Circuit Court for Anne Arundel County
Case No. 02-C-14-190469

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2055

September Term, 2018

MATTHEW PHILLIP PLACELLA

v.

REBECCA MARTIN PLACELLA

Wright,
Graeff,
Nazarian,

JJ.

Opinion by Graeff, J.

Filed: April 18, 2019

This appeal arises from the Judgment of Absolute Divorce issued by the Circuit Court for Anne Arundel County, and the decisions regarding custody of the parties' child, J., and child support.[1] With respect to custody, the court awarded Rebecca Placella, appellee, sole legal custody and primary physical custody of J. and awarded supervised visitation to Matthew Placella, appellant. Supervised visitation, with conditions, would be in place until March 1, 2019, and after that, visitation would be unsupervised.[2]

On appeal, Mr. Placella presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court err by not permitting the parties to conduct discovery after this case was remanded from this Court?

2. Did the circuit court err by not permitting Mr. Placella to amend his complaint?

3. Did the circuit court err by not appointing a best interest attorney for J.?

4. Did the circuit court err by ordering that Mr. Placella have supervised visitation with J.?

[1] The initial order was issued on April 12, 2018. On August 16, 2018, the circuit court entered an order modifying the Judgment of Absolute Divorce. These modifications were either technical (e.g., the correction of a typographical error) or not relevant to the issues on appeal.

[2] As discussed, *infra*, the supervised visitation allowed short times where Mr. Placella could transport the child without supervision. The order also stated:

> At any time, until March 1, 2019, [Ms. Placella] may, up to one time per month, demand that [Mr. Placella] take a drug test. If [Mr. Placella] fails to take a drug test within twenty-four hours then supervision will be suspended. If [Mr. Placella] tests positive for any illegal drugs then visitation will be suspended and will not resume until [Mr. Placella] can provide a showing of six months of clean tests[.]

5. Did the circuit court err by incorporating a *pendente lite* order that pre-dated the original Judgment of Absolute Divorce?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

This is Mr. Placella's second appeal to this Court. For necessary background, we will briefly summarize the events leading up to the previous appeal, what happened on appeal, and the events that led to this current appeal.

I.

The History between the Parties[3]

On April 17, 2004, the Placellas were married. In June 2012, the parties' son was born.

On August 31, 2014, the Placellas separated. On September 8, 2014, Mr. Placella filed a Complaint for Limited Divorce in the Circuit Court for Anne Arundel County.

On December 11, 2014, Ms. Placella filed a counter complaint for an annulment, sole custody of their child, and child support, which she subsequently amended on April 22, 2015, to add an alternative claim for limited divorce. Ms. Placella also requested that the circuit court "[e]stablish a supervised visitation schedule for [Mr. Placella]," and order him "to engage in supervised drug testing."

[3] Much of the history recited is from this Court's unreported opinion addressing Mr. Placella's appeal from the initial Judgment of Divorce. *Placella v. Placella*, No. 412, Sept. Term, 2017 (filed May 22, 2017).

At a scheduling conference on March 4, 2015, the parties agreed that Mr. Placella would have visitation with J. on Sunday. On May 4, a *pendente lite* hearing with a magistrate occurred, and the magistrate recommended Sunday visitation. That same day, the magistrate issued a Report, Recommendations and Findings of Fact.

On July 6, 2015, the parties appeared before the circuit court for a hearing on Ms. Placella's exceptions to the magistrate's report. The court ultimately agreed with the magistrate's recommendation regarding visitation, but it found that the magistrate's decision regarding child support was clearly erroneous, and it ordered that Mr. Placella pay child support in the amount of $1,617.00 per month to Ms. Placella "on a pendente lite basis." It ordered "that the child support award of $1,617.00 is retroactive to December 11, 2014," and it found that Mr. Placella owed "child support arrearages in the amount of $6,735.00 from the period from December 11, 2014[,] through May 4, 2015."

II.

The First Trial

On March 2, 2016, the morning of the first scheduled day of trial, Ms. Placella and her attorney were present, but Mr. Placella and his counsel were not. The court advised Ms. Placella that it had received emails from Mr. Placella and his attorney that morning. Mr. Placella emailed the court directly, stating that he was self-represented but "unable to attend" the first day of the trial "due to illness." He stated that "this is scheduled as a three-

day hearing," and he could be present the next day, March 3, 2016.[4] Mr. Placella's attorney also sent an email, dated March 1, 2016, stating that Mr. Placella had fired him that day and told him not to attend the trial beginning on March 2.

The court noted that "all matters must be filed properly and the Court cannot consider ex parte communication." When it was determined that no witnesses for Mr. Placella were present, the court stated that no postponement had been granted, and it would proceed on Ms. Placella's amended complaint for absolute divorce.[5]

At the close of Ms. Placella's case, which concluded on March 2, 2016, the same day that the trial began, counsel for Ms. Placella made an oral motion to dismiss Mr. Placella's complaint, which included a request for alimony. The court granted the motion because "the plaintiff has failed to appear and . . . present any testimony."

The court then ruled from the bench. The court granted Ms. Placella an absolute divorce, noting that the parties had been separated since August 31, 2014, which entitled Ms. Placella to a divorce based upon one year of separation. After a lengthy discussion of the factors relevant to custody, the court found "that it is in the best interest of the minor child that the mother be awarded sole legal and sole physical custody of the minor child."

[4] The court's administrative assistant advised that Mr. Placella had also called the morning of March 2, 2016, stating that he was sick and could not attend the first day of trial.

[5] The court initially denied Ms. Placella's motion to dismiss Mr. Placella's complaint for a limited divorce, noting that the case had been called, the court would take testimony on Ms. Placella's complaint, and if Mr. Placella wanted to "show up" in the middle of the testimony, "maybe we'll start taking testimony" on his complaint.

