rights to real and personal property, as well as his rights to custody of his children were jeopardized when the circuit court denied his motion for new trial.

The twin arguments that Mr. Schneck advances are: (1) that his addiction to drugs and alcohol prevented him from being an active participant in the divorce proceedings; and, (2) the circuit court denied him a fair trial by not allowing him to obtain money from joint assets to get an attorney. Central to both claims is the implication that the two judges involved in this case, the one who presided at the divorce hearing, and the judge who denied his motion for new trial, should have realized that Mr. Schneck was "impaired," and could not fully participate in his divorce proceedings. It is on these grounds that Mr. Schneck urges us to reverse the decision of the motions judge and remand this case to the circuit court for a re-hearing on the parties' divorce.

Just as forcefully, Ms. Schneck urges us to affirm the circuit court's denial of the motion for new trial. She argues that Mr. Schneck's motion was untimely filed, citing Maryland Rule 2-533 in support of her claim. Ms. Schneck argues that Mr. Schneck had ten days from the date the original judgment of divorce to request a new trial. Instead, he requested a new trial only after the court filed the amended judgement. In Ms. Schneck's

[2] We understand that *Thodos* may be cited for the general proposition that the standard of review of a denial for new trial is abuse of discretion. *Thodos*, 75 Md. App. at 708. *Wernsing* is discussed later in this opinion.

opinion, her husband missed the filing deadline by a month since the original filing date controls.

Ms. Schneck argues that contrary to what Mr. Schneck asserts, his due process rights were not trammeled. She notes that Mr. Schneck had had the opportunity to be heard before the motions judge. She points out that the motions judge even agreed with Mr. Schneck on one issue, namely, child support, and granted him a re-hearing on that issue. Also, Ms. Schneck asks this Court to remember that her former husband had an opportunity to appear at several proceedings in this case, but he chose not to attend.

Ms. Schneck argues that there is no evidence in the record that Mr. Schneck's addiction ever prevented him from participating in this case. Indeed, she lists eight instances of Mr. Schneck's active participation in this case, belying his claimed incapacity. For example, she notes that Mr. Schneck signed his Answer to the complaint for absolute divorce under oath, claiming that "his drug problem was resolved, and that he was fit and proper to have joint legal custody of his children." He completed a co-parenting seminar, participated in mediation, and filed his request to lift the injunction. Mr. Schneck also directly negotiated with Ms. Schneck's counsel in the days leading up to the divorce hearing in an attempt to reach a settlement. Finally, she argues that for five months during the pendency of this case, Mr. Schneck had counsel. She asks us to consider that Mr. Schneck's former counsel never notified the court that Mr. Schneck was "incapacitated and unable to participate in the case." Ms. Schneck's contention is that even though her former husband might have an addiction, he clearly understood the significance of what was at

stake during all stages of the divorce proceedings. For these reasons, Ms. Schneck urges us to reject all of Mr. Schneck's claims.

A. Timeliness

As a preliminary issue, Ms. Schneck asks us to consider the timing of Mr. Schneck's motion for new trial. After the divorce hearing in this case, the circuit court docketed its judgment of divorce on April 2, 2018. On April 23, 2018, the circuit court unilaterally amended the judgment to correct an error in the case number of a companion foreclosure case. The court also clarified that the trustee appointed to sell the marital home was to disburse the "net" proceeds from that sale to the Schnecks in equal proportion, minus costs, rather than the "gross" proceeds as the court originally stated. The circuit court docketed the revised judgment of divorce on April 25, 2018. Ms. Schneck argues that if Mr. Schneck wanted a new trial, he had ten days from April 2, 2018, or until April 12, 2018, to do so, but he did not.

Maryland Rule 2-533 governs requests for a new trial. Subsection (a) of the Rule states:

> Any party may file a motion for new trial within ten days after entry of judgment. A party . . . whose judgment has been amended on a motion to amend the judgment may file a motion for new trial within ten days after entry of the judgment notwithstanding the verdict or the amended judgment.

