Circuit Court for Prince George's County
Case No. CAL17-13781

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1914

September Term, 2019

PATRICIA A. RUFFIN

v.

MERLENE FORDE

Berger,
Reed,
Friedman,
JJ.

Opinion by Reed, J.

Filed: April 22, 2022

The sage advice of not mixing business with pleasure rings true in the case at bar between Patricia Ruffin ("Appellant") and Merlande Forde ("Appellee"). In May of 2005, the parties met and became friends and disputedly romantic partners. Shortly thereafter, the parties began working together in a screen-printing and embroidery business. Unfortunately, the issue in which the case at bar originates does not end in the parties living "happily ever after".

After a series of disagreements between the parties, they sought the dissolution of the screen-printing and embroidery business and contested the nature of the business's ownership and assets. Appellant alleged she and Appellee entered a business partnership agreement and began operating a business together on or around June 12, 2005. Appellant also alleged that she and Appellee were strictly friends and business partners. Appellee claims that she was in a romantic relationship with Appellant and Appellant allowed Appellee to assist her in operating her business. The business relationship ended either after a business dissolution agreement or after the romantic relationship ended.

Compounded with the business dispute, the Appellant moved in with the Appellee in March of 2017, and alleged that she entered a rental agreement. After an uninvited sexual incident in the Appellant's room, Appellant left the Appellee's home and was prevented from returning to the property. In her amended complaint, Appellant sought the return of business equipment, personal property, and damages for other offenses on seven counts, ranging from breach of contract, unjust enrichment, conversion, tort battery, and malicious use of property.

The Circuit Court for Prince George's County scheduled trial for June 26-27, 2019 and issued a scheduling order on September 19, 2018. The scheduling order states, inter alia:

> This order is your notice of dates and required court appearances. It may not be modified except by order of the court upon a showing of good cause. Stipulations between counsels are not effective to change any deadlines of this order. Failure to comply with all terms of this Order may result in the imposition of appropriate sanctions . . . 60 days prior to trial, the [parties] complete the following: 1. All discovery. 45 days prior to trial, complete the following: 1. File dispositive motions.

Appellee's previous counsel filed a Motion to Withdraw from representing Appellee on May 13, 2019. While Appellee's previous counsel's Motion to Withdraw was pending, Appellant served Notice for the Deposition to Appellee's previous counsel on May 17, 2019 and scheduled the deposition for May 30, 2019. Appellee did not attend the deposition and Appellant filed a Motion for Sanctions on May 31, 2019. On July 10, 2019, the Motion for Sanctions was denied by the Circuit Court for Prince George's County citing the concurrent issue of the status of the Appellee's legal representation and the need to employ new counsel at the time of the deposition. Appellee's new counsel entered his appearance on or about August 9, 2019.

On June 21, 2019, Appellant filed an Emergency Motion for Continuance after being hospitalized. Appellee also filed a Motion to Continue Trial Dates on June 25, 2019 for more time to obtain new counsel. The continuance for Appellant's Emergency Motion was granted that same week, moving the trial to August 28 and 29, 2019.

However, prior to the start of trial on August 28, 2019, Appellee's counsel presented Appellant's counsel with a witness list that included an unknown witness. Appellant's

counsel objected to trial proceeding, requesting time to depose the unknown witness. Appellant's Motion was granted and Appellant was given an additional thirty days to depose the witness. Appellee complied and the witness was deposed on September 13, 2019. Trial was continued to September 23, 2019.

After a series of continuances, the trial originally scheduled June 26-27, 2019 began on September 23, 2019 in the Circuit Court for Prince George's County. At the close of Appellant's case, counsel objected to Appellee being called as a witness in her own defense, arguing that Appellee's failure to appear for her deposition should prevent her from testifying. The circuit court gave Appellant's counsel the option to depose Appellee that evening and continue with trial the next day. Appellant declined and Appellee was permitted to testify. At the conclusion of trial on September 24, 2019, the case was submitted to the jury which ruled in favor of Appellant on one count of battery and awarded her $3000 in damages.

