

STATE OF MICHIGAN
IN THE COURT OF APPEALS

MICHAEL P. CAMMENGA,
Plaintiff,

v.

Court of Appeals No. 382046
Barry Circuit Court No. 2020-000233-DO

BARRY COUNTY CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT;
HON. VICKY L. ALSPAUGH, in her official capacity; and
HON. WILLIAM M. DOHERTY, Chief Judge, in his official capacity,
Defendants.

BRIEF AMICUS CURIAE OF RITA WILLIAMS
IN SUPPORT OF PLAINTIFF MICHAEL P. CAMMENGA

ORAL ARGUMENT NOT REQUESTED

Rita Williams
Editor, Clutch Justice
Amicus Curiae, In Propria Persona
Richland, MI 49083
hello@clutchjustice.com

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Interest of Amicus Curiae

Rita Williams is the founder and editor of Clutch Justice, an independent Michigan-based investigative journalism platform reporting on court administration, sentencing, and public accountability. She submits this brief individually and has submitted amicus briefs in *Foley v Barry County* 5th Circuit Court, Supreme Court No. 170670 (Court of Appeals No. 381330), and *People v Arizola*, Court of Appeals No. 377625. Her interest is in identifiable dispositions and an accurate record through which litigants may seek review.¹

Amicus offers a focused perspective on the distinction between judicial discretion over a motion and an alleged refusal to provide a disposition at all. She seeks no adjudication of her own records disputes or of claims by other Barry County litigants. The requested relief is limited to the issues raised by the parties. MCR 7.212(H)(3).

Questions Addressed and Procedural Posture

This is an original action for superintending control over a circuit court under MCR 7.203(C)(1), MCR 7.206, and MCR 3.302. Amicus supports limited relief only upon proof of a clear legal duty and the absence of an adequate alternative remedy.

Whether, if the record establishes that properly presented motions remain unresolved because of a categorical physical-appearance condition, the Court should require disposition through lawful procedures, without directing the substantive outcome of the motions or granting immunity from an outstanding warrant.

Amicus answers: Yes, subject to the required showing on each motion and the adequacy of available remedies.

Whether the chief judge's trial-court administrative responsibilities bear on the means of securing compliance when the record establishes unresolved motions or failures in recording and service. Amicus answers: Yes, with relief tied to the duties and facts established in this action.

¹ Pursuant to MCR 7.212(H)(4), amicus states that no counsel for a party authored this brief in whole or in part; no party or counsel for a party contributed money intended to fund its preparation or submission; and no person other than amicus contributed money intended for that purpose.

Statement of Facts

Plaintiff alleges that more than a dozen motions and requests filed since 2025 remain unresolved or lack an identifiable written disposition in Barry County Circuit Court No. 2020-000233-DO. Complaint ¶¶ 6–8. Those allegations require verification against the filings, service records, hearing history, and signed orders; a count of docket entries alone does not establish that every motion is ready for decision.

According to the complaint, plaintiff underwent spinal cord stimulator implantation on December 16, 2025, sought adjournment or remote participation in January 2026, and faces a civil failure-to-appear warrant with a cash-only bond exceeding \$280,000. Complaint ¶¶ 10–11. Plaintiff alleges that Court Services communicated on April 30, 2026 that no written ruling would issue without an in-person hearing. Complaint ¶ 14. The complete communication and any underlying judicial directive are material to whether this described a categorical condition or a particular hearing requirement.

Plaintiff also alleges that he sought administrative assistance from the chief judge on May 22, 2026, without receiving a response before filing this action, and that an August 4, 2026 order was entered without his physical appearance. Complaint ¶¶ 17–18. The latter allegation supports examination of the asserted condition; it does not establish that every pending motion can be decided by the same procedure.

Defendants' September 15, 2026 response to plaintiff's motion for preliminary hearing and peremptory relief acknowledges that counsel missed the original September 8 answer deadline, reports a September 14 request to extend that deadline to September 21, and acknowledges plaintiff's request for de novo fee-waiver review. Response ¶¶ 4–6, 13. The response opposes the motion; it is not the promised answer to the complaint. Amicus addresses those positions below without assuming that either pending request has been decided.

Summary of Argument

The Court should separate unresolved requests from previously decided, defective, or unsubmitted matters. For any proved refusal to perform a clear duty, relief should identify the affected motion, the responsible judicial or administrative action, and a definite means of

compliance. The decisive issue is whether a lawful route to disposition remains available in this case. Allegations of misconduct elsewhere cannot substitute for that showing. Amicus's reporting and experience raise a related administrative concern: whether difficulties obtaining rulings and records recur across more than one courtroom under the same chief judge. That context bears on the need for verifiable compliance if the allegations in this case are established. Defendants' September 15 response does not supply that accounting. The Court should resolve fee-review and scheduling questions under their governing rules, then assess the specific alleged failures; neither a missed deadline nor a large docket answers the merits.

I Identify the duty and the motions actually awaiting decision

In *re Credit Acceptance Corp*, 273 Mich App 594, 598; 733 NW2d 65 (2007), requires a clear legal duty and the absence of an adequate legal remedy. That standard does not convert every scheduling decision into a ministerial act. Plaintiff must identify the particular obligation the circuit court has failed to perform.

Several distinct questions must be kept separate. Was the document accepted for filing? Was it served and properly brought before the judge? Is briefing or evidence outstanding? Has the court already ruled? Is entry of an order, rather than adjudication, the missing step? MCR 8.119(C) and (D) govern filing and case records; MCR 2.602 governs entry of orders. A defect in one step should not be mistaken for failure at another.

MCR 8.107 addresses matters under submission. Its 35-day decisional benchmark does not begin merely because a document was filed; the submission date matters. Its separate reporting provisions likewise should not be described as an automatic entitlement to judgment. Plaintiff should establish when each matter became ready for decision and whether any outstanding requirement explains the delay.

Nor does an entitlement to a written order mean an entitlement to detailed written findings on every motion. MCR 2.517(A)(4) generally dispenses with findings on motions unless another rule requires them. In domestic-relations proceedings, MCR 3.210(D) supplies requirements that must be matched to the particular matter, including contested postjudgment

modification motions. The appropriate request is for the disposition and any findings the governing rule actually requires.

If defendants identify a genuine defect or a prior disposition, that motion should be treated accordingly. But a generalized assertion that plaintiff has filed numerous motions should not answer a documented request for adjudication of a specific, properly presented matter.

II Require a case-specific basis for an appearance condition

An outstanding warrant does not itself establish that requiring attendance is unlawful. Plaintiff's apprehension about arrest also does not create an automatic entitlement to remote participation. Amicus asks the Court to examine the alleged condition and the unresolved motions, without adjudicating the validity of the warrant through this brief.

The governing procedures permit distinctions among motions. MCR 2.119(E)(3) permits dispensing with oral argument. MCR 2.408 authorizes video participation in civil proceedings and presumes it for specified circuit-court proceedings, subject to the analysis under MCR 2.407. These provisions do not eliminate necessary evidentiary hearings. They do make the nature of each requested proceeding material to an asserted requirement of physical attendance.

If the April 30 communication merely conveyed a judicial decision about a particular evidentiary hearing, defendants should identify that decision and the motion it addresses. If it instead imposed an across-the-board condition, the record should identify who adopted it, its legal basis, and its effect on pending requests to modify the appearance requirement itself. Counsel's litigation explanation should be compared with the contemporaneous communication and the actual orders.

The August 4 order should receive similarly careful treatment. A different motion may properly receive different treatment. Its entry without physical attendance does not prove discrimination or bad faith. It does, however, make the asserted scope of any categorical condition a factual question requiring an accurate answer.

Foley's separate application reports that, after denial of his superintending-control complaint on August 14, 2026, he was arrested on August 17 and received a thirty-day jail sentence before Chief Judge Doherty after raising service and process objections. Foley,

Application for Leave to Appeal and Emergency Petition for Superintending Control (September 8, 2026), p 3. That account illustrates why the prospect of custody should not be dismissed as abstract. It does not establish that Foley’s custody was unlawful or that Cammenga’s circumstances are identical. The relevant question here is whether properly presented requests concerning participation can receive a judicial disposition without making the unresolved participation issue itself a barrier to obtaining that disposition.

Any determination that a hearing is necessary should leave a concrete path forward: the affected motion, the required proceeding, and disposition of any properly presented request concerning how plaintiff may participate. The proposed relief would preserve lawful enforcement authority while preventing uncertainty about whether, and on what terms, the motion can be heard.

III Test the adequacy of each alternative remedy

MCR 3.302(B) and (D)(2) require use of adequate alternative remedies, including an available appeal. In *re Hague*, 412 Mich 532, 546; 315 NW2d 524 (1982), recognizes that an appeal’s availability does not by itself establish its adequacy. Plaintiff must demonstrate the inadequacy; it cannot be presumed from dissatisfaction with the circuit court.

A recent adverse decision merits attention. In *Clark Commons Ltd Dividend Housing v 67-5 District Court Judge*, unpublished per curiam opinion of the Court of Appeals, issued December 9, 2025 (Docket No. 371839), pp 4–6, the Court treated scheduling complaints as discretionary and affirmed dismissal where the petitioners failed to explain why a Judicial Tenure Commission remedy was inadequate. The opinion is not binding under MCR 7.215(C) (1), but its reasoning makes a generalized allegation of delay insufficient.

The alleged April 30 condition also warrants examination as a practice rather than merely a disputed scheduling choice. If the complete record establishes that all otherwise ready motions were withheld categorically until physical appearance, regardless of their individual requirements, plaintiff has a stronger basis for invoking *Hague*’s concern with blanket practices. But *Clark Commons* requires more than attaching the label “policy” to delay. The record must

establish the condition's scope, its application to identified motions, and why available corrective procedures would be inadequate.

The distinction plaintiff must establish is concrete: which presently unresolved motion requires judicial action, what effort has been made to obtain it, and why a disciplinary proceeding would not supply that disposition when needed. This is an argument about the adequacy of that remedy for the requested case-specific relief, not a claim that judicial discipline can never correct a practice. The same inquiry applies to administrative assistance, reconsideration, entry of a proposed order, or an application for leave to appeal.

If a signed order has already decided a particular issue, ordinary review of that order may be the adequate remedy. If a decision was announced but no order entered, the available procedure for obtaining entry must be addressed. If an unsigned staff communication is the only response, defendants should identify the judicial disposition they contend can be reviewed. The absence of an order is relevant, but does not excuse consideration of other available remedies.

Should defendants rely on nonappearance, unclean hands, or a disentitlement theory, they should identify the applicable authority and its connection to this civil action. The narrow request for lawful disposition does not itself seek suspension of the warrant. Amicus does not contend that filing this action excuses compliance with existing orders.

IV Tailor relief to identifiable outstanding matters

Any relief should be administrable from the record. A motion-by-motion schedule should identify the filing date and title, service and submission status, any prior ruling, the remaining procedural step, and the proposed disposition date. Where a motion has already been decided, the signed order and corresponding docket entry should be identified. A single order may address several requests if its treatment of each is clear.

This approach also permits a fair response to later developments. If defendants issue an order after this action begins, the Court should determine which requested relief it actually supplies. A hearing notice, an administrative acknowledgment, and a final disposition accomplish different things. Conversely, if all requested case-specific relief has been supplied

and no live controversy remains, amicus does not ask the Court to adjudicate a past grievance merely to condemn it.