Md. Rule 2-533(a). Ms. Schneck's argument is that on April 2, 2018, when the judgment of divorce was entered, the clock started running for Mr. Schneck to ask for a new trial. The clock stopped ten days later, according to Ms. Schneck, and Mr. Schneck had not filed.

After all, she argues, Mr. Schneck did not know that the court was going to unilaterally amend its judgment at any time after the original decree of divorce was docketed. Mr. Schneck filed his motion for new trial only after the amended judgment of divorce was docketed, 21 days later. Therefore, in Ms. Schneck's opinion, Mr. Schneck should not be allowed a time extension to May 2, 2018, simply because the court decided to amend the judgment after the deadline to ask for a new trial had passed.

While the issue is interesting, it was not one that Ms. Schneck presented to the circuit court for consideration. Thus, the circuit court did not have an opportunity to address the issue and decide it. Maryland Rule 8-131(a) states:

> Generally, . . . the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay or another appeal.

Md. Rule 8-131(a). And while the issue raised is an interesting one, we do not think it necessary to exercise our discretion to resolve. The primary purpose of Maryland Rule 8–131(a) is to ensure fairness for all parties and to promote the orderly administration of justice. *Conyers v. State*, 367 Md. 571, 594 (2002). Resolution of the issues raised in this appeal on the merits may be done fairly, without prejudice to either party. *See Jones v State*, 379 Md. 704, 714-15 (2004) (Appellate courts may exercise discretion to consider unpreserved issues if in so doing neither party would be prejudiced and "the exercise of discretion promotes the orderly administration of justice.") As the issue of the timeliness of Mr. Schneck's motion is not preserved, we decline to exercise our discretion and consider the issue on appeal. *Sutton v. FedFirst Fin. Corp*., 226 Md. App. 46, 80 n.18

(2015), *cert. denied*, 446 Md. 293 (2016) (declining to address an argument that was not made below).

B. The trial court acted within its sound discretion when it denied Mr. Schneck's Motion to Alter or Amend Judgment and Request for New Trial.

On June 26, 2018, the circuit court convened a hearing on Mr. Schneck's motion for new trial or to alter or amend the judgment. The motions judge did not conduct the merits hearing of the parties' divorce. At this hearing, Mr. Schneck was represented by counsel. Ms. Schneck was represented by the same counsel she had throughout these proceedings. Neither side called witnesses; counsel simply made argument to the court.

Mr. Schneck's counsel admitted that while Mr. Schneck had a long history of drug and alcohol abuse, there was no excuse for Mr. Schneck not to have complied with prior court orders or to have followed his previous attorney's advice about how to proceed. His counsel admitted that Mr. Schneck's actions were "reckless," particularly Mr. Schneck's failure to attend the February 8, 2018 divorce merits hearing.

As counsel put it, "the main issue" for Mr. Schneck was that the trial judge had insufficient evidence to calculate his income for child support purposes. Counsel argued that the trial judge should have better determined whether Mr. Schneck could have earned the income attributed to him in light of his alleged mental and physical "disabilities." Mr. Schneck's attorney took issue with the fact that the trial judge used the information that Ms. Schneck provided about Mr. Schneck's earning potential without any information about Mr. Schneck's expenses.

Aside from child support, Mr. Schneck's counsel asserted that four other deficiencies merited a new trial. First, as concerns dissipation of assets, in counsel's estimation, Ms. Schneck offered no evidence at the merits hearing of how Mr. Schneck used the money he derived from dissipating marital property. Mr. Schneck's counsel averred that his client used the money to satisfy some of the parties' marital debt. Second, counsel also disputed the fairness of the trial court's monetary award to Ms. Schneck, imploring that it be revised to reflect the marital debts Mr. Schneck had paid. Third, counsel asked the court to allow Mr. Schneck to sell a truck and a boat so that he could use the proceeds "to get back on his feet." Finally, counsel asked the motions court to consider the fairness of the trial court's decision not to divide any of Ms. Schneck's personal property, such as her jewelry, with Mr. Schneck.