Appellant filed a Motion for a New Trial on October 3, 2019 based on Appellee's failure to appear for a deposition and the circuit court's denial of Appellant's Motion for Sanctions. On October 24, 2019, Appellant's motion was denied. It is from this denial that Appellant filed this timely appeal. In bringing her appeal, Appellant presents the following questions, which we have rephrased for clarity:[1]

[1] Appellant presents the following questions for appellate review:

1. Whether the Circuit Court for Prince George's County erred when it denied Appellant's Motion for Sanctions?

I. Did the circuit court err in denying Appellant's Motion for Sanctions?

II. Did the circuit court err when permitting Appellee to testify at trial after her failure to appear for a deposition?

III. Did the circuit court err in denying Appellant's Motion for a New Trial?

For the following reasons, we answer all three questions presented by Appellant in the negative and affirm the decision of the circuit court.

FACTUAL & PROCEDURAL BACKGROUND

A. Business Dispute

Appellant and Appellee disputed the business ownership and formation of Forde Designs, LLC, CreativeUS, LLC, and RuffinStuff, LLC, embroidery and screen-printing businesses, based on their contradicting positions of being solely in a business partnership or solely being in a romantic relationship. Appellant alleges that the parties entered a business relationship. Appellee testified that the parties began a romantic relationship and Appellant allowed Appellee to assist her in operating her business. The parties agreed that Appellant would handle marketing while Appellee did the embroidering for orders and managed the business's finances.

2. Whether the Circuit Court for Prince George's County erred when it permitted Appellee to testify at trial notwithstanding her failure to appear for a deposition?
3. Whether the Circuit Court for Prince George's County erred when it denied Appellant's motion for a new trial based on Appellee having been permitted to testify at trial in view of her failure to appear for a deposition?

To refute the notion that the parties strictly shared a romantic relationship, Appellant testified to a dissolution of partnership agreement, signed by the parties in September 2011. Appellant alleged that Appellee suggested the business be dissolved so the two signed the dissolution of partnership agreement. Appellant testified that she did not take a salary from the business because she had other income, but she expected to be paid when the business dissolved. The agreement calculated the salary owed to Appellant for six years of working the business minus expenses at $52,825.00. In contrast, Appellee testified that she paid Appellant in cash whenever an order was completed for a client.

When asked about her signature on the dissolution of partnership agreement, Appellee testified that she only signed the document because Appellant threatened to tell Appellee's mother about their same-sex relationship, which was a "disgrace in Appellee's home country." Appellee testified that Appellant also threatened to make false statements that could impact Appellee's immigration status as a permanent resident. Appellee reiterated "[t]here was no business relationship . . . she was my girlfriend and she assisted me in the business." While Appellant asserted the dissolution agreement was replaced by another business partnership agreement, Appellee testified that no other partnership or business agreements existed between the two after they reconciled around November 2011.

B. Living Arrangement and Protective Orders

Appellant testified that after ending her 30-year marriage in 2016, she moved into an apartment in Hanover, Maryland with a lease from March 2016 to March 2017. At the end of her lease, Appellant testified she moved in with Appellee under a lease agreement from March 24, 2017 to May 24, 2017 for $100 per week and moved in furniture, clothing,

a motorcycle, and Corvette to Appellee's residence.

Appellant testified that she paid for the entire eight weeks in advance and alleged that she and Appellee agreed at the start of the lease that their business partnership would, once again, dissolve when her lease ended, and that Appellant was owed $225,190 in earnings. Appellee testified that Appellant had been staying with her since January 2017, that there was no lease agreement, and no rent was paid because she wanted to help the Appellant "get back on her feet".

Appellant testified that on April 1, 2017 she returned to Appellee's house around 5:30 a.m. after work at a part time job. Appellant testified that Appellee entered her room, where the doorknob had been removed completely, and "put her nude body" on Appellant. Appellant testified that she became very distressed and called her son.[2] Appellee began crying, begging her not to call law enforcement. Afterwards, Appellant testified that Appellee left the house. Appellant also left to stay with her adult children in Middle River, Maryland. Appellee denied engaging in such behavior on April 1, 2017.

Appellee also testified that on April 8, 2017, Appellant entered the property, became aggressive, and destroyed Appellee's property. Appellant testified that when she returned, the locks on the gates to the property had been changed, an unknown man blocked her from going in to retrieve her personal items, and the Appellee called the police. This incident prompted Appellee to file a Protective Order against Appellant, which was issued and

[2] Appellant's son, Paul Cottman, II, testified that on April 1, 2017, he received a "frantic" call from Appellant following an incident where Appellee, "had made some sexual advances on her, that she had crawled into her bed and she had touched her, made some unwanted physical contact."

effective from April 21, 2017 to April 28, 2017. Appellee's Protective Order and complaint against Appellant were dismissed at the expiration of the Order.

