Circuit Court for Baltimore County
Case No. 03-C-94-1519

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1170

September Term, 2018

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ALLA P. GAKUBA

v.

CHRYSOLOGUE GAKUBA

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Berger,
Nazarian,
Arthur,

JJ.

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Opinion by Nazarian, J.

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Filed: July 10, 2020

Alla P. Gakuba ("Alla") and Chrysologue Gakuba ("Chrysologue")[1] divorced twenty-five years ago. After a period of dormancy, the litigation came back to life over Chrysologue's failure (or refusal) to pay alimony and for Alla's health insurance coverage. The current round arises from Alla's success, indeed over-success, in garnishing Chrysologue's accounts to collect arrearages. Alla now appeals an order of the Circuit Court for Baltimore County finding that she had been overpaid for alimony arrearages and health insurance premiums she had garnished from Chrysologue's domestic investment accounts, finding that Chrysologue no longer could be ordered to pay her health insurance costs, and awarding $525 in attorneys' fees to Chrysologue after a discovery dispute. We affirm.

## I. BACKGROUND

Alla and Chysologue divorced in 1995. There was a flurry of litigation in the years after, an interregnum between 2001 and 2015, and renewed litigation since, primarily (as here) over Chrysologue's failure to pay alimony and for Alla's health insurance. Our March 21, 2017 opinion addressed much of the factual background and procedural history,[2] and we pick the story up there.

### A. Chrysologue's Over-Payment Of Arrearages To Alla.

On February 29, 2016, the circuit court ordered Chrysologue to pay Alla $25,200 for fourteen months of unpaid alimony. Chrysologue still didn't pay and the court held a

[1] We use the parties' first names purely for clarity. We mean no disrespect.

[2] *Gakuba v. Gakuba,* No. 50, Sept. Term 2016, 2017 WL 1057446 (Md. App. Mar. 21, 2017).

contempt hearing on June 21, 2016. When he failed to appear, the court found him in contempt, ordered a writ of body attachment, and outlined his debts at the time: (1) $32,400 for alimony arrears through June 1, 2016 (18 months' worth); (2) $3,213.90 for unpaid health insurance premiums through June 1, 2016; and (3) $1,670 in fees and costs related to the 2016 proceedings. Between March and May 2017, the court entered additional judgments against Chrysologue for $18,000 in unpaid alimony due from July 1, 2016 through April 30, 2017, $2,397 for unpaid insurance premiums through April 30, 2017, and $1,774 in costs and fees. Combined, and accounting for post-judgment interest, Chrysologue's outstanding judgments totaled $60,669.53. Alla garnished Chrysologue's bank accounts to collect the debt, and the court approved a garnishment of Chrysologue's Social Security benefits to cover his monthly indefinite alimony obligation of $1,800.

Chrysologue was taken into custody for contempt on September 25, 2017. At his bail review hearing, he presented a check he had written to Alla for $25,200 on April 25, 2017 in partial satisfaction of his alimony debt (although the court had updated that arrearage to $32,400 for more missed payments).[3] He offered further evidence that he had overpaid for his debts through bank account garnishments: one of his banks had paid Alla $38,275.05 and another bank paid her $38,705.05.[4] Combined, he had paid her

[3] The court refers to this check as "cancelled" and indicates it was for $25,000. The record reveals that the check was for $25,200 and that Alla did receive that money.

[4] In its May 10, 2018 Order, the court states incorrectly that the payments were $38,275.05 and $37,705.05 instead of $38,275.05 and $38,705.05. This mistake didn't lead to a miscalculation of the total, however.

$102,180.10. The court found that Chrysologue had complied with its June 21, 2016 order and released him. The court issued orders of satisfaction for the outstanding judgments on October 23, 2017.

Alla and Chrysologue filed several motions relating to Chrysologue's debts, ongoing discovery disputes, and Alla's health insurance coverage.[5] They appeared for a motions hearing on April 6, 2018, "[t]he gravamen of [which] was the allegation that [Alla] over-garnished [Chrysologue's] funds to satisfy the four judgments entered in her favor . . . ." The court, relying on calculations submitted by Chrysologue's counsel, found that Chrysologue owed Alla "a total of $60,669.53 in judgments and post-judgment interest as of April 1, 2018 . . . ." It found "credible [Chrysologue's] evidence in support of the payments made and amounts garnished for the benefit of [Alla]," and determined that she received the funds from the three payments.

