Circuit Court for Wicomico County
Case No. C-22-FM-22-000417

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1476

September Term, 2025

DAVID CHRISTOPHER LEONE

v.

STACY LEONE

Tang,
Albright,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: March 19, 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).

This appeal arises from a divorce proceeding between the appellant, David Leone ("Father"), and the appellee, Stacy Leone ("Mother"). Judge Karen M. Dean of the Circuit Court for Wicomico County presided over a multi-day merits hearing concerning various matters, including custody of the parties' two minor children, child support, alimony, a monetary award, and use and possession of the family home. Before making findings of fact and rendering a decision on these issues, Judge Dean recused from the case.

The case was reassigned to Senior Judge Brett W. Wilson. Father moved for a mistrial, arguing that the case needed to be retried before the same judge who would decide it. However, Judge Wilson denied the motion and decided the case based on his review of the court filings, exhibits, and the audio and transcripts from the merits hearing. Thereafter, Father moved for a new trial, which the court denied.

On appeal, Father challenges the denial of the motion for mistrial as well as the decision on the merits of the divorce action.[1] For the reasons stated below, we conclude

[1] In his brief, Father presents the following questions:

I. Under Federal and Maryland state law did the trial court err in denying Appellant's motion for mistrial when the judge who heard the testimony recused herself *sua sponte* and was not the judge who made the findings of fact?

II. Under Maryland law did the trial court err in precluding the Appellant from introducing evidence regarding the values of marital property when the Appellee was able to introduce evidence to the values, but the Appellant was not?

III. Under Maryland law did the trial court prejudice the Appellant by refusing to allow him to introduce updated evidence related to property when the court did not render a judgment until nine (9)

that the court abused its discretion in denying Father's motion for mistrial. Accordingly, we reverse and remand the case for further proceedings. In light of this disposition, we need not address the specific issues related to the decision on the merits of the divorce action.

BACKGROUND

The parties married in 2007 and have two minor children. In 2022, Mother filed a complaint for absolute divorce, which she later amended. She sought sole legal and primary physical custody of the children, child support, alimony, a monetary award, use and possession of the family home, as well as attorney's fees, among other requests.

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months after closing arguments and over eighteen months (18) after the Appellees property evidence was introduced?

IV. Under Maryland Law did the trial court abuse its discretion when it awarded a monetary award that was to be paid on a monthly basis that is greater than the Appellant's income?

V. Under Maryland law did the trial court abuse its discretion in its determination that Appellee is entitled to alimony when it (1) improperly imputed income to the Appellant, (2) did not award alimony for the purposes of rehabilitating the Appellee and (3) did not properly consider the Appellee's earning potential?

VI. Under Maryland law did the trial court abuse its discretion when it improperly weighed the evidence on the record and improperly made credibility determinations despite not being present at trial?

VII. Under Maryland law did the trial court improperly weigh the custody factors and make a custody award against the best interest of the minor children?

VIII. Under Maryland Law did the trial court improperly award attorney's fees when there is nothing on the record to support its finding?

The parties, including the children, were represented by their respective counsel. They appeared before Judge Dean for a seven-day merits hearing held on several dates in 2024: March 25 and 26, August 12 and 13, and November 13, 14, and 15. The parties and children's counsel presented their cases, and Judge Dean heard testimony from the parties and other witnesses, including friends, family members, the children's therapist, and experts. Additionally, Judge Dean interviewed the two children, who were 11 and 15 years old at the time.

The parties were subject to various pendente lite orders and supervised visitation orders prior to the merits hearing. The pendente lite orders covered custody, access, the sharing of certain home-related expenses, uninsured medical costs for the children, and other child-related expenses. Mother filed several petitions for contempt against Father, claiming that he failed to comply with these orders, including the requirement that Father reimburse Mother for shared expenses related to the children and the family home. Judge Dean heard testimony on the pending contempt petitions for part of the day on August 12, but she deferred ruling on them.