Appellant testified that when she returned in May 2017, her Honda Gold Wing motorcycle was gone, much of her furniture and clothing was inaccessible, and her car was damaged after the tarp was removed allowing rain and defecation from stray cats to soak the interior. Appellant testified that, in her opinion, her destroyed personal property was valued at $3000.

Appellant testified that after April 1, 2017 she was not able to continue participating in business operations and Appellee never paid her share of the earnings. Appellant testified that any records she had related to the business, hard copy or electronic, were destroyed during the time the Protective Order was in effect and she could not produce any evidence of her earnings. Appellant responded through testimony that she did not destroy any personal property or records maintained by Appellant. In fact, Appellee asserts, Appellant had no business documents.

In December 2017, approximately eight months later, Appellee filed another complaint against Appellant, seeking a Protective Order, for allegedly stalking her at work. Appellee was granted a Protective Order from December 22, 2017 to January 8, 2018 but after the hearing in January her complaint was dismissed.

C. Procedural History

On June 2, 2017, Appellant filed a Motion for Emergency Injunction Hearing against Appellee in the Circuit Court for Prince George's County. Appellant alleged the parties entered a business partnership agreement and began operating a business together

on or around June 12, 2005 and upon dissolution of the business, was not properly compensated. Appellant also alleged that she entered a lease agreement with Appellee to rent a room in Appellee's home and, after being prevented from returning to the premises, she sought the return of business equipment, personal property, and damages for other offenses. Appellant's Motion for Emergency Injunction was denied and she was advised to seek counsel prior to a status hearing scheduled for July 14, 2017. A Summons was issued for Appellee.

Appellee filed a Motion to Dismiss Appellant's Complaint on October 19, 2017, arguing that Appellant failed to state a claim for which relief could be granted under the Maryland Rules. After filing an Opposition to Appellee's Motion to Dismiss on November 7, 2017, Appellant filed an Amended Complaint on November 15, 2017, reiterating many of her initial claims. Additionally, Appellant's Amended Complaint sought relief for the following: Count 1: Breach of Contract regarding the alleged jointly owned business, Count 2: Conversion of business assets, Count 3: Unjust Enrichment, Count 4: Conversion regarding a lease agreement between the Appellant and Appellee, Count 5: Breach of Contract-Lease, Count 6: Tort-Battery, and Count 7: Malicious Use of Process. Appellee's Motion to Dismiss was denied as moot on December 4, 2017.

Subsequently, Appellee filed a second Motion to Dismiss and Answer to the Amended Complaint on January 5, 2018. On January 23, 2018, Appellant filed a Motion to Strike Appellee's Second Motion to Dismiss and Appellee's Answer to Amended Complaint, arguing that it was not properly served and thus non-compliant, and in a separate filing, requested that the circuit court deny the Appellee's second Motion to

Dismiss. The circuit court granted the Appellant's request and denied Appellee's second Motion to Dismiss on August 31, 2018.

The Circuit Court for Prince George's County issued a scheduling order on September 19, 2018. The scheduling order states, inter alia:

> This order is your notice of dates and required court appearances. It may not be modified except by order of the court upon a showing of good cause. Stipulations between counsels are not effective to change any deadlines of this order. Failure to comply with all terms of this Order may result in the imposition of appropriate sanctions . . . 60 days prior to trial, the [parties] complete the following: 1. All discovery. 45 days prior to trial, complete the following: 1. File dispositive motions.

D. Discovery

On November 28, 2018, Appellant's counsel sent Appellee's counsel a first set of Requests for Admissions, Interrogatories, and Production of Documents. On February 1, 2019, Appellee's former counsel responded to the Appellant's request. Appellant's counsel emailed counsel for Appellee on March 6, 2019 regarding alleged inadequate answers to interrogatories and failure to produce requested documents and requested that Appellee and her counsel respond to the email with dates they would be available for Appellee's deposition. On March 7, 2019, Appellee's former counsel responded and requested Appellant respond to their discovery requests. Appellee's former counsel and Appellant exchanged emails about discovery from March 6, 2019 to April 3, 2019.

