

Discovery sanctions in custody and child support cases



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There are few things in litigation more frustrating, costly and time-consuming than a party withholding relevant information and failing to fully participate in the discovery process.

Maryland discovery rules and procedures are designed to provide for the broad exchange of information to “eliminate, as far as possible, the necessity of any party to litigation going to trial in a confused or muddled state of mind, concerning the facts that gave rise to the litigation.” *Baltimore Transit Co. v. Mezzanotti*, 227 Md. 8, 13 (1961).

Generally, when a party to a civil matter fails to comply with the discovery procedures, the trial court has the broad discretion to sanction the withholding party. This includes the power to enter “extreme sanctions,” such as prohibiting a party from introducing evidence at trial or entering an order of default or dismissal.

The power of the trial court to impose sanctions for failures of discovery is so absolute that it will only be disturbed on appeal upon a showing of the strict abuse of discretion of standard. A new ruling affecting custody and child support matters, however, seems to limit this power.

In custody and child support matters, the court’s authority to impose sanctions has sometimes seemed at conflict with its duty to protect a child’s indefeasible right to have a custody or child support determination made

only after a full evidentiary hearing regarding his/her best interests.

Maryland’s appeals courts previously have instructed that the trial courts must first exhaust all other available remedies, such as holding a party in contempt, prior to entering an extreme sanction such as default or dismissal.

The courts recognized this practice as the best way to protect a child’s right to a determination regarding their best interests and prevent dismissal based on a procedural deficiency or a parent trying to game the system by failing to comply with discovery.

This did, however, leave the door open for a court to limit evidence or enter default or dismissal after all other available remedies had been exhausted.

This issue of “extreme” discovery sanctions in custody and child support matters recently came before the Court of Special Appeals again in the case of *A.A. v. Ab.D.*, 246 Md. App. 418, (2020).

With two minor children, Mother initially filed for custody in 2011 and father failed to answer. The court issued a default order against Father, and Mother was awarded sole legal and physical custody.

Since then, Father filed several modifications. During the first modification trial, the court found that it was in the best interest of the minor children for legal and primary physical custody to remain with Mother. This finding was consistent with the court evaluator’s recommendations.

During Father’s second request for modification, he issued written discovery on Mother. Mother’s responses included many objections and she was untimely in responding.

At trial, Father moved *in limine* to exclude mother from presenting testimony or evidence outside what had been provided in her discovery responses. The trial court agreed with

Father, ruling that Mother would not be permitted to introduce testimony or evidence relating to documents not previously provided and excluding witnesses for whom information had not been turned over.

Mother was effectively precluded from calling witnesses and introducing evidence on her behalf. At the conclusion of the trial, the court modified legal and physical custody based on the limited evidence which was mostly provided by Father.

The appeals court noted the trial court’s independent obligation to consider the best interests of the children. The court reasoned that to honor its obligation, that the trial court must consider the impact of a discovery order on a child’s right to have his or her best interests considered before entering such an order. It held that the trial court erred by not permitting Mother to proffer the significance of the evidence and its impact on the court’s ability to determine the best interests of the children.

Family law practitioners and trial courts must now be mindful that before a court can impose a discovery sanction that the court must first ascertain whether the information sought to be excluded is relevant in determining the best interests of the child.

Based upon this ruling, it appears that if the withholding party can successfully argue that the withheld information is necessary to the best interests of the child, then the court will permit its introduction. How this will affect the non-withholding party’s right to proceed in trial without being in a “confused and muddled state” remains to be seen.

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