Ms. Schneck's counsel argued that the status of Mr. Schneck's mental and physical health was purely speculative. In her opinion, Mr. Schneck voluntarily chose not to attend the February 8, 2018 merits hearing, just as he failed to attend a scheduling conference and a domestic violence protection hearing. In Ms. Schneck's counsel's view, the trial court heard and assessed the evidence presented and made a rational decision. For example, regarding dissipation, at trial there was no evidence presented to suggest that Mr. Schneck sold marital assets and used the proceeds to pay down marital debt, as his counsel argued. The evidence adduced at trial showed that the marital home was in foreclosure and Mr. Schneck's business' creditors were dunning him for payment, suggesting the opposite conclusion from Mr. Schneck's assertion.

The thrust of Ms. Schneck's counsel's presentation was that Ms. Schneck would be prejudiced if the court granted her former husband a new trial. In her counsel's words, Ms. Schneck "played by the rules." To give Mr. Schneck a new trial, when he chose not to participate in the last one, would be to punish Ms. Schneck.

As for the amount of Mr. Schneck's income used to calculate child support, counsel argued that the trial judge had sufficient information about Mr. Schneck's employment history and his past earnings to make an informed decision. Contrary to what Mr. Schneck's attorney said, Ms. Schneck's counsel noted that the trial judge did not find that Mr. Schneck was unemployed, nor did the trial judge find that Mr. Schneck voluntarily impoverished himself. The evidence at trial showed that Mr. Schneck, despite his addiction, had sufficient earnings capacity to pay the Guidelines suggested amount of child support. In closing, counsel for Ms. Schneck argued that if Mr. Schneck wanted to modify the court-ordered amount of child support, he could file a motion for modification. For these reasons, Ms. Schneck's counsel asked the motions court to deny the request for new trial.

After taking the matter under advisement, the motions judge issued a written memorandum and order on July 5, 2018. After briefly reviewing the procedural background, the judge recited each award the trial court made to Ms. Schneck in the amended judgment of divorce. Also, in his analysis, the judge succinctly recaptured the arguments that each party made. The judge recounted that Mr. Schneck claimed that he was laboring under the weight of his addiction, and that prevented him from fully participating at the merits hearing. In noting Mr. Schneck's main concern, that the trial

court had insufficient evidence of Mr. Schneck's income to properly determine child support, the judge cited Section 12-204 (b)(2) of the Family Law Article, which directs the circuit court "not to determine potential income of a parent who is unable to work because of a physical or mental disability."

As for Ms. Schneck, the judge noted that her position was that her former husband simply chose not to attend the merits hearing. Also, Mr. Schneck had previously acknowledged his mental competence in the criminal case that resulted from an alleged violation of a domestic violence order, thus he was not a "vulnerable adult," as he claimed. Finally, the judge acknowledged Ms. Schneck's argument, namely, that it would be unfair to grant Mr. Schneck a new trial when he had not "played by the rules." Ms. Schneck had invested a substantial amount of time in preparing for trial and complied with all court orders, whereas Mr. Schneck chose not to participate at the merits hearing and now sought to revise the court's orders solely for his benefit.

Taking counsels' arguments into consideration, the motions judge issued his ruling. We reprint it verbatim:

> Apparently, defendant is currently unemployed and incarcerated. When determining child support, the Court considers support in light of what is in the best interest of the minor children. Having a father who may be struggling with drug addiction and is incarcerated is problematic. In order to aid in making a fair and impartial decision, it is appropriate to acquire documentation and knowledge about the defendant's financial position, even if defendant had every opportunity up to now to do so. Thus, the Court concludes that a hearing on child support should be granted. The Court takes note of the fact that plaintiff is likely prejudiced by this decision, as it was not her choice for defendant not to participate in the prior proceedings. The Court will not address child support arrearages or any other issue already decided in the judgment or otherwise alter or amend the judgment. The issue will [be] addressed as a prospective one from the date of the judgment. The

> motion will be denied as to requested relief other than as to current child support.