On November 15, after the parties rested, Judge Dean heard closing arguments from counsel for the children. Judge Dean instructed both Mother and Father to submit their closing arguments in writing.

Judge Dean's Recusal

During a hearing on December 11, 2024, the administrative judge of the circuit court notified counsel for the parties and the children that Judge Dean had recused herself from

the case. At that point, Judge Dean had not made any findings of fact or resolved any issues related to the divorce action or the contempt petitions. The administrative judge explained that Judge Dean's recusal was "not based on anything that occurred during the course of the trial or anything of that sort[.]" Instead, it was based on "something that has arisen after [the proceedings] that Judge Dean thinks affects her ability to be fair and impartial in rendering a decision at this point." The administrative judge stated that the case would be reassigned to another judge, who would then schedule a hearing to determine the next steps.

Reassignment to Judge Wilson

Judge Wilson was reassigned to the case and held a status conference on February 4, 2025. He initially planned to read the transcripts, review the exhibits, and consider the closing arguments. Following that, he intended to schedule a hearing where the attorneys could present additional points before deciding the case. Judge Wilson stated that this approach "would be to save the parties money and angst" of having a new trial. Counsel for Mother and the children agreed with Judge Wilson's plan but suggested that he also listen to the audio of the merits hearing to better assess the witnesses' credibility.

Father, through counsel, disagreed. His attorney expressed Father's concern about Judge Wilson's ability to adequately assess the witnesses' credibility, stating that it would be impossible to do so without Judge Wilson hearing their testimony and observing their reactions in the courtroom. Father believed that the best course of action was for the court to order a new trial, fully aware that this would lead to incurring additional attorney's fees. Consequently, Father's counsel orally requested a mistrial. Judge Wilson then instructed

Father to submit a written motion for a mistrial, allowing Mother to respond in writing within ten days.

Father's Motion for Mistrial

After the status conference, Father filed a motion for mistrial. He argued that Judge Dean's recusal created prejudice against the parties because it made it impossible for the successor judge to assess the credibility of witnesses. Father explained that the successor judge, who would listen to audio recordings or review transcripts, would be unable to observe body language, reactions from others in the courtroom, or any other non-verbal cues. He emphasized that these subtle non-verbal gestures and movements were crucial for determining credibility. Father acknowledged that although the court took corrective action by reassigning the case to Judge Wilson, this reassignment would not eliminate the prejudice caused by Judge Wilson's inability to evaluate credibility, as he was not the judge who originally heard and saw the testimony. Accordingly, Father requested a new trial.

Mother opposed the motion, claiming that neither party disputed the witnesses' credibility. She argued that Maryland Rule 2-536 permitted Judge Wilson, as the successor judge, to decide whether he could decide the case based on the existing record, which included audio recordings. She stated that a new trial should be ordered only if the successor judge determined that he could not render a decision based on that record.

On February 13, 2025, Judge Wilson denied the motion for a mistrial. In his written order, Judge Wilson stated that the court would "render a decision in this case after review

of the entire file, including the pleadings, exhibits, written transcript, audio recording and written closing arguments."

Judge Wilson's Decisions

Thereafter, additional petitions for contempt were filed in the case. On March 14, 2025, counsel for the children filed a petition for contempt against Father for failing to abide by a prior order to control his conduct. Counsel for the children also petitioned for payment of outstanding fees. On April 3, 2025, Mother filed another petition for contempt, seeking reimbursement of shared expenses, including those in her earlier petitions and additional expenses incurred since the merits hearing.

On April 29, 2025, Judge Wilson held a hearing on these petitions and heard testimony from both parties. At the conclusion of the hearing, Judge Wilson found Father in contempt and issued orders on May 2 and 13, 2025. Father subsequently appealed these orders in a separate case (ACM-REG-505-2025).