The court also accepted Chrysologue's calculation of additional outstanding alimony owed from May 1, 2017 and May 10, 2018, a total of $4,072.14.[6] Chrysologue's

[5] The following motions were set for a hearing on April 6, 2018:

> Defendant's Petition for Reimbursement of Alimony Overpayment (paper #27000) and Plaintiff's Response (paper #27001); Plaintiff's "Motion to Enforce the Court's Orders that Defendant Refused to Obey – starting from 12/1/17" (paper #274000) and Defendant's Response (paper #274001); Plaintiff's Motion for Sanctions (paper #275000); Plaintiff's "Motion Not to Cancel Her Health Insurance" (paper #276000) and Defendant's Response (paper #276001); and Defendant's Motion for Discovery Sanctions (paper #277000) and Plaintiff's Response (paper #277001).

[6] The court explained its calculations of the additional alimony owed as follows:

outstanding balance on the four judgments, $60,669.53, plus the additional alimony amount of $4,072.14, combined for a total debt obligation of $64,741.67. "Subtracting the amounts due [$64,741.67] from the amounts paid and garnished [$102,180.10]" resulted in a finding that Alla "over-garnished [Chrysologue's] accounts by $37,438.43."

**B. Chrysologue's Obligation To Pay For Alla's Health Insurance.**

After the parties divorced, the court ordered Chrysologue to provide Alla with health insurance or pay for her premiums until she remarried or either of the parties passed away, whichever happened first:

> ORDERED that [Chrysologue] shall continue to maintain comparable or the same health insurance coverage (with the same deductible) which was in effect prior to the Judgment of Divorce in October, 1995, on [Alla], at his expense, until October 9, 1997 as was previously ordered in the Judgment of Divorce and thereafter continue to maintain comparable coverage (with the same deductible) for [Alla], at [Chrysologue's] expense until [Alla's] remarriage or the death of either party, whichever event first occurs. If [Alla] relocates to another state, she will secure comparable insurance coverage and [Chrysologue] will pay the premiums thereon. If it is established that [Chrysologue] has cancelled [Alla's] medical insurance, he is ordered to immediately reinstate that insurance and maintain it in full force and effect. . . .

On February 14, 2018, Alla filed a motion to enforce the court's February 12, 2016 order arguing, among other things, that Chrysologue had failed to reinstate her health insurance

> [Chrysologue's] outstanding alimony obligation from May 1 to December 31, 2017 (10 months x $1,800=$14,400), less the amount that the Social Security Administration actually garnished during that time period ($1,721.30 x 6 = $10,327.80), totals $4,072.14 ($14,400 $10,327.80=$4,072.14).

as ordered. In response, Chrysologue argued that he no longer was required to pay Alla's health insurance premiums because there no longer were statutory grounds to support the order. He argued that under *Bricker v. Bricker*, 78 Md. App. 570 (1989), "a [c]ourt can only grant a divorced spouse medical insurance coverage or expense reimbursement if the prior spouse was covered under a group health insurance contract" under the Maryland Code (1995, 2017 Repl. Vol.), § 11-508(b)(3) of the Insurance Article ("IN"). And because Chrysologue no longer had group insurance coverage after closing his practice, he asserted that didn't need to pay Alla's secondary insurance premiums. He argued further that Alla was Medicare eligible and no longer could receive benefits under IN § 15-408(c)(2). The court agreed:

> In *Bricker* the Court of Special Appeals held that there is no common law basis for the award of health insurance as a component of alimony; therefore a divorced spouse must rely on statutory authority to justify such an award. Section 11-111 of the Family Law article dictates that a court *may* include health insurance as a component of alimony subject to the requirements of §15-408 of the Insurance article.
>
> Subsection § 15-408(b)(3) of the Insurance Article directs that continuing coverage for a divorced spouse is available only when the insured is covered by a group contract. This is clearly not the case here; [Chrysologue] is retired and no longer covered by the group plan that was in place at the time of the 1997 Order. Furthermore, subsection (c)(2) provides that a divorced spouse loses eligibility for continuing coverage when she becomes entitled to Medicare benefits. In this case, [Alla's] primary insurance coverage is, in fact, Medicare.