Mr. Schneck contends that the circuit court abused its discretion when it denied him a new trial. Mr. Schneck posits that we would create a "miscarriage of justice" if we denied him the opportunity to address the issues raised in the complaint for divorce at a fresh hearing. Specifically, Mr. Schneck argues that the circuit court's denial of his motion for a new trial was tantamount to a denial of his procedural due process rights.

The standard of review for a trial court's denial of a motion for new trial is abuse of discretion. *University of Maryland Medical System Corp. v. Gholston*, 203 Md. App. 321, 329 (2012). "We have also noted that, when reviewing a trial judge's discretionary rulings, 'this Court has recognized that trial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature'" *Miller v. Mathias*, 428 Md. 419, 438 (2012). In other situations, abuse of discretion occurs when "no reasonable person would take the view adopted by the court" or when the court acts "without reference to any guiding rules or principles." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (internal citations omitted). "An abuse of discretion may also be found where 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.'" *Id*. Questions of law, however, are reviewed *de novo*, as we make an independent assessment of whether the trial court correctly applied the law. *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 675-76 (2008); *Ehrlich v. Perez*, 394 Md. 691, 708 (2006).

Although we review circuit court rulings on motions for new trial under an abuse of discretion standard, rulings allegedly contrary to the United States Constitution or the Maryland Declaration of Rights are reviewed *de novo* to determine whether the circuit court's decision was legally correct. *Lisy Corp. v. McCormick & Co., Inc*., 445 Md. 213, 221 (2015); *Davis v. Slater*, 383 Md. 599, 604-605 (2004).

The Fourteenth Amendment of the United States Constitution guarantees that no State "shall deprive any person of life, liberty or property without due process of law." U.S. Const. amend. XIV, § 1. Article 24 of the Maryland Declaration of Rights states that,

> No man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty of property, but by the judgment of his peers, or by the Law of the land.

Md. Const. art. 24. Article 24 of the Maryland Declaration of Rights incorporates the 14th Amendment of the U.S. Constitution into Maryland law. *Vavasori v. Commission on Human Relations*, 65 Md. App. 237, 243 (1985). We have previously discussed whether a constitutionally protected due process right is implicated in the family law context in *Burdick v. Brooks*, 160 Md. App. 519, 524 (2004). And, in *Pitsenberger v. Pitsenberger*, 287 Md. 20, 30, *appeal dismissed*, 449 U.S. 807 (1980), the Court of Appeals discussed the requirements of appellate review of due process claims in civil actions such as family law cases. *Pitsenberger* held that

> [t]he first prerequisite to raising a due process argument is that the action complained of must constitute 'state' action. Next, the state action must result in a 'deprivation' of the complainant's interest, and such interest must be a 'property' interest within the meaning of the due process clause. Finally,

> if state action deprives one of a property interest, the court must balance the various interests at stake in order to determine the procedural due process which is constitutionally required under the circumstances.

287 Md. at 27-28 (internal citations omitted).

We also note that the right of due process "does not require procedures so comprehensive as to preclude any possibility of error." *Wagner v Wagner*, 109 Md.App.1, 24, (1996) (citing Int'l *Caucus of Labor Comm. v. Md. Dep't of Transport*., 745 F.Supp. 323, 329–30 (D.Md.1990)). Instead, as we said in *Burdick*, "due process merely assures reasonable procedural protections, appropriate to the fair determination of the particular issues presented in a given case." *Burdick*, 160 Md. App. at 524 (citations omitted). Therefore, a denial of due process claim is tested by analyzing the totality of the facts in the given case. *Id*. (citing *Betts v. Brady*, 316 U.S. 455, 462 (1942)).

After our review of the record, we hold that the circuit court did not deny Mr. Schneck due process during any phase of the divorce proceedings. We conclude that Mr. Schneck had notice and several opportunities to participate, either with counsel assisting him or as a self-represented litigant.