It granted Mr. Placella supervised "visitation with the minor child from Sunday at 10:00 a.m. to 8:00 p.m.," stating that "the child may not leave the State of Maryland with the father," and the "visitation shall be suspended until the father has complied with any urine tests which have been ordered and will be ordered by the court. Or, it shall remain suspended unless the mother approves visitation." The court ordered Mr. Placella to pay child support in the amount of $1,957 per month. The court also awarded Ms. Placella $16,838.25 in counsel fees.

III.

The First Appeal to this Court

Mr. Placella appealed, raising several issues. We agreed with Mr. Placella on the first issue, i.e., that the circuit court erred in conducting the trial in his absence and the absence of his attorney.

We explained that, the general rule is that the determination whether to grant a motion for a continuance generally is within the trial court's discretion. *Touzeau v. Deffinbaugh*, 394 Md. 654, 670 (2006). In "exceptional situations," however, it is an abuse of discretion to deny a request for a continuance. *Id.* at 671. *Accord Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 250 (2011).

We concluded in an unreported opinion issued on May 22, 2017, that this was a case where the refusal to grant a continuance constituted an abuse of discretion. Accordingly, we vacated the judgment of the circuit court and remanded the case for further proceedings. *Placella*, slip op. at 14.

IV.

Motions on Remand

Mr. Placella filed several motions. As discussed, *infra*, he filed a Motion to Appoint a Best Interest Attorney, a Motion to Extend the Discovery Deadline, and a Motion for Leave to File Amended Complaint. The court denied these motions.

V.

The Trial after Remand

A.

Testimony

On December 5, 2017, the second trial began.[6] Mr. Placella testified that he had been employed by Citibank North America, but he lost his job on March 15, 2016. Since that time, he had made "considerable efforts to try and to find employment," including applying to "over 30 banks," as well as jobs in other industries, including retail. According to his W-2s, he earned $73,000 in 2011, $74,000 in 2012, $79,000 in 2013, and $83,000 in 2014. In 2015, Mr. Placella earned in excess of $90,000, and although he was fired March 15, 2016, his earnings for 2016 totaled close to $42,000. Mr. Placella testified that he had not paid child support since he lost his job in March 2016.

Mr. Placella also testified regarding his mental health. From approximately October 2007 until "the turn of" 2016, he had received treatment for depression and bipolar

[6] The trial occurred over three days: December 5, 2017, December 6, 2017, and January 18, 2018.

disorder. Although medications prescribed for these conditions initially helped him, there came a time when he felt they no longer helped him. He stopped taking his medications in March 2016, and he testified that he felt "fine" and in "good mental health" as of the date of the trial. No doctor had told him that it was appropriate to stop taking his medication.

Mr. Placella stated that, as of the date of trial, he was not taking illegal substances, though he had smoked crack cocaine between December 2011 and July 2014. He had been taking regular drugs tests, but between June 2015 and May 2016 he did not take any tests because he could not afford them and there was not a facility where he could get the test done within the time allotted "for a lunch or a break during the business day." Mr. Placella stated that he had not used illegal drugs since July 3, 2014.

Mr. Placella's supervised visitation with J. occurred on Sundays from 10:00 a.m. to 8:00 p.m. When he spent time with J., they would do various activities, such as playing with Legos and fishing. He testified that he was unable to call his son, and had not spoken on the phone with J. since his fourth birthday. He stated that he would like to have visitation that allowed for overnight stays, vacation, certain holidays, the ability to take J. to museums in Washington, D.C., and the ability for him to take J. to see family in Florida. When asked what custody arrangement he felt would be in J.'s best interest, Mr. Placella

stated that "some level of" joint legal and physical custody would be appropriate. He stated that he would be willing to cooperate with Ms. Placella to make decisions for J.[7]

Mr. Placella did not have "concerns about [Ms.] Placella as a parent per se," as she was "a very loving person" and "a good mother" to J. Prior to their separation, however, their "norm" was "daily alcoholism and marijuana use." And he stated that, when Ms. Placella excessively used alcohol, "things can come out of the mouth."

Mr. Placella was living in his parents' home at the time of trial. The home was equipped with five bedrooms and 2.5 bathrooms. Although the house was listed for sale, it had been on the market since approximately 2005.

During their marriage, Mr. Placella helped Ms. Placella with her business as an orthopedic physical therapist.[8] Although he received a W-2 indicating that he was paid by the business, he would immediately transfer any money he received to Ms. Placella. Additionally, he would share household expenses with Ms. Placella during the marriage.

Dawn Haag-Hatterer, who was admitted as an expert witness in human resource management practices, testified regarding Mr. Placella's difficulty obtaining employment after he lost his job in March 2016. She stated that the national unemployment rate at the

[7] The court asked if, since the entry of the July 20, 2015, *pendente lite* order, Mr. Placella had ever filed a motion for modification of the custody order. Mr. Placella responded that he had not.

[8] Ms. Placella testified that Mr. Placella helped with her practice when he was previously unemployed, prior to getting his job at Citibank.

time of trial was 4.1 percent, "which is quite low, so there should be a lot of viable opportunities" for Mr. Placella to find employment. She noted, however, that

> As a best practice, all employers will conduct a thorough candidate review. For the most part that may include a criminal background check, could include a drug screen[,] but it also includes a check on social media and on any available public documentation such as through the Maryland Judiciary Case Search.

And she stated that the unreported opinion issued by this Court in May 2017, which noted the allegation that Mr. Placella had used drugs, would be "problematic for a hiring manager."

On cross examination, counsel for Ms. Placella noted that this Court's opinion was issued in May 2017, "some 14 months after Mr. Placella left his job at Citibank." When Ms. Haag-Hatterer was asked how she "explain[ed] the difficulty that he had for th[e] 14 months [prior to] the decision[,]" she stated that there were "other results that . . . popped up on the judiciary research."