The court held that Chrysologue's obligation to pay for Alla's supplemental health insurance terminated on April 1, 2018. It found that Chrysologue still owed $2,491.61 in insurance costs from May 1, 2017 through March 31, 2018, though, and, after deducting

that amount from Alla's calculated overpayment of $37,438.43, found that Alla owed Chrysologue a total of $34,946.82 in over-garnished funds and post-judgment interest.

**C. The Discovery Dispute And Fee Award.**

On March 1, 2018, Alla moved for sanctions against Chrysologue and his attorney, arguing primarily that they had acted in bad faith and furthered "unjustified proceedings." In her motion, she requested $216,000 for Chrysologue's "abuse of process" and $100,000 against counsel for Chrysologue for "'abuse of process', for violating the Rules of Professional Conduct, for unpure motives, [and] for filing frivolous motions in bad faith." Chrysologue responded by calling Alla a "vexatious litigant" for "filing numerous *pro se* pleadings," and asked the court to order Alla to pay attorneys' fees for "the costs of these proceedings." Counsel for Chrysologue attached a letter he sent to Alla as a "good faith attempt" to resolve a discovery dispute in which he asserted that Alla had failed to respond timely to his interrogatories, documents requests, and request for admission of facts. He requested $525 in fees for his time in dealing with the alleged discovery violation.

Chrysologue then filed a separate motion for sanctions arising from Alla's failure to file discovery responses timely. He asserted that he served her with interrogatories, document requests, and requests for admission of facts on February 16, 2018, and sent her a follow-up letter on March 19, 2018. He moved for sanctions three days later, again requesting $525 for the same services described in his response to Alla's motion for sanctions. He added requests for the court to admit all facts set forth in his request for admission of facts, to strike all of Alla's pleadings, and to dismiss all of Alla's pending

claims.

The court addressed all of the motions at the April 6 hearing. The court granted Chrysologue's request for attorneys' fees, admitted facts from Chrysologue's request for admission of facts, and denied his request to strike all of Alla's pleadings:

> This motion is whether you responded to discovery and whether the discovery was proper. I do find it to have been proper. If you had sought discovery yourself, then [Chrysologue] would have been required to produce his bank statements. But that did not happen. The rules are here for a reason. . . . So, I am granting [] [Chrysologue's] Motion regarding the discovery. As far as [] all designated facts set forth in his Request for Admission of Facts and Geniuneness of Documents shall be taken to be established for the purposes of this action. And I'm further ordering costs of the Motion, including what I find to be quite reasonable attorney's fees, of $525.00.

Alla appeals the circuit court's May 10, 2018 Memorandum Opinion and Order. We supply additional facts as needed below.

## II. DISCUSSION

Alla raises seven issues in her brief,[7] four of which we can resolve summarily. *First*,

[7] Alla raised seven Questions Presented in her brief:

> I. Did the circuit court abuse its discretion when from 04/01/2018 fatally and gravely terminated Ms. Gakuba's health insurance by overruling all 3 prior mandates from the court of special appeals; disregarded all facts and laws in this case – when Ms. Gakuba is a 79-years old grandmother, who is representing herself as a *pro se*, who lives near the poverty line and Mr. Gakuba – a cardiologist, a multi-millionaire, who is representing by a team of 4 lawyers plus paralegals?
>
> II. Did the circuit court err and abuse its discretion when *sua sponte*, on its own, decreased alimony garnishment from Mr. Gakuba's Social Security to Ms. Gakuba from 65% to 50% and