We note that at the start of the case, Mr. Schneck had the benefit of counsel. Through counsel, Mr. Schneck filed an answer to the complaint. He made discovery requests to Ms. Schneck. He filed a financial statement. With counsel's help, he responded to Ms. Schneck's counsel's request for sanctions due to his untimely discovery responses. When Ms. Schneck requested the court enjoin Mr. Schneck from unilaterally dissipating marital assets, with help of counsel, he responded. The circuit court notified Mr. Schneck

of each hearing that occurred in this case, including the divorce hearing. In fact, Mr. Schneck cited the merits date in his motion for relief from the circuit court's order against dissipation of marital assets, writing, "Defendant and plaintiff are scheduled to appear in Circuit Court on February 8, 2018." For reasons not disclosed in the record, Mr. Schneck did not appear at the merits hearing.

Aside from participating in the legal proceedings of his divorce, Mr. Schneck took an active role in the mediation process. Even though no agreement resulted from the mediation sessions, Mr. Schneck attended them. Further, he participated in an on-line parenting class.

In the days leading up to the merits hearing, Mr. Schneck attempted to negotiate a settlement with Ms. Schneck's counsel. The two exchanged several emails, text messages, and paper correspondence over a period of several days. According to Ms. Schneck, these exhibits were made part of the record to show that although Mr. Schneck might have been addicted to drugs and alcohol, he was competent and knowledgeable enough about the facts of this case to negotiate with counsel. These facts also reveal that Mr. Schneck knew of the impending merits hearing and was doing what he could to resolve the matter without having a full-blown trial. Mr. Schneck's desire to resolve the differences that he had with his former spouse is commendable. Mr. Schneck's negotiations also reveal his knowledge of the issues facing the Schnecks, particularly the disposition of their marital property. We conclude that, because Mr. Schneck was actively trying to resolve the parties' various marital property issues with opposing counsel in the days before the divorce hearing, he just as easily could have participated at that merits hearing if he chose to do so but did not.

The record also reflects that the circuit court notified Mr. Schneck of the date of the hearing of his motion for new trial. As discussed, with counsel's assistance, Mr. Schneck tried to persuade the circuit court to give him a new trial or change its judgment. Significantly, the court granted Mr. Schneck relief on his "main issue" of concern, child support.

And, Mr. Schneck had the opportunity to address his assertion that the circuit court did not properly calculate child support at an August 23, 2018 hearing. With counsel's assistance, Mr. Schneck participated at that hearing. At the conclusion of that hearing, Mr. Schneck decided to dismiss his request to modify child support. As a result, the circuit court's original child support order from the amended judgment of divorce remained in effect.

As to the merits of circuit court's decision to deny Mr. Schneck a new trial on all but the issue of child support, we discern no abuse of discretion. The motions judge evaluated the parties' arguments and arrived at what, by any assessment of the record, was a fair decision, particularly when the evidence strongly suggested that Mr. Schneck simply chose not to attend the merits hearing. Indeed, over Ms. Schneck's objection, the judge permitted Mr. Schneck to present evidence of his current employment status, mental and physical health at another hearing to determine an appropriate amount of child support. We conclude that the circuit court did not abuse its discretion in denying Mr. Schneck's motion for new trial.

II

In his second question, which is tied to Mr. Schneck's allegation of denial of due process, is his contention that the circuit court abused its discretion when it denied his emergency motion to lift its injunction and allow him to sell marital assets or otherwise use marital funds to obtain counsel. In denying his motion, Mr. Schneck claims the court effectively denied a him a fair trial. And he argues that is an abuse of discretion to deny a motion for new trial "where there is a fair probability that to fail to [grant a new trial] would deny a party the right to a fair trial." *Thodos*, 75 Md. App. at 708, quoting *Wernsing v. General Motors Corp*., 298 Md. 406, 416 (1984).

In opposition, Ms. Schneck argues that the circuit court properly denied Mr. Schneck's motion. She cites Mr. Schneck's pattern of dissipation of joint assets, using the proceeds from the sale of those assets to satisfy his business creditors, for example, rather than pay marital debts, as he claimed. Ms. Schneck urges us to conclude that the circuit court's order preserved marital assets for her and the children and did not deprive Mr. Schneck of the right to fully participate in the proceedings if he chose to do so.

