UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 281

September Term, 2015

SVETLANA SAVRANSKAYA

v.

DMITRY SAVRANSKY

Kehoe,
Leahy,
Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: March 27, 2017

*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.

In the midst of a divorce, Svetlana Savranskaya and Dmitry Savransky executed a settlement agreement (the "Settlement Agreement" or "Agreement") in March 2013 and were granted a judgment of absolute divorce in April 2013. The Settlement Agreement contained a provision stating that, if there were litigation regarding the Settlement Agreement, the prevailing party was entitled to reasonable attorney's fees from the other.

Shortly after the Agreement's execution, the parties began to disagree as to the method for appraising the marital home, 307 Ritchie Parkway, Rockville, Maryland 20852 (the "Property") for purposes of equity distribution, an issue that the Settlement Agreement governed. Mr. Savransky filed two motions in the Circuit Court for Montgomery County to enforce the Settlement Agreement and was granted his requested relief on both occasions. The circuit found, however, that ambiguity in the Settlement Agreement was the cause of the post-divorce enforcement litigation and that neither Mr. Savransky nor Ms. Savranskaya was the prevailing party. Mr. Savransky appealed the attorney's fees issue to an in banc panel of circuit court judges, which reversed the circuit court, concluding that Mr. Savransky was the prevailing party and was entitled to contractual attorney's fees.

Ms. Savranskaya appealed to this Court and presents the following questions, which we have consolidated and rephrased:

> 1. Did the in banc panel err when it reversed the circuit court's finding that there was no prevailing party?
>
> 2. Did the in banc panel err when it determined that Mr. Savransky's contemptuous behavior was a collateral matter?[1]

[1] In our rephrasing of Ms. Savranskaya's questions, we retain the form she presented as to whether "the in banc panel erred," although we note in respect to the first issue, we

We affirm the decisions of the in banc panel. We conclude that Mr. Savransky was the prevailing party because he succeeded "'on a[] significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.'" *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 457 (2008) (some internal quotation marks omitted) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). In addition, the in banc panel did not err in disregarding the circuit court's finding of contempt as a collateral matter.

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are primarily reviewing the decision of the circuit court, not that of the in banc panel, because the in banc panel functions as an appellate tribunal. *See Bienkowski v. Brooks*, 386 Md. 516, 553-54 (2005). Ms. Savranskaya's questions as originally presented are as follows:

1. "Did the In Banc Panel err when it reversed the factual finding of the trial court that 'there was an ambiguity in the agreement's language' that caused the litigation, even though [Ms. Savranskaya] argued that fact and [Mr. Savransky] admitted that fact explicitly in the April 2, 2014 hearing—one of the few undisputed facts in the entire proceeding?

2. "Did the In Banc Panel err when it reversed the factual finding of the trial court that [Ms. Savranskaya] was not in breach of the parties' agreement, even though [Mr. Savransky]'s own testimony in the April 2, 2014 hearing shows [Ms. Savranskaya] complied with the agreement?"

3. "Did the In Banc Panel err when it ignored competent material evidence in the hearing transcripts and exhibits that supported the trial court's factual findings both on the settlement agreement's deficient language and on the lack of breach of the agreement?"

4. "Did the In Banc Panel err when it refused to 'give due regard to the opportunity of the trial court to judge the credibility of the witnesses', and instead shrugged as 'a collateral matter' what the Panel itself says is '[Mr. Savransky]'s contemptuous behavior' to the trial court, and likewise [Mr. Savransky's] Counsel's own 'misrepresentation' to the trial court's clerk, in order to award attorneys' fees to [Mr. Savransky] and reward such behavior?"

BACKGROUND

A. The Settlement Agreement and Appraisals

On April 26, 2013, the parties were granted a judgment of absolute divorce, pursuant to the Settlement Agreement executed by the parties on March 4, 2013, and dated February 28, 2013. Paragraph 3 of the Settlement Agreement, relating to valuation and equity distribution of the Property, reads as follows:

> (a) Within thirty (30) days of the execution of this Agreement, the parties shall obtain an appraisal of the marital home. The parties shall jointly select a certified real estate appraiser and shall divide the cost of the appraiser equally. If the parties cannot mutually agree on an appraiser, each party shall obtain an appraisal at his/her own expense and the appraised value shall be determined by taking the average of such appraisals, provided that the appraisals not differ from each other by more than five percent (5%).
> (b) [Ms. Savranskaya] shall pay [Mr. Savransky]'s interest in the home calculated as 50% of the appraised value as determined by the real estate appraiser, less liens (*i.e., by way of illustration only*, if the appraised value of the home is $200,000.00 and a $100,000.00 lien, the total remaining equity is $100,000.00. [Mr. Savransky]'s 50% interest would be $50,000.00).

