

Circuit Court for Baltimore County
Case No. C-03-CV-19-000949

CONSOLIDATED

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 0877 & 1337

September Term, 2021

JENNIFER S. HORNE, et al.

v.

LAW OFFICE OF J. CALVIN JENKINS, JR.

Beachley,
Albright,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: September 8, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from a collection case. Appellant Jennifer S. Horne is the former client of attorney J. Calvin Jenkins, Jr.¹ Appellant, Nancy Thompson, is Ms. Horne’s Mother. Ms. Horne hired Mr. Jenkins to represent her in a then-pending family law case. Ms. Thompson co-signed her daughter’s and Mr. Jenkins’ written fee agreement. The attorney-client relationship soured and Mr. Jenkins terminated his representation before the family law case ended. When Ms. Thompson and Ms. Horne failed to pay their balance due, Mr. Jenkins filed this case against them, and Ms. Horne counterclaimed for legal malpractice. Ten months later, when Ms. Horne asked to dismiss her counterclaim without prejudice, the circuit court declined, opting instead to dismiss it with prejudice. A two-and-a-half-day bench trial ended with judgment being entered in favor of Mr. Jenkins for the full amount owed, as well as a second judgment, this pursuant to Maryland Rule 1-341, for the extra attorney’s fees and expenses Mr. Jenkins incurred in having to attend the second and third (half) day of trial. Ms. Thompson and Ms. Horne appeal both judgments.²

Ms. Horne and Ms. Thompson raise seven questions for our review, which we have rephrased and reorganized into six questions:³

¹ Mr. Jenkins trades as “The Law Offices of J. Calvin Jenkins, Jr.[.]” the Appellee here. We will refer to Appellee as Mr. Jenkins.

² We consolidated these appeals as they arose from one circuit court case.

³ Appellants’ questions are:

1. Did the trial court err in granting the Appellee full damages in this breach of contract action, that is, payment of the full balance of Appellee’s

1. Did the circuit court err or abuse its discretion when it denied Appellants' motions for postponement and stay?
2. Did the trial court err in dismissing Appellant Horne's amended counterclaim with prejudice and without leave to amend?
3. Did the trial court err, or abuse its discretion, when it denied Appellants' motion for recusal?
4. Did the trial court err or abuse its discretion in entering judgment in favor of Appellee for the full amount of his damages?
5. Did the trial court err, when, pursuant to Maryland Rule 1-341, it awarded Appellee his attorney's fees and costs from the second and third day of trial?
6. Did the trial court impermissibly penalize Appellants for proceeding *pro se*?

representation fees, when Appellants had legitimate defenses to those full damages – aside from the counter complaint?

2. Did the trial court err in dismissing the counter complaint with prejudice and without leave to amend?
3. Did the trial court err, or abuse its discretion, when it denied Appellants[] a stay of this litigation, until the divorce action was finalized?
4. Did the trial court err or abuse its discretion, when it denied a postponement of the case -- in denying Appellants' motion for appropriate relief -- while the divorce case was still active?
5. Did the trial court err, or abuse its discretion, when it denied Appellants' motion for recusal?
6. Did the trial court err, when it granted Appellants' attorney fees pursuant to Rule 1-341, regarding the trial, after the final judgment was entered?
7. Did the trial court impermissibly penalize Appellants for proceeding *pro se*?

For the reasons that follow, we answer Questions 1, 2, and 3 “no.” We decline to reach Questions 4, 5, and 6, and will dismiss the appeal in part as to those questions. Accordingly, we affirm the judgments of the circuit court.

BACKGROUND

In 2018, Ms. Horne hired Mr. Jenkins to represent her “in her domestic matter,” *Jennifer S. Horne v. Robert M. Horne*, Circuit Court for Baltimore County, Case No. 03-C-16002324. At the time, Ms. Horne’s family law case had been going on since 2016. For this purpose, Ms. Horne signed a written “Domestic Fee Agreement” with “The Law Offices of J. Calvin Jenkins, Jr.” Three days later, Ms. Thompson signed the same agreement as “Co-Signer.”

Beyond identifying the work for which Mr. Jenkins was hired, the fee agreement addressed a variety of standard issues. Thus, Ms. Horne and Ms. Thompson agreed to pay Mr. Jenkins at the rate of \$400 per hour for “[a]ny and all activities . . .” Ms. Horne and Ms. Thompson also agreed to provide a \$15,000 retainer that would be credited against hours incurred, to pay a 12% per annum late charge for fees and costs not paid within 30 days, and to pay 15% of any unpaid balance for Mr. Jenkins’ attorneys’ fees in the event that he was required to “resort to legal proceedings to collect [his] fee.” Mr. Jenkins agreed to “advise you monthly (by statement) with reference to the amount of time that has been spent in rendering services in connection with your case[,]” among other things.

The Domestic Fee Agreement also outlined several reasons for Mr. Jenkins to discontinue representing Ms. Horne. For instance, if Ms. Horne and Ms. Thompson failed to pay Mr. Jenkins’ bills within a reasonable time, Mr. Jenkins could withdraw his

appearance on behalf of Ms. Horne. The agreement also provided that “[Mr. Jenkins] reserves the right to discontinue performing legal services on [Ms. Horne’s] behalf for any one of the following reasons: lack of client cooperation, lack of meritorious claim, or a client’s failure to maintain an account in good standing. The firm will not discontinue legal services without giving [Ms. Horne] due notice.”

Shortly after she co-signed the fee agreement, Ms. Thompson paid the \$15,000 retainer, and Mr. Jenkins entered his appearance in the family law case. At the time, a family law merits trial was scheduled for January 2019.

In December, 2018, Mr. Jenkins observed (and billed Ms. Horne to observe) another case then pending in the Circuit Court for Baltimore County, this by Ms. Thompson against Ms. Horne and Robert Horne, Ms. Horne’s husband and the father of her children. Known to the parties here as the “house case” or the “fraud case,”⁴ this case involved the Hornes, Ms. Thompson, the Hornes’ marital home, and the attorney that was representing Mr. Horne in the family law case. It was also being heard by the same judge. Mr. Jenkins saw this as a valuable opportunity to evaluate witnesses who could be testifying in the family law case. At the time, Ms. Horne thanked Mr. Jenkins for attending.

With respect to billing, Mr. Jenkins’ typical practice was to issue monthly bills only after the initial retainer was exhausted. Thus, he issued his first bill under the fee

⁴ It was captioned *Nancy Lee Kathryn Thompson v. Robert M. Horne, et. al.*, Case No. 03-C-16-003714, Circuit Court for Baltimore County.

agreement in January 2019, for services rendered in the last quarter of the prior year.⁵

Other bills followed over the course of Mr. Jenkins’ representation of Ms. Horne.⁶

In January 2019, the circuit court bifurcated Ms. Horne’s family law case such that custody would be heard first, with all remaining issues to be heard at a later time. The custody trial was scheduled to conclude that month, but it did not.⁷ After the custody trial carried over, Ms. Horne notified Mr. Jenkins of her intent to hire Toyja E. Kelley, Esquire, the lawyer representing Ms. Horne in the “house case,” as additional counsel in the family law case (including the custody dispute). Ms. Horne decided to hire Mr. Kelley “unilaterally,” i.e., without first consulting Mr. Jenkins. Shortly after, Mr. Kelley entered his appearance in the family law case.

Ms. Horne then backtracked over many of the trial strategy decisions that Mr. Jenkins had already reviewed with her. For instance, she wanted him to subpoena Child Protective Service records that they had previously decided not to pursue. She wanted him to subpoena Mr. Horne’s financial records, when they had previously established a plan to address financial issues later in the case. She wanted to revisit Mr. Jenkins’

⁵ This bill, which was issued on January 2, 2019, covered services rendered from September 27, 2018 to December 28, 2018. At that time, the balance due was \$12,945.

⁶ Specifically, after the January 2019 bill, Mr. Jenkins issued bills on February 5, 2019 and April 2, 2019. As is discussed later, Mr. Jenkins withdrew his appearance on March 7, 2019, and so the April bill did not include any charges for services rendered after the withdrawal.

⁷ The final scheduled day of the custody trial in the family law case was January 18, 2019. That portion, however, was carried over to February 28, April 2, and April 15, 2019. It concluded on July 3, 2019 when the circuit court issued an Amended Child Access and Custody Order. Mr. Horne would later dismiss her appeal from that Order.

strategy regarding which witnesses to call at the custody trial. And she continued to reject Mr. Jenkins’ advice that she settle the custody dispute along the lines that the custody evaluator recommended.

Meanwhile, in February 2019, Ms. Thompson made a partial payment toward Ms. Horne’s balance due with Mr. Jenkins. By then, however, Mr. Jenkins had already issued another bill, meaning that the partial payment was less than 20 percent of the balance due.⁸

On March 7, 2019, Mr. Jenkins terminated his representation of Ms. Horne due to Ms. Horne’s “lack of cooperation, unrealistic goals and demands, and [his] personal health.” He notified the circuit court of his withdrawal that same day.⁹

Two months passed, and Mr. Jenkins received no further payments. He filed suit against Ms. Thompson and Ms. Horne for breach of the fee agreement, alleging that he was still owed \$99,149.95 for the legal work that he performed for Ms. Horne, and that he had not been paid (despite repeated requests). Ms. Thompson and Ms. Horne denied the allegations and counterclaimed that during his representation of Ms. Horne, Mr. Jenkins breached the fee agreement by neglecting his reasonable duties and violating Ms.

⁸ Specifically, Ms. Thompson paid \$12,000 on February 15, 2019, while Mr. Jenkins’ February 5, 2019 bill had a balance due of \$69,484.70.

⁹ Given that Ms. Horne was also represented by Mr. Kelley, Mr. Jenkins’ withdrawal was by notice rather than motion. *See* Md. Rule 2-132(a).

Horne’s instructions.¹⁰ Later, Ms. Thompson and Ms. Horne represented that Allen J. Kruger, Esquire, an expert witness, would testify that Mr. Jenkins did not adhere to the standard of care in his representation of Ms. Horne.

Ms. Thompson and Ms. Horne took several steps to try to delay Mr. Jenkins’ collection efforts, including by filing a motion to request what amounted to an indefinite stay “pending resolution of the underlying family law matter.” While that motion was pending, Ms. Horne also amended her counterclaim,¹¹ alleging that Mr. Jenkins had breached his fee agreement with Ms. Horne by neglecting to provide monthly statements to her (through January 2019); to familiarize himself sufficiently with her case; to issue

¹⁰On September 12, 2019, Mr. Jenkins moved to dismiss Ms. Thompson’s and Ms. Horne’s original counterclaim for failure to state a claim, a motion the court first denied. When Mr. Jenkins moved for reconsideration of that denial, the circuit court modified its decision in part and dismissed all of Ms. Thompson’s counterclaims with prejudice and portions of Ms. Horne’s counterclaim without prejudice. It appears that the circuit court reached this decision without holding a hearing or considering Ms. Thompson’s and Ms. Horne’s timely opposition memorandum.

On reconsideration, and as to Ms. Thompson’s counterclaim, the circuit court determined that because Ms. Thompson’s allegations arose from her being a co-signer to the fee agreement and not an intended third-party beneficiary, Ms. Thompson could not maintain claims against Mr. Jenkins. As to Ms. Horne’s counterclaim, and to the extent that Ms. Horne alleged that Mr. Jenkins made “trial missteps” during the custody trial that caused her injury, the circuit court determined that Ms. Horne’s claim was “not ripe” because in its view, “the underlying case [was] still ongoing.” Based on these conclusions, the circuit court ordered that Ms. Horne amend her counterclaim. The circuit court later determined that its initial understanding of the custody case’s posture was incorrect. Indeed, a final order had been issued, and, as a consequence, the court concluded, Ms. Horne’s legal malpractice counterclaim “was ripe.”

¹¹ Ms. Thompson did not amend her counterclaim.

subpoenas; to supplement discovery; to prepare witnesses for trial; to pursue updates to evidence, including expert witnesses; and to “comply with Horne’s reasonable requests concerning the handling of her custody trial.”

In May 2020, Ms. Thompson’s and Ms. Horne’s counsel moved to withdraw their appearances. They represented that Ms. Thompson and Ms. Horne had been “thoroughly advised of their rights and responsibilities with respect to the instant case and all pending issues before the Court[,]” and that there would be no undue delay by the granting of the motion. Ms. Thompson and Ms. Horne both signed the motion, representing that they had reviewed it with counsel and consented to their withdrawal “freely, knowingly, and voluntarily.” The circuit court granted this motion one month later and notified Ms. Thompson and Ms. Horne about the risks of representing themselves.¹²

Shortly after, via letter to the circuit court, Ms. Horne requested another stay as well as a discovery deadline extension. Specifically, she asked the circuit court to stay the case and extend the discovery deadline until “my divorce trial ends.” She also argued that a “sequestration order” prevented Ms. Thompson from reviewing documents provided by Mr. Jenkins in discovery and from deposing Mr. Jenkins. A few days later, Ms. Thompson and Ms. Horne again asked to stay Mr. Jenkins’ case by filing a formal motion. In this motion, Ms. Thompson admitted that she had failed to pay Mr. Jenkins’

¹² In separate signed notices mailed to each of their addresses, the circuit court said “unless new counsel enters his or her appearance . . . within fifteen (15) days after service of this notice, your lack of counsel shall not be grounds for postponing any further proceedings.” The court added that “. . . without legal counsel, you face the risks of dismissal, judgment by default, and assessment of court costs against you.”

outstanding balance, but claimed she had “. . . the right to make sure Mr. Jenkins did what he was hired to do before she pays the outstanding balance” and that Ms. Thompson needed a stay to review trial transcripts and Mr. Jenkins’ discovery documents. The circuit court denied both postponement requests but stayed discovery pending an August 2020 motions hearing.

At around the same time, Ms. Thompson and Ms. Horne also filed a motion to dismiss Ms. Horne’s counterclaim without prejudice. In support, they stated that, “[w]e are not prepared to move forward with a legal malpractice lawsuit against Mr. Jenkins and feel doing so would severely prejudice us.” Ms. Horne added that she “does not want to give up any of her rights to file a malpractice lawsuit against Mr. Jenkins in the future after the divorce is final if she chooses to.” Mr. Jenkins opposed this request, affirmatively asking that Ms. Thompson and Ms. Horne be presented with two options: “litigate their case in a timely fashion as required by the Maryland Rules or a dismissal *with prejudice*.” (emphasis in original).¹³

In August 2020, in an oral ruling that spanned 16 transcript pages, the circuit court dismissed Ms. Horne’s amended counterclaim with prejudice and in so doing, denied Ms. Horne’s motion for voluntary dismissal without prejudice.¹⁴ After

¹³ By then, the only counterclaim before the circuit court was Ms. Horne’s amended counterclaim. Ms. Thompson had already elected not to amend her counterclaim.

¹⁴ The circuit court’s written order incorporating this ruling was filed August 24, 2020.

reviewing the history of the case, the circuit court noted that “a lot of time and effort and expense has been put into the discovery . . . with very little results,” that Ms. Horne had engaged in excessive delay and lack of diligence, prosecuting a theory that had been “a consistent moving target,” and that Ms. Horne’s status as a *pro se* litigant was not a viable reason for more delay. The case, and the counterclaim, had been going on for over a year, the circuit court noted, and added that as to the counterclaim, Mr. Jenkins had a dispositive motion pending.

In March 2021, Ms. Thompson and Ms. Horne moved to recuse the circuit court judge, who, by that time, had been specially assigned to the case for a year,¹⁵ and asked that the case be transferred to another county. The circuit court denied this motion, finding “that there is no reasonable question of the Undersigned’s impartiality or ability to decide this matter fairly based on the evidence to be admitted at trial.”

The bench trial started soon after. Mr. Jenkins testified on his own behalf and called Richard Jacobs, Esquire, an expert who opined on the fairness and reasonableness of Mr. Jenkins’ fees. When it became apparent that the trial would not conclude on the first day, the court looked to schedule a second. Ms. Thompson and Ms. Horne requested not one but two more days because they intended to call Mr. Kelley and Mr. Kruger to testify, and the circuit court granted their request. During the remainder of the trial, Ms.

¹⁵ The circuit court judge was specially assigned on February 25, 2020.

Thompson and Ms. Horne continued to represent themselves and never called Mr. Kruger to testify.

Ultimately, the circuit court ordered that judgment be entered against Ms. Thompson and Ms. Horne and in favor of Mr. Jenkins for \$142,793.75, with post-judgment interest at the legal rate. The circuit court found that “[by] failing to pay [Mr. Jenkins] for services rendered in accordance with the Domestic Fee Agreement, [Ms. Thompson and Ms. Horne] breached their contractual obligation to [Mr. Jenkins].” The court then reviewed the evidence of Mr. Jenkins’ fees, including that provided by Mr. Jenkins’ expert witness, in light of Maryland Rule 19-301.5, and concluded that “the fees charged by [Mr. Jenkins] were fair and reasonable.” In reaching this conclusion, the circuit court considered and rejected each of Ms. Thompson’s and Ms. Horne’s defenses, often because the circuit court found Ms. Thompson’s and Ms. Horne’s testimony not credible:

Defendants advanced many purported defenses to Plaintiff’s claim. . . . None of these defenses were supported by relevant, admissible evidence. Defendants’ collective testimony was not credible and was often contradicted by their own exhibits. Many of the defenses argued lacked legal basis.

Defendants’ argument that Plaintiff breached Paragraphs 3, 7, and 17 of the Domestic Fee Agreement was addressed and rejected above. Defendants did not demonstrate that Plaintiff’s failure to strictly comply with Paragraph 3 of the Agreement constituted a material breach of the contract. The fact that Plaintiff did not send monthly statements to the Defendants until the initial retainer was exhausted does not excuse Defendants from paying for appropriately-billed time – particularly when Defendant Thompson made payments toward the January 2019 bill and Defendant Horne continued to incur billed time thereafter. The evidence and testimony at trial contradicted Defendants’ argument that Plaintiff’s attendance at another related matter

involving the same parties was unwanted by the Defendants. Defendants lunched at Mr. Jenkins’ office to discuss and prepare for trial during the breaks of the related matter. *See* Def. Ex. 56. Defendants even thanked Mr. Jenkins and Ms. Horne agreed that his presence at the related matter served a valid, effective purpose. . . . Finally, Defendants’ complaints about Plaintiff’s withdrawal lack merit. Plaintiff withdrew in accordance with Md. Rule 2-132(a) after advising Defendants several times that he would have to withdraw if they continued to withhold payment. *See* Pltf. Ex. 6; Pltf. Ex. 14.

Defendants[] claim that Plaintiff’s failure to obtain Ms. Horne’s stated objective of sole legal custody justifies their non-payment of Plaintiff’s fee. However, Md. Rule 19-301.5(d)(1) prohibits any fee arrangement that is made contingent upon a particular custody result. Moreover, Defendants refused to pay Mr. Jenkins before the Court issued a custody ruling.

. . . .

Defendants failed to prove any deficiency or impropriety in Mr. Jenkins’ representation of Ms. Horne. Mr. Jenkins’ representation of Ms. Horne was competent and appropriate. Md. Rule 19-302.1 requires an attorney to “exercise independent professional judgment and render candid advice.” Although Ms. Horne did not, for example, want to settle for anything less than sole custody,[omitting footnote 2], Mr. Jenkins was ethically compelled to discuss settlement offers with Ms. Horne and was, therefore, entitled to bill Ms. Horne for his time spent doing so. Similarly, Mr. Jenkins was compelled to review the files of Ms. Horne’s prior counsel and he was entitled to bill for his time spent in review. Ms. Jenkins’s decision to use prior counsel’s documents, or not, at the custody trial was an exercise of his professional judgment . . . it is not evidence that Mr. Jenkins billed for work that he did not perform. Defendants’ attempts to prove otherwise by highlighting particular questions and evidence in their attempts to relitigate the underlying domestic matter from which this litigation bloomed were not persuasive.

Following an unopposed motion for Rule 1-341 attorney’s fees and costs, the circuit court found that the requested sum was reasonable and awarded Mr. Jenkins

\$10,073.50.¹⁶ The circuit court further found that “Defendants intentionally abused the judicial process by acting in bad faith. On several occasions throughout this case, this Court has noted Defendants’ penchant for unreasonably delaying and prolonging the litigation.”

In reaching these conclusions, the circuit court focused primarily on Ms. Thompson’s and Ms. Horne’s attempts to delay and prolong the trial (many of which were ultimately rejected). These included their requests for postponement; to recuse the circuit court judge and change venue (or for default judgment against Mr. Jenkins); for two additional trial days; and, subsequently, to reschedule those same days to September 2021. The circuit court also found fault with Ms. Thompson’s and Ms. Horne’s conduct, finding (among other things) that they had “feign[ed] unpreparedness”; “concocted a months-long bluff”; and reneged on “several representations to Plaintiff and the Court”—all while causing Mr. Jenkins to unnecessarily incur additional expert fees. Ultimately, the circuit found that “Defendants’ intentional misconduct, particularly their persistent efforts to unreasonably delay the resolution of this litigation, qualifies as bad faith and warrants the assessment of fees and costs pursuant to Md. Rule 1-341.”

We will supply additional facts below as necessary.

¹⁶ This fee award against Ms. Thompson and Ms. Horne was the circuit court’s *second* in this case. The *first*, for \$3,835.00, was on September 30, 2020 following the circuit court’s determination that Ms. Thompson and Ms. Horne had moved to dismiss Mr. Jenkins’ suit without substantial justification and in bad faith. Question 5 is directed to the *second* Rule 1-341 award.

DISCUSSION

The \$142,793.75 Judgment, the Rule 1-341 Attorney’s Fees Award, and Ms. Thompson’s and Ms. Horne’s status as self-represented litigants (Ms. Thompson’s and Ms. Horne’s Questions 4, 5, and 6)

Central to Ms. Thompson’s and Ms. Horne’s argument on these questions is their contention that with its rulings, the circuit court treated them unfairly because they represented themselves. Thus, as to the \$142,793.75 judgment (Question 4), Ms. Thompson and Ms. Horne argue that they were unfairly prevented from presenting their “defenses” to Mr. Jenkins’ claim because the trial court sustained Mr. Jenkins’ counsel’s objections to their questions.¹⁷ As to the Rule 1-341 Award (Question 5), Ms. Thompson and Ms. Horne continue with the theme of improperly sustained objections. They argue that by making the award, the circuit court implicitly agreed with Mr. Jenkins’ argument, itself prejudicial, that labeled Ms. Thompson’s and Ms. Horne’s trial performance a

¹⁷ These defenses were: 1) that Ms. Horne did not request that Mr. Jenkins attend the “house” trial; 2) that she was double-billed for Mr. Jenkins review of transcripts and for attending the “house” trial where there was another lawyer representing Ms. Horne at the “house” trial; 3) that she was not comfortable taking the Fifth Amendment to questions about her destruction of property charge in her custody case; 4) that she was adamant to reject a court-appointed parenting coordinator; 5) that she was aghast at Mr. Jenkins not calling a single witness in her side of the custody case, except for her and Mr. Horne (as an adverse witness); 6) that she was compromised in her attempt to prove that she was a good mother, and her character put before the custody court was damaged beyond repair; 7) that Mr. Jenkins did not cross-examine Erica Finn, Mr. Horne’s then-paramour; 8) that she was not given monthly statements in the third quarter of 2018 and January 2019, despite language in Mr. Jenkins’ fee agreement; 9) in general, she was not pleased with Mr. Jenkins’ representation, for example Mr. Jenkins’ did not adequately prepare Ms. Horne regarding her testimony; and 10) Mr. Jenkins withdrew in the middle of the custody trial, without providing five-day notice, leaving her with non-domestic trial counsel.

“clown show” due to the sheer number of sustained objections to Ms. Thompson’s and Ms. Horne’s questions. Finally, with regard to Question 6, Ms. Thompson and Ms. Horne claim that the circuit court “impermissibly penalize[d]” them for proceeding *pro se*. They invite us “to examine the record of this case” as it “speaks for itself,” and to revisit *Tretick v. Layman*, 95 Md. App. 62 (1993) and *Pickett v. Noba, Inc.*, 122 Md. App. 566 (1998), the long-standing precedents that tell (or show) us that procedural rules apply equally to *pro se* litigants.

We do not reach the merits of Questions 4, 5, and 6. Under the Maryland Rules, parties on appeal must support their positions with argument, provide a Record Extract (in civil cases) or an Appendix, and identify – by precise page number(s) – the page(s) in the record that support the appellant’s (or appellee’s) assertions. *See* Md. Rules 8-501(a), 8-504(a)(4), and 8-504(a)(6). For the trial court’s evidentiary rulings, “[e]rror may not be predicated upon a ruling that . . . excludes evidence unless the party is prejudiced,” and the substance of the evidence was offered or apparent to the court. Md. Rule 5-103(a)(2). Taken together, these rules require that an appellant wishing to challenge the trial court’s exclusion of evidence must identify by page number the ruling and offer of proof (or other basis for the court’s awareness of the substance of the excluded evidence) and show how prejudice resulted from that specific ruling. An appellant that fails to comply risks dismissal of his or her appeal or other appropriate orders. *See* Md. Rule 8-504(c).

Here, despite their claim of being prejudiced by the trial court’s evidentiary rulings, and “penalized” for representing themselves, contentions we do not take lightly,

Ms. Thompson and Ms. Horne do not specify with page citations which evidentiary rulings they challenge, why these rulings were incorrect, or why they suffered legal prejudice because of them. Nor do they specify with page numbers where they claim to have been “penalized” for representing themselves.¹⁸ Ms. Thompson’s and Ms. Horne’s alternative -- that the record “speaks for itself” -- is simply insufficient for meaningful appellate review. *Boston Sci. Corp. v. Mirowski Family Ventures, LLC*, 227 Md. App. 177, 209 (2016) (“We fail to see how the prejudice to [appellant] is ‘self-evident,’ and because [appellant] fails to provide any support to that claim, this Court need not address this issue.”).

Nor will we revisit our decisions in *Tretick*, 95 Md. App. 62 and *Pickett*, 122 Md. App. 566. Under our principles of *stare decisis*, reversal of prior decisions may be appropriate “(1) when the prior decision is clearly wrong and contrary to established principles or (2) when the precedent has been superseded by significant changes in the law or facts.” *Conover v. Conover*, 450 Md. 51, 64 (2016) (quotations and citation omitted). Although Ms. Thompson and Ms. Horne say that consistent application of Maryland’s rules sets an “impossible” standard for *pro se* litigants, they offer no substantial legal argument (under either of the above standards) as to why *Tretick* and

¹⁸ At oral argument, Ms. Thompson’s and Ms. Horne’s appellate counsel conceded that their brief contained no citations to page numbers in the trial record, and did not provide any supplemental page numbers. Although we are not necessarily required to dismiss the appeal, at this stage it does not appear that any alternatives (such as ordering reproduction of the brief) would be practical, fair, or even effective. *See* Md. Rule 8-504(c).

Pickett should be reversed.¹⁹ Md. Rule 8-504(a)(6); *IMPAC Mortg. Holdings, Inc. v. Timm*, 245 Md. App. 84, 117 (2020), *aff'd*, 474 Md. 495 (2021) (arguments not presented with particularity will not be considered on appeal) (citing cases); *Beck v. Mangels*, 100 Md. App. 144, 149 (1994) (refusing to address appellants’ questions that were unsupported by substantial argument). Accordingly, we decline to revisit these precedents.

Standards of Review

Ms. Thompson’s and Ms. Horne’s remaining questions are subject to the following standards of review.

We review a circuit court’s decision regarding a stay or postponement for abuse of discretion, unless the exercise of that discretion is based on legal principles, in which case, review is *de novo*. *E.g.*, *Moser v. Heffington*, 465 Md. 381, 398-99 (2019) (stay); *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011) (postponement). An abuse of discretion occurs “where no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding principles.” *Moser*, 465 Md. at 556 (cleaned up). An abuse of discretion may also

¹⁹ In their Reply Brief, Ms. Thompson and Ms. Horne argue for the first time that “. . . a brief review of the surrounding jurisdictions reveals that policies for *pro se* litigants are materially in conflict with Maryland’s all or nothing rule.” Their Reply Brief goes on to cite and quote opinions from federal courts, the District of Columbia, Delaware, and West Virginia. Because this argument appears for the first time in a reply brief, we do not address it. *See* Md. Rule 8-505(a)(5); *Chang v. Brethren Mut. Ins. Co.*, 168 Md. App. 534, 550 n.7 (2006)(citing *Beck v. Mangels*, 100 Md. App. 144, 149 (1994)).

be found where the ruling under consideration is “clearly against the logic and effect of facts and inferences before the court” or when the ruling violates fact and logic. *Id.* (cleaned up).

We also review recusal decision for abuse of discretion. *S. Easton Neighborhood Ass’n v. Town of Easton*, 387 Md. 468, 499 (2005). This is an objective standard, and our inquiry centers on “whether a reasonable member of the public knowing all the circumstances would be led to the conclusion that the judge’s impartiality might reasonably be questioned.” *In re Turney*, 311 Md. 246, 253 (1987).

A trial court’s decision to grant or deny a motion for voluntary dismissal is a matter within the trial court’s sound discretion “after weighing the equities and giving due regard to all pertinent factors.” *Owens-Corning Fiberglas Corp. v. Fibreboard Corp.*, 95 Md. App. 345, 349-350 (1993). We review such factual findings for clear error. *In re Meddings*, 244 Md. App. 204, 220 (2019) (citing cases). Ultimately, the trial court’s decision “will not be overturned on appeal absent a showing that the judge abused that discretion.” *Owens-Corning Fiberglas Corp.*, 95 Md. App. at 350.

Denial of Postponement and Stay

We start with Ms. Thompson’s and Ms. Horne’s contention that the circuit court abused its discretion in denying their motions for stay and postponement. Ms. Thompson and Ms. Horne argue that there was “no urgent or jurisdictional need” for Mr. Jenkins to have filed his contract claim against them when he did. They add that it was overly burdensome on Ms. Thompson and Ms. Horne to retain counsel to litigate Ms. Horne’s

not-yet-ripe counterclaims against Mr. Jenkins, especially as Ms. Horne had to retain counsel for other then-pending cases. As a consequence, they say, their motions for postponement or stay should have been granted.

We see nothing from which to conclude that the circuit court abused its discretion in denying Ms. Thompson’s and Ms. Horne’s motions to postpone or stay this case. Mr. Jenkins alleged that Ms. Thompson and Ms. Horne breached the Domestic Fee Agreement by failing to pay approximately \$100,000 in legal fees and expenses. Ms. Thompson and Ms. Horne elected to press a permissive counterclaim²⁰ against Mr. Jenkins for legal malpractice, and said that they had an expert witness, Mr. Kruger, available to testify on their behalves. Ms. Horne elected to continue this course when she amended her counterclaim. Ms. Thompson and Ms. Horne consented to their counsel’s withdrawal, and were warned of the consequences of not retaining new counsel. And, at the time that they moved for postponement and stay, the case had been pending for over a year. Under these circumstances, we cannot conclude that a decision whose effect was to deny more delay was an abuse of discretion.

Recusal

We turn next to Ms. Thompson’s and Ms. Horne’s argument that the circuit

²⁰ See Maryland Rule 2-331(a) (“[a] party may assert as a counterclaim any claim that party has against an opposing party, whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. . . .”); see also *Rowland v. Harrison*, 320 Md. 223, 233 (1990) (“Maryland's counterclaim rule, by its plain terms, is permissive and not mandatory.”).

court should have recused itself. Ms. Thompson and Ms. Horne reiterate the contents of their circuit court recusal motion²¹ and argue that “[e]ven if only half of what was in the recusal motion is true, the trial court should have exercised her discretion and granted the recusal motion.” They also claim that the circuit court’s finding of its own impartiality was “misleading,” arguing that the circuit court was “continually disturbed and offended by Appellants’ delays and miscues throughout the three day trial, that it was obvious that Appellants did not receive a fair opportunity to present their defenses.” We disagree.

Maryland Rule 18-102.11(a)(1) provides that a judge “shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned,” including when “[t]he judge has a personal bias or prejudice concerning a party[.]” Because we presume “. . . ‘that judges are impartial participants in the legal process, whose duty is to preside when qualified is as strong as their duty to refrain from presiding when not qualified[.]’” *Connor v. State*, 472 Md. 722, 738 (2021)(quoting *Jefferson-El v. State*, 330 Md. 99, 107 (1993)), a party seeking recusal “has a heavy burden to overcome the presumption of impartiality and must prove that the judge has a personal bias or prejudice against him or her or has personal knowledge of the disputed evidentiary facts concerning the proceedings.” *Attorney Grievance Comm’n v. Shaw*, 363 Md. 1, 11 (2001).

²¹ In their recusal motion before the circuit court, Ms. Thompson and Ms. Horne identified the circuit court’s dismissal of Ms. Horne’s amended counterclaim, its denial of their request for stay, and its September 30, 2020 award of Rule 1-341 attorney’s fees to Mr. Jenkins (the *first* Rule 1-341 award), and argued that these rulings were evidence of the circuit court’s bias against them and warranted recusal and a change of venue.

Ordinarily, a recusal motion may not be “predicated upon the judge’s rulings in the case at hand or a related case.” *Reed v. Baltimore Life Ins. Co.*, 127 Md. App. 536, 552 (1999) (citing cases). For trial rulings,

Unless there is palpable and demonstrable indicia of judicial bias, evidentiary calls and actions taken by the trial judge in the conduct of a trial are more appropriately reviewed in the context of whether the judge's rulings comport with applicable law, rather than by divining a motive speculatively attributed to the trial judge by counsel.

Id.

Because Ms. Thompson and Ms. Horne do not overcome the presumption of impartiality accorded the circuit court judge, we discern no abuse of discretion in the judge’s denial of Ms. Thompson’s and Ms. Horne’s recusal motion. Taken together, the circuit court’s dismissal of Ms. Horne’s amended counterclaim, its denial of a stay, and its first award of Rule 1-341 attorney’s fees to Mr. Jenkins provide no reason to depart from our settled law that a judge’s adverse rulings are not ordinarily the stuff of recusal. That the circuit court ruled against Ms. Thompson and Ms. Horne does not mean the circuit court was prejudiced or biased against them. Ms. Thompson and Ms. Horne have not shown otherwise.

With regard to Ms. Thompson’s and Ms. Horne’s claim that the circuit court’s finding of impartiality was “misleading,” we note that the two-and-a-half-day bench trial on which they base this argument occurred *after* the circuit court denied their recusal motion, a chronology suggesting that what Ms. Thompson and Ms. Horne want us to do is look at the trial transcript for circumstantial evidence of the circuit court’s lack of impartiality. This we decline to do. Again, Ms. Thompson and Ms. Horne reference

nothing in the pages of the trial transcript to suggest that the circuit court was biased against them or denied them a fair opportunity to present their defenses at trial.

Dismissal of Ms. Horne’s Amended Counterclaim

Ms. Horne argues that the circuit court erred in dismissing her amended counterclaim with prejudice.²² Pointing to the *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405 (2007) factors,²³ she contends that as to the first factor, “[t]he effort and expense in preparing for trial . . . were equally taxing, especially for *pro se* parties.” As to the second, she claims “there was no intentional delay or lack of diligence. Defendants had not been unreachable and had responded to all of Plaintiff’s motions, requests for sanctions, motions to compel, etc.” She denied she was interested in forum shopping and that there was any “deceit or duplicity” in her amended counterclaim. As to factor three, she claims “there *was* sufficient explanation for Ms. Horne’s need for a dismissal, she described to the court that she was not prepared to tackle a malpractice lawsuit at this time chiefly because she was *pro se* – but that was not the only reason – and compete with experienced malpractice counsel that Plaintiff had employed” As to the fourth

²² Given that Ms. Thompson did not lodge an amended counterclaim, we take this question to be pressed by Ms. Horne alone.

²³ These factors are “(1) the non-moving party's effort and expense in preparing for litigation; (2) excessive delay or lack of diligence on the part of the moving party; (3) sufficiency of explanation of the need for a dismissal without prejudice; and (4) the present stage of the litigation” *Aventis Pasteur*, 396 Md. at 420. The court has discretion to consider other factors as well. *Id.*

factor, Ms. Horne argues that it does not apply here because Mr. Jenkins’ summary judgment motion was not filed until January 2021. Finally, Ms. Horne adds that the circuit court should have resolved the ambiguity in the Domestic Fee Agreement about whether Ms. Thompson was liable or not “before any further action regarding Ms. Thompson and her liability on the fee agreement proceeded.”²⁴ We disagree.

Under Maryland Rule 2-506(c), a party wishing to voluntarily dismiss a counterclaim following the filing of an answer may do so “only by order of court and upon such terms and conditions as the court deems proper. . . .” Maryland Rule 2-506(c). And “[t]he mere possibility that the action could be refiled in the future . . . is not a sufficient reason to find the legal prejudice necessary to bar a court-granted dismissal.” *Aventis Pasteur*, 396 Md. at 419.

After reviewing the *Aventis Pasteur* factors, we are not persuaded that the circuit court erred, or abused its discretion, in dismissing Ms. Horne’s amended counterclaim. For the first factor, the circuit court may not have considered how “taxing” litigation preparation was for Ms. Horne, but the first factor focuses on Mr. Jenkins’ effort and expense, not Ms. Horne’s. *See Aventis Pasteur*, 396 Md. at 420. This focus makes sense because the four-factor analysis of *Aventis Pasteur* is to determine whether the non-

²⁴ This argument appears in the section of Ms. Thompson’s and Ms. Horne’s brief devoted to the dismissal of Ms. Horne’s amended counterclaim with prejudice. Nonetheless, we assume that Ms. Thompson joins Ms. Horne in pressing this argument as we doubt that Ms. Horne would have had standing, as an initial matter, to contest Ms. Thompson’s liability under the Domestic Fee Agreement.

moving party, not the movant, would suffer plain legal prejudice by a voluntary dismissal without prejudice.

As to the remaining factors, there was ample evidence to support the circuit court’s conclusion that Ms. Horne’s “inconsistent” positions caused excessive delay and amounted to a lack of diligence on her part, and that Ms. Horne’s *pro se* status was an insufficient reason for further delay. At the start, Ms. Horne opposed special assignment of this case to the judge hearing her divorce case because Ms. Horne wanted this case concluded first, only to turn around months later and ask, multiple times, that this case be delayed until the divorce case was over. After filing a *permissive* counterclaim against Mr. Jenkins, and amending it eight months later, Ms. Horne turned around, after months of discovery disputes (caused largely by her), and asked for voluntary dismissal, this while Mr. Jenkins’ dismissal motion loomed. *See Aventis Pasteur*, 396 Md. at 420 (noting that the fourth factor contemplates “whether a motion for summary judgment or other dispositive motion is pending”).²⁵ And, having consented to the withdrawal of her counsel “freely and voluntarily,” and been advised of the consequences of not getting

²⁵ That Mr. Jenkins had not yet filed his January 2021 summary judgment motion does not render the fourth factor inapplicable. Indeed, when the circuit court analyzed the *Aventis* factors, Mr. Jenkins’ dispositive dismissal motion was pending, a fact the circuit court noted when it said, “[T]here is a pending dispositive motion which favors a conclusion that dismissal without prejudice is inappropriate.”

new counsel, Ms. Horne used her status as a *pro se* litigant to justify further delay of her claims against Mr. Jenkins.²⁶

With regard Ms. Horne’s and Ms. Thompson’s argument that Ms. Thompson’s liability under the Domestic Fee Agreement should have been decided before anything else, Ms. Thompson did not move for dismissal before answering Mr. Jenkins’ complaint. Accordingly, we do not review the chronological order in which the circuit court chose to approach the issues.²⁷

CONCLUSION

For the reasons above, we hold that the circuit court did not err or abuse its discretion by denying Ms. Thompson’s and Ms. Horne’s motions for postponement or stay or their motion for recusal. Neither did the circuit court err in dismissing Ms.

²⁶ For these same reasons, the circuit court did not abuse its discretion in dismissing the amended counterclaim with prejudice, even without giving Ms. Horne the option to litigate her case instead. It appears that Ms. Horne engaged in delaying tactics and other unfair conduct, and that such tactics caused harm to Mr. Jenkins and delayed proceedings. Ms. Horne also represented that she was “not prepared to move forward” On this record, we do not think it an abuse of discretion to deny Ms. Horne the opportunity to litigate her case (and potentially induce further delay), particularly considering that Mr. Jenkins’ motion to dismiss the counterclaim was still pending.

²⁷ See Md. Rule 8-131(a) (“[o]rdinarily, the appellate court will not decide any . . . issue [other than subject matter jurisdiction or personal jurisdiction where not waived] unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.”).

Horne’s amended counterclaim with prejudice. Having concluded that Ms. Thompson and Ms. Horne did not particularize their arguments for the remaining three questions they present, we decline to reach these questions and dismiss that portion of the appeal. Accordingly, we affirm the judgments of the circuit court.

APPEAL DISMISSED IN PART AS TO APPELLANT’S QUESTIONS 4, 5, AND 6. JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.