The court then had the following exchange with Ms. Haag-Hatterer:

> THE COURT: The best – I want to make sure I understand this because obviously it's relevant to this case and very relevant. It's your expert opinion that if someone says something in a divorce negative about the other person, in this case drug use for a former person in the banking industry, that that person could never be employed in the banking industry again because of an allegation that may have turned out to be false?
>
> MS. HAAG-HATTERER: No. That's not – my opinion is not [that] they are never going to be employed in the banking industry.
>
> THE COURT: Then what is your opinion, [because] that's what I'm hearing from you.

> MS. HAAG-HATTERER: My opinion is that a resume of this nature and his qualifications, if I had a stack of 10 of these resumes and they are all the same and I did my research as a human resources professional and I find that there's an allegation of drug use, as a hiring professional this resume is going to go down to the bottom of the pile.

Ms. Placella also testified on her own behalf. She stated that she consumed alcohol "a few nights a week," possibly having "a glass of wine with dinner" or "a cocktail after work with dinner."[9] Ms. Placella admitted to smoking marijuana in the past, stating that, before she and Mr. Placella were separated, he "smoked on a daily basis," and she "only smoked on weekends." After J. was born, she did not smoke because she was nursing, and since his birth, she had only smoked "maybe two or three times." She never smoked marijuana in front of J., and she neither smoked nor drank during pregnancy.

Since she and Mr. Placella separated on August 31, 2014, J. had lived with her in her home, except for a period of six months when she and J. lived with her older sister.[10] Ms. Placella is an orthopedic physical therapist, and she conducts her business from the basement of her home. Beginning a week after J. was born, she hired a nanny so she could continue to see patients during the day. Over the course of their marriage, Mr. Placella's

[9] Ms. Placella's friend, Christy Stouffer, testified that she did not believe Ms. Placella had a problem with alcohol.

[10] She and Mr. Placella resided in that home beginning in September 2008 until their separation. She and J. moved out for a brief period of time starting September 30, 2014, because her lease on the home expired and the owners wanted to sell the home. She and J. lived with her sister for six months in Chesapeake Beach, Maryland, then returned to the Severna Park home when her parents were able to purchase it. At the time of trial, she leased the house from her parents.

involvement with J.'s care lessened, and she "could count on him sometimes and other times not at all."

After their separation, per a March 14, 2015, Scheduling Order, Mr. Placella began to have supervised visitation with J. every Sunday from 8:00 a.m. to 10:00 p.m. This visitation schedule continued until trial. Although visitation sessions initially were "frequently canceled," since the summer of 2016, Mr. Placella had consistently exercised his visitation rights under the order.

Ms. Placella stated that she did not have any objection to J. being able to speak on the phone with Mr. Placella on a regular basis, but she believed that Mr. Placella should not have physical custody of J. because she did not feel he was a "fit and proper parent." She believed that Mr. Placella should be a part of J.'s life, but all visitation should continue under supervision. She objected to Mr. Placella having overnight visitation with J. and requested that the court not order a different visitation schedule than what was already in place.[11] Ms. Placella did not believe that Mr. Placella was "a physical danger" to J, but she believed that the current visitation schedule allowed for enough of a relationship between J. and his father.

As to making decisions regarding J., Ms. Placella testified that, even prior to her and Mr. Placella's separation, she made the majority of decisions regarding their son. She did not believe that she and Mr. Placella could have joint legal custody of J., even if Mr.

[11] Ms. Placella did concede, however, that it would be in J.'s best interest for him to meet his extended family in Florida.

Placella was drug free, because she did not think they could "communicate well enough to make decisions together."[12] She contended that she should continue to have sole custody of J.

Ms. Placella testified, consistent with Mr. Placella's testimony, that he had not paid any child support since March 2016. Even prior to March 2016, Mr. Placella had failed to pay some of his required child support. Counsel for both parties agreed that, between the July 20, 2015, *pendente lite* order from the circuit court and the date of the trial, Mr. Placella had paid a total of $12,495.67 in child support. Counsel for Mr. Placella contested whether Mr. Placella was required to pay the $1,617 monthly payment contained in the July 20, 2015, *pendente lite* order through the date of trial, but stated that, if the court found that he was required to pay that amount, Mr. Placella would currently owe $47,333.33.[13]

Ms. Placella's gross earnings were $85,157.44 in 2017, $85,112 in 2015, and $114,147 in 2016. Ms. Placella attributed the extra earnings in 2016 to a particularly lucrative patient with extensive injuries. At the time of trial, her business was suffering because she did not have enough patients, so she had begun marketing her practice. Since she and Mr. Placella had separated, she had begun to seek other means of income. She

[12] Ms. Placella testified that she believed there was "a chance" that Mr. Placella was still using illegal substances.

[13] In calculating this figure, Mr. Placella's counsel multiplied $1,617 by 37 months to arrive at $59,829, then subtracted the $12,495.67 that Mr. Placella had already paid. According to Ms. Placella, there had been no payments since December 2014, so the 37-month calculation accounted for non-payment between December 2014 and January 18, 2018, or the last day of the trial.

began teaching swim lessons and doing flower arrangements for weddings, which allowed her to occasionally earn some extra money. Her financial statement indicated that she spent, on average, $1,242 per month on daycare for J. After Mr. Placella lost his job at Citibank, she began paying for J.'s health insurance, but as of January 2018, neither she nor J. had health insurance because she could not afford it. She had debt in the amount of $55,000 to $65,000.

Several people testified regarding Ms. Placella's character. Mr. Ronald Schronce stated that Ms. Placella "does everything a parent should do," and he could not "see a better person that could take care of" J. Kayleigh Hildebrand, J.'s prior nanny, said that Ms. Placella was an "exceptional" mother and a fit person to have custody of J. Theresa Gallo, Ms. Placella's sister, testified that her sister was a "very involved, considerate, thoughtful parent who consistently put [J.'s] needs above her own."