On August 15, 2025, Judge Wilson issued an opinion on the merits of the divorce action and entered an order of judgment of absolute divorce. At the outset of the written opinion, Judge Wilson stated:

> Consistent with applicable law, the following Opinion and related Judgment are based upon the review of all pleadings filed in the matter, testimony as heard from the audio recordings and read from the transcripts of the proceedings, and the exhibits which were accepted as evidence by the trial judge [Judge Dean].

In his written opinion, Judge Wilson made several findings of fact regarding the grounds for divorce, the factors related to custody, the determination of child support

including an imputation of income, the factors for determining alimony, the factors for adjusting any inequity in determining the monetary award, the basis for awarding use and possession of the family home, and an analysis of Mother's request for attorney's fees.

Judge Wilson granted Mother a divorce on grounds of adultery, one year separation, and cruelty of treatment. He awarded Mother sole legal and physical custody of the children. Father was granted supervised visitation with the children once a week, with the possibility of additional unsupervised visits with one of the children upon that child's initiation. In conjunction with the judgment of absolute divorce, Judge Wilson entered a separate order requiring supervised visitation and specifying the logistics of the parties' use of a visitation center for these visits. In addition, he granted Mother use and possession of the family home for three years.

Judge Wilson imputed an income higher than Father's stated income and used the imputed income to calculate child support and determine alimony. Judge Wilson ordered Father to pay $1,768 per month in child support and awarded Mother alimony of $5,000 per month until 2031. He granted Mother a monetary award of $970,465.50 to be paid in monthly installments of $26,957.38. He also ordered Father to pay Mother $50,000 in attorney's fees.

In the written opinion and order for judgment of absolute divorce, Judge Wilson noted that he considered multiple allegations of contempt during a separate hearing on April 29, 2025, which resulted in the orders entered separately on May 2 and 13, 2025,

supra. The judge incorporated these orders by reference in the order for judgment of absolute divorce.

On August 25, 2025, Father filed a motion for a new trial, reiterating the arguments made in his earlier motion for a mistrial. On September 9, 2025, Judge Wilson denied the motion for a new trial. On September 11, 2025, within thirty days of the entry of the judgment of absolute divorce, Father noted his appeal.

PARTIES' CONTENTIONS

Father challenges the court's decisions on the merits of the divorce action.[2] His threshold argument is that Judge Wilson abused his discretion by denying the motion for a mistrial. He claims Judge Dean's recusal prejudiced him, and that the court's subsequent actions did not address this prejudice. Father explains that the successor judge, Judge Wilson, did not have the opportunity to observe and listen to the witnesses testify during the trial, and thus could not have properly made custody-related determinations based on a "cold record." Father maintains that Judge Wilson should have declared a mistrial and that his failure to do so was an abuse of discretion.

Mother continues to maintain that Rule 2-536 allows a successor judge to make decisions based on the existing record and to assess credibility accordingly. Although the first judge, Judge Dean, who presided over the merits hearing, was better positioned to

[2] Father does not challenge the court's decisions regarding the contempt petitions in this appeal. *See supra*, n.1. As stated in his brief, the contempt proceedings were pursued independently from the relief sought in divorce action. As mentioned, he is challenging the court's decision related to the contempt petitions in a separate appeal.

evaluate credibility, the successor judge, Judge Wilson, could still render a judgment on the divorce action by relying on the record. She contends that declaring a mistrial is an extraordinary measure that should be used only in cases of manifest necessity and that Father has not demonstrated any necessity or prejudice in this situation.

STANDARD OF REVIEW

"Whether to order a mistrial lies in the sound discretion of the trial judge, and appellate review of the denial of the motion is limited to whether there has been an abuse of discretion." *Brown v. Contemporary OB/GYN Assocs.*, 143 Md. App. 199, 237 (2002). In exercising discretion, the trial judge must correctly apply the pertinent legal standard. *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241–42 (2011).