> in doing so unjustly decreased her monthly alimony by $400, or from $1,800 to $1,400 that have grave consequences on her life?
>
> III. Did the circuit court abuse its discretion when it collapsed a multi-step discovery process and instead rubber-stamped Mr. Gakuba's the 2nd step "Motion for Sanction" by sanctioning Ms. Gakuba to pay $525 to Mr. Gakuba's for his lawyers' fees when Ms. Gakuba is 79-years old grandmother, is representing herself as a *pro se* versus Mr. Gakuba, a multi-millionaire, who is represented by a defense team of 4 lawyers plus paralegals?
>
> IV. Did the circuit court grossly abuse its discretion when it granted Mr. Gakuba's fraud-motion to rob $36,388.66 plus $9.72 per diem from Ms. Gakuba's IRAs that by law are exempt from any garnishments and also her other accounts located in Self-Reliance NY Federal Credit Union – all that in addition to a bond of $49,019 she already posted?
>
> V. Did the circuit court err and abuse its discretion when arbitrary, *sua sponte*, has added to a supersedeas bond amount – which is an additional amount of $10,000 for "damages for delay" that do not exist?
>
> VI. A. Did the circuit court err, and was flatly wrong on law and facts and abuse its discretion when itself served directly a "writ of garnishment of property" on each of 8 Ms. Gakuba's banks located in another states that were not 1st domesticated in the courts in those states where assets are located?
>
> VI. B. Did the circuit court err and abuse its discretion by issuing against Ms. Gakuba's "over-garnishment" judgment that does not exists when for the last 2 years starting from 05/01/2017 to present Mr. Gakuba paid no marital debts?

Chrysologue rephrased the Questions Presented as:

> I. Whether the Circuit Court erred by holding that Appellee was no longer required to pay the cost of Appellant's supplemental health insurance, post divorce, since Appellant was receiving Medicare coverage and Appellee was no longer covered under a group health insurance plan?
>
> II. Whether the August 23, 2017 Circuit Court Order garnishing 50% of Appellee's Social Security benefits

Alla attempts to relitigate an old issue: that the court abused its discretion when it modified the percentage of funds garnished from Chrysologue's Social Security from 65% to 50%. But the court issued the order to that effect on August 25, 2017 and Alla didn't appeal. *Next*, Alla argues three issues that *post-date* her appeal to this Court and are similarly not before us. She argues that the court issued eight writs of garnishment on her property improperly, but the writs were issued on August 8, 2018, after she appealed. She contends that the court erred and abused its discretion when it assessed an additional $10,000 to her supersedeas bond amount for "delay," but that order is dated October 3, 2018 and was not appealed. *And finally*, she argues that the court abused its discretion when it garnished her Self-Reliance NY bank account for the over-payment plus interest, but that Order was

constitutes reversible error?

III. Whether the Circuit Court erred by awarding discovery sanctions and attorney's fees in the amount of $545.00 to Appellee based on Appellant's failure and refusal to provide any discovery responses?

IV. Whether the Circuit Court erred by issuing writs of garnishment to various financial institutions in an attempt to collect the judgment entered against Appellant after she violated the Circuit Court's Order dated July 9, 2018 by transferring funds from her Ally Bank account?

V. Whether the Circuit Court erred in determining the amount of Appellant's supersedeas bond?

VI. A. Whether the Circuit Court erred by serving writs of garnishment on financial institutions located outside of Maryland?

VI. B. Whether the Circuit Court's factual finding that Appellant is owed Appellee $37,438.43 representing "over-garnishment" of alimony is supported by the evidence presented at trial?

dated October 17, 2018. None of these issues are before us in this appeal of the May 10, 2018 Memorandum and Order.

This leaves the three issues that are before us properly. *First*, did the court err when it held that it could not order Chrysologue to pay Alla's secondary medical insurance premiums? *Second*, did the court err when it found that Alla was overpaid as a result of the two garnishments and Chrysologue's check for $25,200? And *finally*, did the court abuse its discretion when it awarded Chrysologue $525 in attorneys' fees? We see no error or abuse of discretion.