Thus, the parties were to select jointly a real estate appraiser to determine the value of the Property. If they could not agree on an appraiser, each party was to obtain an independent appraiser and the two appraisals were to be averaged together to determine the value of the Property. Then, Ms. Savranskaya was to buy out Mr. Savransky's interest in the Property after subtracting the value of any liens on the Property. The Settlement Agreement does not specify what was to happen should the two appraisals be more than 5% apart.

The Settlement Agreement does, however, contain a provision governing attorney's

fees in the event of litigation pursuant to the Settlement Agreement. Paragraph 9 provides:

> Each party will pay their own attorney's fees related to the negotiation of an Agreement and in pursuing an uncontested divorce. **However, in the event of a breach of the Agreement or proceeding to enforce or modify the provisions of this Agreement, the prevailing party shall be entitled to judgment for reasonable attorneys' fees and costs against the other party.**

(Emphasis added). Thus, in an action to enforce this Settlement Agreement, the prevailing party shall have his attorney's fees and costs paid by the other party.

On April 17, 2013, Mr. Savransky emailed Ms. Savranskaya, stating that they needed to schedule the appraisal and suggesting the names of two appraisers that might be acceptable. On the same day, Ms. Savranskaya responded that she would secure an appraisal from a bank as part of a refinancing process, so that Mr. Savransky should not order any appraisal. On May 2 and May 6, Mr. Savransky requested details on the bank's appraisal. On May 8, Ms. Savranskaya sent an email to Mr. Savransky stating that the bank, SunTrust, already did their appraisal and that she would send this appraisal to Mr. Savransky when she received a copy. The next day, Mr. Savransky accused Ms. Savranskaya of concealing the details of the appraisal she scheduled and stated that he would be scheduling a second appraisal. Over the next week and a half, their emails became increasingly acrimonious and contentious.

Ms. Savranskaya's appraisal, acquired from SunTrust, valued the Property at $434,500.00. Mr. Savranskaya obtained an appraisal of the Property from KMG Appraisal Group ("KMG") in June 2013. It appraised the Property at $480,000.00.

B. The Underlying Proceedings

On September 10, 2013, Mr. Savransky instituted the underlying proceedings, through a filing titled "Defendant's Motion to Enforce Judgment of Absolute Divorce, or in the Alternative, Modify the Terms of the Parties' Settlement Agreement and for Attorney Fees." The motion alleged that Ms. Savranskaya had not abided by the terms of the Settlement Agreement because she made no attempt to jointly select a real estate appraiser with Mr. Savransky. The motion continued, stating that Ms. Savranskaya sent Mr. Savransky a check for his equity interest in the house pursuant to her SunTrust appraisal, but that he refused to cash this check. The motion requested that either Mr. Savransky's KMG appraisal be accepted as the mutually agreed upon appraisal or that Ms. Savranskaya obtain a new appraisal within 10 days, at which point the two appraisals could be averaged. Finally, the motion requested attorney's fees, pursuant to Paragraph 9 of the Settlement Agreement.

Ms. Savranskaya responded on October 17, 2013. She alleged that the parties could not mutually agree upon an appraiser and that she obtained her own appraisal through SunTrust as part of a refinance. She stated her belief that it was Mr. Savransky's goal to obtain the maximum value of the house for the equity division, rather than to obtain the fair market value. Her opposition affirmed that she had sent Mr. Savransky a check for his equity in the house based on the SunTrust appraisal that he had not cashed. She requested the dismissal of Mr. Savransky's motion.

C. The April 2, 2014 Hearing

The circuit court held a hearing on the motion on April 2, 2014. Mr. Savransky testified at the hearing that, in April 2013, he sent an email to Ms. Savranskaya stating that they needed to find an appraiser mutually agreeable to both parties and suggested two appraisers. He also related her response, directing him not to obtain an appraisal and that she would use the SunTrust appraisal because it would speed along the process. Then, Mr. Savransky explained, he attempted to obtain his own appraisal in May, but Ms. Savranskaya threatened to call the police if he entered the Property. Mr. Savransky eventually obtained his appraisal from KMG on June 7, 2013, when a mutual friend of the parties was available to guide the appraiser through the house and answer any questions. He testified that there were discrepancies in the SunTrust appraisal, giving the Property an improper valuation. On cross examination, Mr. Savransky stated his position that a refinance appraisal was not suited for an equity division appraisal.

Mr. Savransky agreed that the Settlement Agreement was silent as to what would happen in the event two appraisals were more than 5% apart. He also agreed that Ms. Savranskaya sent him an email saying that, if he did not agree with the SunTrust appraisal, he was welcome to procure his own appraisal, but he nonetheless contended that she frustrated his procurement of the second appraisal. Finally, he testified that Ms. Savranskaya never proposed any names to serve as mutually-agreed-upon appraisers.