David Martin, Ms. Placella's brother, also testified. When asked to describe Ms. Placella as a parent, he stated that he believed that she was "the only parent," and that Mr. Placella was not a fit and proper person to have custody of J. Mr. Martin had periodically spent the night at Mr. and Ms. Placella's home prior to their separation. He had seen Mr. Placella take care of J., and "pretty much every time that [he] saw [Mr. Placella] take care of [J.] in the morning, he'd be asleep on the couch while the kid was running around."

Ms. Placella's mother, Melba P. Griffin-Martin, also testified. Prior to the parties' separation, her opinion of Mr. Placella was that he was "more like a friend than a parent,"

but she "thought he was a reasonably good dad." She believed that her daughter was "a wonderful parent."

Mr. Placella's mother, Davina Placella, testified that she did not have any concerns about Mr. Placella as a father, and she believed Ms. Placella was a good parent. She testified that, as of the date of the trial, Mr. Placella was regularly taking drug tests, for which she paid.[14] Mr. Placella took urine tests weekly, and hair follicle tests monthly. Mr. Placella had been living with his parents since April 2016. Mrs. Davina Placella testified that her son agreed to reimburse his parents "for the room and board, all attorney's fees, all urine and hair tests" when he was financially able to do so.

B.

Motion for Judgment and Closing Arguments

At the close of all the testimony, counsel for Mr. Placella made a motion for judgment regarding a Petition for Contempt for Failure to Pay Child Support that Ms. Placella had filed on September 7, 2017. In this petition, Ms. Placella referred to the July 20, 2015, *pendente lite* order from the circuit court requiring Mr. Placella to pay a set sum each month, and she asserted that, because the original judgment of absolute divorce was vacated, the July 20, 2015, *pendente lite* was still in effect. She argued that Mr. Placella's failure to pay any money since March 2016 was a "willful violation of the circuit court's

[14] Mr. Placella testified that drug testing cost $298 per month, and his parents paid for it.

order and demonstrated Mr. Placella's contemptuous disregard for the power and authority of [the court]."

Counsel for Mr. Placella argued that the July 20, 2015, *pendente lite* order "expired" when Ms. Placella was granted the original judgment of divorce. Though that judgment was "subsequently vacated by the Court of Special Appeals," the "Court of Special Appeals did not reinstitute the *pendente lite* order." As such, counsel for Mr. Placella argued: "[T]here is no order from which Mr. Placella could be in contempt of."

Counsel for Ms. Placella responded:

> Your Honor, I do not believe there is anything in the Court of Special Appeals' opinion that once [the] judgment of absolute divorce was reversed, that does not take the Court – the case back to the status quo. The status quo was that there was a pending PL order, pending a final resolution of the case. We thought we had it two years ago. We didn't. So it goes back to what was in existence.
>
> There is – I am not aware of any statutory or case law that says that the status quo changes, you know, when the Court completely reverses a decision that the status quo doesn't – that, you know, it – that any existing court orders are changed. Certainly, Mr. Placella believed the orders were in – you know, still in existence because he certainly followed the custody order. He certainly followed, you know, all of the other – all the other pieces of it, the custody, the visitation, all of those other pieces.

The circuit court stated it would reserve on the motion for judgment until it determined what amount of child support it would grant.

In closing, counsel for Mr. Placella argued that Ms. Placella had income of $130,000, and Mr. Placella had no income, despite applying for jobs. He requested that Mr. Placella have unsupervised visitation and the requirement for drug tests end. With respect to Ms. Placella's petition for contempt, counsel asked that, rather than calculating

arrearages from December 2014, as the amended *pendente lite* order did, the court calculate child support arrearages from the time that Mr. Placella lost his job, March 15, 2016.

Counsel for Ms. Placella asked the court to grant Ms. Placella an absolute divorce based on one year of separation and grant Ms. Placella primary physical custody and sole legal custody of J. She also asked the court to impute income to Mr. Placella "of less than what he was earning at his last job, but still a substantial amount of $90,000."

C.

The Circuit Court's Ruling

On February 28, 2018, the circuit court ruled from the bench. It first granted Ms. Placella's request for an absolute divorce based on more than a year of separation.

Regarding the issue of custody and visitation, the circuit court considered the factors set forth in *Montgomery County Dept. of Social Services v. Sanders*, 38 Md. App. 406 (1977); and *Taylor v. Taylor*, 306 Md. 290 (1986), and it awarded Ms. Placella sole legal custody and primary physical custody of J. The court found that Mr. Placella's "inability to financially support the child, [his] ongoing arrears, are facts that show [he] currently [did] not have the ability to support the child on a shared basis."[15]

The court then turned to Mr. Placella's visitation. It stated that, while the child was in school, Mr. Placella would have visitation "on an every other weekend basis . . . from Friday after school until Sunday evenings at 6:00 p.m." Once school ended, and

[15] The court found that Ms. Haag-Hatterer's testimony about Mr. Placella's employment opportunities was not credible, and it stated that it did not believe that there was no place that he could find a job.

"[p]rovided there has been no indication of continued drug use," Mr. Placella would get visitation "from Thursday at 6:00 until Monday at 6:00 every other week, plus "two non-consecutive weeks of summer vacation with the child."

The court then imposed conditions of visitation:

> [Ms. Placella] may, at her choosing, for a period of one year, require [Mr. Placella] to take random drug tests through a licensed Maryland facility no more than once a month. And [Ms. Placella] cannot require them to be [done] while [Mr. Placella's] on vacation with the child. [Mr. Placella] will have to have those tests taken within 24 hours of [Ms. Placella] notifying him that [she is] exercising [her] right to the test. If [Mr. Placella] refuses or fails to take the test for any reason, visitation is suspended until [he] take[s] and provide[s] a clean test. [Mr. Placella] is to sign any paperwork necessary to have the results sent directly to [Ms. Placella]. And that's for a one year time period.
>
> If during that time [Mr. Placella] relapses and goes back to illegal drug use, visitation is suspended until [he] can provide a showing of six months of clean tests. . . .
>
> Once school starts again in the fall, visitation will go back to Friday after school until Sunday at 6:00 p.m. And will have a Wednesday after school visit until 8:00 p.m. each week.