"The declaration of a mistrial is an extraordinary act which should only be granted if necessary to serve the ends of justice." *Hill v. State*, 134 Md. App. 327, 348–49 (2000); *Beghtol v. Michael*, 80 Md. App. 387, 399 (1989) ("[W]e have adopted the standard in criminal cases, which is equally applicable here, that in exercising that discretion a trial judge should declare a mistrial only under extraordinary circumstances and where there is manifest necessity to do so." (citation modified)). "The question is one of prejudice." *ACandS, Inc. v. Godwin*, 340 Md. 334, 407 (1995). Thus, "[t]he decision of whether to grant a mistrial is vested in the discretion of the trial judge and will not be disturbed on appeal unless there was clear prejudice to the defendant." *Richwind Joint Venture 4 v. Brunson*, 96 Md. App. 330, 348 (1993), *aff'd in part and rev'd in part on other grounds*, 335 Md. 661 (1994).

DISCUSSION

Maryland Rule 2-536 allows one judge to substitute for another in an ongoing action if the first judge is unable to act and the successor judge is satisfied that they can properly perform the remaining functions of the first judge. The Rule provides:

> If, by reason of termination of office, absence, death, sickness, or other inability to act, a judge is unable to perform an act or duty in an action, any other judge authorized to act in that court may perform the act or duty *if satisfied that the other judge can properly do so*. Otherwise, the other judge shall grant a new trial or such other relief as justice requires.

(emphasis added).[3]

The authors of the *Maryland Rules Commentary* explain:

> Whether a judge can "properly perform" the functions of a prior judge is resolved under the standards of substantive law. If the judge is unable to determine that the other judge is able, both legally and factually, to succeed the prior judge, the proceeding must begin anew.

[3] Maryland Rule 2-536 was adopted in 1984, and was derived from former Rule 528, carrying forward with stylistic changes only the substance of the former Rule. *Maryland Rules Commentary Rule 2-536*. Former Rule 528, which was adopted in September 1961, read:

> If by reason of termination of office, absence, death, sickness, or other inability to act, the judge before whom any proceeding in an action has been had is unable to perform an act or duty in connection with such action, his successor in office or any other judge presiding in or assigned to the court may perform such act or duty; but if such other judge is not satisfied that he can properly perform such act or duty, he may at his discretion grant a new trial, rehearing or such other relief as justice may require. (Added Sept. 15, 1961.)

Maryland Rule 528 (1961).

Maryland Rule 4-361 is a similar rule in the context of when a successor judge can sentence a criminal defendant, *see* subsection (a), and when a successor judge may proceed with and finish a jury trial, *see* subsection (b).

Paul Niemeyer & Linda Schuett, *Maryland Rules Commentary Rule 2-536* (6th ed. 2024). "Whether or not the case is being tried by a jury or by the court is a factor in determining whether the new judge can proceed." *Id.* For instance, "[i]n a jury trial, the successor judge who reads a transcript of a prior proceeding may assume the functions of the prior judge and continue the trial." *Id.* On the other hand,

> [I]f a judge is the trier of fact and has presided for a substantial portion of the trial, it is virtually impossible for another judge to continue the case over the objection of one of the parties. *The first judge's opinion about the credibility of witnesses cannot be transferred to a successor judge.* Substitution is no more feasible than substituting a new juror in the middle of trial. A party is entitled to have the same fact finder sit throughout a trial.

Id. (emphasis added).

The Supreme Court of Maryland highlighted this consideration in *Leet v. Totah*, 329 Md. 645 (1993), when it reversed a jury verdict awarding damages and remanded the case for further proceedings on an equitable claim for specific performance. *Id.* at 667. The trial judge died while the appeal was pending. *Id.* at 667. The Court stated that on remand, absent an agreement between the parties, another judge would have to hear and decide additional issues peculiar to specific performance that were not adjudicated in the jury trial. *Id.* at 670–71. It instructed that the "successor judge should grant a new trial, unless that judge is 'satisfied that [the successor judge] can properly' determine the common issues relying only on the prior record." *Id.* at 670 (quoting Md. Rule 2-536). "If the successor judge is so satisfied, that judge may determine the common issues based on the prior record." *Id.* "When evaluating whether '[the successor judge] can properly' independently determine the common issues based on the jury trial record, the successor judge will

necessarily be mindful of the admonition" in the *Maryland Rules Commentary*, *supra*, relating to the judge's duty in a bench trial to assess the credibility of witnesses. *Id.*