Ms. Savranskaya testified that she did not reject Mr. Savransky's appraisers, but that she wanted to wait until SunTrust performed its appraisal and that, in her view, she

was making a counterproposal. She also defended the SunTrust appraisal, insisting it did not matter whether an appraisal, was done for a refinancing or to obtain the fair market value for an equity division because both appraisals are done for the purpose of obtaining a fair market value. Ms. Savranskaya also stated that Mr. Savransky was delaying the appraisal process, not her, and that he unreasonably canceled at the last moment an appraisal scheduled for May 16.

In closing argument, Mr. Savransky contended that Ms. Savranskaya had breached the settlement agreement by not attempting to select jointly a real estate appraiser and that the SunTrust appraisal was inappropriate for this purpose. He requested attorney's fees for the enforcement of the Settlement Agreement. Ms. Savranskaya, in turn, argued that she had been trying her best to cooperate with Mr. Savransky and that the agreement itself was deficient in that it did not provide a course of action if the appraisals differed by more than 5%.

In an oral ruling, the circuit court found Ms. Savranskaya breached the Settlement Agreement and ordered a new appraisal to be performed, but deferred on the issue of attorney's fees. The court announced its ruling:

> The agreement is very specific on what is required from the parties, and the first thing that was required . . . of the parties was that they "shall jointly select a certified real-estate appraiser. If they cannot mutually agree on an appraiser, then each party gets their own." That means . . . there's a duty to, in good faith, arrive at an agreed upon appraiser. It doesn't say "well do this, get one appraiser that we agree on, or do our own -- whichever way we want to do it." It says "the parties shall jointly select a certified real-estate appraiser and shall divide the costs of the appraiser. If they cannot agree, then each party gets their own."

> Ms. Savranskaya, you conducted this process unilaterally. You understandably wanted the refi[nance], and your ex-husband had no obligation to cooperate in that, but what you've done in this situation is you have said "okay, I've gotten an appraisal on the refi[nance]. It's my appraisal. I think the agreement provides that I can just accept my appraisal. Maybe I have to give 5 percent more. There's no statement in the agreement to that effect. There is a deficiency in the agreement in that -- what happens if the appraisals are not within 5 percent, but I suggest to you that that is in there, not so recklessly as might be portrayed because certified real-estate appraisers usually are going to be within 5 percent of each other, and based upon the evidence, the deficient appraisal here is SunTrust's appraisal. . . . I know what [Maryland Code (1989, 2010 Repl. Vol.), Business Occupations and Professions Article ("BOP"), § 16-402][2] says. What the statute says basically is you can't do what the person that hires you wants you to do on the appraisal. You've got to be independent, but that independence is exercised, I find, significantly differently when the appraiser knows that they're appraising for a refinance, or for a mortgage finance with a bank, and they're notoriously more conservative -- I'll take judicial notice of that -- than a true, fair-market value appraisal, and there is a substantial likelihood that that is the reason for the discrepancy that SunTrust conducted through their appraiser -- a refi[nance] evaluation, not a fair-market sale-price evaluation.
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> **[Ms. Savranskaya], by her own admission, did not propose a joint-certified appraiser. That was the first step in this whole process.** It was not done, and then just head strong unilaterally, went to refi[nance], "it's my appraisal, that's what's going to happen. In fact, here are your checks based upon my appraisal. Take it or leave it. Maybe I'll negotiate 5 percent up because of the 5 percent thing," but **that failure constitutes --** and plus, the exchanges and the lack of effort after [Mr. Savransky] made an effort to propose two independent certified appraisers, the conduct of [Ms. Savranskaya] afterwards, in addition, to the failure to propose any jointly agreeable -- or proposed, jointly-agreeable certified real-estate appraise[r]s

[2] BOP 16-402(a)(2), which Ms. Savranskaya had cited to argue that all appraisals done by certified real estate appraisers were done for the purpose of obtaining fair market value, reads as follows:

> "Independent appraisal service" means an engagement for which a licensed real estate appraiser is perceived by a third party or the public to act as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion about the nature, quality, use, or value for identified real estate, regardless of the intent of the employer.

> **constitutes a breach of the settlement agreement.**
>
> **The court, based upon that breach, will defer on attorney's fees and will order -- and I want to see [what] comes of this, but I'm going to defer on attorney's fees, partly because I need to take a closer look at those fees and evaluate the fairness and relevance to the dispute.**
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> The court is going to order [Ms. Savranskaya] to obtain an appraisal conducted by a certified real-estate appraise[r] approved by the court . . . which [Mr. Savransky's counsel], as officer of the court, may not reasonably decline to accept . . . if you can't agree, then you can each submit . . . up to two appraisers to the court, and I'll select the appraiser, and the appraisal has to be done on the fair-market value as of the same date as [Mr. Savransky's] appraisal. . . . That appraisal will be done at the expense of [Ms. Savranskaya].