### A. The Trial Court Terminated Chrysologue's Obligation To Pay Alla's Secondary Medical Insurance Premiums Correctly.

*First*, Alla argues that the trial court erred when it determined that it could no longer order Chrysologue to pay her secondary medical insurance premiums. Alla is approximately eighty years old. She's Medicare eligible, and has it, but she argues here that Chrysologue is obligated under the 1997 Order to pay her secondary or gap insurance coverage. Chrysologue responds that he isn't required to pay under Maryland Code (1984, 2019 Repl. Vol.), § 11-111 of the Family Law Article ("FL"), IN § 15-408, and *Bricker v. Bricker*, 78 Md. App. 570 (1989), because Alla is receiving Medicare benefits and Chrysologue is no longer covered by group health insurance. For reasons we explain below, we agree with Chrysologue.

We review *de novo* the trial court's application of Maryland statutory and case law. *Montgomery Cty. Off. of Child Support Enforcement v. Cohen*, 238 Md. App. 315, 324 (2018) (*citing Baltimore Cty. v. Aecom Servs., Inc.*, 200 Md. App. 380, 397 (2011)). We

give the lower court's fact-finding "due regard" and we won't set its findings aside unless they are clearly erroneous. *Prince George's Cty. Off. of Child Support Enforcement v. Brown*, 236 Md. App. 626, 633 (2018) (*quoting Clickner v. Magothy River*, 424 Md. 253, 266 (2012)).

On May 28, 1997, after holding a trial, the circuit court ordered Chrysologue to pay indefinite alimony of $3,000 (later modified to $1,800) and ordered continuation of health insurance coverage:

> ORDERED that [Chrysologue] shall continue to maintain comparable or the same health insurance coverage (with the same deductible) which was in effect prior to the Judgment of Divorce in October, 1995, on [Alla], at his expense, until October 9, 1997 as was previously ordered in the Judgment of Divorce and thereafter continue to maintain comparable coverage (with the same deductible) for [Alla], at [Chrysologue's] expense until [Alla's] remarriage or the death of either party, whichever first occurs. If [Alla] relocates to another state, she will secure comparable insurance coverage and [Chrysologue] will pay the premiums thereon. If it is established that [Chrysologue] has cancelled [Alla's] medical insurance, he is ordered to immediately reinstate that insurance and maintain it in full force and effect . . . .

He argues here that he can no longer be ordered to pay for her benefits because Alla is receiving Medicare and he is no longer covered under group insurance coverage.

He's right. At common law, a court could not order both alimony *and* reimbursement for future medical insurance premiums. *Bricker v. Bricker*, 78 Md. App. 570, 572 (1989).[8] The court may order payment of health insurance benefits only under

[8] In *Bricker*, the trial court awarded the wife indefinite alimony "plus a continuation of group medical insurance through the husband's employer" after the parties divorced in

statutory authority. In Maryland, FL § 11-111 provides that a court may order a party to pay health insurance costs or continue health insurance benefits for the other party upon divorce:

> (a) In accordance with the provisions of § 15-408 of the Insurance Article, the court may, either after a divorce is granted or pendente lite, allocate between the parties any additional costs of providing hospital, medical, or surgical benefits under a group contract or require continuation of such benefits.

IN § 15-408 allows for continuation coverage for divorce spouses, but carves out an exception while the insured is not covered by a group contract:

> (b)(1) Each group contract in force on the date of the change in status [the divorce of the insured and the insured's spouse] shall provide continuation coverage in accordance with this section.
>
> (2) Subject to subsection (c) of this section, a qualified secondary beneficiary [a beneficiary under the group contract as the spouse of the insured for at least 30 days immediately preceding the change in status] is entitled to continuation

1987. 78 Md. App. 570, 575, 578 (1989). That order was later modified to reflect that the husband had to pay the wife within fifteen days after she forwarded him an invoice representing her quarterly medical insurance premiums. *Id.* at 578. Although the Court affirmed the trial court's award of indefinite alimony, it held that trial courts are not permitted "to award reimbursement of medical insurance premiums over and above an award of alimony" under the common law because, traditionally, only "alimony in the form of a money allowance" could be awarded by the court at common law. *Id.* at 580. It pointed, however, to growing exceptions to this general rule. For example, the Court detailed one exception dating to 1979 which allowed trial courts to allocate the financial responsibilities surrounding the use and possession of the family home and family use personal property. *Id.* at 582. Another, it explained, derived from an act passed in 1986 requiring "medical coverage in group contracts be made available for dependent children and a divorced spouse who have been covered for at least the 30-day period preceding the divorce." *Id.* at 583. As we explained in *Bricker*, medical insurance reimbursement couldn't be ordered at common law, but orders for reimbursement or continued coverage could be grounded in statutory law.