As director of court administration, the chief judge has administrative superintending authority over the court's judges and personnel, including responsibility to supervise caseload management and monitor disposition of judicial work. MCR 8.110(C)(3), (C)(3)(a). Those responsibilities must be considered within Barry County's unified trial-court administration. MCR 8.119(C) and (D) separately assign filing and recordkeeping duties to the clerk. Relief should reflect those respective functions. Administrative supervision can facilitate identification, scheduling, and recording of unresolved matters; it does not authorize the chief judge to dictate another judge's substantive ruling.

Barry County administers its circuit, district, and probate/family divisions within the Barry County Trial Court. Its 2025 family-court plan depicts those divisions under a shared administrative structure, and the county's 2025–2026 directory identifies Doherty as chief judge. Barry County Family Court Plan (2025), p 8; Barry County Directory (2025–2026), p 20. The different divisional labels therefore do not sever the administrative connection. Foley's application names Alspaugh and Doherty; Snowden's reported concerns arose before Schipper. If a failure is established here, relief should identify who must coordinate compliance across chambers, court services, and the clerk.

Amicus's concern arises from her reporting and personal experience: filings missing from the docket, incorrect addresses remaining on file, and documents failing to reach intended recipients. Her Foley amicus submission describes a separate docket-entry problem. She also recounts denial of her June 2023 request for court records and a sentencing recording despite her offer to pay applicable fees. These experiences explain her concern about administrative reliability; they are not findings establishing the cause of any failure or the merits of Cammenga's complaint.

Amicus reported that a received stamp on a filing at the 56B District Court was obscured with correction fluid and the document returned without a docket entry. Rita Williams, "When a Court Stamp Disappears: Why White-Out on a Barry County Motion Undermines Justice," Clutch Justice (February 15, 2026, updated March 26, 2026). Amicus states from her own

experience that Doherty was the judge in that case when the incident occurred. The connection is therefore both administrative and case-specific; it cannot be dismissed merely because the filing bore a district-court designation. The report described an SCAO investigation as pending at its March update. This account does not establish that Doherty personally directed the alteration, but it supports requiring verifiable receipt, docketing, and preservation rather than assuming those steps occurred. Amicus further describes the officer as having approximately twenty years of probation experience and asserting influence over judicial decisions. A veteran officer's removal of a filing from the adjudicative process, coupled with such assertions, warrants scrutiny of the supervision and workplace practices that permitted it. If established, that conduct makes a similar administrative obstruction elsewhere in the unified court more plausible and weakens an assurance that the alleged failure here is too improbable to investigate. The inference concerns the need for examination and verifiable safeguards; it does not establish that another employee committed the same act.

At the February 24, 2026 Barry County Board of Commissioners meeting, Jeffrey Snowden raised records-access concerns in a matter involving a different judge, Michael Schipper. Amicus's contemporaneous report describes his allegations and preservation notice. Rita Williams, "Barry County on Notice: Jeffrey Snowden Challenges FOIA Denials, Alleges Brady Violations and Retaliatory Tactics," Clutch Justice (February 24, 2026).

Snowden's presentation also included an assertion that, after invoking rights under the Americans with Disabilities Act, he was met not with an accommodation but with a motion for mental competency testing. Amicus does not ask this Court to resolve whether that motion was proper or retaliatory. She offers the reported sequence as another example of her concern that a request for access may receive a procedural response without an effective resolution of the underlying request. The report documents Snowden's assertion; it does not itself establish retaliation or a circuitwide policy.

The relevance of these accounts is limited but concrete. If the record establishes the refusal alleged here, a direction to address Cammenga's motions should include a reliable way to verify that the required action occurred. Defendants may correctly distinguish the governing procedures and facts of other cases; that distinction would not answer a proved failure to perform a clear duty in this case. Conversely, similarity between reported experiences cannot supply

missing proof of that duty or its breach. Amicus seeks relief tied to the established record, with administrative responsibility and compliance made explicit.

Prior notice to county officials provides additional context for the requested verification. Amicus's February 27, 2026 report, "Barry County Commissioner Claims 'No Knowledge' of Prosecutor Issues. The Record Says Otherwise," describes a May 2023 outside-counsel retention concerning prosecutor grievances and a May 9 board packet reflecting \$3,943.80 in related legal fees. Together with Snowden's February 2026 presentation, that reporting supports notice of concerns to county officials. Notice of grievances is not proof of their merits, and prosecutor-related expenditures do not establish knowledge of Cammenga's unresolved motions. Nor can the county board direct judicial decisions. The relevant point is narrower: referral back to ordinary local channels should be assessed for practical adequacy, and any judicial relief should include a specific means of verifying completion.

For a proved record discrepancy, the remedy should identify the specific document and preserve the distinction between receipt, signing, entry, and service. A later docket correction should be transparent about what was corrected. Neither a new entry alone nor a discrepancy alone establishes intentional alteration. The question is whether the resulting record accurately identifies the action taken and permits the parties to pursue their procedural rights.

The cumulative burden matters to the adequacy of a proposed remedy. When a litigant must first locate an omitted filing, correct an address, or obtain an order that was not received, the work required to use reconsideration or appellate review increases. Repeated requests, replacement copies, postage, and time spent reconstructing the record can impose a practical cost even without an unlawful fee. A remedy that depends on access to an accurate record should be evaluated in light of a proved obstacle to obtaining that record. The relevant inquiry remains what happened to Cammenga's filings and what corrective process would actually work.

MCR 8.119(H)(7) permits inspection of unrestricted case records. MCR 8.119(J)(1) prohibits fees for public case-history access and retrieval or inspection of a case document; subrules (J)(2) and (J)(4) govern reproduction charges and applicable exceptions. Thus, an inspection request and a request to purchase copies require different analysis. Restrictions on particular records, including the rules governing court recordings, must also be respected.

Amicus does not assert a right to every record or a finding that Barry County imposed an unlawful charge here.

The present materials do not establish particular Barry County copying charges or a uniform excessive-fee practice. The \$400 appellate entry and electronic-filing fees concern this Court's filing process, not a Barry County records charge. But defendants' own reliance on a register exceeding 1,000 events makes reliable identification of the relevant documents especially important. Any compliance process should identify the orders and corresponding docket entries, confirm the proper address or authorized electronic-service destination, and document service. That permits verification without requiring plaintiff to purchase or reconstruct the entire file merely to learn whether the challenged motions were decided.

A finite compliance filing, with a reasonable opportunity for plaintiff to identify remaining omissions, would permit the Court to assess compliance without supervising the domestic-relations merits. Amicus proposes that mechanism only to implement relief supported by the complaint and established facts, not to expand this action into a countywide investigation.

V The September 15 response does not resolve the alleged refusal to rule

A Preliminary review has express authority without automatic victory

Defendants acknowledge that counsel failed to answer by September 8. Response ¶ 5. They nevertheless characterize plaintiff's request as unsupported by authority. Id. ¶ 12. That objection overlooks the rule named in the motion and defendants' own response: MCR 7.206(D) (3) expressly authorizes preliminary consideration, including peremptory relief or further merits proceedings. It provides for no oral argument at that stage. A request invoking that procedure has a rule-based foundation.

The rule does not entitle plaintiff to freeze the record as of September 8 or prevail solely because an answer was late. The substantive requirements for superintending control remain. Denying exclusion of a later answer would not resolve whether the complaint warrants relief or further proceedings.

B Nonpayment does not answer the fee-review question or establish no prejudice

Defendants acknowledge a request for de novo review under MCR 2.002(G)(2), then call it reconsideration and infer that nonpayment means no prejudice from their delay. Response ¶¶ 4, 14. MCR 2.002(G)(2)(a) provides that a de novo review request automatically stays the case or preserves the filing date until review is decided. A timely qualifying request must be evaluated under that provision, rather than treated simply as failure to comply with the payment order. Amicus does not ask this panel to decide plaintiff's finances through this brief.

The protection must also be applied consistently. If the request stayed this original action before September 8, the Court should determine its effect on the answer deadline and preliminary review; if it instead preserved the filing date, the Court should identify the applicable schedule. Defendants' concession about the original deadline is not a reason to disregard an operative stay. Nor does amicus contend that fee review stays the underlying domestic-relations warrant. The filing, notice, and any subsequent order must control.

Paragraph 14 does not explain why nonpayment establishes absence of prejudice. A stay may prevent immediate merits consideration; it does not establish that unresolved trial-court matters cause no continuing harm. The Court should determine the fee-review status, its procedural effect, and the next step consistent with any operative stay.

C An extension requires its own justification

Defendants report filing their extension motion on September 14, after the original deadline they acknowledge. Response ¶¶ 5, 13. If the answer was due and remained overdue, MCR 7.216(B) permits a late nonjurisdictional act on a showing of good cause for delay or that delay was not due to culpable negligence. The response supplies no specific explanation of counsel's missed deadline. The separate extension motion may supply one; the Court should assess that showing rather than assume that a future answer date is already authorized.

The conceded missed deadline also bears on confidence in unverified assurances of procedural compliance. It concerns defendants' appellate counsel, however, and does not by itself establish a failure by the circuit clerk, a chief-judge policy, or the cause of the earlier reported problems. Together with a large docket and any established record or notice

discrepancies, it supports a practical response: identified responsibility, definite deadlines, and documented completion. Those measures address the administrative risk without requiring this Court to infer a common cause from separate events.

Record size may support additional preparation time, but does not itself explain why an extension was not requested before the deadline. Lack of prejudice cannot replace the required showing. If the Court permits an answer, amicus requests a definite filing date and a reasonable opportunity for plaintiff to address new material bearing on disposition.

D Docket volume and prior misconduct do not identify a disposition

Defendants cite 1,054 docket events, more than 250 since January 2025, and the contentious divorce history. Response ¶¶ 7–8, 11. Those totals describe volume, not the disposition of the challenged motions. They do not identify which entries were plaintiff’s filings, which requests were submitted for decision, or which orders resolved them. A lengthy register can coexist with a particular unresolved request. Defendants can answer the allegation by identifying the relevant filings, procedural defects, hearings, and orders.

The 2023 opinion defendants cite does contain findings adverse to Michael Cammenga, including concerning discovery and credibility. Amicus does not dispute those holdings through this action. But that same opinion affirmed in part, vacated in part, and remanded; it rejected reluctance to oversee future litigation as a basis for failing to value a marital asset. *Cammenga v Cammenga*, unpublished per curiam opinion of the Court of Appeals, issued March 23, 2023 (Docket No. 358463), pp 1, 3–4, 8–9. The decision illustrates why the actual duty and ruling matter even in difficult litigation. It did not adjudicate whether motions filed in 2025–2026 were properly handled.

If particular noncompliance prevents disposition of a motion, defendants should identify the connection. This response identifies neither the judicial basis for the alleged April 30 condition nor the status of the challenged requests. Those omissions are not merits admissions in a filing opposing preliminary relief. They do leave the motion-specific merits questions unanswered.