(Emphasis added).

Mr. Savransky's counsel then asked whether Mr. Savransky could be present during the appraisal, and the court stated that it was better that he not be physically present, but that a representative of his choosing could attend. The hearing then concluded.[3]

D. Subsequent Proceedings

Ms. Savranskaya selected an appraiser, Paul Newman, who was agreed upon by Mr. Savransky. Paul Newman appraised the Property at $475,000.00 on May 16, 2014.

On June 11, 2014, Ms. Savranskaya filed a "Motion to Resolve Appraisal Value, Order Appropriate Equity Division, and Deny Attorney's Fees." Ms. Savranskaya stated

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[3] The court also requested Mr. Savransky's counsel to submit a proposed written order containing the terms of the court's oral order, which Mr. Savransky's counsel failed to do.

On June 16, 2014, the circuit court entered a written order to the effect of its oral order given at the conclusion of the April 2, 2014 hearing. The document ordered, *inter alia*, that Mr. Savransky's September 10, 2013 motion was granted in part, that the issue of attorney's fees was to be deferred, and that Ms. Savranskaya was to obtain an appraisal at her own cost. Finally, it ordered "that a representative of [Mr. Savransky], but not [Mr. Savransky] himself, may be present at the time of the appraisal."

in her motion that she had obtained an appraisal, as required by the court, performed by Paul Newman. She also alleged that Mr. Savransky had disobeyed the court's instruction by appearing, with his significant other and a friend, at the Property on May 16, 2014, the date of the appraisal.

Ms. Savranskaya, in her motion, requested that the court average the *three* appraisals to determine the fair market value of the Property for equity division: (1) the SunTrust appraisal for $434,500.00, (2) the KMG appraisal for $480,000.00, and (3) the Paul Newman appraisal for $475,000.00. She also requested that she not be required to pay attorney's fees, because of the deficient drafting of the contract and because Mr. Savransky had disobeyed the court by attending the appraisal.

Mr. Savransky filed a motion and response on June 26, 2014. Mr. Savransky requested that the court average the KMG appraisal and the Paul Newman appraisal together to determine the fair market value of the Property and again requested attorney's fees.[4]

E. The September 4, 2014 Hearing

On September 4, 2014, the court held a hearing on the June motions. At that hearing,

[4] Mr. Savransky also stated that it was not his intention to violate a court order by appearing at the appraisal. He pointed out that the written order following the April 2, 2014 hearing, was entered on June 16, 2014, after the May 16, 2014 appraisal.

Mr. Savransky's motion did acknowledge, in a perhaps-less-than-contrite manner, the court's oral instruction that he did not attend the appraisal. This explanation also ignores the fact that at least one reason for the lack of a written order was Mr. Savransky's counsel's failure to submit a written order to the circuit court.

Mr. Savransky testified that he had incurred $3,587.50 in attorney's fees as a result of trying to enforce the Settlement Agreement. Mr. Savranskaya admitted that he did show up at the house the day that Paul Newman was appraising the Property. The court held Mr. Savransky in contempt for appearing at the house in violation of the court's order.[5]

The circuit court then announced its ruling:

> We're here because there was an agreement reached between the parties that failed to adequately set forth clearly what the obligations were in respect to appraisals, if they varied by more than 5 percent. That lack of clarity is really what brought this matter here. . . . There may be some disappointment or second thoughts by [Ms. Savranskaya] about the fairness of that agreement but that is [] neither before the [c]ourt nor properly before the [c]ourt because this really is just an action on enforcement of the settlement agreement with the [c]ourt's assistance in resolving the lack of clarity on the value of the property.
>
> The [c]ourt ordered that there be a third appraisal because the plaintiff's first appraisal was unreliable for true value of evaluation purposes because it was done for purposes of refinance. It was an appraisal by the bank, I believe the bank was going to do the refinance so there was a great incentive to be much more conservative in appraising. And I've already mentioned that that appraisal was not credible. And, the fact that it varies so much from the other 2 appraisals, now a third party neutral appraisal of $475,000. I've looked at that appraisal by Mr. Newman. It appears reasonable, well-founded. . . . **So the [c]ourt gives credibility to that appraisal and finds that, under the terms of the agreement, that the appropriate value of the property is $477,500, which is the average of the neutral appraisal and [Mr. Savransky]'s appraisal.** So, pursuant to the agreement, paragraph 3 of the agreement, the math would be that the value of the property is $477,500. From that, liens are subtracted, and then there's the division by 2 for a split of the value of the property, pursuant to the agreement.