"Particularly important in custody cases is the trial court's opportunity to observe the demeanor and the credibility of the parties and witnesses." *Petrini v. Petrini*, 336 Md. 453, 470 (1994). This is because, in child custody cases, "the court has an absolute and overriding obligation to conduct a thorough examination of all possible factors that impact the best interests of the child . . . ." *A.A. v. Ab.D.*, 246 Md. App. 418, 444 (2020); *see Ross v. Hoffman*, 280 Md. 172, 174–75 (1977) (noting that the best interests of the child standard "is firmly entrenched in Maryland and is deemed to be of transcendent importance").

We have emphasized that "procedural defects should not be corrected in a manner that adversely impacts the court's determination regarding the child's best interests." *A.A.*, 246 Md. App. at 446. We applied this principle in the context of a discovery sanction in *A.A v. Ab.D.* There, the father propounded discovery requests to the mother in connection with his motion to modify custody. *Id.* at 426. According to the father, the mother's responses were deficient, and he moved to compel further responses. *Id.* at 427. The father then moved in limine to exclude the testimony of witnesses for whom the mother did not provide contact information, and to exclude most of the evidence the mother had not produced during discovery. *Id.* The court granted the father's motion and excluded such evidence. *Id.* at 428.

On appeal, we held that the court erred in imposing a discovery sanction that effectively precluded it from considering potentially significant evidence directly relevant

to the factors necessary to determine a custody arrangement that would be in the children's best interests. *Id.* at 447. Significantly, we explained:

> In assessing the child's best interests, a trial court, acting under the State's *parens patriae* authority, is in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child's best interests. *Plainly, a child's best interests are best attained when the court's decision is as well-informed as possible*.

Id. at 447 (citation modified) (emphases added).

We also applied this principle in a case involving a default judgment after a parent failed to respond to a custody complaint. In *Flynn v. May*, 157 Md. App. 389 (2004), we held that the circuit court abused its discretion when it ordered a change in the primary custody of a child after the court entered a default judgment against the child's mother. *Id.* at 411. In that case, a father filed for custody of the parties' son and for child support. *Id.* at 392. The mother, proceeding pro se, attempted to file an answer with the court but did not include a certificate of service. *Id.* Consequently, her answer was never filed. *Id.* The court granted the father's request for an order of default but instructed that testimony supporting the allegations of the complaint should still be taken. *Id.* at 394–95. Despite the default, the mother attended the custody hearing with witnesses. *Id.* at 395. However, the court did not allow her to testify or present evidence. *Id.* As a result, physical custody of the son was transferred to his father without a trial or evidentiary hearing. *Id.* at 397–98, 411.

We articulated that a child has "an indefeasible right to have any custody determination concerning him made, after a full evidentiary hearing, in his best interest."

Id. at 410. We instructed that a child does not lose that right because of a parent's procedural pleading deficiency. *Id.* In reversing the court's decision, we reasoned that the court's entry of default judgment without considering any evidence was contrary to the very purpose of a custodial hearing, which is to provide for the best interests of the child. *Id.* at 406–10; *accord Wells v. Wells*, 168 Md. App. 382, 396–97 (2006) (vacating a default judgment in a divorce action as to custody and other issues because the child has an "indefeasible right" to have his best interests considered in a full evidentiary hearing).