Appellant filed a Motion to Compel Discovery on May 9, 2019, requesting that the circuit court order Appellee to provide adequate responses to the Request for Admissions, Interrogatories, and Production of Documents. The Motion did not request Appellee be made available for deposition. Appellee's former counsel filed a Motion to Withdraw and

Strike Appearance on May 13, 2019. While Appellee's former counsel's Motion to Withdraw and Appellant's Motion to Compel Discovery was pending, notice for Appellee's scheduled deposition was sent on May 17, 2019 scheduled for May 30, 2019. Appellant filed a Motion for Sanctions on May 31, 2019 following the Appellee's absence from the scheduled May 30, 2019 deposition. Appellant asked that the circuit court enter judgment against Appellee in the case and attorney's fees.

On June 11, 2019, Appellee's former counsel's Motion to Withdraw was granted. The following day, on June 12, 2019, Appellant's Motion to Compel Discovery was granted, and Appellee was ordered to provide complete responses to Appellant's Request for Production of Documents and Answers to Interrogatories within thirty days, but the order did not include the request for the deposition.

On June 19, 2019, Appellee's former counsel sent an email to Appellant's counsel enclosing the Appellee's responses for the request for production of documents, request for admissions, interrogatories, and a notice that "[Appellee] will not be available for a deposition prior to the [t]rial date." A few days later, Appellee filed a pro se Motion to Continue Trial Dates on June 25, 2019 for more time to obtain new counsel, stating that "[Appellee] would like to ask the court to reschedule the court date . . . becau[s]e [she] just found out that my [l]awyer withdr[e]w from [her] case, and [needed] to find another lawyer." On July 10, 2019, Appellant's May 31, 2019 Motion for Sanctions was denied citing Appellee's former counsel's granted Motion to Withdraw and Appellee's need to employ new counsel.

E. Additional Continuances

On June 21, 2019, Appellant filed an Emergency Motion for Continuance after Appellant had been hospitalized due to acute renal failure. The Appellant's Emergency Motion for Continuance was granted that same week, moving the trial to August 28 and 29, 2019.

Appellee's new counsel entered his appearance on or about August 9, 2019. After Appellee's new counsel entered his appearance, Appellant's counsel forwarded an email to Appellee's new counsel on August 23, 2019, sent on June 19, 2019 from Appellee's former counsel with electronic links to him with requested discovery documents. A few days later, on August 26, 2019, Appellee's new counsel produced additional discovery documents at the Appellant's request.

Prior to the start of trial on August 28, 2019, Appellee's counsel presented Appellant's counsel with a witness list that included an unknown witness. Appellant's counsel objected to trial proceeding, requesting time to depose the unknown witness. The circuit court granted the Appellant's motion for a continuance, stating "Plaintiff needs time for deposition with Defendant[']s witness". Appellant was given an additional thirty days to depose the witness. Appellee complied and the witness was deposed on September 13, 2019. Trial was continued to September 23, 2019.

F. Jury Trial and Verdict

Trial began on September 23, 2019 in the Circuit Court for Prince George's County. At the close of Appellant's case, counsel for Appellant objected to Appellee being called as a witness in her own defense, arguing Appellee's failure to appear for her deposition

should prevent her from testifying as a penalty. The circuit court agreed that it was unfair to move forward without giving the Appellant an opportunity to depose the Appellee and gave Appellant's counsel the option to depose Appellee that evening and continue with trial the next day. Appellant declined the circuit court's offer and Appellee was permitted to testify. At the conclusion of trial on September 24, 2019, the case was submitted to the jury which ruled in favor of Appellant on a count of battery and awarded her $3000 in damages.

Appellant filed a Motion for a New Trial on October 3, 2019 based on Appellee's failure to appear for a deposition and the circuit court's denial of Appellant's Motion for Sanctions. On October 24, 2019, Appellant's motion was denied and Appellant filed this timely appeal.