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[5] Apparently, the circuit court did not impose a contempt sanction on Mr. Savransky. The circuit court also expressed its frustration with Mr. Savransky's counsel for an apparent failure to submit a proposed order to the court, which the court had requested. This appears to be the reason for the delay between the court's oral order on April 2, 2014, and its entry of a written order on June 16, 2014.

Thus, the court averaged the KMG appraisal and the Paul Newman appraisal to determine the fair market value of the Property for purposes of equity distribution, granting the relief requested in Mr. Savransky's June 26, 2014 motion.

The court, however, declined to grant attorney's fees to Mr. Savransky, finding that there was no prevailing party because the dispute was caused by ambiguity in the contract. The court explained:

> In terms of attorney's fees, the [c]ourt notes that the agreement provides for attorney's fees in the case of breach, enforcement, or modification. Which are I guess we really would say we are here on a modification because the [c]ourt does not find . . . that there was a breach of the agreement in the strict sense of that term because the real basis for having to come back to court was the lack of clarity in the agreement drafted by counsel. And the question then becomes, this is a modification and the prevailing party is to be entitled to judgment for reasonable attorney's fees. The [c]ourt does not find that the [Mr. Savransky] was the prevailing party because there was a genuine dispute over, caused by the lack of clarity and the deficiency in agreement and that had to be addressed and resolved, and the mere fact that the [c]ourt now is accepting the neutral . . . appraisal as the second appraisal is not sufficient to find that Mr. Savransky is a prevailing party under the terms of that settlement agreement and declines to award attorney's fees.

On September 19, 2014, the circuit court entered its findings in a written order. Mr. Savransky filed a motion for reconsideration of this order on September 25, 2014. Mr. Savransky argued that, although the circuit court was correct on the merits, it erred by not providing him attorney's fees. Mr. Savransky contended that the circuit court had no discretion to not award attorney's fees because they were provided for by contract and he was the prevailing party, noting that the court found in favor of Mr. Savransky at both hearings, granted him his requested relief, and did not grant any relief to Ms. Savranskaya.

Mr. Savransky also suggested that the court was withholding attorney's fees as a punishment for attending the appraisal, but he argued that this had no bearing on whether Mr. Savransky was entitled to contractual attorney's fees.

On December 15, 2014, the circuit court entered an order denying Mr. Savransky's motion for reconsideration, specifically finding no breach as contemplated in the Agreement and instead finding that the Agreement's ambiguity was the cause for the hearing.

F. In Banc Proceedings

Mr. Savransky filed a motion for in banc review on December 23, 2014. Maryland Const. art. IV, § 11. The in banc panel, consisting of three circuit judges, heard oral argument on March 6, 2015. Mr. Savransky argued that attorney's fees should be granted to him because he was the successful litigant and received his requested relief, making him the prevailing party. He further argued that the circuit court judge found a breach in the April hearing and stated so on the record.

Ms. Savranskaya began argument by speaking about Mr. Savransky's contravention of the court's order by appearing at the Property during the appraisal. In response, the in banc panel stated that this was a "collateral issue" and a "red herring." She then argued that there was no prevailing party in this case and that the circuit court judge had made a specific finding on that issue. The in banc panel, however, pointed out that the circuit court granted Mr. Savransky his exact requested relief and that she "lost" at both the April and September hearings, and that the only relief Mr. Savransky did not receive was attorney's

fees, but stated that "that's not losing." Ms. Savranskaya then argued that she did not breach the agreement, but the in banc panel responded that, at the April hearing the circuit court judge found that she had breached the agreement. The in banc panel also noted that, pursuant to the Settlement Agreement, it does not actually matter whether Ms. Savranskaya was in breach for Mr. Savransky to be awarded attorney's fees because the prevailing party in a proceeding to enforce the Settlement Agreement is still entitled to attorney's fees, as per Paragraph 9 of the Settlement Agreement.

After closing argument from both sides reiterating their previous arguments, the in banc panel concluded that the circuit court erred in finding that Ms. Savranskaya did not breach the Agreement and erred in finding that Mr. Savransky was not the prevailing party. The panel reasoned that, at the April 2 hearing, the circuit court found explicitly that Ms. Savranskaya breached the Agreement and awarded Mr. Savransky his requested relief, making him the prevailing party. As for the September hearing, the panel explained that "in granting the specific relief sought by [Mr. Savransky] without variation therefrom, which was consistent with the terms of the agreement, that the [c]ourt erred in a manifest way in not determining that [Ms. Savranskaya] . . . had breached the agreement and that [Mr. Savransky] was the prevailing party." As for Mr. Savransky's "contemptuous behavior regarding . . . being at the appraisal with the appraiser when he was not supposed to be," the panel found that to be a collateral matter that "would have its own consequences," and would be addressed separately from the agreement. Ultimately, the in banc panel "reverse[d] the trial court's ruling denying attorney's fees and costs for the April

and September proceedings and remands for the [c]ourt to enter an award of attorney's fees upon examination and findings as required under the case law and under the agreement itself."