> coverage under a group contract after a change in status.
>
> (3) **Paragraph (2) of this subsection does not apply while the insured is not covered by a group contract.**

(emphasis added). IN § 15-408(c)(2) provides another relevant limiting provision:

> (c) Continuation coverage under this section shall begin on the date of the change in status and **end on the earliest of the following**: . . . (2) the date on which the qualified secondary beneficiary becomes entitled to benefits under Title XVIII of the Social Security Act[.]

(emphasis added).

The court could have ordered Chrysologue to pay Alla's health insurance premiums, but it needed statutory authority to do so. That authority stemmed for many years from FL § 11-111 and IN § 15-408, which allowed for Alla's continued coverage on Chrysologue's group plan after their divorce. But under the limiting provisions of IN § 15-408(b)(3) and (c)(2), there is no longer a statutory basis for the order: he is no longer covered by a group contract and Alla is Medicare eligible. Accordingly, the statutory basis for the health insurance component of the court's 1997 Order has evaporated, and the court didn't err when it found that Chrysologue's health insurance obligation had terminated.

### B. The Court Did Not Err In Finding That Alla Had Over-Garnished Chrysologue's Accounts.

Alla argues *next* that the court erred when it found that she was overpaid. She asserts that the court calculated the amount that Chrysologue owed and the amount she received improperly. Chrysologue responds that the court didn't err in calculating the amount owed and that its order should be affirmed. We agree with Chrysologue.

We review the circuit court's findings of fact under the clearly erroneous standard.

*Brown*, 236 Md. App. at 633; *Na v. Gillespie*, 234 Md. App. 742, 757 (2017). "The clear error standard is a deferential one, giving great weight to the court's finding of fact." *Gillespie*, 234 Md. App. at 757 (*quoting Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000)) (cleaned up). The trial court has the "opportunity to observe the parties and witnesses, hear testimony, and make credibility determinations," and is in a better position than an appellate court to make factual determinations. *Id.*

The court found that Alla received a check for $25,200 and two garnishments from Chrysologue's bank accounts (one for $38,275.05 and another for $38,705.05):

> Defendant's hearing Exhibit 17, which was accepted into evidence, sets fourth the four judgments entered against [Chrysologue] in 2017 and calculates the post judgment interest due for each vis a vis the payments made on the judgments by check and garnishment. [Chrysologue's] calculations show that [he] owed [Alla] a total of $60,669.53 in judgments and post-judgment interest as of April 1, 2018; the [c]ourt finds these calculations to be accurate. [Alla] did not dispute these figures at the hearing.
>
> This [c]ourt further finds credible [Chrysologue's] evidence in support of the payments made and amounts garnished for the benefit of [Alla]. Specifically, this [c]ourt finds that on April 25, 2017, [Alla] received and deposited a $25,200 check drawn on [Chrysologue's] Bank of America Account (*see* Defendant's Exhibits 6 and 9); that on August 28, 2017, $38,275.05 was garnished from [Chrysologue's] T. Rowe Price account and paid to [Alla] (*see* Defendant's Exhibits 7 and 9); and that $38,705.05 was garnished from [Chrysologue's] Fidelity Investment account and paid to [Alla] on the same date (*see* Defendant's Trial Exhibits 8 and 9). The sum of these payments and garnishments—that is, the amount [Chrysologue] has paid to [Alla]—is $102,180.10. [Alla] conceded receipt of these funds at the hearing and in her Response to [Chrysologue's] Petition for Reimbursement of Alimony Overpayment (paper #27001).

The court explained further that it accepted Chrysologue's calculation of his outstanding alimony obligation from May 1, 2017 to May 20, 2018 and concluded that Alla had over-garnished Chrysologue's accounts in the amount of $37,438.43.