The court stated that supervised visitation would continue for one year. After that, it would expire. Additionally, the court set the visitation schedule so that the parties would share holidays with J.

As to division of property, the court determined that the parties would "keep and maintain the property that [was] in their sole and separate possession. There [would] be no adjustments." The court did not award attorney's fees to either party.

The circuit court then discussed child support. The court imputed an income to Mr. Placella of $10 an hour, $1,733 a month. Taking into account $1,243 a month for work-related childcare and $157 a month for health insurance relating to the child, the court

calculated monthly child support of $592, accounting from January 1, 2017. With respect to arrears, the court stated:

> [T]here was an order in place that provided for child support at a rate of $1,617 a month. Ordinarily that would have expired at the time that the Court entered the judgment of absolute divorce. Since the Court made a determination, the Appeals Court, determined to vacate the judgment of divorce in its entirety, the Court finds that the pendente lite order remained in place. And [the July 20, 2015] order therefore was effective through December of 2016. . . . So there will be an arrears based on $1,617 a month up through that time per [the July 20, 2015] order. And then $592 accounting from January 2017.[16]

VI.

Motion to Alter or Amend Judgment or for New Trial

On April 20, 2018, Mr. Placella filed a Motion to Alter or Amend Judgment or for New Trial. Mr. Placella argued, among other things, that: (1) the circuit court erred in denying his pre-trial motions to extend the discovery deadline, to amend his complaint, and to appoint a best interest attorney; (2) because the court found no evidence of "real harm to the child," the judgment "should be amended to immediately allow the unsupervised visitation with his minor child;" and (3) the court erred in its child support award by

[16] In the written Judgment of Absolute Divorce issued on April 12, 2018, the court calculated the arrears as follows:

January 1, 2017- March 1, 2018	
(15 months @ $592 per month)	$8,880.00
December 2014 through-December 31, 201[6]	
(24 months at $1617 per month)	$38,808.00
Less Payments made	($12,495.67)
Total Arrears	$35,192.33

"simply incorporating the *pendente lite* order instead of making the required findings of facts regarding the parties' actual income, actual day care expense, etc., from the date of the initial pleading."

Ms. Placella filed an opposition to the motion. She stated that the denial of Mr. Placella's pre-trial motions "had no negative impact whatsoever" on Mr. Placella and provided "no basis for a new trial." Regarding supervised visitation, Ms. Placella contended that the circuit court did the "balancing that was required by the cases," and requiring that "supervision continue for a limited period of time while [Mr. Placella] presumably experiences parenting the minor child on a more extensive basis" is not a reason for a new trial. As to the effective date of child support, Ms. Placella maintained that, once the Court of Special Appeals vacated the original judgment of absolute divorce, "the existing Pendente Lite Order remained in effect."

On July 25, 2018, the circuit court held a hearing on Mr. Placella's Motion to Alter or Amend Judgment or for New Trial. As to the question of supervised visitation, the circuit court noted that "the restrictions that were put in place" for Mr. Placella were "significantly less than what had been in place previously," and that the court believed, in light of Mr. Placella's "self-declared use and abuse of drugs," that supervised visitation for a period of one year was appropriate.

Regarding the pretrial rulings, the circuit court stated that Mr. Placella was beyond the timeframe that would have allowed him to amend a complaint, and that Mr. Placella had never conducted discovery prior to the first appeal. The court continued:

"I don't believe, in any stretch of the imagination, that [Mr. Placella] was precluded from providing any evidence that he wished to provide during his testimony or that of the individuals who testified on his behalf." The court stated that counsel could not "point to anything" to make the court "believe that [Mr. Placella] was harmed in not having discovery." As to the request for a best interest attorney, the court stated that counsel failed to give "any reason to say that there was a need for one."

As to the effective date of child support, the circuit court stated that "the judgment of divorce, having been vacated, puts back into place the [July 20, 2015] PL order."

The court amended the judgment regarding a typographical error and to indicate that alimony was denied to both parties.[17] It denied Mr. Placella's motion for a new trial.

DISCUSSION

I.

Mr. Placella contends that the circuit court erred in denying his request to extend the discovery deadline. Although he acknowledges that "a significant amount of time had passed since the deadlines had expired," he asserts that his "failure to conduct discovery and amend his [c]omplaint was more technical than substantial because the case had effectively started anew when it was remanded to the [c]ircuit [c]ourt." He contends that "[e]xtending the discovery deadline was necessary to afford the [circuit court] an opportunity to fully and fairly decide the best interests of the minor child."

[17] The court also made other amendments that are not at issue in this appeal.

Ms. Placella contends that the trial court did not abuse its discretion by denying Mr. Placella's "broad, unspecified" motion to extend the discovery deadline. She notes that Mr. Placella "never propounded any discovery" prior to the first trial, and she argues that, in his motion filed on remand, he failed "to specify what discovery he required." She asserts that Mr. Placella had "sufficient opportunity and information to prepare for trial," and he cannot identify any way "his ability to present his case was harmed" by the court's denial of his motion.

A.

Proceedings Below

On August 14, 2017, Mr. Placella filed a Motion to Extend the Discovery Deadline. Mr. Placella acknowledged that the "pre-appeal scheduling order in this case provided a discovery deadline of May 29, 2015," and that he, "while represented by other counsel, failed to conduct discovery within the time set forth in the scheduling order." He contended, however, that "[c]ircumstances of the parties and the minor child have changed significantly in the more than two and one half years since the discovery deadline closed," and if the deadline was not extended, he would "have no opportunity to gather evidence to present information to the Court related to the best interests of the child."