On March 20, 2015, the in banc panel of the circuit court entered an order to the same effect. Ms. Savranskaya filed a timely notice of appeal to this Court on April 17, 2015.

DISCUSSION

On appellate review of an action that "has been tried without a jury, we review the case on both the law and the evidence, but we will not reverse a case on the evidence in the absence of clear error." *Judd Fire Protection, Inc. v. Davidson*, 138 Md. App. 654, 659-60 (2001) (citing Maryland Rule 8-131(c) and *Narayen v. Bailey*, 130 Md. App. 458, 461 (2000)). We review *de novo* a trial court's legal conclusions. *Ahmad v. Eastpines Terrace Apartments Inc.*, 200 Md. App. 362, 370 (2011) (citing *Cattails Assocs., Inc. v. Sass*, 170 Md. App. 474, 486 (2006)). A contract's interpretation "is a legal question subject to *de novo* review." *Nationwide Mut. Ins. Co. v. Regency Furniture, Inc.*, 183 Md. App. 710, 722 (2009) (citations omitted). Furthermore, "[a] determination of prevailing party status is a question of law, which we review de novo." *Maryland Green Party v. State Bd. of Elections*, 165 Md. App. 113, 128 (2005) (citing *Smyth ex rel. Smyth v. Rivero*, 282 F.3d 268, 274 (4th Cir. 2002)).

We note that the in banc panel functions as an appellate tribunal and that we are primarily reviewing the circuit court proceedings, s*ee Bienkowski v. Brooks*, 386 Md. 516,

553-54 (2005), and resolving whether the in banc panel erred on the questions of law presented.

I.

The Prevailing Party

Ms. Savranskaya argues that the Settlement Agreement was ambiguous because it contained no provision for a situation in which two appraisals were more than 5% apart and contends that this was an undisputed fact because Mr. Savransky admitted as much at the April hearing. She further maintains that she was not in breach of the Settlement Agreement and that the circuit court was correct in so finding at the September hearing.

Mr. Savransky responds by arguing that the in banc panel correctly disregarded the Settlement Agreement's silence on a situation in which the appraisals were more than 5% apart because the circuit court did not adjudicate that issue. Instead, Mr. Savransky contends, the circuit court granted Mr. Savransky's request for relief and denied Ms. Savranskaya's request for relief.

Mr. Savransky further maintains that, regardless of whether Ms. Savranskaya was in breach of the Settlement Agreement, he was the prevailing party and, thus, is entitled to attorney's fees. He observes that the circuit court granted his requested relief at the April 2 hearing, in that it ordered Ms. Savranskaya to obtain an appraisal, and at the September 4 hearing, when it averaged the Paul Newman appraisal with the KMG appraisal to determine the fair market value of the Property. Mr. Savransky also maintains that Ms. Savranskaya was in breach of the Settlement Agreement because she made no effort to

jointly select a real estate appraiser because she unilaterally selected SunTrust to perform the appraisal as part of her refinance.

Maryland Courts apply the American Rule, which, generally, holds both parties responsible for their own attorney's fees, "unless (1) the parties to a contract have an agreement to that effect, (2) there is a statute that allows the imposition of such fees, (3) the wrongful conduct of a defendant forces a plaintiff into litigation with a third party, or (4) a plaintiff is forced to defend against a malicious prosecution." *Thomas v. Gladstone*, 386 Md. 693, 699 (2005) (citations omitted). In this case, only the first circumstance is at issue.

Maryland courts also follow the "objective interpretation of contracts," which "giv[es] effect to the clear terms of the contract regardless of what the parties to the contract may have believed those terms to mean[.]" *Towson Univ. v. Conte*, 384 Md. 68, 78 (2004) (citations omitted). The Court of Appeals has instructed that

> [a] court construing an agreement under this test must first determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated. In addition, when the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed. In these circumstances, the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant. Consequently, the clear and unambiguous language of an agreement will not give away to what the parties thought that the agreement meant or intended it to mean.

Gen. Motors Acceptance Corp. v. Daniels, 303 Md. 254, 261 (1985) (citing *Bd. of Trustees v. Sherman*, 280 Md. 373, 380 (1977)).

"Contract provisions providing for awards of attorney's fees to the prevailing party in litigation under the contract generally are valid and enforceable in Maryland." *Myers v. Kayhoe*, 391 Md. 188, 207 (2006) (citing *Atlantic v. Ulico*, 380 Md. 285, 316 (2004)). Even if the agreement does not require that the attorney's fees be "reasonable," the court awarding fees must read a reasonability requirement into the contract. *Id.* "In the context of an award of attorney's fees, a litigant is a 'prevailing party' if he succeeds 'on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.'" *Wang*, *supra*, 183 Md. App. at 457 (2008) (some internal quotation marks omitted) (quoting *Hensley*, *supra*, 461 U.S. at 433).