We understand that over the lengthy history of this case, Chrysologue has failed (or refused) repeatedly to pay alimony and other ordered support to Alla. We understand as well how frustrating it must be, after having to resort to litigation to get Chrysologue to fulfill his obligations, to find that the success of her efforts to overcome his intransigence leaves Alla to defend his claims of overpayment. Even so, the circuit court went to great lengths to determine how much Chrysologue owed and how much Alla had received. It took evidence, such as bank statements and copies of the deposited check, it heard oral argument from the parties, and it issued an order detailing Chrysologue's financial obligations and payments. We see no clear error in the court's calculations, in its conclusion that Alla had been overpaid, and its order that she had to repay the difference.

### C. The Court Did Not Abuse Its Discretion When It Awarded Chrysologue $525 As A Discovery Sanction.

*Finally*, Alla argues that the court abused its discretion when it awarded Chrysologue attorneys' fees as a sanction for her failure to respond to Chrysologue's discovery requests. Chrysologue responds that the sanction was warranted. This decision could have gone either way, but the court didn't abuse its discretion in imposing sanctions here.

Rules 2-433 and 2-432 govern discovery sanctions, where, as here, a party moves immediately for sanctions instead of for the court to compel discovery. Rule 2-432(a)

explains that a party may move for immediate sanctions "without first obtaining an order compelling discovery" when "a party fails to serve a response to interrogatories under Rule 2-421 or to a request for production or inspection under Rule 2-422, after proper service." In turn, Rule 2-433 states that, "[u]pon a motion filed under Rule 2-432(a), the court, if it finds a failure of discovery, may enter such orders in regard to the failure as are just," including "attorneys' fees [] caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of costs and expenses unjust." The trial court also "has the power to impose sanctions as part of the court's inherent power to control and supervise discovery." *A.A.*, slip. op. at 25 (*citing Gallagher Evelius & Jones, LLP v. Joppa Drive Thru, Inc.*, 195 Md. App. 583, 596 (2010)).

The trial court is guided further by the following factors in deciding whether to impose sanctions:

> (1) whether the disclosure violation was technical or substantial; (2) the timing of the ultimate disclosure, (3) the reason, if any, for the violation; (4) the degree of prejudice to the parties respectively offering and opposing the evidence; and (5) whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance.

*Valentine-Bowers v. Retina Grp. of Washington*, 217 Md. App. 366, 378–79 (2014) (*quoting Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 725–26 (2002)). These factors overlap frequently and don't lend themselves to a compartmental analysis. *Lowery v. Smithsburg Emergency Medical Serv.*, 173 Md. App. 662, 672 (2007) (*quoting Taliaferro v. State*, 295 Md. 376, 390–91 (1983)).

Although the court didn't outline the factors specifically, it explained in sufficient detail why it granted the requested sanction:

> At the April 6 hearing, this Court granted [Chrysologue's] Motion for Discovery Sanctions (paper #277000) having found that [Alla] failed to respond to [Chrysologue's] timely filed and appropriately served Interrogatories, Requests for Admissions of Facts and Genuineness of Documents, and Request for Production of Documents. [Alla] argued at the hearing that the discovery issued to her was unduly burdensome, however, [Alla] failed to raise her objections in a motion for protective order in accordance with Maryland Rule 2-403. Furthermore, this Court inspected the discovery propounded and found it to be appropriately tailored to this matter and in accordance with the Maryland Rules. As a discovery sanction, this Court awarded [Chrysologue's] attorneys' fees in the amount of $525.00 related to the discovery dispute.

As far as we can discern from the record, Alla never responded to the requests, and she hung up on counsel for Chrysologue when he called to ask her to respond. Alla's reason for failing to respond, that the discovery was unduly burdensome, was not found to be convincing by the circuit court. Alla hasn't presented any reasons on appeal to justify the discovery failure, and she presents no other evidence for why the award was unjust under the circumstances of the case. The court wasn't required to sanction Alla for this discovery failure, but it didn't abuse its broad discretion in deciding to award sanctions under these circumstances.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. APPELLANT TO PAY COSTS.**