

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2710

September Term, 2013

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RAMEZ GHAZZAOUI

v.

BARBARA G. TAYLOR

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Meredith,  
Woodward,  
Friedman,

JJ.

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Opinion by Friedman, J.

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Filed: May 28, 2015

\*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 case comes to us on appeal from the Circuit Court for Anne Arundel County. The trial court granted a motion to dismiss appellant, Ramez Ghazzaoui’s third lawsuit against his daughter’s court-appointed “best interests” attorney, this time alleging (1) unjust enrichment, (2) intentional interference with custody and visitation rights, and (3) detrimental reliance. Ghazzaoui appeals only the dismissal of the unjust enrichment and the intentional interference claims. Because the circuit court did not err, we affirm.

### **BACKGROUND**

The genesis of this case is the divorce and custody battle between Ramez Ghazzaoui and Carolina Chelle. In the context of that case, which began in 2008, Barbara Taylor, appellee, was appointed as the best interests attorney for the minor child of Ghazzaoui and Chelle, M.<sup>1</sup> Taylor represented M. from September of 2008 through March of 2011. Joint legal and physical custody of M. was awarded in October of 2010, and the final divorce of Ghazzaoui and Chelle was granted in March of 2011.

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<sup>1</sup> A best interest attorney can be appointed by the court to represent a child in divorce or custody cases. Md. Fam. L. Ann. Code, §1-202. The guidelines for when counsel may be appointed and the responsibilities of counsel after appointment are found as an Appendix to the Maryland Rules entitled “Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access” (“Guidelines”). The “hallmark of the [best interest attorney] under the [Guidelines] is advocacy of a position in the child’s best interests (not necessarily the same as what the child wants), and the concomitant prohibition against the BIA testifying at trial or filing a report with the Court.” CYNTHIA CALLAHAN & THOMAS C. RIES, *FADER’S MARYLAND FAMILY LAW* 7-2 (5th ed. 2011) (“FADER’S FAMILY LAW”). Indeed, the Guidelines specify that a best interest attorney “provides legal services *for the purpose of protecting a child’s best interests.*” Guidelines. § 1.1 (emphasis added).

At the conclusion of her work, Taylor petitioned the circuit court for an award of her attorney's fees in accordance with section 6.2 of the Guidelines and the Anne Arundel County Guidelines. Over Ghazzaoui's vociferous opposition,<sup>2</sup> the Circuit Court awarded Taylor attorney's fees of \$5,208.40 on October 4, 2009, and \$20,732.10 on July 17, 2012.<sup>3</sup>

Following the divorce, Ghazzaoui filed several lawsuits against Taylor. Ghazzaoui's first lawsuit was filed on May 19, 2011, by Ghazzaoui and on behalf of his minor child, M., against Taylor alleging legal malpractice. That suit was dismissed by the Circuit Court for Anne Arundel County on September 26, 2012. This Court affirmed the dismissal upon appeal. *Ghazzaoui v. Taylor*, No. 1715, September Term 2012, slip op. (Court of Special Appeals, filed July 10, 2014). Ghazzaoui's second lawsuit was filed on May 24, 2011, against Taylor, Ghazzaoui's ex-wife Carolina Chelle, and a whole host of other attorneys, medical professionals, and social workers who were involved in the custody case. In this second lawsuit, the causes of action sounded in defamation, nuisance, legal malpractice, breach of implied contract, intentional infliction of emotional distress, negligence and, against Taylor only, a count sounding in fraud. That second lawsuit was also dismissed by the Circuit Court for Anne Arundel County and no appeal was taken. Ghazzaoui's third lawsuit against Taylor, which gives rise to this appeal, was filed on

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<sup>2</sup> Ghazzaoui's multiple oppositions contained many of the same claims that he makes in this most recent case, namely, that Taylor did not adequately perform her duties, was biased against Ghazzaoui in performing her duties, and failed to advocate M.'s best interest.

<sup>3</sup> These fee amounts reflect the amount ordered against Ghazzaoui. Chelle was also ordered to pay fees.

May 7, 2013, and made claims sounding in (1) unjust enrichment; (2) intentional interference with custody and visitation; and (3) detrimental reliance. In response to Taylor’s motion to dismiss, a hearing was held on January 28, 2014, and the trial court granted the motion, dismissing Ghazzaoui’s third complaint with prejudice. Ghazzaoui then noted this timely appeal.

### **ANALYSIS**

We review the grant of a motion to dismiss to determine whether the trial court was legally correct. *Hrehorovich v. Harbor Hosp. Center, Inc.*, 93 Md. App. 772, 785 (1992). This requires determining whether the complaint states a legally sufficient cause of action. *Id.*

#### **Count 1: Unjust Enrichment**

Ghazzaoui claims that Taylor was unjustly enriched by the fees she was awarded because Taylor failed to exercise ordinary care and diligence in the performance of her duties and therefore unjustly enriched herself. He also claims that Taylor’s legal services were actually “underhanded and veiled legal services to Carolina Chelle.” Ghazzaoui argues that he has no recourse for Taylor’s alleged willful and intentional failure to exercise ordinary care and diligence but to bring suit in a separate tort action. The trial court dismissed Ghazzaoui’s unjust enrichment claim under the theory that it was an impermissible “collateral attack.”

The law defines a collateral attack as an attempt to avoid, defeat, evade, or deny the force of a judgment, through a separate action, in a court other than the one that rendered the judgment. *Finch v. LVNV Funding, LLC*, 212 Md. App. 748, 764 (2013) (citing *Klein*

*v. Whitehead*, 40 Md. App. 1, 20 (1978)). “In other words, if the action or proceeding has an independent purpose and contemplates some other relief or result, although the overturning of the judgment may be important or even necessary to its success, then the attack on the judgment is collateral.” *Klein*, 40 Md. App. at 20. Collateral attacks are prohibited by Maryland law. This prohibition is “critical to the effectiveness of the judicial system itself,” *id.* at 20, as it provides certainty and order. If judgments were freely subject to attack in any proceeding it would be impossible for litigants to have any measure of certainty that a judgment obtained in one proceeding wouldn’t later be rescinded in another proceeding, thus rendering the original judgment irrelevant.

We agree with the circuit court that Ghazzaoui’s claim for unjust enrichment is an impermissible collateral attack on the fee award in the custody case. This is evidenced by Ghazzaoui’s demand that the trial court “vacate each and every monetary Judgment entered by this Court in favor of the Defendant [in the custody case].” The language of Ghazzaoui’s complaint makes it clear that he was asking the trial court, in a new and separate proceeding, to vacate judgments entered in a previous, completed, case.

Ghazzaoui also claims that he was unable to oppose Taylor’s motion for fees in the custody case itself. This argument is just plain wrong. Ghazzaoui did, in fact, oppose each of Taylor’s petitions for fees. Without attempting to catalogue all of Ghazzaoui’s filings, we note that he filed at least six oppositions to her request for interim fees, an unsuccessful appeal of the award of interim fees, two oppositions to the request for a judgment on the awarded fees, and two other motions related to Taylor’s fees in the underlying divorce and

custody case. His argument, therefore, that he was not allowed to oppose Taylor’s motion for fees is simply not true.

Because Ghazzaoui’s complaint for unjust enrichment was properly dismissed as an impermissible collateral attack on the award of attorney’s fees in the original divorce case, it is unnecessary for us to comment further on the unjust enrichment claim.

**Count 2: Intentional Interference with Custody and Visitation**

Ghazzaoui next argues that his claim for intentional interference with custody and visitation was improperly dismissed by the trial court. Ghazzaoui argues that the trial court improperly determined that Taylor’s alleged behavior, during her service as M.’s best interests attorney, did not rise to the level of “substantial and outrageous” as required by *Khalifa v. Shannon*, 404 Md. 107 (2008). In essence, Ghazzaoui is arguing that the question of whether Taylor’s actions rose to the level of “substantial and outrageous” was a factual question that should have been left for a jury to decide and was, therefore, improperly decided by the court on a motion to dismiss. That isn’t what happened at all. Rather, the trial court properly determined that Ghazzaoui failed to state a claim for the tort of intentional interference with custody and visitation.

To state a claim for tortious interference in Maryland, it is essential to show the physical removal of the child from parental custody. *Lapides v. Trabbic*, 134 Md. App. 51, 60 (2000). This requirement traces its background to the common law torts of abduction, harboring, and enticement. *Khalifa*, 404 Md. at 124; *Lapides*, 134 Md. App. at 60 (noting that it is in cases where the parent is “deprived of the physical presence of the child for a continuous period because of the defendant’s actions in abducting, enticing, or

assisting in the abduction or enticing” that the tort has been recognized). Claims of “undermining parental authority” and the like, without physical removal are not sufficient to state a claim. *Lapides*, 135 Md. App. at 63; *see also Hixon v. Buchberger*, 306 Md. 72, 83 (1986) (holding that the alleged conduct of making belligerent statements in front of the child, making it difficult to take the child for visitation, and attempting to supplant the father in the child’s mind fell “considerably short” of the conduct necessary to sustain intentional interference). It is the physical removal of the child from the parent, therefore, that constitutes the basis for this tort.

Ghazzaoui’s brief states that paragraph ten of his complaint “enumerates no less than 21 facts [that] indicate Taylor’s failure to exercise ordinary care and diligence in the performance of her duties as a court-appointed best interest attorney.” Paragraph ten of Ghazzaoui’s complaint, however, does not list any facts. Paragraph ten of Ghazzaoui’s complaint for this case merely references another complaint filed in a completely separate case. Ghazzaoui’s complaint in this case does, however, summarily allege Taylor’s “failure to exercise ordinary care and diligence,” and that Ghazzaoui suffered “humiliation; embarrassment; grief; frustration; psychological damage and emotional distress ... massive monetary damages; as well as damage to M.’s education and social life and deprivation of M.’s childhood and innocence.” These claims, even if true, do not state a cause of action for intentional interference.

Ghazzaoui does not allege that Taylor abducted, enticed, assisted in abduction, or in any way physically removed and withheld M. from Ghazzaoui. The award of joint custody, rather than sole custody (as Ghazzaoui apparently had hoped), is simply not the

equivalent of a physical abduction. Nor is the allegation that Taylor made it difficult for Ghazzaoui to maintain regular visitation with M. in any way equivalent to abduction. The harms alleged by Ghazzaoui are more akin to those alleged in *Hixon*, of rude statements made in front of the child and attempts to supplant the father in the child's mind. *Hixon*, 306 Md. at 83. As the Court of Appeals explained in *Hixon*, however, such allegations, even if true, fall *considerably* short of the conduct necessary to bring a charge of intentional interference with custody and visitation rights. *Id.* at 83. Therefore, because there is no allegation of a physical act, such as abduction or withholding the minor child, Ghazzaoui has failed to state a claim for intentional interference with custody and visitation rights and the trial court correctly dismissed the claim.

Therefore, because the claim of unjust enrichment was an impermissible collateral attack and because the claim of intentional interference with custody and visitation failed to state a claim, we affirm the trial court's dismissal of Ghazzaoui's complaint.

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