Although the circumstances in *A.A.* and *Flynn* are different from this case, the principle that procedural defects should not be corrected in a way that negatively affects the court's decision about the child's best interests is equally applicable here. Judge Dean recused herself after the parties had rested and submitted their closing arguments. Her recusal rendered her "unable to perform" the remaining duties of making findings of fact and deciding the issues in the divorce action. *See* Md. Rule 2-536. Consequently, the case was assigned to Judge Wilson. Father requested a mistrial, arguing that Judge Wilson should not decide issues of custody and other matters related to the divorce action without having witnessed the testimony given during the multi-day trial.[4]

In denying the motion for mistrial, Judge Wilson apparently determined, under Rule 2-536, that he could "properly" decide the custody issues, among other issues, by reviewing

[4] During oral argument, Father acknowledged that if his actions had led to Judge Dean's recusal, he would not have had valid grounds to request a mistrial. We do not need to address that issue further, as the record does not provide the reason for Judge Dean's recusal.

the court file, pleadings, exhibits, transcripts, audio recordings, and written closing arguments. However, under the circumstances of this case, Judge Wilson could not have properly performed the duties that Judge Dean was expected to perform before her recusal—namely, making findings of fact and deciding custody and other issues in the divorce action—solely by reviewing the record and listening to the audio recordings of the trial.

This case involves highly contested facts related to Father's abuse of illicit drugs and physical and emotional abuse of Mother, among other disputed issues. Resolution of these factual disputes would undoubtedly impact the judge's decision regarding custody, access, alimony, a monetary award, and the grounds for divorce (one of which was cruelty of treatment). These factual findings could have been made only by assessing the witnesses' credibility based on seeing and hearing their testimony. As stated in *Gizzo v. Gerstman*, 245 Md. App. 168 (2020), a trial judge who sees the parties and other witnesses, and hears their testimony, is in a far better position than the appellate court, which has only the record, to weigh the evidence and determine what disposition will best promote the welfare of the child. *Id.* at 201. This principle also applies to the successor judge in this case.

Mother argues that although Judge Wilson was not present during the merits hearing, he did preside over the contempt hearing in April 2025. During that hearing, the judge observed the parties testify and assessed their credibility before issuing the judgment of absolute divorce in August 2025. Therefore, she claims that Judge Wilson did not rely solely on the record from the merits hearing and could evaluate the parties' credibility.

However, we are not persuaded by this argument. It is irrelevant whether Judge Wilson gained a sense of the parties' credibility at a later hearing; he did not observe them at any point during the multi-day merits hearing, nor did he observe the several other witnesses who testified. For the reasons stated, the court erred in denying Father's motion for mistrial.

Our holding and reasoning align with those in other jurisdictions.

> As a generally recognized principle, a successor judge may not make a decision in a civil case on evidence heard by a predecessor who failed to make findings of fact and conclusions of law or render credibility determinations if the successor judge would be required to weigh and compare testimony of witnesses whom he or she did not see or hear.

Kurtis A. Kemper, *Power of Successor or Substituted Judge in Civil Case, to Render Decision or Enter Judgment on Testimony Heard by Predecessor*, 84 A.L.R.5th 399, § 16 (2000); *see also id.* at § 18 (collecting cases wherein credibility determinations by a successor judge were held improper). On the other hand, "when a predecessor judge has not made findings of fact and conclusions of law, a successor judge may proceed on evidence heard by the predecessor judge where witness credibility is not a factor in rendering a decision." *Id.* at § 16; *see also id.* at § 17 (collecting cases where a successor judge's decisions were upheld because their inability to observe witnesses was found inconsequential). The rationale underlying these general principles is that "due process entitles a litigant to a decision on the facts by a judge who has heard the evidence and has been afforded an opportunity to assess the credibility of witnesses by observing their demeanor." 48A C.J.S. *Judges* § 175 (March 2026 update); 46 Am. Jur. 2d *Judges* § 31 (Feb. 2026 update).