In *Myers*, the petitioners entered into a residential real property sales contract with the respondents. 391 Md. at 193. The contract provided that, in the instance of litigation under the agreement between the parties, the prevailing party "'shall be entitled to receive reasonable attorney's fees from the other party as determined by the court or arbitrator.'" *Id.* at 194. The petitioners, however, were not able to secure financing, and the transaction did not close. *Id.* at 196. The respondents then sold the property to another buyer for less than the price of their contract with petitioners. *Id.*

Respondents then sued petitioners in the Circuit Court for Queen Anne's County, claiming breach of contract. *Id.* Petitioners counterclaimed for the return of their security deposit and for attorney's fees. *Id.* After the parties filed cross-motions for summary judgment, the circuit court granted summary judgment for the petitioners, but it awarded no attorney's fees. *Id.*

After granting certiorari, the Court of Appeals affirmed the grant of summary judgment to petitioners. *Id.* at 207. The Court, however, held that the circuit court had committed an error of law in not awarding attorney's fees to the petitioners. *Id.* The Court explained:

> Although the determination of reasonableness of attorney's fees is left to the discretion of the trial court, the trial court did not have discretion to refuse to award fees altogether. The attorney's fees provision in the parties' contract plainly states that the prevailing party "*shall* be entitled to receive reasonable attorney's fees from the other party" (emphasis added). Under the trial court's disposition of the case, appellants were the prevailing parties in the litigation under the contract, and were therefore entitled them to recover their legal expenses, to the extent the fees charged were reasonable.

Id. at 207-08. The court then affirmed the judgment of the circuit court in part and reversed in part, remanding the case to the circuit court for an award and determination of attorney's fees. *Id.* at 208.

In the case *sub judice*, Paragraph 9 of the Settlement Agreement provides:

> Each party will pay their own attorney's fees related to the negotiation of an Agreement and in pursuing an uncontested divorce. **However, in the event of a breach of the Agreement or proceeding to enforce or modify the provisions of this Agreement, the prevailing party shall be entitled to judgment for reasonable attorneys' fees and costs against the other party.**

(Emphasis added). Thus, according to the plain language of the Settlement Agreement, the prevailing party in a proceeding to enforce or modify is entitled to reasonable attorney's fees.

On September 10, 2013, Mr. Savransky filed a motion to enforce or modify the Settlement Agreement. His motion requested either that the circuit court order Ms.

Savranskaya to obtain an appraisal of the Property or for the circuit court to accept the KMG appraisal as the fair market value of the Property for purposes of equity distribution.

At the April 2, 2014 hearing for the September 10, 2013 motion, the circuit court granted Mr. Savransky the requested relief—that Ms. Savranskaya be ordered to obtain a new appraisal of the Property at her own expense, making him successful on a "'significant issue in litigation which achieves some of the benefit the parties sought in bringing suit[,]'" and thereby a prevailing party. *See Wang*, 183 Md. App. at 457 (some internal quotation marks omitted) (quoting *Hensley*, 461 U.S. at 424). The court deferred only on the issue of attorney's fees.

At the September 4, 2014 hearing on the motions filed by the parties in June, the court averaged the KMG appraisal and the Paul Newman appraisal to determine the fair market value of the Property for purposes of equity distribution. This was the relief requested by Mr. Savransky in his June 26, 2014 motion, making him successful on another "'significant issue,'" *see id.* (quoting *Hensley*, 461 U.S. at 424), thereby entitling him to prevailing party status.

The underlying actions were to enforce the Settlement Agreement, and Mr. Savransky was given his requested relief—(1) Ms. Savranskaya was ordered to obtain a new appraisal of the Property for purposes of equity distribution and (2) the KMG appraisal and the Paul Newman appraisal were averaged together to arrive at the correct figure for equity distribution. Thus, "[u]nder the trial court's disposition of the case," Mr. Savransky "was the prevailing part[y] in the litigation under the contract, and w[as] therefore entitled

them to recover their legal expenses, to the extent the fees charged were reasonable." *See Myers*, 391 Md. at 208. Mr. Savransky is, therefore, entitled to attorney's fees, and we need not determine whether or not Ms. Savranskaya was in breach. *See Wang*, 183 Md. App. at 457 (quoting *Hensley*, 461 U.S. at 433). The circuit court erred by not finding Mr. Savransky was the prevailing party, and the in banc panel's decision reversing the circuit court's judgment was legally correct.

II.