Ms. Placella filed a response, asserting that Mr. Placella's motion should be denied. Her response provided as follows:

> 1. Counsel is correct that this case is on remand from the Court of Special Appeals after a trial before this Court in March 2016. In the Court of Special Appeals['] Opinion, the Court remanded the case for a new trial because the Plaintiff did not appear for the original trial.

2. There is nothing in the Court's Opinion permitting this Court to, in effect, start the case over from the beginning and allow the parties to utilize all of the services of the Court and to start discovery from the beginning.

3. When the case was filed originally, a Scheduling Order was issued by the [c]ourt and there was a period of discovery. The fact that [Mr. Placella] and/or his prior counsel chose not to engage in discovery is irrelevant.

4. Nevertheless, [Mr. Placella] has had ample opportunity to understand the issues in this case. First, he has received all of the financial records of [Ms. Placella], including in late 2016 when [Mr. Placella] filed a Petition to Modify. In addition, although he did not appear at the trial, he has a transcript of the trial from March 2016 with complete testimony from [Ms. Placella] as to her position on issues of custody, child support[,] and marital property.

5. Further, except when he has chosen not to exercise his rights, [Mr. Placella] has had regular visitation with the minor child. There is nothing in any of the Court Orders preventing him from inquiring about the health and welfare of the minor child. He has just never chosen to do so, basically since the minor child was born.

6. This case is set for trial in December 2017, pursuant to the remand from the Court of Special Appeals. This Court has no authority to reopen the case and treat it as a newly filed case.

7. Prior to the trial in March 2016, [Mr. Placella] listed that he was going to bring 25 witnesses to the trial, although neither he nor the witnesses appeared. He was obviously prepared at that time, however, to present his case. There are no allegations that anything has changed since March 2016 when he had the opportunity to hear in great detail [Ms. Placella's] testimony about her life, the life of the minor child[,] and her concerns about [Mr. Placella]. Therefore, [Mr. Placella's] statement that he has had no information since [the discovery deadline] is not true.

On September 5, 2017, the circuit court denied the motion. The order stated: "Upon consideration of the Plaintiff's Motion to Extend Discovery Deadline and the Defendant's

Response thereto, it is by the Circuit Court for Arundel County, ORDERED, that the Motion to Extend Discovery Deadline is hereby denied."

B.

Discussion

"[T]he circuit court 'has the inherent power to control and supervise discovery as it sees fit[,]'" and therefore, we review a circuit court's denial of discovery for an abuse of discretion. *Sibley v. Doe*, 227 Md. App. 645, 658–59 (quoting *Bacon v. Arey*, 203 Md. App. 606, 673 (2012)), *cert. denied*, 448 Md. 726 (2016). *Accord Johnson v. Clark*, 199 Md. App. 305, 323 (2011) ("Trial judges administer the discovery rules, and are vested with a reasonable, sound discretion in applying them, which discretion will not be disturbed in the absence of abuse."). We have previously explained that

> [a]n abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court[ ] . . . or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court [] . . . or when the ruling is violative of fact and logic."

Sibley, 227 Md. App. at 658 (quoting *Bacon*, 203 Md. App. at 667).

As a general rule, in every civil action, a circuit court "shall enter a scheduling order," which shall contain, *inter alia*,

> (D) a date by which all discovery must be completed;
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> (E) a date by which all dispositive motions must be filed, which shall be no earlier than 15 days after the date by which all discovery must be completed.

Maryland Rule 2-504. "[W]hile absolute compliance with scheduling orders is not always feasible from a practical standpoint," it is reasonable "for Maryland courts to demand at

least substantial compliance, or, *at the barest minimum*, a good faith and earnest effort toward compliance." *Faith v. Keefer*, 127 Md. App. 706, 733 (quoting *Naughton v. Bankier*, 114 Md. App. 641, 653 (1997)) (emphasis in *Naughton), cert denied*, 357 Md. 191 (1999).

Mr. Placella acknowledges that he failed to conduct discovery by the discovery deadline of May 29, 2015. He offers no explanation why his counsel at the time did not propound discovery in preparation for the original trial. Given these circumstances, and where the case was remanded solely because trial proceeded in Mr. Placella's absence, we agree with Ms. Placella that the circuit court did not abuse its discretion in denying Mr. Placella's request to reopen discovery.[18]

II.

Mr. Placella next contends that the circuit court "was required to allow [him] leave to amend his complaint if justice required." He contends that, during the period between the scheduling order's deadlines to amend pleadings and the remand of this case, he "had expended virtually all of his assets and he had no income." As such, his claims for a "monetary award, alimony[,] and attorneys' fees only arose after the deadline."

Ms. Placella contends that the circuit court did not abuse its discretion by denying Mr. Placella's motion to amend his complaint. She asserts that Mr. Placella's argument "makes no sense . . . based on how the trial transpired," noting that Mr. Placella was

[18] As the trial court noted, with respect to discovery, the trial on remand "was in the same posture that would have been held had he been present" on the day of the initial trial.

permitted "to put on evidence and argue without any procedural objection that he was entitled to a division of marital property, attorneys' fees, and presumably alimony." The circuit court then rendered its "decision regarding attorneys' fees, alimony[,] and marital property" based "on the evidence and merits."

A.

Proceedings Below

On October 16, 2017, Mr. Placella filed a Motion for Leave to File Amended Complaint. He acknowledged that the Scheduling Order provided that the deadline for amendments to pleadings was May 14, 2015. He argued, however:

> Since the expiration of the deadline to amend pleadings[,] circumstances have arisen which give rise to causes of action which may not have been available to [Mr. Placella] prior to the deadline to amend pleadings. Specifically, among other things, [Mr. Placella's] earning potential has been significantly reduced as a result of publication on the internet of allegations made by [Ms. Placella]. As a result of the change in circumstances[,] [Mr. Placella] is entitled to an allocation of marital property and a monetary award.