Conclusion and Relief Requested

Amicus respectfully requests that, to the extent the pleaded and established facts show a continuing failure to perform a clear legal duty for which no adequate remedy exists, the Court grant limited relief requiring:

1. Identification of each properly presented motion within the complaint's scope that remains unresolved, together with any prior signed disposition or specific unmet procedural requirement.
2. A definite schedule, set by the Court in light of the record, for disposition of the unresolved matters and any necessary hearings, including judicial consideration of properly presented participation requests under the applicable rules.
3. Entry, recording, and service of the resulting orders through the applicable procedures, with findings where required and confirmation of the proper address or authorized electronic-service destination.
4. A case-specific compliance filing identifying what was done and what remains, with administrative coordination under the chief judge's supervisory responsibilities and an opportunity to address a material omission.

The Court should clarify fee-review status and decide any late-answer request under the applicable standard, then consider relief or further proceedings under MCR 7.206(D)(3). Amicus seeks no automatic default relief, particular substantive outcome, warrant stay, damages, or disciplinary sanction.

Respectfully submitted,

/s/ Rita Williams

Rita Williams

Editor, Clutch Justice

Amicus Curiae, In Propria Persona

Richland, MI 49083

hello@clutchjustice.com

Dated: September 15, 2026

Statement of Word Count

This brief contains no more than 4,619 words, conservatively counting front matter, substantive text, signatures, and the disclosure footnote. MCR 7.212(B).

Public Sources Cited

Michigan Court Rules — official compilation, accessed September 14, 2026.

<https://www.courts.michigan.gov/siteassets/rules-instructions-administrative-orders/michigan-court-rules/michigan-court-rules.pdf>

Opinion — Clark Commons Ltd Dividend Housing v 67-5 District Court Judge, unpublished per curiam opinion, December 9, 2025, No. 371839.

<https://www.michbar.org/Portals/0/opinions/appeals/2025/120925/84775.pdf>

Reporting context — Rita Williams, “Barry County on Notice: Jeffrey Snowden Challenges FOIA Denials, Alleges Brady Violations and Retaliatory Tactics,” Clutch Justice (February 24, 2026).

<https://clutchjustice.com/2026/02/24/jeffrey-snowden-barry-county-foia-brady-ada-section-1983/>

Appendix A: The accompanying December 9, 2025 unpublished opinion in Clark Commons is supplied under MCR 7.215(C)(1). Its discussion of scheduling discretion and alternative remedies provides context for the argument addressed in Part III. The opinion is not binding precedent.

Appendix B: Cammenga v Cammenga, unpublished per curiam opinion, March 23, 2023 (No. 358463). The accompanying copy is supplied under MCR 7.215(C)(1).

<https://cases.justia.com/michigan/court-of-appeals-unpublished/2023-358463.pdf?ts=1679662837>

Record document addressed: Defendants’ Response to Plaintiff’s Motion for Preliminary Hearing and Peremptory Relief on the Unopposed Record Under MCR 7.206(D)(3), received September 15, 2026 at 2:00:15 p.m., pp 1–4. Paragraph references to “Response” refer to that filing.

Reporting context — Rita Williams, “When a Court Stamp Disappears: Why White-Out on a Barry County Motion Undermines Justice,” Clutch Justice (February 15, 2026, updated March 26, 2026). <https://clutchjustice.com/2026/02/15/barry-county-record-tampering/>

Reporting context — Rita Williams, “Barry County Commissioner Claims ‘No Knowledge’ of Prosecutor Issues. The Record Says Otherwise,” Clutch Justice (February 27, 2026).

Related proceeding — Foley v Barry County 5th Circuit Court, Supreme Court No. 170670 (Court of Appeals No. 381330), Application for Leave to Appeal and Emergency Petition for Superintending Control (September 8, 2026), pp 1, 3; amicus submission of Rita Williams (September 11, 2026).

Court administration — Barry County Family Court Plan (2025), p 8, <https://www.courts.michigan.gov/4a692a/siteassets/family-court-plans/barry-family-court-plan-2025-.pdf>; Barry County Directory (2025–2026), p 20.

STATE OF MICHIGAN
COURT OF APPEALS

In re CLARK COMMONS LIMITED DIVIDEND
HOUSING ASSOCIATION, LLC and
PREMIER PROPERTY MANAGEMENT, LLC

UNPUBLISHED
December 09, 2025
2:49 PM

CLARK COMMONS LIMITED DIVIDEND
HOUSING ASSOCIATION, LLC and
PREMIER PROPERTY MANAGEMENT, LLC,

Petitioners-Appellants,

v

HON. HERMAN S. MARABLE, JR.,

Respondent-Appellee.

No. 371839
Genesee Circuit Court
LC No. 24-120286-AS

Before: YATES, P.J., and BOONSTRA and YOUNG, JJ.

PER CURIAM.

Petitioners appeal by right the trial court’s order granting respondent’s motion for summary disposition and dismissing petitioners’ complaint for superintending control. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Petitioner Clark Commons Limited Dividend Housing Association, LLC is the owner and operator of a multi-family housing development, while Petitioner Premier Property Management, LLC is a property management company that manages the property of a number of owners of multi-family housing developments. Respondent is a sitting 67th District Court judge.

In 2024, petitioners filed a complaint for superintending control in the trial court, alleging that respondent had failed to comply with the law or court rules in several ways during summary eviction proceedings initiated by petitioners. Specifically, petitioners alleged that respondent (1) had failed to enter default judgments at certain hearings when a tenant failed to appear, (2) had a pattern and practice of refusing to enforce conditional dismissal orders that he himself had signed, (3) had unreasonably delayed signing orders of eviction in several cases, and had set hearings

before signing them, despite the court rules not requiring a hearing, (4) frequently adjourned eviction hearings and other proceedings to the benefit of tenants and without good cause, (5) frequently asked petitioners questions at hearings that “surprised” petitioners and “use[d] their failure to respond to his liking as a basis for further adjournment,” and (6) failed to adequately control the scheduling of his docket, causing some cases to be delayed. Petitioners alleged in their complaint that respondent’s actions were “intentionally designed to harm landlords to the benefit of tenant defendants.”

In response, respondent moved for summary disposition under MCR 2.116(C)(3), (4), (5), (8), and (10). After a hearing, the trial court granted respondent’s motion, holding that respondent was entitled to summary disposition under MCR 2.116(C)(4) (lack of subject matter jurisdiction) because an adequate legal remedy, see MCR 3.302(B), for petitioners’ complaints existed. Petitioners moved for reconsideration, which the trial court denied. This appeal followed.

II. STANDARD OF REVIEW

We review for an abuse of discretion a trial court’s decision to grant or deny a request for superintending control. *In re Grant*, 250 Mich App 13, 14; 645 NW2d 79 (2002). However, we review de novo as a question of law whether a respondent has a clear legal duty to perform and whether a petitioner has a clear legal right to the performance of any such duty. *Adams v Parole Bd*, 340 Mich App 251, 258; 985 NW2d 251 (2022). We review de novo a trial court’s decision on a motion for summary disposition. *Moser v Detroit*, 284 Mich App 536, 538; 772 NW2d 823 (2009). We also review de novo issues involving the interpretation of statutes and court rules. *Grand Rapids v Brookstone Capital, LLC*, 334 Mich App 452, 457; 965 NW2d 232 (2020).

III. ANALYSIS

Petitioners argue that the trial court erred by determining that an adequate legal remedy existed for their claims and accordingly by dismissing their complaint for superintending control. Although we agree that the trial court erred by determining that it lacked subject-matter jurisdiction, we nonetheless affirm the trial court’s grant of respondent’s motion for summary disposition and the dismissal of petitioners’ complaint for superintending control.

“The writ of superintending control supersedes the writs of certiorari, mandamus, and prohibition, and provides one simplified procedure for reviewing or supervising a lower court or tribunal’s actions.” *Shepherd Montessori Center Milan v Ann Arbor Charter Twp*, 259 Mich App 315, 346-347; 675 NW2d 271 (2003). “The filing of a complaint for superintending control is not an appeal, but, rather, is an original civil action designed to order a lower court to perform a legal duty.” *Id.* “When a reviewing court issues an order of superintending control, the reviewing court is invoking an extraordinary power. Such an extraordinary power should only be exercised in extraordinary circumstances[.]” *People v Burton*, 429 Mich 133, 144; 413 NW2d 413 (1987). Superintending control is an extraordinary power that may only be invoked when the plaintiff has no adequate legal remedy and the lower court has failed to perform a clear legal duty. *Shepherd Montessori Center Milan*, 259 Mich app at 347; see also *In re Gosnell*, 234 Mich App 326, 341; 594 NW2d 90 (1999).

The availability of an appeal generally requires that a complaint for superintending control must be dismissed. See *Gosnell*, 234 Mich App at 341; *Shepherd Montessori Center Milan*, 259 Mich App at 347; *Choe v Flint Charter Twp*, 240 Mich App 662, 667; 615 NW2d 739 (2000); see also MCR 3.302(D)(2). However, a party may lack an adequate legal remedy when challenging the general policies and procedures of a lower court. *Gosnell*, 234 Mich App at 341-342. “A clear legal duty, like a clear legal right, is one that is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.” *Adams*, 340 Mich App at 260. A clear legal duty is generally one that is ministerial in nature, rather than discretionary. See *Barrow v Wayne Co Bd of Canvassers*, 341 Mich App 473, 483-484; 991 NW2d 610 (2022). A ministerial duty is one that the law “prescribes and defines . . . with such precision and certainty as to leave nothing to exercise of discretion or judgment.” *Berry v Garrett*, 316 Mich App 37, 42; 890 NW2d 882 (2016). The party seeking an order of superintending control “bears the burden of establishing the grounds for issuing the order.” *Gosnell*, 234 Mich App at 342. An order of superintending control should not issue “where the petitioner seeks to employ the court’s power to superintend as a substitute for an appeal or to evade a statutory prohibition of an appeal.” *Public Health Dep’t v Rivergate Manor*, 452 Mich 495, 518; 550 NW2d 515 (1996).

MCR 3.302 governs orders of superintending control, and provides in relevant part:

(B) Policy Concerning Use. If another adequate remedy is available to the party seeking the order, a complaint for superintending control may not be filed. See subrule (D)(2) and MCR 7.306(A).

* * *

(D) Jurisdiction

(1) The Supreme Court, the Court of Appeals, and the circuit court have jurisdiction to issue superintending control orders to lower courts or tribunals.

(2) When an appeal in the Supreme Court, the Court of Appeals, or the circuit court is available, that method of review must be used. If superintending control is sought and an appeal is available, the complaint for superintending control must be dismissed.

At the outset, we conclude that petitioners are correct that the trial court erred by granting respondent’s motion under MCR 2.116(C)(4) (lack of subject-matter jurisdiction). In discussing MCR 3.302(D)’s predecessor, GCR 711.4 (which contained identical language to MCR 3.302(D)), our Supreme Court stated that the provision indicating that a complaint for superintending control must be dismissed is not jurisdictional in nature; that is, the availability of an appeal does not deprive a court of the subject-matter jurisdiction to issue an order of superintending control; rather, the subrule is “a procedural requirement to be met before relief can be granted.” *In re Hague*, 412 Mich 532, 546-547; 315 NW2d 524 (1982). In *Hague*, our Supreme Court adopted the recommendation of the Judicial Tenure Commission (JTC) holding that the respondent judge was guilty of misconduct by, among other actions, refusing to follow several orders of superintending control issued by a higher court, related to his “wholesale dismissal” of “virtually all the prostitution cases being brought to the court.” *Id.* at 540, 543. The respondent judge argued that

the circuit court had been without jurisdiction to issue the order of superintending control, due to the availability of an appeal; our Supreme Court rejected that argument for the reasons stated. *Id.* at 546-547. The Court also noted that the “availability of an appeal in the individual case does not preclude superintending relief when that procedure does not provide an adequate remedy.” *Id.* at 546.

There is no reason that *Hague*’s rationale should not apply to MCR 3.302(D). The trial court accordingly erred by granting respondent’s motion for summary disposition under MCR 2.116(C)(4). However, respondent moved for summary disposition on several grounds, including that no genuine issue of material fact existed such that respondent was entitled to judgment as a matter of law. MCR 2.116(C)(10). Even if a trial court errs by granting summary disposition under the wrong subrule, this Court may review the matter under the correct subrule, and may affirm the trial court if the correct result was reached for the wrong reason. *Computer Network, Inc v AM General Corp*, 265 Mich App 309, 313; 696 NW2d 49 (2005). Because the trial court did not err by holding that an adequate legal remedy existed (such that petitioners’ claim for superintending control was properly dismissed on that basis), the trial court’s error was harmless.

In this case, as stated, petitioners alleged in their complaint that respondent violated his clear legal duty in several ways. Generally speaking, petitioners’ allegations involved respondent either refusing to sign or unnecessarily delaying the signing of eviction orders, setting hearings that were not required by law or court rule, failing to control his docket so that cases proceeded in a timely manner, refusing to enter default judgments, questioning petitioners about what action they had taken to verify that tenants had actually vacated the property, and adjourning cases without good cause. Petitioners also alleged that respondent’s actions were intentional and demonstrated a bias in favor of tenant defendants or against landlord litigants.

Although the trial court dismissed petitioners’ complaint on the grounds that an adequate legal remedy was available, we note that many of petitioners’ complaints, if true, do not appear to indicate that respondent violated a clear legal duty. See *Gosnell*, 234 Mich App at 341. As noted, a clear legal duty is generally one that is ministerial in nature, rather than discretionary. See *Barrow*, 341 Mich App at 483-484. Yet, many of petitioners’ allegations against respondent concern discretionary tasks, such as the scheduling of hearings that petitioners deem unnecessary, or the adjournment of hearings that petitioners feel was unwarranted. Petitioners also allege that respondent asked them whether they had taken affirmative steps to verify whether a tenant had vacated a premises, even though petitioners believe they owe no duty to take such steps under the relevant court rules and statutes. These allegations seem to be based on discretionary, rather than ministerial, acts by respondent; we are not convinced that respondent owed petitioners a clear legal duty to, for example, refrain from asking them certain questions when they appear before him, or to schedule or refrain from scheduling hearings in a manner that best suits them. And while petitioners frequently point out that our court rules and statutes did not *require* respondent to hold or adjourn a hearing, or *require* petitioners to undertake certain actions to verify whether a tenant is in fact still living in a property before issuing an order evicting that tenant, the court rules and relevant statutes do not *forbid* such actions. *Barrow*, 341 Mich App at 483-484. A trial court has the inherent power to control its own docket. *Baynesan v Wayne State University*, 316 Mich App 643, 651; 894 NW2d 102 (2016). A trial court also possesses the inherent authority to control its courtroom, including control over order and the manner in which those who appear before it are

questioned, see *People v Johnson*, 315 Mich App 163, 177; 889 NW2d 513 (2016). The exercise of that inherent power may only be disturbed “upon a finding that there has been a clear abuse of discretion.” *Baynesan*, 316 Mich App 651. Regarding these allegations, therefore, the trial court could have granted respondent’s motion for summary disposition on the grounds that petitioners had not demonstrated that respondent violated a clear legal duty. *Gosnell*, 234 Mich App at 341.

Some of petitioners’ allegations, such as the allegation that respondent makes a practice of unaccountably delaying signing default judgments or eviction orders, concern more ministerial acts that are prescribed by our court rules. See, e.g., MCR 4.201(M)(2). And some of these allegations do concern conduct for which an appeal is not legally or practically available, although we note that petitioners have not shown that they even attempted to avail themselves of the appellate process in the example cases cited in their complaint and brief on appeal. But even assuming that petitioners did not have an appeal available with respect to certain challenged conduct, petitioners still had an adequate remedy at law to address their complaints against respondent. The JTC is empowered by the Michigan constitution to recommend that our Supreme Court “censure, suspend with or without salary, retire or remove a judge for . . . misconduct in office, persistent failure to perform his duties, habitual intemperance or conduct that is clearly prejudicial to the administration of justice.” Const 1963, art 6, § 30; see also MCR 9.211(A). To that end, our court rules provide the JTC with the power to investigate complaints against judges, take evidence, issue subpoenas, hold hearings, and institute formal proceedings against a judicial respondent, including a trial; the JTC is also empowered to make dismissal of a grievance contingent on respondent satisfying conditions imposed by the commission, including successful completion of a monitoring period. MCR 9.223.

It is clear that the JTC has significant power to address judicial misconduct. Judicial misconduct includes “persistent incompetence in the performance of judicial duties,” “persistent neglect in the timely performance of judicial duties,” and “persistent failure to treat persons fairly and courteously.” MCR 9.202(B)(1). The JTC is also empowered to address “conduct in violation of the Code of Judicial Conduct or the Rules of Professional Conduct.” MCR 9.202(B)(2). The Code of Judicial Conduct requires a judge to “be faithful to the law and maintain professional competence in it,” and “dispose promptly of the business of the court,” Code of Judicial Conduct, Canon 3(A)(1) (6), as well as raise the issue of disqualification whenever the judge has cause to believe that grounds for disqualification may exist, Canon 3(C). Grounds for disqualification include bias or the appearance of bias for or against a party. MCR 2.003(C)(1).¹

Petitioners’ complaints against respondent, if true, could easily fall into several of the categories listed above. Many of them involve the accusation that respondent regularly fails to timely perform his duties, or imposes requirements on certain litigants that are not mandated by statute or court rule. In general, petitioners have alleged that respondent has engaged in a pattern of behavior that demonstrated bias against either them in particular or landlord litigants in general, and demonstrated bias in favor of tenant defendants. Petitioners do not explain why the availability of a complaint to the JTC against respondent, which could lead to respondent’s censure, suspension

¹ We note that it does not appear that petitioners ever sought respondent’s disqualification in their cases before him, as our court rules permit. See MCR 2.003(B).

or termination as well as corrective action to address the challenged conduct, is an inadequate remedy; rather, they merely argue that holding that an adequate remedy at law existed in this case would send us down a slippery slope where “no person could seek to correct a judge’s misconduct through a superintending control complaint” because of the availability of a JTC complaint. Besides being hyperbolic, petitioners’ argument is illogical—the availability of an alternate legal remedy *does* preclude the “extraordinary relief” of superintending control; therefore, if in fact complaints of judicial misconduct are generally, or even always, resolvable by an alternative method rather than by an order of superintending control, that is not a fault that must be corrected, but rather merely a class of complaints that are not remediable by the extraordinary relief of superintending control. *Burton*, 429 Mich at 144.

But we need not establish such a bright line rule today to conclude that the relief petitioners sought in the form of an order of superintending control was not available. Petitioners argue that they seek to challenge a general practice of an inferior court, and argue that, as in *Hague*, a “case-by-case appeal was neither an adequate nor realistic remedy.” *Hague*, 412 Mich at 532. But in *Hague*, the respondent judge had dismissed “hundreds” of prostitution and gun-control cases as soon as they were filed, and continued to do so after being ordered to stop by several higher courts. See *id.* at 562-564. Moreover, while our Supreme Court did opine that the orders for superintending control were validly issued inasmuch as the appellate process was not an adequate remedy, it also noted that the respondent judge was required to follow the orders of superintending control *unless the superior court had lacked the jurisdiction to issue them*, even if the orders were “clearly incorrect.” See *id.* at 545. Additionally, *Hague* itself was a judicial disciplinary proceeding arising out of a complaint from the JTC. See *id.* at 539. *Hague* does not aid petitioners in arguing that no adequate remedy could be found for their complaints through a JTC complaint; in fact, the complained-of judicial conduct in *Hague* was considerably more “wholesale,” involving “dozens upon dozens” of cases dismissed without legal justification. See *id.* at 547-551.

In contrast with *Hague*, in this case petitioners have identified certain actions taken by respondent in some eviction cases, many of which did ultimately resolve in the favor of the landlord litigant, that they feel violated Michigan law or court rules, and demonstrated a bias in favor of tenant defendants and against landlord litigants. Petitioners’ complaints can be resolved without resorting to the extraordinary relief of an order of superintending control. *Burton*, 429 Mich at 144. Accordingly, we affirm the trial court’s grant of summary disposition to respondent and the dismissal of petitioners’ claim for superintending control.

Affirmed.

/s/ Christopher P. Yates
/s/ Mark T. Boonstra
/s/ Adrienne N. Young

STATE OF MICHIGAN
COURT OF APPEALS

STACEY LYNN CAMMENGA, also known as
STACEY LYNN TIMMER,

UNPUBLISHED
March 23, 2023

Plaintiff/Counterdefendant-
Appellee/Cross-Appellant,

v

No. 358463
Barry Circuit Court
LC No. 2020-000233-DO

MICHAEL PHILIP CAMMENGA,

Defendant/Counterplaintiff-
Appellant/Cross-Appellee.

Before: M. J. KELLY, P.J., and JANSEN and CAMERON, JJ.

PER CURIAM.

In this divorce action, defendant, Michael Cammenga, appeals the divorce judgment as of right, and plaintiff, Stacey Cammenga, has filed a cross-appeal. For the reasons explained in this opinion, we affirm in part, vacate in part, and remand for further proceedings.

I. BASIC FACTS

The parties married in October 1992 and have two adult children. During the marriage, Michael worked at various jobs in the paper industry. The parties lived in several states during the marriage, and Michael sometimes lived separately from Stacey and the children. Michael was the primary breadwinner, whereas Stacey was primarily responsible for the home and childrearing. In 2018, Michael started a business, Cammenga Investments, LLC, which he used—in partnership with other entities that he had an interest in—to purchase a papermill. In March 2020, after discovering that Michael was having an affair with an employee of the papermill, Stacey filed a complaint for divorce. Michael filed a counterclaim for divorce.

The divorce was contentiously litigated. Relevant to the issues raised on appeal, the trial court entered a status quo order that limited the parties’ spending to their past practices and prohibited Michael from spending money on the woman identified as his mistress. Both parties presented evidence indicating that the other had violated the status quo order, and the trial court

eventually determined that their spending in violation of the order resulted in a “wash” so there was no need to credit either party for the other’s improper spending. There was also extensive pretrial litigation related to Michael’s untimely and incomplete responses to discovery requests. The court ultimately sanctioned Michael by prohibiting the use of documentation that he had not provided to Stacey. Additionally, after the court ordered Michael to pay temporary spousal support, he moved to modify the amount owed based on a purported decrease in his monthly income from \$10,000 to \$2,500. The trial court denied his request after determining that Michael lied about the decrease in his income.

Following a three-day bench trial, the court placed detailed findings on the record addressing numerous issues related to the parties’ assets, the division of the marital estate, spousal support, and Stacey’s requests for attorney fees. Thereafter, in response to motions for reconsideration and clarification, the court placed additional findings on the record. This appeal and cross appeal follow.

II. CREDIBILITY

A. STANDARD OF REVIEW

Michael argues that the trial court improperly prejudged his credibility during the discovery proceedings. We review a trial court’s factual findings for clear error. *Hodge v Parks*, 303 Mich App 552, 554-555; 844 NW2d 189 (2014). “Findings of fact are clearly erroneous when this Court is left with the definite and firm conviction that a mistake has been made.” *Id.* at 555 (quotation marks and citation omitted). “Special deference is afforded to a trial court’s factual findings that are based on witness credibility.” *Id.*

B. ANALYSIS

Michael claims that, during the discovery process, there was no legitimate basis upon which the trial court could assess his credibility. The record belies his assertion.

The discovery proceedings were lengthy, spanning multiple hearings over several months. Although there were various issues, the most significant issues involved Stacey’s requests for business documents. She first moved to compel discovery in August 2020, which the trial court granted. When Michael still did not provide the materials, Stacey sought to enforce the discovery order. The court—after viewing information that had been provided by Michael—concluded that Michael had provided irrelevant documents, but had not provided necessary information about his income and the business. Despite Michael’s failure to comply with discovery, the court did not sanction him. Instead, the court ordered Stacey to hire an accountant to help her determine what information she needed. The court ordered Michael to produce that information within seven days after the accountant identified it.

Stacey hired an accountant and provided a detailed list of the information needed, which Michael did not provide within seven days. Michael maintained that he could not produce documents because they were in the possession of third parties and that, in any event, producing the materials would be unduly expensive. He claimed that there was no point in producing documents related to the value of the business because the business was a “dumpster fire” with no

value whatsoever. Thereafter, Michael moved for a protective order, and Stacey filed a counter-motion to compel discovery.

The court again reviewed information provided by Michael. That information included empty electronic folders, Michael's assertions that he lacked the information, financial statements that appeared to have been prepared by Michael's alleged mistress, and instructions for Stacey to direct her inquiries to other entities. Additionally, Michael claimed that Stacey did not need the information because documents had been given to *his* expert and she had been given "unfettered" access to this expert. (He later admitted that the access was not, in fact, unfettered). Although the court expressed concern that Michael was "playing fast and loose with the rules" by not providing information necessary for Stacey to determine the value of the business, the court gave him additional time to get his "ducks in a row."

At a subsequent hearing, the court noted that Michael sent the court a large box of "what appears to be discovery," which Michael explained he was offering as an exhibit to demonstrate his good faith effort to comply with discovery. Michael did not ask to testify or present any other evidence. His lawyer reiterated Michael's position that he could not provide Stacey with third-party discovery, that she did not need this information because the business was a "dumpster fire," and that it would be a waste of money to generate documents to determine the business's value. In response, Stacey again identified the materials that she had not received and explained why they were necessary for her evaluation of Michael's income and the value of the business.

Ultimately, after eight months of Michael not providing Stacey with the requested information, the trial court held that Michael did *not* have to produce any "third-party" information, but that he would not be able to use any third-party information at trial that was not provided to Stacey by April 16, 2021. See MCR 2.313(B)(2)(b). Michael did not object.

On this record, Michael's complaints about the trial court's discovery determinations and his claim that the court formed unfairly negative opinions about him or treated him harshly during discovery are spurious. The court showed considerable patience and forbearance in the face of Michael's repeated failure to comply with discovery. Indeed, the court's discovery sanction was eminently fair. Moreover, to the extent that the trial court found that Michael failed to provide the information Stacey sought, the trial court was presented with materials from *both* parties to review in assessing Michael's compliance with discovery. Michael did not seek to testify, and he has not shown that the trial court clearly erred by concluding that he had not complied with discovery.

Nevertheless, Michael contends that the court's pretrial discovery rulings resulted in a "prejudgment" of the case, such that the subsequent trial proceedings were tainted. However, "[o]pinions formed by a judge on the basis of facts introduced or events occurring during the course of the current proceedings, or of prior proceedings, do not constitute bias or partiality unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Schellenberg v Rochester Mich Lodge No 2225, of Benevolent & Protective Order of Elks of USA*, 228 Mich App 20, 39; 577 NW2d 163 (1998). Nothing in the trial court's statements or discovery rulings evinces a deep-seated favoritism or antagonism that would make fair judgment at trial impossible.

Moreover, to the extent that, following trial, the trial court concluded that Michael had misrepresented the facts by asserting that he was a “little” person with no access to documents, this finding was supported by the record, which showed that, through his corporations, Michael owned 25% of the LLC that owned the papermill, that he worked at the papermill, and that he was intimately involved in the business’s dealings. Further, insofar as the trial court considered Michael’s conduct during discovery as a factor when valuing the business and dividing assets, this was not improper. See *Draggoo v Draggoo*, 223 Mich App 415, 430; 566 NW2d 642 (1997) (“Defendant’s refusal to answer the interrogatories or supply bank documents could be considered as a relevant factor in determining an equitable division of property because it was tantamount to an attempt to conceal assets.”) In sum, Michael’s complaints regarding the discovery proceedings as an improper “prejudgment” of the case are without merit.

III. TEMPORARY SPOUSAL-SUPPORT

Next, Michael argues that the trial court abused its discretion and denied him due process by preventing him from presenting expert testimony at a temporary spousal-support hearing. We disagree.

In domestic relations actions, a temporary spousal-support order may be entered at any time during the pendency of case. MCL 552.13(1). Such an order may also be “modified at any time during the pendency of the case, following a hearing and upon a showing of good cause.” MCR 3.207(C)(3). Here, the court entered a temporary spousal-support award requiring Michael to pay \$3,739 in monthly spousal support. Michael moved to modify that order.

The court conducted an evidentiary hearing on the motion. Michael testified at length that, as of February 2021, his monthly income had been reduced from \$10,000 to \$2,500. He explained that the \$2,500 was being paid by a customer called Selig Sealing Products, Inc., and that it was his sole source of income. Stacey, however, presented testimony and evidence regarding an application at a credit union, which Michael completed in March 2021. The loan officer testified that Michael represented that he earned \$15,000 each month, that his employer was Cammenga Investments, and that his income was not likely to decline. Given the discrepancy between his testimony and his representations to the loan officer, the court found that Michael had lied about his income. As a result, the court denied the motion to modify spousal support. Considering the record, we conclude that the court did not clearly err by determining that Michael lied about his income being reduced to \$2,500.

Michael, however, argues that the court erred by preventing him from presenting testimony from an accountant who was going to testify about Michael’s tax forms. The expert testimony regarding tax forms for the 2018 and 2019 tax years appears irrelevant and a needless waste of time given Michael’s misrepresentation about his income in 2021, which was the time frame at issue. See MRE 402; MRE 403. The court did not abuse its discretion by excluding the accountant’s testimony. See *Nahshal v Fremont Ins Co*, 324 Mich App 709, 710; 922 NW2d 662 (2018) (stating that a trial court’s decision to exclude evidence is reviewed for an abuse of discretion).

IV. ADMISSION OF TEXT MESSAGES

Michael next argues that the trial court abused its discretion by admitting his text messages to his mistress evincing their affair. According to Michael, the messages should have been excluded because Stacey obtained them from his cell phone in violation of MCL 752.795. Under MCL 752.795, it is a felony for a person to access a computer program, system, or network to acquire property if the person was acting “intentionally and without authorization or by exceeding valid authorization.” Here, the testimony shows that while Michael was sleeping, Stacey entered the password for his cell phone, accessed his text messages, and recorded several messages so that she could view them at her leisure. Although there is evidence suggesting that the password on the device was to prevent Michael’s employees, not his family from accessing his phone, Stacey’s furtive actions when accessing the device suggest that she was aware that she lacked authorization to access the text messages stored on his phone. Yet, assuming *arguendo* that the trial court abused its discretion by admitting the text messages, we conclude that reversal is not warranted.

The text messages were one piece of evidence supporting that Michael had an affair with his mistress. The other evidence of his affair included the photos of Michael and his mistress that he inadvertently uploaded to the family’s iCloud account, including photos of his mistress in her underwear. There was also testimony about the thousands of dollars Michael had recently begun spending on libido and sex enhancers, his post-it note about “hot love” “last night,” testimony from the parties’ daughter about her observations of Michael and his mistress whispering together at the papermill, the fact that Michael had moved in with his mistress, and the e-mail to a realtor supporting that Michael and his mistress were buying a house together and putting it in the mistress’s name to conceal the purchase. In short, the evidence of an affair was substantial, and even assuming some error in the admission of the text messages, exclusion of the messages would not have affected the outcome of the proceedings. See MCR 2.613(A). Michael is not entitled to relief on this basis.

V. PROPERTY DIVISION

A. STANDARD OF REVIEW

Both parties raise numerous challenges to the property award.

In deciding issues on appeal involving division of marital property, this Court first reviews the trial court’s findings of fact. Findings of fact, such as a trial court’s valuations of particular marital assets, will not be reversed unless clearly erroneous. . . . If the trial court’s findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and will be affirmed unless this Court is left with a firm conviction that the division was inequitable. [See *Butler v Simmons-Butler*, 308 Mich App 195, 207-208; 863 NW2d 677 (2014) (citations omitted).]

B. ANALYSIS

1. MICHAEL'S CHALLENGES TO THE PROPERTY DISTRIBUTION

“The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances.” *Berger v Berger*, 277 Mich App 700, 716-717; 747 NW2d 336 (2008). “Each spouse need not receive a mathematically equal share, but significant departures from congruence must be explained clearly by the court.” *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). When addressing the distribution of marital property, the court should consider:

(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. There may even be additional factors that are relevant to a particular case. For example, the court may choose to consider the interruption of the personal career or education of either party. The determination of relevant factors will vary depending on the facts and circumstances of the case. [*Cassidy v Cassidy*, 318 Mich App 463, 477; 899 NW2d 65 (2017) (quotation marks and citation omitted).]

“The trial court must consider all relevant factors but not assign disproportionate weight to any one circumstance.” *Id.* (quotation marks and citation omitted).

Michael first contends that the court erred because it discussed property valuation and the division of assets *before* reviewing the enumerated factors relevant to the property distribution. We disagree. The court is not required to make its findings in any particular order. Instead, the court is required to consider the relevant factors, *Cassidy*, 318 Mich App at 477, and to set forth its findings of fact and law, see MCR 2.517(A)(1) through (3). The court fulfilled these obligations in this case.

Indeed, the court made detailed finding of fact to support its determination that a 60/40 division of the marital property, favoring Stacey, was warranted. The court found that the parties' marriage was a long-term marriage of over 28 years, in which both parties contributed to the marital estate. Michael primarily contributed financially, while Stacey primarily cared for the home and the children. Although Michael worked outside the home, his contribution to the estate had not been entirely positive because he had lost marital assets in his business ventures. The parties were middle-aged and able to work. Stacey's lack of work history limited her opportunities. Michael had some health issues, but they did not prevent him from working. The court found that Michael and his affair were at fault for the breakdown of the marriage, but the court did not treat this as a significant fact in the distribution of assets. Instead, in concluding that a 60/40 division was warranted, the court emphasized Michael's lack of credibility regarding his assets and income and his obstructionist behavior during the court proceedings.

As it relates to the court's factual findings, Michael contends that the court afforded too much weight to his fault. The fault at issue in this case is twofold: Michael's fault in engaging in an extramarital affair that contributed to the breakdown of the marriage and Michael's misconduct

related to the parties' assets. "Marital misconduct is only one factor among many and should not be dispositive." *Cassidy*, 318 Mich App at 478 (quotation marks and citation omitted). "Fault is not a punitive basis for an inequitable division." *Id.* (quotation marks and citation omitted). "Instead, fault should be considered in conjunction with all the other relevant factors." *Id.* (quotation marks and citation omitted). Although misconduct related to assets does not require automatic forfeiture of those assets, attempts to conceal assets, or behavior that results in unnecessary litigation, can be considered when dividing assets and can support a deviation from an equal split. *Draggooo*, 223 Mich App at 430.

The trial court gave some weight to Michael's extramarital affair, but its overall focus was on Michael's misconduct relative to the parties' assets and the divorce proceedings. The court detailed Michael's obstructionist behavior at length—including both his behavior during discovery and his numerous lies during the course of these proceedings—which interfered with Stacey's efforts to value the business, hindered efforts to determine his income, and stymied the court's ability to accurately value assets. On this record, the trial court did not err by considering Michael's misconduct as a significant factor warranting a 60/40 distribution of the marital estate.

Moreover, although Michael's misconduct was a significant factor in the trial court's analysis, it was not the only factor considered. As noted above, the court considered many of the factors, including the parties' age, the length of the marriage, their earning abilities, their health, and their contributions to the marital estate. Considering the trial court's analysis as a whole, the 60/40 division of assets appears to be a fair and equitable on the facts of this case.

Michael briefly argues that the division was inequitable because he received few liquid assets and the business which the court found was worth \$0. Although Michael complains about a lack of liquidity, the court's findings make clear that Michael has greater earning capabilities than Stacey and a house in which to live with his mistress which lessens his need for liquid assets. Further, Michael's argument ignores the liquid assets that he received before trial as well as the assets that he received as the beneficiary of the estate of David Hendrickson.¹ Although the court correctly treated the inheritance as separate property, see *Dart v Dart*, 460 Mich 573, 585; 597 NW2d 82 (1999), the fact remains that, contrary to his complaints about liquidity, Michael has liquid assets at his disposal.

Next, with regard to the business, the court valued it at \$0, meaning that it did not affect the overall liquidity or value of Michael's property award one way or the other. Moreover, although the court valued the business at \$0, Michael testified that the papermill is in the process of building back to full strength. Thus, it is an asset with a potential for additional value and income. See *Hodge*, 303 Mich App at 564 (noting that the husband's business, awarded to him as an asset, "although currently of minimal value, has the potential to improve as economic conditions change"). Michael's general arguments regarding the equity and liquidity of the award, therefore, lack merit.

¹ Prior to his death, Hendrickson was a friend who loaned the parties approximately \$76,000 during their marriage.

Next, Michael contends that a tax loss carryforward is not an asset and that it should not have been divided as part of the marital estate. In contrast, Stacey asserts that the court correctly identified the carryforward as a marital asset but that it clearly erred by assigning the asset to Michael's without valuing the carryforward. We agree that the tax loss carryforward is a marital asset and that the trial court erred by awarding it to Michael without first determining its value.

"Generally, assets earned by a spouse during the marriage, whether they are received during the existence of the marriage or after the judgment of divorce, are properly considered part of the marital estate." *Woodington v Shokoohi*, 288 Mich App 352, 364; 792 NW2d 63 (2010). Tax benefits—such as the right to a tax refund—may be divided as marital assets. See *Burkey v Burkey*, 189 Mich App 72, 75; 471 NW2d 631 (1991). Several courts to consider the issue have also concluded that tax loss carryforwards, which involve the right to offset future earnings with losses, can constitute marital property subject to division when the losses to be carried forward were incurred during the marriage. See 1 *Equitable Distribution of Property*, 4th, § 5:9 & n 16 (compiling cases). Here, during the marriage, Michael used marital assets to purchase the business, and he incurred significant business losses—apparently totaling more than \$2 million—that he may use to offset taxes on future income. Thus, the trial court did not err by determining that the tax loss carryforward is a marital asset.

Once a determination has been made that an item constitutes marital property, a trial court is required to make specific findings regarding the value of that property "if the value is in dispute." *Olson v Olson*, 256 Mich App 619, 627; 671 NW2d 64 (2003). It is clear error for a court to simply award an asset with a disputed value to one party without first placing a value on the disputed piece of marital property. *Id.* At trial, Stacey presented expert testimony from a certified public accountant to support that Michael's tax documents evince a more than \$2 million carryforward. The accountant testified that the carryforward will continue until it is used completely and that it may be used to offset ordinary income as well as things like capital gains. As a result, Michael will effectively be able to earn \$2 million without paying any taxes on those earnings. The carryforward is nontransferable, so Michael could not assign a portion to Stacey for use on her own taxes. Nevertheless, the accountant testified that the value of the carryforward could be determined by calculating Michael's taxes each year and to ascertain how much he saved as a result of the carryforward. This would involve looking at Michael's income, determining his tax bracket and any deductions first, and then calculating the tax that he would owe but for the carryforward. Michael did not present any evidence as to the value or lack thereof of the tax loss carryforward.

Based on the accountant's testimony, a portion of the tax loss carryforward's value could be allocated to Stacey by ordering Michael to annually pay Stacey an amount equal to 60% of his tax savings attributable to the carryforward. That is a permissible way to divide an asset. There is no prohibition on the trial court entering orders that will require future disclosures by the parties. See, e.g., *Hodge*, 303 Mich App at 562 (approving a 2011 property division that, among other things, required the husband to "thereafter submit his personal and business income tax returns in 2012, 2013, and 2014 to show whether the business improves"). The trial court rejected this approach because it posed the risk of the parties being "in litigation forever." The court's concern for future litigation is understandable. But the court's reluctance to preside over anticipated future litigation does not provide a basis for awarding the asset solely to Michael without placing a value on it. Because the trial court clearly erred by awarding the carryforward to Michael without

determining the value of the asset, we vacate the court's conclusions regarding the carryforward and remand for further proceedings. On remand, the trial court shall, on the existing record, determine the value of the carryforward and readjust the property division to compensate Stacey accordingly.²

Michael also argues that the trial court clearly erred by valuing the notes in the Entrust account at \$362,500 when, according to Michael, the notes are worthless. We disagree. Although Michael contends that the notes are worthless because they are backed by the papermill's earnings, and the papermill is in turn worthless, the only evidence Michael offered to support his assertions regarding the terms of the notes was his own testimony. The court was not required to and, in fact, did not find his testimony credible. See *Hodge*, 303 Mich App at 555. Moreover, the court's valuation determination is supported by the record. With regard to the Entrust account, the statement for the account admitted at trial indicated that it has a total "market value" of \$377,813.44. This amount consists of \$15,313.44 in cash, and \$362,500 in "notes" related to "Columbia OPSCO, LLC," which is one of the partner companies in Michael's business. The chief financial officer for Entrust testified that Michael withdrew \$362,500 in actual cash from the account. Further, Michael conceded that he gave money to Columbia in exchange for the promissory notes. Thus, the record provided evidence that there is an outstanding debt in the amount of \$362,500 owed to the marital estate. The court did not err by valuing this asset on the basis of the amount owed to the marital estate and dividing this asset as part of the marital estate. See 2 Equitable Distribution of Property, 4th, § 6:100 & n 2 ("Debts receivable are acquired in exchange for the funds or property transferred to the debtor, and they are normally given the same classification.").

Next, Michael argues that the court erred by assigning the debt associated with his personal guaranties solely to him without first valuing them. The court addressed Michael's personal guaranties in connection with the business, concluding that the best estimate for everything—on the basis of Michael's accountant's testimony—was to value the business at zero while also giving Michael zero credit for any liabilities that he may have related to the business. In reaching this conclusion, the court relied on Michael's accountant's testimony that the business had a value of \$0. In contrast, the trial court emphasized that evidence also showed that the business was hiring new employees and had offered Michael a position with a \$128,000 salary, which were activities

² Michael argues that the court's failure to value the carryforward in the context of the property division is of no importance because the court considered the carryforward when calculating spousal support. This argument lacks merit. The carryforward is an asset, and as such, must be valued by the trial court as part of the property division. See *Olson*, 256 Mich App at 627-628. Without a value—or another means for determining the carryforward's equitable distribution between the parties—it is impossible to determine the equity of the property division or the equity of the spousal-support award. See *Seifeddine v Jaber*, 327 Mich App 514, 523-524; 934 NW2d 64 (2019) ("[T]he property awarded to the parties is a factor that should be considered when deciding whether to award spousal support."). Michael's claim that spousal support somehow obviates the need to value an asset is without merit.

that Michael's accountant testified were contrary to the condition of the business at the time he valued it. That suggested a potential change of circumstance and an improvement in the business. In bundling the personal guaranties with the business, the court noted that these personal guaranties were not among the "debts" that Michael claimed on his Verified Financial Statement. The court also again emphasized Michael's obstructionist behavior, and that of his business partners, in attempting to thwart Stacey's discovery requests. Further, the court also addressed the various loan arrangements in this case as a "tangled web of business garbage." With limited information about the business, and given the loan arrangements, the trial court ultimately awarded the business and related liabilities to Michael at a \$0 value. On this record, given the lack of information regarding the particulars of the business, we conclude that the trial court did not clearly err by assigning Michael's personal guaranties to him," and awarding the business and associated debts to him with a net value of \$0 and no credit for the potential liability on the personal guaranties.

Moreover, a guaranty is "an independent collateral agreement" by which the guarantor "undertakes to pay the obligation if the primary payor fails to do so." *Bandit Indus, Inc v Hobbs Intern, Inc*, 463 Mich 504, 508 n 4; 620 NW2d 531 (2001) (quotation marks and citation omitted). The contingent nature of a guaranty is notable in the context of a divorce and the division of liabilities because a liability that is merely speculative or hypothetical need not necessarily be divided or assigned value when dividing the marital estate. See, e.g., *Hanaway v Hanaway*, 208 Mich App 278, 301 & n 13; 527 NW2d 792 (1995) (concluding that the trial court did not err by valuing stock without considering possible tax consequences when no sale or other taxable event was planned or contemplated). In the context of guaranties, a speculative possibility of liability associated with a guaranty should not be considered; rather, there must be a showing that there is a "quantifiable likelihood of liability" before guaranties can be divided in a divorce. See 2 *Equitable Distribution of Property*, 4th, § 6:98 & n 12. See, e.g., *Larson v Larson*, 733 NW2d 272, 275-276 (SD, 2007) (concluding that the trial court did not abuse its discretion by failing to deduct the husband's personal guaranties from his total asset award when liability under them was contingent and speculative).

Michael has evaded efforts to value the business and to accurately determine its assets and liabilities. As a result, the record provides no basis on which to assess the likelihood that the business will default on the underlying loans and to conclude that there is a quantifiable likelihood that defendant will become liable for the guaranties. In other words, without more information about the business, which Michael chose not to provide, it cannot be concluded that the business is substantially likely to default on the underlying loans or that Michael will likely become liable as the guarantor. Therefore, on this record, the court did not abuse its discretion by bundling the guaranties with the business and awarding the business to Michael with \$0 value and \$0 liabilities.

Next, Michael argues that the trial court erred by treating the \$76,000 the parties owed to the Hendrickson Estate as a separate debt and holding him solely responsible on the basis that Michael, as the executor of Hendrickson's estate, was empowered by Hendrickson's will to forgive debts. Michael asserts that he owes a fiduciary duty and that he cannot simply forgive the debt. He maintains that the debt should be considered a marital debt and divided accordingly.

A trial court may find reasons to conclude that debt incurred during the marriage is an individual debt. *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005). However, that is not what the court did in this case. Both parties testified that, during their marriage, they borrowed

\$76,000 from Hendrickson. When dividing the parties' debts and assets, the trial court apportioned the debt to Michael, noting that Michael had the power under Hendrickson's will, as the executor of the estate, to forgive debts. After recognizing Michael's power to forgive the debt, the court stated:

So, I'm being asked, well, half that—half that debt, make her pay part of it, and I'll pay part of it. Well, you just happen to leave out that you have the power to forgive your part of that debt. So, you get that entire debt. That \$76,000 debt is on your side of the marker. Because you have the authority under the will that you signed on behalf of [Hendrickson] to forgive that debt entirely. And you just kind of left that out in your testimony along with the life insurance. And if you really feel like his kids need that \$76,000, then I suppose you could pay it out of the life insurance proceeds that you received or out of the IRA that you received. But since you have the ability to forgive that debt, you get the debt.

The court later clarified its ruling as follows:

Then there's the 76,000 owed to [Hendrickson's estate]. That is *apportioned* to [Michael].

And in clarification of the previous statements, I did not indicate that [Michael] shouldn't pay it. I said he has the ability under the terms of the will to forgive it. What I do not—what—*what will not happen under the terms of the judgment is he can forgive his half, and she's responsible for her half.* No. So, he has that entire amount. He can—he can pay it back with the IRA he got from the estate. He can pay it back with the insurance proceeds he got from the estate. Or he can choose to pay it back some other way. Or he can choose not to pay it back, as he has the ability to forgive it. That's what I said. I didn't say he shouldn't pay it. I said he has the ability to not pay it because of that clause in the will. [Emphasis added.]

Considering the trial court's analysis of the Hendrickson's debt as a whole, particularly its clarifications, the trial court treated the Hendrickson debt as a marital debt and apportioned it to Michael in the property division for practical reasons. Indeed, the court's reference to Stacey's "half," makes clear that this debt was treated as a marital debt and divided as part of the marital estate. Because Michael already received the relief requested, he is not entitled to further relief on appeal.

2. STACEY'S CHALLENGES TO THE PROPERTY DISTRIBUTION

Stacey argues that the trial court erred by using her spending while the status quo order was in place to offset Michael's dissipation of assets during the same timeframe. Stacey maintains that Michael was the only one who engaged in dissipation of marital assets and that the court erred by failing to take punitive measure against him to compensate her for the dissipated assets.

In a divorce action, "when a party has dissipated marital assets without the fault of the other spouse, the value of the dissipated assets may be included in the marital estate." *Woodington*, 288 Mich App at 368. Spending of marital assets on a mistress dissipates the marital estate. See

Cassidy, 318 Mich App at 468, 499-500 (indicating that the marital estate was dissipated by the husband using marital funds to assist his mistress in purchasing a home). Fraudulent transfers to third parties, including children, can also provide a basis for recapturing an asset for distribution as part of the marital estate, when the transfer was made to deprive the other spouse of an interest in marital property. See *Thames v Thames*, 191 Mich App 299, 302; 477 NW2d 496 (1991). In addition, a court might specifically enter an order prohibiting certain actions regarding property during the pendency of the divorce case, and property transfers in violation of such an order are invalid and may be set aside. See *Webb v Webb*, 375 Mich 624, 627; 134 NW2d 673 (1965).

The trial court found that Michael engaged in dissipation of marital assets. See *Cassidy*, 318 Mich App at 499-500. The court found that Michael purchased a home with his mistress, which they placed in her name even though they were buying it together. The court specifically rejected Michael's claim that he was simply a tenant paying "rent" to a landlord. Stacey also presented evidence that Michael spent marital funds improving his new house with his mistress, "wining and dining" his mistress, buying supplements to enhance their sex life, and taking trips with his mistress. The trial court credited Stacey's evidence and concluded that Michael had improperly spent \$22,735 on his mistress. Given the evidence presented, the court did not clearly err by concluding that Michael had engaged in improper spending, i.e., dissipation of marital assets.

The trial court's findings also support that Michael's improper spending constituted a violation of the status quo order. That order, which was amended once, limited the parties' spending to their past practices and it prohibited Michael from spending money on his mistress. It also contained provisions requiring Michael to continue to deposit his income and expense reimbursements into the marital accounts. Thus, by continuing to spend funds on his mistress, and by failing to deposit funds in marital accounts, Michael dissipated marital assets and he violated the status quo order. These funds should have been recaptured for the marital estate.

Instead of recapturing the dissipated assets and undeposited income for the marital estate, the trial court "offset" Michael's dissipation of assets with Stacey's spending during the pendency of the divorce, which included her spending on the parties' adult children as well as other expenditures. Specifically, at trial, Michael sought to recapture \$72,927 in allegedly inappropriate spending by Stacey. Addressing Michael's request, the court first held that his request for repayment of money spent on a computer was addressed in the property settlement and that he would be reimbursed for expenses related to Stacey's hiring of a private investigator. Additionally, Stacey conceded that Michael should be credited for the \$1,500 she spent on a wedding venue for the parties' daughter, which was an unusual expense for which Michael did not consent.

The trial court, however, did not make any findings as to whether the other allegedly improper expenses were, in fact, improper expenses. In particular, with regard to Stacey's spending, Stacey and the parties' children testified that her spending on the children pending the divorce was consistent with past practices. Stacey also testified that her spending on family members—such as her parents, brother, nieces and nephews, and friends—was consistent with past practices. Michael offered no evidence that plaintiff's spending on their daughter—or other family members and friends—differed from the couple's past practices. With regard to spending on the parties' son, however, Stacey acknowledged that she spent over \$33,000 supporting him. Stacey and the children testified that this spending was consistent with past practices. Michael

acknowledge that the parties had provided support for their adult child before the divorce. He maintained, however, that, during the pendency of the divorce, Stacey spent more on their son than they had in past years and that, in any event, the parties should no longer support him because he smoked marijuana and stopped attending college. Michael also maintained that their son should be able to support himself. The trial court did not resolve this factual dispute.

Among Michael's other claims of improper spending, the trial court also failed to address the \$15,000 Stacey gave to the parties' son, before entry of the status quo order, which Stacey testified was a repayment of money that she and Michael took from the child's bank account in 2017. Repayment of a marital debt does not constitute dissipation. See *Elahham v Al-Jabban*, 319 Mich App 112, 124; 899 NW2d 768 (2017) (concluding that a loan repayment did not constitute dissipation of marital assets). Stacey also testified that a payment to her mother was a repayment of money that Stacey borrowed from her parents during the pendency of the divorce case when Michael emptied their account, leaving her with no money to pay bills. If Stacey's testimony is credited, this would not constitute dissipation of assets. See *Hanaway*, 208 Mich App at 299-300 (concluding that the trial court erred by reducing the wife's "share of the assets by \$30,613, the amount she spent because defendant refused to pay certain expenses, that should have been paid from marital assets"). Yet, the trial court made no factual findings regarding these amounts to support whether they constituted dissipation of assets or legitimate payment of debts and marital expenses. Other than noting the amount that Stacey spent on a private investigator, the trial court also failed to make factual findings regarding her expenditures on an accounting expert for this case, an estate planner, or a private investigator to support that this spending constituted dissipation or a violation of the status quo order, particularly in light of Stacey's testimony that Michael had also been using marital funds to pay for litigation expenses, such as an attorney.

In sum, apart from the \$1,500 wedding debt that Stacey concedes was properly included on her side of the ledger, there are factual questions to be resolved regarding whether Stacey's expenditures constitute a dissipation of marital assets or a violation of the status quo order or both. Accordingly, we remand with instructions that the trial court make factual findings, on the existing record, regarding Stacey's spending to determine whether Stacey dissipated assets or violated the status quo order or both. See *Woodington*, 288 Mich App at 368. If the trial court's fact-finding results in the elimination or reduction of the offset for Stacey's spending, the property award should be adjusted accordingly.

Next, Stacey argues that the trial court's overall distribution of assets did not, mathematically speaking, accord with the trial court's intention to divide the estate 60/40. According to Stacey, she is entitled to an additional \$90,000 in assets to accomplish the 60/40 split. Michael concedes that the trial court intended a 60/40 split of assets, but he argues that Stacey's calculations regarding the distribution of assets are incorrect. Both parties provided detailed charts on appeal purporting to summarize the court's distribution of assets and debts with the corresponding values as assigned by the trial court. We conclude that there is no need to address this issue. Remand for further proceedings related to the overall value of the marital estate are required because the trial court clearly erred by failing to place a value on the tax loss carryforward and because the court failed to make adequate factual findings as to whether Stacey dissipated the marital estate, violated the status quo order, or both. Because the court's findings on remand related to both of those issues has the potential to affect the overall value of the marital

estate, we conclude that any mathematical errors in the court's distribution can be addressed on remand.

VI. SPOUSAL SUPPORT

A. STANDARD OF REVIEW

Both parties challenge the trial court's spousal-support award. We review a trial court's spousal-support award for an abuse of discretion. *Woodington*, 288 Mich App at 355.

B. ANALYSIS

Spousal support is governed by MCL 552.23(1), which provides for a case-by-case approach to a determination of spousal support. See *Loutts v Loutts*, 298 Mich App 21, 29; 826 NW2d 152 (2012). There is no particular formula that governs spousal support. *Id.* at 30. "The object in awarding spousal support is to balance the incomes and needs of the parties so that neither will be impoverished; spousal support is to be based on what is just and reasonable under the circumstances of the case." *Berger*, 277 Mich App at 726. Factors to be considered when addressing spousal support include:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity. [*Id.* at 726-727 (quotation marks and citation omitted).]

"The trial court should make specific factual findings regarding the factors that are relevant to the particular case." *Korth v Korth*, 256 Mich App 286, 289; 662 NW2d 111 (2003).

The trial court concluded that Stacey was entitled to spousal support. Initially, the trial court awarded her \$2,426 in monthly spousal support, imputing income to plaintiff in the amount of \$20,000 and using \$128,000 as Michael's annual income. On reconsideration, the trial court also addressed the tax carryforward, and it reconfigured its calculations to account for the fact Michael's income would essentially be tax free.³ Considering this fact, the court increased the amount of spousal support to \$2,767 each month for 14 years and four months.

³ On appeal, Michael attempts to challenge the testimony regarding the valuation of the tax loss carryforward. We consider these arguments, which Michael failed to raise in the trial court, to be waived. See *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008).

1. MICHAEL'S SPOUSAL-SUPPORT CHALLENGES

Michael argues that the trial court's calculation of spousal support improperly involved the mechanical use of a prognosticator, rather than an assessment of the parties' particular facts and circumstances. Yet, contrary to his contention that the trial court mechanically applied a formula or prognosticator, the record shows that, when addressing spousal support, the trial court considered numerous factors. The trial court noted the long-term length of the marriage, addressed the property awarded to both parties, and their respective abilities to work and their earning capacities. The trial court rejected Michael's claim that his health interfered with his ability to work, and although recognizing Stacey's limited earning capacity given her lack of work history, the trial court imputed income to her in the amount of \$20,000 on the basis that she should be able to work full-time and earn minimum wage. The trial court addressed the history of the marriage and the parties' respective contributions, noting Michael's role as "breadwinner" and Stacey's contribution as a "stay-at-home parent." The trial court considered Michael's fault in the breakdown of the marriage, the parties' historical standing of living, the parties' present needs and respective living situations. Further, the trial court addressed equity in general, again noting Michael's delaying tactics in the divorce case and his numerous lies during this case. Thus, on this record, the trial court did not rigidly adhere to any particular formula without consideration of the parties' particular needs and incomes.

Michael complains that the trial court failed to address (1) Stacey's postdivorce needs and (2) his health. The record belies that claim. With regard to Stacey's needs, Michael apparently wants her to live on an incredibly restricted budget, which he maintains she can do by residing with her parents forever. The trial court considered and rejected this view of Stacey's needs, noting that Stacey planned to move out of her parents' home and that she needed spousal support "to provide her the ability to bring her present situation to a livable situation." Thus, the trial court did not fail to consider Stacey's needs. Similarly, the trial court did not fail to address Michael's health. Evidence was offered at trial that Michael has a history of migraines and had surgery in the past for neck problems. However, the evidence was also clear that these problems date back 10 years, and that these issues have not prevented Michael from working during that time. Indeed, historically, after surgeries, Michael was soon back to work and taking vacations. Further, despite his purported health complaints, there is no dispute that Michael is currently working. Consistent with this evidence, the trial court specifically addressed Michael's health concerns as bearing on his ability to work, acknowledging that Michael had a history of health concerns but concluding that these concerns, including surgery, did not prevent him from working. There is, therefore, no merit to Michael's claim that the court did not address his health.

Finally, Michael proclaims, in cursory fashion, that the award is inequitable and will clearly leave him impoverished. He does not, however, direct this Court to any testimony supporting his claim that paying a total of \$33,204 annually in modifiable spousal support to Stacey will impoverish him. Rather, in connection with this argument, he only directs this Court to testimony suggesting that Stacey is relatively young and was awarded significant assets, so it is unreasonable to expect that the "vast majority" of her financial support must come from Michael. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham*

v Detroit, 355 Mich 182, 203; 94 NW2d 388 (1959). Accordingly, we consider this argument abandoned on appeal.

2. STACEY’S SPOUSAL-SUPPORT ARGUMENTS

On cross-appeal, Stacey argues that the trial court failed to appropriately consider her needs and the fact that the amount of spousal support awarded to her will leave her with a budget shortfall each month. As discussed in connection with Michael’s arguments, the trial court did not fail to consider Stacey’s needs.

Stacey next argues that the trial court clearly erred in its determination that Michael’s annual income was \$128,000. She asserts that the court should have found that because there was evidence that Michael had previously lied about his income, the court should have found that his income was higher. She does not direct this Court to testimony in the lower court record, however, indicating what specific income should have been found. Michael testified that his annual income was \$128,000 and introduced documentation to support that assertion. Although the trial court stated repeatedly that Michael’s credibility was “zero,” the court was not precluded from finding his testimony regarding his income to be credible. In light of the evidence introduced at the bench trial, we are not left with a definite and firm conviction that the trial court’s finding was clearly erroneous.

3. IMPACT OF THE TAX LOSS CARRYFORWARD

The trial court’s spousal support calculation took into account the impact the tax loss carryforward would have on Michael’s income. Based on its determination that Michael would, essentially, not have any tax liability as a result of the carryforward, the court used Michael’s gross income when calculating spousal support. Under the circumstances, that decision was “just and reasonable.” See *Berger*, 277 Mich App at 726. Yet, because the trial court must assign a value to that tax-loss-carryforward asset and must distribute 60% of the value of that asset to Stacey, the carryforward’s impact on the spousal-support calculation will likely be affected. Therefore, on remand, the trial court must consider the impact of its tax-loss-carryforward’s valuation determination has on the spousal support calculation.

VII. ATTORNEY FEES

A. STANDARD OF REVIEW

Both parties also challenge the trial court’s award of attorney fees to Stacey. We review a trial court’s decision whether to award attorney fees for an abuse of discretion. *Cassidy*, 318 Mich App at 479.

B. ANALYSIS

Attorney fees may, however, be awarded under MCR 3.206(D), which states:

(1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.

(2) A party who requests attorney fees and expenses must allege facts sufficient to show that:

(a) the party is unable to bear the expense of the action, including the expense of engaging in discovery appropriate for the matter, and that the other party is able to pay, or

(b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply, or engaged in discovery practices in violation of these rules.

This court rule provides two independent reasons for a party in a divorce action to obtain attorney fees. *Cassidy*, 318 Mich App at 480. “Whereas MCR 3.206[D](2)(a) allows payment of attorney fees based on one party’s inability to pay and the other party’s ability to do so, MCR 3.206[D](2)(b) considers only a party’s behavior, without reference to the ability to pay.” *Id.* at 480-481 (quotation marks and citation omitted). Under either subsection, “[t]he party requesting the attorney fees has the burden of showing facts sufficient to justify the award.” *Woodington*, 288 Mich App at 370.

Stacey sought attorney fees under both subsections in MCR 3.206(D)(2). When a party requests need-based attorney fees in a divorce action it is incumbent upon the trial court to determine whether attorney fees are needed for the party to defend his or her suit, including whether, under the circumstances, paying attorney fees would require that party to invade assets needed for support. *Myland v Myland*, 290 Mich App 691, 703; 804 NW2d 124 (2010). The trial court must also consider whether the other party has “the ability to pay or contribute” to those attorney fees. *Id.* Special consideration should be given “to the specific financial situations of the parties and the equities involved.” *Id.*

Here, although Stacey specifically sought attorney fees on the basis that she was unable to pay and that Michael was able to pay her attorney fees. The trial court, however, failed to make any of the factual findings necessary for a determination of the propriety of attorney fees under MCR 3.206(D)(2)(a). Without adequate fact-finding, it cannot be determined whether the trial court’s decision regarding need-based attorney fees constituted an abuse of discretion. See *Woodington*, 288 Mich App at 371. In these circumstances, we remand to the trial court for consideration, in the first instance, of Stacey’s need-based request under MCR 3.206(D)(2)(a). See *Myland*, 290 Mich App at 703.

Next, the parties dispute the trial court’s decision to awarded Stacey \$20,000 on the basis of Michael obstructive conduct and failure to follow court orders. Given the extensive discovery history in this case and the overall lack of reliable information about Michael’s business that has flowed from his obstructionist behavior, the trial court did not clearly err by concluding that Michael’s behavior warranted attorney fees under MCR 3.206(D)(2)(b). Michael responded late to discovery requests, withheld information about assets during discovery, lied about his income when seeking to have spousal support modified before trial, and refused to produce information about the business during discovery. Notably, while Michael stonewalled discovery before trial with assertions that he lacked access to “third party” information about the companies, at trial he attempted to authenticate business documents as records kept in the ordinary course of business,

and, as emphasized by the trial court, he was able to produce business information for a valuation review by his expert. Contrary to Michael's arguments, the trial court did not err in its assessment of Michael's credibility regarding his access to documents or by concluding that Michael had engaged in obstructionist behavior during discovery and throughout this case. In light of the record in this case, the trial court did not err by concluding that attorney fees were warranted.

Notwithstanding that the trial court did not err by concluding that Michael's behavior warranted attorney fees, the court clearly erred in setting the amount of attorney fees at \$20,000. Attorney fees and expenses are warranted when they were incurred as a result of one party's bad behavior. See MCR 3.206(D)(2)(b). There is, in other words, a causal requirement; the bad behavior must have caused the incurrence of the fees and expenses. See *Richards v Richards*, 310 Mich App 683, 702; 874 NW2d 704 (2015). Moreover, the amount of attorney fees must also be reviewed for reasonableness. See *Cassidy*, 318 Mich App at 488. Here, in setting the amount of attorney fees at \$20,000, the trial court admitted that it pulled this number "out of the air." This is not a sufficient basis for justifying a particular amount of attorney fees. Instead, the trial court needed to more particularly evaluate what attorney fees and expenses Stacey incurred as a result of Michael's bad behavior, and before awarding a specific amount of attorney fees, the trial court also needed to assess reasonableness. Given the trial court's failure to make these necessary findings, we vacate the award of attorney fees and remand for further proceedings regarding the amount of attorney fees.

VIII. REMAND TO DIFFERENT JUDGE

Finally, Michael asserts that the trial judge should be disqualified and the case remanded for proceedings before a different judge. "The general concern when deciding whether to remand to a different trial judge is whether the appearance of justice will be better served if another judge presides over the case." *Bayati v Bayati*, 264 Mich App 595, 602; 691 NW2d 812 (2004). That is, this Court "may remand to a different judge if the original judge would have difficulty in putting aside previously expressed views or findings, if reassignment is advisable to preserve the appearance of justice, and if reassignment will not entail excessive waste or duplication." *Id.* at 602-603. None of these circumstances are present in this case. The judge's findings relative to Michael's credibility were soundly rooted in the evidence, and these types of opinions, formed by a judge on the basis of evidence and events occurring during the course of the current proceedings, are not evidence of bias or partiality. See *Schellenberg*, 228 Mich App at 39. There is also no indication of deep-seated antagonism or favoritism that would suggest that the trial judge cannot put aside previous findings or views as would warrant reassignment to a new judge on remand. See *Bayati*, 264 Mich App at 602. Moreover, in this lengthy and factually detailed case, reassignment would involve unnecessary and excessive waste and duplication. See *id.* Michael's request for a new judge is denied.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We retain jurisdiction. Neither party having prevailed in full, no taxable costs are awarded. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Kathleen Jansen
/s/ Thomas C. Cameron

Court of Appeals, State of Michigan

ORDER

Stacey Lynn Cammenga v Michael Philip Cammenga

Docket No. 358463

LC No. 2020-000233-DO

Michael J. Kelly
Presiding Judge

Kathleen Jansen

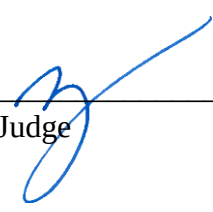
Thomas C. Cameron
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 56 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. The proceedings on remand are limited to the issues specifically addressed in the opinion issued concurrently with this order.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

March 23, 2023

Date



Chief Clerk