Federal Rule of Civil Procedure 63 and cases interpreting it are generally in accord. *See Maryland Rules Commentary Rule 2-536* ("Although [Maryland Rule 2-536] differs significantly from the language of Fed. R. Civ. P. 63, the substance is similar, and case law developed under that rule is still useful in construing this rule."). Federal Rule of Civil Procedure 63 provides:

> If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a nonjury trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

"The policy behind Rule 63 is that the successor judge, not having heard witnesses at the trial, may be unable to resolve issues of credibility." *Thompson v. Sawyer*, 678 F.2d 257, 270 (D.C. Cir. 1982). If "there are issues of credibility that cannot properly be resolved on the basis of the record or for any other reason the replacement judge concludes that it is not possible to proceed in fairness to the parties, the judge has discretion to grant a new trial." 11 *Wright & Miller's Federal Practice and Procedure*, § 2922 (3d ed. Sep. 2025 update); *see Mergentime Corp. v. Wash. Metro. Area Transit Auth.*, 166 F.3d 1257, 1266 (D.C. Cir. 1999) ("While Rule 63 allows a successor judge to make findings of fact based on evidence heard by a predecessor judge, . . . this practice is appropriate only 'in limited circumstances' . . . . [a] successor judge . . . would 'risk error to determine the credibility of a witness not seen or heard who is available to be recalled.'" (quoting the 1991 advisory committee note under Rule 63)); *In re Karten*, 293 Fed. Appx. 734, 736 (11th Cir. 2008)

("If a judge presiding in a civil bench trial steps down before making findings of fact and conclusions of law, a successor judge generally cannot make credibility determinations and should retry the case."); *cf. Patelco Credit Union v. Sahni*, 262 F.3d 897, 906 (9th Cir. 2001) ("[T]he successor judge may examine the trial transcript as if it were 'supporting affidavits' for summary judgment purposes and enter summary judgment *if no credibility determinations are required*." (emphasis added) (citation omitted)).

The Fourth Circuit explained that without the parties' consent "a successor master or judge may not be appointed to make findings of fact and conclusions of law based solely upon the transcript developed before the original judge or master, unless no credibility determination as to the testimony of the witnesses needs to be made." *Henry A. Knott Co.v. Chesapeake & Potomac Tel. Co. of West Virginia*, 772 F.2d 78, 87 (4th Cir. 1985). This is because the first judge hears the witnesses' live testimony and can assess their credibility. *See id.* at 83. A successor judge who decides the case solely on the record is essentially engaging in conduct that is typically the function of the appellate court, not the trial court. *Id.* "Having the same judge preside throughout the trial is even more important in a case that is not tried before a jury, because it is the judge who will make the decisions as to which witnesses are more credible based upon the live testimony and demeanor of the witnesses." *Id.*

State court decisions in custody and other divorce-related matters also support our holding. *See, e.g.*, *LaMotte v. LaMotte*, 200 N.E. 3d 922, 926–27 (Ind. Ct. App. 2022) (explaining that a party to an action is entitled to a determination of the issues by the jury

or judge that heard the evidence, and where issues remained undetermined at the death, resignation, or expiration of the term of such judge, his successor cannot decide or make findings in the case without a trial de novo where credibility must be weighed); *Jackson v. DeJean*, 228 N.E. 3d 1111,1114, 1118 (Ind. Ct. App. 2024) (holding that successor judge abused their discretion in re-weighing evidence and re-assessing credibility of witnesses in modifying custody based on listening to the recording of contested hearing tried before the predecessor judge who had retired); *Fry v. Fry*, 887 So.2d 438, 440–41 (Fla. Dist. Ct. App. 2004) (explaining that in divorce proceedings, factual issues requiring weighing of testimony must be decided by the judge who heard that testimony, or else new trial was required); *In re Marriage of Seyler*, 559 N.W.2d 7, 10 (Iowa 1997) (concluding that in child custody case where credibility determinations are of paramount importance, the deciding judge must also be the one who heard the evidence); *Vergon v. Vergon*, 622 N.E.2d 1111, 1113 (Ohio Ct. App. 1993) (reversing judgment of divorce by successor judge, who did not preside over trial, where record was full of conflicting testimony and witness credibility was a vital factor); *Davis v. Davis*, 408 A.2d 849, 850 (Pa. Super. Ct. 1979) (remanding for further proceedings in a custody case and explaining that credibility determination is a "vital function" which can be made only by the judge before whom the witnesses appear).