Ms. Placella responded to the motion, requesting that it be denied. She stated, in pertinent part, as follows:

> 1. [Mr. Placella] has offered no reasons why he is seeking to file an amended Complaint and change the relief that he is requesting six weeks prior to trial. The concerns that he addresses, the publication of the unreported opinion in the Court of Special Appeals that references his drug use, was issued by the Court of Special Appeals on May 22, 2017 and has been available online since May 22, 2017.
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> 2. [Mr. Placella] is apparently alleging that he is unable to find employment because of the opinion that was published in May 2017. It is [Ms. Placella's] information and belief, however, that he has been unemployed since March 2016[,] if not sooner.

> 3. Further, it is highly prejudicial and unfair to [Ms. Placella] to now, within six weeks of trial, raise issues of alimony and health insurance issues as well as a monetary award issue.
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> 4. There is no reason [Mr. Placella], with valid issues, could not have asked to file an amended complaint five months earlier, which would have allowed the [Ms. Placella] to have more time to prepare for an unexpected alimony claim.
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> 5. [Mr. Placella] has been represented by counsel starting with the appeal and moving forward[,] and these last minute requested change[s] to this case are highly prejudicial to [Ms. Placella].

On November 5, 2017, the circuit court denied the motion. The order stated: "Upon consideration of [Mr. Placella's] Motion for Leave to File Amended Complaint and [Ms. Placella's] Response thereto, it is by the Circuit Court for Anne Arundel County, ORDERED, that the Motion for Leave to File Amended Complaint is hereby denied."

B.

Discussion

Maryland Rule 2-341(a) provides, in pertinent part, that a party "may file an amendment to a pleading without leave of court by the date set forth in the scheduling order." After the date set forth in the scheduling order has passed, a party may file an amendment to a pleading "only with leave of court." Rule 2-341(b). "'[A] trial court should not grant leave to amend if the amendment would result in prejudice to the opposing party or undue delay.'" *Prudential Sec. Inc. v. E-Net, Inc.*, 140 Md. App. 194, 232 (2001) (quoting *Hartford Accident & Indem. Co. v. Scarlett Harbor Asso. Ltd. P'ship*, 109 Md. App. 217, 248 (1996)). *Accord Mattvidi Associates Ltd. P'ship v. NationsBank of Virginia,*

N.A., 100 Md. App. 71, 85 (noting "federal appellate courts have consistently held that the refusal of a trial court to permit amendments asserting new claims, after the close of discovery or on the eve of trial, is not an abuse of discretion"), *cert. denied*, 336 Md. 277 (1994).

The Court of Appeals has previously explained the relevant standard of review:

> With respect to procedural issues, a trial court's rulings are given great deference. The determination to allow amendments to pleadings or to grant leave to amend pleadings is within the sound discretion of the trial judge. Only upon a clear abuse of discretion will a trial court's rulings in this arena be overturned.

Schmerling v. Injured Workers' Ins. Fund, 368 Md. 434, 443–44 (2002) (citations omitted).

In his Motion for Leave to File Amended Complaint, Mr. Placella conceded that, pursuant to the Scheduling Order, the deadline for filing amendments to pleadings was May 14, 2015. Mr. Placella's motion was filed on October 16, 2017, more than two years after the deadline noted in the scheduling order had lapsed, nearly five months after this Court issued its opinion vacating the initial judgment, and less than two months before the December 5, 2017, trial date. In his motion, Mr. Placella requested a division of marital property, a monetary award, and alimony requests that were not part of his original complaint. Under these circumstances, we conclude that the circuit court did not abuse its discretion in denying Mr. Placella's motion.

In any event, as Ms. Placella notes, the circuit court permitted Mr. Placella to argue for such relief and denied the relief on the merits, not based on a pleading failure. Accordingly, there was no prejudice to Mr. Placella requiring a new trial. *In re Ashley E.*,

158 Md. App. 144, 164 (2004) ("It is well settled in Maryland that a judgment in a civil case will not be reversed in the absence of a showing of error *and* prejudice to the appealing party."), *aff'd*, 387 Md. 260 (2005).

III.

Mr. Placella contends that the circuit court should have appointed a best interest attorney. He asserts that, in deciding whether to appoint a best interest attorney, a circuit court "is required to consider the 10 factors set forth in [Maryland] Rule 9-205.1(b)," and because the order does not reference Rule 9-205.1, this Court "should not give any deference to the trial court's judgment and [should] review this question on a *de novo* basis."

Ms. Placella contends that the circuit court did not abuse its discretion in denying Mr. Placella's request to appoint a best interest attorney. She contends that Mr. Placella failed to state how the circuit court's "ability to determine what was in [J.'s] best interest was in any way hampered by not having the assistance of a Best Interest Attorney."

A.

Proceedings Below

On August 12, 2017, Mr. Placella filed a Motion to Appoint [a] Best Interest Attorney. He argued that, pursuant to Rule 9-205.1(b), various factors weighed in favor of the court appointing a best interest attorney.[19] He stated that there was a "high level of

[19] Maryland Rule 9-205.1(b) provides:

conflict between the parties," with Ms. Placella accusing him of drug addiction and sexually abusing J., that he did not know if J. was receiving mental health treatment because Ms. Placella "refuse[d] to communicate with him," J. was "supervised primarily by a nanny who [did] not provide adequate supervision," and that, because additional discovery was opposed by Ms. Placella, a best interest attorney was "vital to discover facts necessary to determine the best interests of the minor child."

Ms. Placella filed a response to Mr. Placella's motion to appoint a best interest attorney, requesting that the court deny the motion. She asserted that the motion was without merit, that she had accused Mr. Placella of drug addiction and he entered into a

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> **(b) Factors.** In determining whether to appoint an attorney for a child, the court should consider the nature of the potential evidence to be presented, other available methods of obtaining information, including social service investigations and evaluations by mental health professionals, and available resources for payment. Appointment may be most appropriate in cases involving the following factors, allegations, or concerns:
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> (1) request of one or both parties;
> (2) high level of conflict;
> (3) inappropriate adult influence or manipulation;
> (4) past or current child abuse or neglect;
> (5) past or current mental health problems of the child or party;
> (6) special physical, educational, or mental health needs of the child that require investigation or advocacy;
> (7) actual or threatened family violence;
> (8) alcohol or other substance abuse;
> (9) consideration of terminating or suspending parenting time or awarding custody or visitation to a non-parent;
> (10) relocation that substantially reduces the child's time with a parent, sibling, or both; or
> (11) any other factor that the court considers relevant.

consent order subjecting himself to weekly drug tests, that the court had ordered supervised visitation, which Mr. Placella frequently did not exercise, and that Mr. Placella's actions, including not paying child support, had caused her severe financial stress, causing her to have no money to pay for a best interest attorney, and that there was "no basis for . . . prolonging this matter."

On August 31, 2017, the circuit court issued an order stating: "Upon review of the file and in consideration of Plaintiff's Motion to Appoint Best Interest Attorney and any response thereto, it is hereby ORDERED, that Plaintiff's Motion to Appoint Best Interest Attorney is hereby DENIED."

B.

Discussion

Maryland Code (2012 Repl. Vol.) § 1-202 of the Family Law Article provides, in pertinent part:

> (a) In an action in which custody, visitation rights, or the amount of support of a minor child is contested, the court *may*:
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> (1)(i) appoint a lawyer who shall serve as a child advocate attorney to represent the minor child and who may not represent any party to the action; or
>
> (ii) appoint a lawyer who shall serve as a best interest attorney to represent the minor child and who may not represent any party to the action[.]

(emphasis added).

Appointment of counsel to represent a child is discretionary. *See Miller v. Bosley*, 113 Md. App. 381, 400 (1997) ("We do not seek to usurp the judge's discretion to decide whether to appoint counsel for the child, or define the scope of representation. That is

clearly within his [or her] purview[.]"). As the Court of Appeals has explained: "Unquestionably, the statute merely *authorizes* a court to appoint counsel in [these] kinds of cases; it does not *mandate* such an appointment." *Garg v. Garg*, 393 Md. 225, 238 (2006).

Rule 9-205.1(b) provides, in pertinent part:

> In determining whether to appoint an attorney for a child, the court should consider the nature of the potential evidence to be presented, other available methods of obtaining information, including social service investigations and evaluations by mental health professionals, and available resources for payment.

The Rule then goes on to explain that "[a]ppointment *may* be most appropriate in cases involving" certain factors enumerated within the Rule. Rule 9-205.1(b) (emphasis added).

Here, although Mr. Placella cites to the various factors in the Rule, he does not explain why a Best Interest Attorney was necessary or what evidence he could not gather without such an appointment. Without such a showing, and with a record indicating that neither party had financial resources to pay a Best Interest Attorney, the circuit court did not abuse its discretion in denying the motion.

IV.

Mr. Placella next contends that the circuit court "abused its discretion in restricting [him] to supervised visitation without a finding that he presented a risk to the child." Ms. Placella contends that Mr. Placella's "argument and request for relief are moot because supervised visitation terminated on March 1, 2019." In any event, she contends that the circuit court "did not abuse its discretion when it ordered a limited period of supervision."

At oral argument, counsel for both parties agreed that the time for supervised visitation had passed, and Mr. Placella now has unsupervised visitation. Under these circumstances, this issue is moot.

"'A question is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.'" *Simms v. State*, 232 Md. App. 62, 68 (2017) (quoting *Att'y Gen. v. Anne Arundel Cty. Sch. Bus Contractors Ass'n.*, 286 Md. 324, 327 (1979)), *aff'd but criticized*, 456 Md. 551 (2017). "Courts generally do not address moot controversies." *State v. Crawford*, 239 Md. App. 84, 112 (2018). Because Mr. Placella's period of supervised visitation has ended, his request that we remand the case to the circuit court to reconsider whether he is entitled to unsupervised visitation is moot. Accordingly, we will not address it.

V.

Mr. Placella's final contention is that the circuit court erred in calculating child support arrears by relying on the *pendente lite* order that predated this Court's May 22, 2017, opinion vacating the original judgment of absolute divorce. He asserts that the *pendente lite* order expired when the initial judgment of absolute divorce was entered, and the "proper procedure would have been to determine the parties' historical incomes and calculate the child support arrears accordingly."

Ms. Placella disagrees. She contends, among other things, that Mr. Placella's argument is incorrect because, "when this Court vacated the 2016 Judgment of Absolute

Divorce, [the *pendente lite*] 2015 Order was revived and remained in effect until the next Order, the current Judgment of Absolute Divorce."

Ordinarily, a judgment of absolute divorce terminates *pendente lite* awards of child support. *Payne v. Payne*, 73 Md. App. 473, 482, *cert. denied*, 312 Md. 411 (1988). We agree with Ms. Placella that when we vacated the original Judgment of Absolute Divorce, it revived the July 20, 2015, *pendente lite* order, the last relevant order that was in place as to child support. *See Kovacs v. Kovacs*, 98 Md. App. 289, 311–12 (1993) (holding that a *pendente lite* order dealing with child custody was "revived," despite the court having entered a judgment of absolute divorce, because the court granted mother's Emergency Motion for Stay Pending Appeal, which stayed portions of the judgment of absolute divorce as to custody), *cert. denied*, 334 Md. 211 (1994).

The circuit court did not abuse its discretion in calculating the amount of child support for which Mr. Placella was in arrears.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.