I. MOTION FOR SANCTIONS

A. Parties' Contentions

Appellant asserts that counsel for Appellee provided inadequate answers to interrogatories, failed to provide documents requested for production, and the Appellee did not appear at the scheduled deposition, and thus the circuit court erred in denying her Motion for Sanctions. Appellant contends "this failure of discovery completely hamstrung Appellant's ability to prosecute her claims in this case and led to an exercise of trial by surprise." Further, Appellant asserts she "should not have been required to choose between a deposition in the middle of trial or no deposition" and instead "either a mistrial and a new trial with proper opportunity for Appellant to depose Appellee" would have been a proper sanction. Appellant argues that the circuit court's decision to deny her Motion for Sanctions

without explanation and allowing Appellee to testify "severely prejudiced" her case and constitutes an abuse of discretion requiring reversal.

Appellee contends that Appellant's Motion for Sanctions was untimely and "should be dismissed as without merit and the Appellee should be awarded the costs and expenses of defending this action." Appellee cites the Scheduling Order dated September 19, 2018, when trial was set for June 26th and 27th, 2019. The Order specified that all discovery shall be complete sixty days prior to trial. Appellee asserts "[a]t the time the deposition was noticed there were approximately forty days left until trial and arguably discovery was closed." The Order also called for dispositive motions forty-five days prior to trial. Because the Motion for Sanctions was filed twenty-six days prior to trial, Appellee contends it violated the Scheduling Order. Finally, Appellee contends that the circuit court, in exercising its discretion, had other options rather than granting a default judgment against the Appellee, as requested by the Appellant in their Motion for Sanctions.

Appellee refutes any claim of unfair surprise, asserting that Appellee's testimony was consistent with her answers to interrogatories and Appellant had ample time to depose Appellee since the case initiated in 2017 but Appellant chose to wait until the discovery deadline was near. Appellee argues that the circuit court properly exercised its discretion to pursue other options given that Appellee was without counsel when the motions were filed.

B. Standard of Review

An appellate court reviews a circuit court's decision to impose, or not impose, discovery sanctions under an abuse of discretion standard. *Dackman v. Robinson,* 464 Md.

189, 231 (2019); *Rodriguez v. Clarke*, 400 Md. 39, 57 (2007). *See also Butler v. S & S P'ship*, 435 Md. 635, 650 (2013) ("[T]he appropriate sanction for a discovery or scheduling order violation is largely discretionary with the trial court"); *Livingstone v. Greater Washington Anesthesiology & Pain Consultants, P.C.*, 187 Md. App. 346, 388 (2009) ("A trial court's discretionary rulings will be disturbed only upon a finding of an abuse of discretion."). There is an abuse of discretion where "'no reasonable person would take the view adopted by the [circuit] court' or when the court acts 'without reference to any guiding principles.'" *Santo v. Santo*, 448 Md. 620, 625-26 (2016). A new trial motion is committed to the sound discretion of the circuit court; its discretionary decision is "rarely, if ever, disturbed on appeal." *Buck v. Cam's Broadloom Rugs*, 328 Md. 51, 59, 612 A.2d 1294 (1992) (cleaned up).

C. Analysis

I. Motion for Sanctions

Appellant's Motion for Sanctions was filed on May 31, 2019, after the Appellee did not appear at the scheduled May 30, 2019 deposition. On July 12, 2019, Appellant's Motion for Sanctions was denied citing Appellee's former counsel's granted Motion to Withdraw and Appellee's need to employ new counsel.

Circuit courts have "very broad discretion" to determine whether sanctions should be imposed. *Muffoletto v. Towers*, 244 Md. App. 510, 542 (2020) (citing *Pinsky v. Pikesville Recreation Council*, 214 Md. App. 550, 590, 78 A.3d 471 (2013) (quoting *North River Ins. Co. v. Mayor and City Council of Baltimore*, 343 Md. 34, 47, 680 A.2d 480 (1996))). When discovery sanctions are imposed, a circuit court should consider the factors

outlined by the Court of Appeals in *Taliaferro v. State*, 295 Md. 376 (1983):

> [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.

Id. at 390-91; *Muffoletto v. Towers*, 244 Md. App. 510, 542 (2020). However, "it is not necessary for the court to go through a checklist and note its consideration for each factor." *Id.* (quoting *Attorney Grievance Com'n of Maryland v. Kent*, 447 Md. 555, 577 (2016)).

Appellee contends that Appellant's Motion for Sanctions was untimely, because "[a]t the time the deposition was noted there were approximately forty days left until trial and arguably discovery was closed." This court has made it clear that while scheduling order deadlines are not to be interpreted as "'unyieldingly rigid,' they should be not complacently lax either." *Asmussen v. CSX Transportation, Inc.*, 247 Md. App. 529, 548 (2020) (quoting *Naughton v. Bankier*, 114 Md. App. 641, 691 (1997)). Circuit courts should demand "at least substantial compliance, or, at the barest minimum, a good faith and earnest effort toward compliance" with the scheduling order's requirements. *Id.* (quoting *Naughton*, 114 Md. App. at 652. "Only when substantial compliance and good cause have been shown by the party unable to meet the scheduling order's deadlines does modification 'prevent injustice.'" *Id.* (citing Md. Rule 2-504(c)).

a. Substantial Compliance and Good Cause

The operative scheduling order, pursuant to Md. Rule §2-504, was issued by the circuit court on September 19, 2018. The scheduling order states, inter alia:

> This order is your notice of dates and required court appearances. It may not be modified except by order of the court upon a showing of good cause. Stipulations between counsels are not effective to change any deadlines of this order. Failure to comply with all terms of this Order may result in the imposition of appropriate sanctions . . . 60 days prior to trial, the [parties] complete the following: 1. All discovery. 45 days prior to trial, complete the following: 1. File dispositive motions.

In accordance with the original scheduling order, discovery needed to be completed on or about April 27, 2019. Under Md. Rule §2-412, notice of a deposition must be served at least ten days prior to the date of the deposition. Thus, for the deposition to be timely, notice needed to be served on or before April 17, 2019, and the deposition needed to occur on or before April 27, 2019 to comply with the scheduling order.

The notice of deposition was served upon the Appellee's former counsel on May 17, 2019 and scheduled for May 30, 2019 – well past the set date to complete of discovery. Appellant was a month late in complying with the scheduling order and did not file a motion to modify the operative scheduling order. *See, e.g., Asmussen,* 247 Md. App. at 540. While a scheduling order may be modified in the interest of preventing injustice under Rule 2-504(c), it is within the discretion of the court to do so. *Id.* at 549. The scheduling order states, "[The scheduling order dates] may not be modified except by order of the court upon a showing of good cause." However, the Appellant never gave the court the opportunity to exercise its discretion to accommodate the late deposition outside of the scheduled discovery timeframe, since the Appellant never filed a motion to modify the scheduling order.

Indeed, the Appellant and Appellee's former counsel exchanged emails about scheduling the deposition during the scheduled discovery time frame in their discussions

of discovery disclosures. While Appellant places blame on the Appellee for scheduling the deposition a month after the discovery window closed for not responding affirmatively to schedule requests in their email exchanges, Appellant had no issue in scheduling or sending the notice of the deposition and did not require the Appellee's permission to do so. Appellant could have sent the notice and scheduled the deposition for any time before the discovery deadline, but instead sent them well after discovery had closed, without filing a motion to modify the scheduling order, and failed to show the circuit court good cause for the delay, as ordered by the circuit court's scheduling order.[3] Thus, to be clear, the Appellant did not comply with the scheduling order and did not show good cause to accommodate the late discovery request.

Conversely, during the time that Appellant gave notice and scheduled the Appellee's deposition, Appellee's former counsel had an outstanding Motion to Withdraw from representing Appellee, filed on May 13, 2019 before the Notice of the Deposition was issued. Appellee did not go to the scheduled deposition and the Appellant filed a Motion for Sanctions on May 31, 2019. On June 11, 2019, Appellee's former counsel's Motion to Withdraw was granted. The next day, on June 12, 2019, Appellant's Motion to Compel Discovery was granted.

Although Appellee's former counsel's Motion to Withdraw was already granted, Appellee's former counsel responded on June 19, 2019, sending an email to Appellant's

[3] The operative scheduling order states: "This order is your notice of dates and required court appearances. It may not be modified except by order of the court upon a showing of good cause. Stipulations between counsels are not effective to change any deadlines of this order."

counsel enclosing the Appellee's responses for the discovery items encapsulated in the Motion to Compel and a response that "[Appellee] will not be available for a deposition prior to the [t]rial date." At that time, trial was scheduled for June 26-27, 2019. It is reasonable that the Appellee's counsel concluded that Appellee would not have been able to meet for the deposition in the week prior to the June 26-27, 2019 trial in light of his withdrawal and Appellant's need to find new counsel.

Following Appellee's former counsel's withdrawal, Appellee filed a pro se Motion to Continue Trial Dates on June 25, 2019 for more time to obtain new counsel, stating that "[Appellee] would like to ask the court to reschedule the court date . . . becau[s]e [she] just found out that [her] [l]awyer withdr[e]w from [her] case, and [needed] to find another lawyer." Concurrently, Appellant filed an Emergency Motion for Continuance after Appellant had been hospitalized for a health issue and the trial was continued to August 28, 2019.

On July 10, 2019, Appellant's May 31, 2019 Motion for Sanctions was denied citing Appellee's former counsel's granted Motion to Withdraw and Appellee's need to employ new counsel. The circuit court considered Appellee's former counsel's withdrawal and its effect on the Appellee's legal representation, stating:

> "[Appellant] filed a Motion for Sanctions on May 31, 2019 and [Appellee's] Counsel filed a Motion to Withdraw on May 19, 2019. [Appellee's] Counsel's Motion to Withdraw was granted by the Honorable John P. Davey on June 11, 2019 and [Appellee] was notified to employ new counsel. Upon consideration of [Appellant's] Motion for Sanctions, it is this 10[th] day of July, 2019 by and through the Circuit Court for Prince George's County, Maryland. ORDERED, that the [Appellant's] Motion be and are hereby, DENIED."

Thus, the circuit court cited the concurrent issue of the status of the Appellee's legal representation in the Order and the need to employ new counsel at the time of the deposition, as the basis of denying sanctions.

The circuit court has broad discretion in to impose, or not impose, discovery sanctions under an abuse of discretion standard. *Dackman v. Robinson,* 464 Md. 189, 231 (2019); *Rodriguez v. Clarke*, 400 Md. 39, 57 (2007). *See also Butler v. S & S P'ship*, 435 Md. 635, 650 (2013). While Appellee did not show up to the deposition on May 30, 2019, and did not comply with the notice of deposition, the deposition was scheduled well outside the discovery period set by the circuit court in their scheduling order. Moreover, good cause for the lack of compliance reasonably could be found by the circuit court considering the circumstances the Appellee faced with the withdrawal of her former counsel. Appellee's former counsel cited irreconcilable differences with the client in their Motion to Withdraw and the Appellee consistently testified that communications between herself and former counsel were strained throughout the duration of former counsel representing Appellee.

In light of the foregoing facts, this Court finds the circuit court's decision to decline sanctions entirely reasonable and not an abuse of their discretion. Finally, the circuit court need not provide a detailed analysis of the *Taliaferro* factors in their decision to deny sanctions and did not err in not discussing the *Taliaferro* factors. *Watson v. Timberlake*, 251 Md. App. 420, 440 (2021). Thus, this Court affirms the circuit court's decision to deny the Appellant's Motion for Sanctions requesting that the circuit court enter judgment against Appellee in the case and attorney's fees.

b. Appellee's Testimony at Trial

Appellant also raises the issue of allowing the Appellee to testify at trial after not appearing for a deposition. The operative scheduling order in this case, inter alia, outlined clearly that the notice of dates and required court appearances for discovery "may not be modified except by order of the court upon a showing of good cause." This Court, in *Watson v. Timberlake*, stated in determining to include late-disclosed evidence, such as testimony, is deciding whether to modify a scheduling order's discovery deadlines to accommodate the late disclosure. *Watson*, 251 Md. App. at 434.

> Accordingly, in analyzing the *Taliaferro* factors or the "substantial compliance" and "good faith" necessary to support a scheduling order modification, circuit courts often walk the same factual ground. *Asmussen,* 247 Md. App. at 548-49.
>
> But just as we require substantial compliance (and good faith in complying) with a Scheduling Order's discovery deadlines, we also expect parties to resolve their known discovery disputes promptly, either informally or by using the mechanisms available under the Scheduling Order and discovery rules. *Food Lion, Inc. v. McNeill*, 393 Md. 715, 733-35 (2006); *Dackman v. Robinson*, 464 Md. 189, 233-37 (2019). *See, e.g.*, *Asmussen*, 247 Md. App. 529 (2020); *Lowery v. Smithsburg Emergency Medical Service*, 173 Md. App. 662 (2007).

Watson, 251 Md. App. at 434.

The discovery window, plus the additional continuances delaying trial from June 26-27, 2019 to September 23-24, 2019 granted the Appellant ample opportunities to renew their request to reopen discovery to depose the Appellee and schedule the deposition before the trial. The Appellant still had an abundance of time before the trial to depose the Appellee as a result of the multiple continuances resulting in a three-month delay. Most notably, the circuit court granted the Appellant's motion for a thirty-day continuance to

depose another witness before trial, in which the Appellant could have also requested to depose the Appellee.

Moreover, the circuit court afforded the Appellant an additional opportunity to depose the Appellee during trial. The circuit court gave Appellant's counsel the option to depose Appellee that evening and continue with trial the next day. Appellant declined and Appellee was permitted to testify. Appellant argued that she was prejudiced by the inclusion of the Appellee's testimony, but where the jury found for Appellant on a count of battery and awarded damages, this Court disagrees.

Additionally, Appellant argued in their brief and at oral arguments that a single day continuance to depose the witness was not enough and would cause severe prejudice, citing the weekend continuance in the *Taliaferro* case deemed as insufficient time in support of Appellant's argument. We do not agree. In the *Taliaferro* case, the defendant attempted to introduce testimony of an alibi witness whose identity was disclosed to the State for the first time on the last day of trial and presented no excuse for their failure to comply with the discovery rules. *Taliaferro,* 295 Md. at 378. The circuit court considered a short continuance over a weekend to allow the State to investigate the "last minute" alibi witness but decided to exclude the testimony due to the late disclosure and lack of good cause. *Id.* at 393-394. The circuit court held that the State would have been severely prejudiced because the State would have had not had a fair opportunity to investigate the witness' background or the alibi. *Id.* at 394. Thus, the Court of Appeals held that the circuit court was within its bounds of discretion to exclude the testimony. *Id.* at 398.

In the current case, unlike in *Taliaferro*, as previously discussed, the Appellee had

good reason for the discovery issue and delay, posed by the withdrawal and lack of counsel for the Appellee. The circuit court cited the lack of counsel specifically as the reason to deny sanctions. Moreover, Appellee also filed a continuance for the trial to obtain counsel.

Unlike the *Taliaferro* case, Appellant of course knew of the Appellee's identity as a party to the case and had many opportunities, in light of the continuances, to depose the Appellee before the trial. As a result, the one-day continuance to depose the Appellee during trial was only one of many opportunities for Appellant to depose the Appellee following the originally scheduled deposition.

While the Appellant did not comply with the scheduling order by scheduling the deposition well outside of the allotted discovery timeframe, in the same breath, the Appellant argues she did not have the time to prepare to depose the Appellee and that the discovery failure led to an "exercise of trial by surprise". The discovery rules and scheduling order are in place to help circumvent such aforementioned "trial by surprise" and are "critical to the circuit court's assignment of actions for trial." *Watson*, 251 Md. App. at 432. However, Appellant did not comply with the scheduling order and did not file a Motion to Modify the Scheduling Order. Secondly, Appellant was granted a thirty-day continuance before trial to depose another witness, and thus had ample time to depose the Appellee, but did not do so. Finally, the circuit court gave Appellant another opportunity to depose the Appellee during trial, and Appellant chose not to do so and proceed with the trial. Thus, any "exercise of trial by surprise" was a product of the Appellant's own actions, or lack thereof.

The original discovery period and the continuances granted by the court in this case

offered the Appellant enough time to renew their discovery request and prepare for Appellee's deposition. Thus, this Court holds that the circuit court did not err when permitting Appellee to testify at trial.

CONCLUSION

This Court does not agree with Appellant's contention that it was an abuse of discretion to decline the Motion for Sanctions and to allow the Appellee to testify. The circuit court gave Appellant yet another opportunity for a continuance to depose Appellee during trial, and Appellant declined. Finally, in accordance with the facts stated above, a new trial was not warranted because the circuit court was acting within its discretion in declining the Appellant's Motion for Sanctions and allowing Appellee to testify. Accordingly, this Court affirms the judgment of the Circuit Court for Prince George's County.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.