The above authorities support the admonition by the Supreme Court of Maryland in *Leet* that, under Rule 2-536, "[a] party is entitled to have the same fact finder sit throughout a trial" and that "if a judge is the trier of fact and has presided for a substantial portion of the trial, it is virtually impossible for another judge to continue the case over the objection

of one of the parties." 329 Md. at 670 (quoting *Maryland Rules Commentary Rule 2-536*). Under Maryland Rule 2-536, Judge Wilson could not have properly performed the duty of making findings of fact and deciding the issues in this divorce action by reviewing the record and listening to the audio recordings of the trial alone. Proceeding in such manner clearly prejudiced Father, and a declaration of a mistrial was necessary to serve the ends of justice. For the reasons stated, the court abused its discretion in denying the motion for mistrial.

CONCLUSION

We reverse the court's denial of Father's motion for a mistrial and vacate the order of judgment of absolute divorce (entered on August 15, 2025, and revised on October 24, 2025).[5] In addition, we vacate the order for supervised visitation entered in conjunction with the order of judgment of absolute divorce.

We remand for further proceedings, including a new trial, unless there is a stipulation that a decision may be rendered based on the record (in whole or in part) already made.[6] Significant changes may have occurred since the original trial; therefore, additional

[5] The vacatur of the order of judgment of absolute divorce does not impact the orders for contempt separately entered on May 2 and 13, 2025, which are the subject of a separate appeal.

[6] *See, e.g.*, *Smith v. Freeman*, 902 N.E.2d 1069, 1075 (Ill. 2009) ("[I]f the parties enter into an agreement or stipulation to allow a successor judge to decide the case based on written evidence received by a predecessor judge and that agreement is knowing, intentional, and voluntary, it is valid and the parties are bound by it."); *Farner v. Farner*, 480 N.E.2d 251, 257–58 (Ind. Ct. App. 1985) ("[W]hen the trial judge who heard the testimony and observed the demeanor of the witnesses at trial is unavailable to render a decision thereon, the parties may stipulate that the substitute judge should determine the

evidence should be received. *See Taylor v. Taylor*, 306 Md. 290, 313 (1986) (remand on custody); *see also St. Cyr v. St. Cyr*, 228 Md. App. 163, 201–02 (2016) (remand on alimony). On remand, the court should receive evidence about developments since the original trial, and in the exercise of its discretion, may receive additional evidence to supplement the existing record. *Taylor*, 306 Md. at 313; *St. Cyr*, 228 Md. App. at 201 (instructing on remand, the court "may accept additional evidence about each party's actual or potential income, including evidence about their incomes since the original trial"); *see also Fox v. Fox*, 85 Md. App. 448, 465–66 (1991) (recognizing when remanding for further proceedings on the monetary award and alimony that the values of property may have changed and that monetary award and alimony should be reconsidered "in light of what has occurred since the [original] decree").

As a result of the vacatur and remand, any pendente lite and supervised visitation order(s) in effect before the entry of the original order of judgment of absolute divorce shall remain in effect until the parties are once again before the circuit court.

case on the record."); *In re Marriage of Seyler*, 559 N.W.2d at 10 n.1, 12 (explaining that unless the parties stipulated that a decision could be made based on the record already made, on remand, the successor judge should hear the case anew due to the custody issues which depended on the credibility of the witness); *Binder v. Binder*, 557 N.W.2d 738, 740–41 (N.D. 1996) (affirming a trial court's judgment because the parties agreed by stipulation to having the successor judge decide the divorce case based on audio recordings of trial testimony).

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY REVERSED; ORDER OF JUDGMENT OF ABSOLUTE DIVORCE (ENTERED ON AUGUST 15, 2025, AND REVISED ON OCTOBER 25, 2025) VACATED; ORDER FOR SUPERVISED VISITATION (ENTERED AUGUST 15, 2025) VACATED; CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEE.