

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0778

September Term, 2014

RACHEL M. HESS

v.

ANDREW ANKER

Zarnoch,
Friedman,
Thieme, Raymond G., Jr
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: June 26, 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.

Rachel M. Hess, appellant, appeals the Circuit Court for Baltimore City’s denial of her motion for sanctions against appellee, Andrew Anker. On appeal, we are asked to determine whether the denial of her motion by the trial court was in error. As we explain below, the trial court was within its discretion to deny the motion for sanctions and we will affirm.

FACTUAL BACKGROUND

This case stems from a long-standing dispute between former business partners. In 1993, Andrew Anker (“Mr. Anker”) and Marc Hess (“Mr. Hess”) together founded Kipp Visual Systems, Inc. (“Kipp”). In 2009, Anker sued Mr. Hess and Kipp seeking damages and to have Kipp dissolved. That matter was resolved in 2010 when the parties entered into a Settlement Agreement and Mutual Release (“Settlement Agreement”). The Settlement Agreement provided that Kipp would pay a total of \$550,000 to Mr. Anker: \$175,000 immediately, and the remainder in 96 monthly payments of \$4,398.59. In exchange, Mr. Anker agreed to “unconditionally sell, transfer, convey and assign” all control of his shares to Kipp, officially resigned as an employee, and gave a full release for all claims. By the terms of the Settlement Agreement, Mr. Anker retained only one right in Kipp:

[Anker] shall retain ONE (1) RIGHT ONLY in the the Shares and Stock Certificate transferred back to [Kipp] entitling Anker to vote on the Shares in the event of a proposed or contemplated liquidation or dissolution of [Kipp].

(Emphasis in original).

In 2012, Mr. Hess died. Rachel Hess (“Ms. Hess”), Mr. Hess’s widow, took over the operation of Kipp as the personal representative of Mr. Hess’s estate. Ms. Hess hired a manager to run Kipp’s day to day operations. Thereafter, Ms. Hess had Mr. Hess’s shares in Kipp transferred to the new manager, Marc Lessans.

On February 14, 2013, Mr. Anker filed suit against Ms. Hess, Kipp, and Ryan and Marc Lessans—father and son who took over the operation of Kipp—alleging, among other things, that after Mr. Hess’s death, Ms. Hess told Mr. Anker that Kipp was on the verge of insolvency and allegedly requested to “buy-out” the remainder of the balance owed to Mr. Anker under the Settlement Agreement for a quarter of its face value. Mr. Anker declined this “buy-out,” and continued to receive his regular installment payments without interruption. Kipp remained solvent.

On February 10, 2014, the trial court found that pursuant to the terms of the Settlement Agreement, Mr. Anker had relinquished the right to sue over the operation of the company, and dismissed his complaint with prejudice. Immediately thereafter, Ms. Hess filed a Motion for Sanctions under Md. Rule 1-341 and requested a hearing. On May 30, 2014, that motion was denied without a hearing. This timely appeal followed.

DISCUSSION

Ms. Hess frames her appeal around three separate questions: (1) whether Mr. Anker maintained the underlying action in bad faith or without substantial justification; (2) whether she was entitled to recover attorney’s fees despite that she accumulated no out of pocket expenses; and (3) whether the trial court erred by failing to award sanctions under Md. Rule 1-341. We, however, must resolve only the third question: whether the trial court

erred by failing to impose sanctions under Md. Rule 1-341. The reason is that even if we assume without deciding that Mr. Anker acted in bad faith or without substantial justification, and that Ms. Hess was eligible to recover attorney’s fees, the trial court still had broad discretion to deny the motion.

Md. Rule 1-341 allows for a court to impose sanctions, including the award of attorneys’ fees to the prevailing party, against the offending party under the following circumstances:

(a) Remedial Authority of Court. In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, *may require* the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys’ fees, incurred by the adverse party in opposing it.

(Emphasis supplied). Thus, under Md. Rule 1-341, a trial court must conduct a two-step process to determine (1) if a party acted in bad faith or without substantial justification; and (2) if so, whether the “wrongdoing actually warrants the imposition of sanctions.” *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999). We review the second determination under the highly deferential abuse of discretion standard. *Id.* “Indeed, a court has the discretion to refuse sanctions, even if there is a finding of bad faith.” *Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 677 (2003).

Moreover, we have previously noted that judicial restraint is particularly appropriate in the context of awarding attorneys’ fees under Md. Rule 1-341 because “[a]n award of

counsel fees to Rule 1–341 is an ‘extraordinary remedy,’ which should be exercised only in rare and exceptional cases.” *Id.* (quoting *Barnes* 126 Md. App. at 105.¹ Therefore, the trial court enjoys broad discretion to deny a motion for sanctions even in instances where an opposing party acted in bad faith or without substantial justification.

Ms. Hess has cited to no precedent that would allow us to reverse the denial of her motion. As we explained above, even though Ms. Hess has presented a strong case that Mr. Anker acted in bad faith and without substantial justification, that alone is not sufficient because the trial court still had broad discretion to deny the motion. Faced with such a highly deferential standard, Ms. Hess has pointed us to no fact that would warrant a finding that the trial court abused its discretion. Accordingly, we must affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

¹ Additionally, a trial court is not required to hold a hearing when denying a motion for sanctions under Md. Rule 1-341. *Fowler v. Printers II, Inc.*, 89 Md. App. 448, 486 (1991) (“[W]e conclude that Rule 2–311(f) does not require that a trial judge hold a hearing prior to denying a motion for sanctions requested pursuant to Rule 1–341.”).