Preliminarily, we note that Mr. Schneck cites no legal authority to support the proposition that he is entitled to a new trial because he lacked access to funds to hire an attorney. We could decline to consider this claim because Mr. Schneck failed to provide any authority in support of this argument. *See Assateague Coastkeeper v. Md. Dep't of the Env't*, 200 Md. App. 665, 670 n. 4 (2011) (declining to address an issue where appellant failed to adequately brief it), *cert. denied*, 424 Md. 291 (2012); *Conrad v. Gamble*, 183 Md. App. 539, 569 (2008) (declining to address issue because argument was "completely

devoid of legal authority"); *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1996) (failure to provide legal authority to support contention waived contention).

We will, however, exercise our discretion to consider it. Based on our review of the record, we conclude the circuit court's order was reasonable and did not deprive Mr. Schneck of a fair trial. Initially, the record documents Mr. Schneck's habit of taking marital assets, selling them if necessary, and using the proceeds for his own purposes, just as Ms. Schneck claims. For example, the record shows that Mr. Schneck took the parties' 2015 joint tax refund in the amount of $50,000.00 and deposited it in his individual account. He also took $75,000.00 from a First Mariner joint account and deposited the money in his individual account. On another occasion, Mr. Schneck transferred to himself title to a jointly held boat, then sold the boat for $65,000.00 and kept the proceeds. On a different occasion, without telling his wife, Mr. Schneck opened credit cards in her name and ran up a debt of over $50,000.00. Given the large amount of assets being depleted, the circuit court properly granted Ms. Schneck's motion and prohibited either party from dissipating marital assets absent mutual consent.

When Mr. Schneck sought relief from this order, obtaining counsel was not his paramount concern. We observe that in the motion, Mr. Schneck cited 17 numbered reasons why the circuit court should grant his request for an immediate infusion of cash, only one had to do with getting an attorney. We cite some of the reasons Mr. Schneck listed to illustrate the focus of his emergency motion. "Over $100,000 was used paying off subcontractors and building material suppliers." Mr. Schneck "request[ed] a joint 50/50 contribution from each parties (sic) IRA" to stop the default on a $125,000.00 loan for his

spec home construction business. (Number 5). He requested "immediate access to his PNC IRA" so that he could use $30,000.00 from the account to go "to Wells Fargo to cure past due balance." (Numbers 7 and 8). Mr. Schneck asked the circuit court to compel Ms. Schneck's cooperation in listing the parties' various real estate holdings, "plus condo/boat slip in Chester MD," so that all could be sold. (Number 9). "Defendant request[ed] plaintiff contribute 50% of funds necessary to cure deficiency balance on marital home. This asset preservation with net equity of approximately $350,000." (Number 10). And, "Defendant request[ed] permission to sell 1992 Ford F-250 pick-up truck." (Number 12).

It was only in the fourteenth point that Mr. Schneck mentioned the *possibility* of needing money to obtain an attorney.

> 14. Defendant is without legal counsel due to no funds left and no access to marital funds. Defendant has applied for a pro-bono lawyer thru Mid-Shore Pro Bono in Easton, MD. Defendant requests an immediate $5,000 disbursement from his IRA at PNC to be used to obtain legal counsel should Defendant not be accepted in the pro-bono program.

Mr. Schneck's request was thus not only buried as one item among many, but it was expressly identified as based on just the possibility that he would not receive pro bono assistance. He did not identify an actual, present need. Given this request, coupled with his well-documented practice of dissipating marital assets, we conclude that the circuit court's denial of Mr. Schneck's emergency motion was reasonable and, more importantly, did not adversely affect his right to a fair trial.

In its totality, the record convinces us that the circuit court did not err when it granted Mr. Schneck a new hearing on child support, but otherwise denied him any

additional relief. We conclude that the record amply reflects that Mr. Schneck was afforded notice and an opportunity to participate in the proceedings below, contrary to what he now claims in this appeal.

THE JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.