Collateral Issue of Contempt

Ms. Savranskaya next argues that Mr. Savransky's contemptuous behavior and his counsel's failure to submit a proposed order to the circuit court requires that Mr. Savransky not be awarded attorney's fees. She contends the in banc panel erred by disregarding Mr. Savransky's contemptuous behavior and in failing to give due regard to the circuit court's ability to weigh the credibility of the witnesses.

Mr. Savransky states that the in banc panel did not err in disregarding collateral issues because they had no bearing on the substance of the circuit court's decisions. He contends that the circuit court correctly ruled on the merits and ruled incorrectly only on the award of attorney's fees.

The Court of Appeals has stated that "[a] contempt was, at common law, and now is, an offense against the court as an organ of justice." *Sheets v. City of Hagerstown*, 204 Md. 113, 118 (1954). In *Unnamed Attorney v. Attorney Grievance Comm'n*, an Inquiry Panel of the Attorney Grievance Commission (the "Commission") sent an attorney a

"Certified Letter in Lieu of Subpoena," requiring the attorney's appearance at a hearing and demanding the production of documents. 303 Md. 473, 476 (1985). The attorney, in response, filed a motion for a protective order or to quash a subpoena in the Circuit Court for Prince George's County. *Id.* at 477. The following month, the Commission filed in the circuit court a "Motion for Contempt" due to the attorney's failure to answer questions during the scheduled hearing and to produce documents. *Id.* The circuit court treated the two motions as the same case and assigned them the same civil action number. *Id.* at 477-78. At a hearing on the motions, the trial judge treated the two motions as the same issue, and the bar counsel argued that the two motions were the same issue. *Id.* at 478.

The circuit court issued an order after the hearing, requiring that the attorney produce the requested documents, but it did not address the attorney's failure to testify at the hearing.[6] *Id.* at 478-79. The Commission then filed a motion to correct or revise the court's order, but, before this was ruled on, the attorney filed a notice of appeal. *Id.* at 479.

After granting certiorari, the Court of Appeals addressed the argument that the attorney could not appeal from this order, because the circuit court had not addressed the contempt issue. *Id.* at 480, 483. First, the Court determined that the circuit court's order had addressed the contempt motion. *Id.* at 483. Nonetheless, the Court explained that

> **[a] contempt proceeding, even though it may grow out of or be associated with another proceeding, is ordinarily regarded as a collateral or separate action from the underlying case** and as separately appealable,

[6] There also was a suggestion that the order did not address the contempt proceeding, but, after granting certiorari, the Court of Appeals determined that the order was intended to dispose of the contempt proceeding by not holding the attorney in contempt. *Unnamed Attorney*, 303 Md. at 483.

> with appellate review normally limited to the contempt order itself. Because the underlying proceeding and the contempt proceeding are usually regarded as separate actions, and not simply as separate issues or claims in the same action, it follows that a judgment terminating the underlying action is final and appealable despite the fact that the associated contempt proceeding is still pending in the trial court.

Id. at 483-84 (internal citations omitted). Thus, we ordinarily regard a contempt proceeding as collateral to the original action from which it stems. *See id.* at 483.

Even though *Unnamed Attorney* was decided in the context of appealability, we find the Court's reasoning instructive in the present situation. Here, the circuit court's contempt finding[7] was a "collateral or separate action from the underlying case[.]" *Id.* at 483-84. It does not affect the interpretation of the Settlement Agreement—a contract that we must interpret objectively—or Mr. Savransky's status as a prevailing party under the Settlement Agreement. We hold, therefore, that any finding of contempt was a collateral matter, and the in banc panel did not err in its decision to treat it accordingly so.[8]

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[7] We take a moment to state that we assume, without deciding, that the circuit court found Mr. Savransky in contempt. After discovering that Mr. Savransky had attended the appraisal, in contradiction to the court's instructions, the court said "You are -- sir, you are in contempt of court for failure to follow that order from this court that you could have a representative there, but not you."

This, however, is the last time in the record that the court made mention of Mr. Savransky being held in contempt of court. Further, as the in banc panel noted, the court did not impose a sanction on Mr. Savransky for this contempt.

[8] To the extent that Ms. Savranskaya offers an independent argument that the in banc panel failed to give the requisite regard to the credibility of the parties , we repeat that contractual interpretation generally, *Nationwide Mutual Ins. Co.*, *supra*, 183 Md. App. 710, 722, and prevailing party status specifically, are legal questions subject to de novo review, not preliminary factual determinations, *Maryland Green Party*, 165 Md. App. at 128. Thus, the in banc panel was not required to give deference to the circuit court on these issues.

JUDGMENT OF THE IN BANC PANEL OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. CASE REMANDED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY FOR A DETERMINATION AND AWARD OF ATTORNEY'S FEES.

COSTS TO BE PAID BY APPELLANT.

Further, Mr. Savransky's counsel's failure to submit a proposed order to the court does not affect his status as a prevailing party on the merits.