Circuit Court for Montgomery County
Case No. 476673V

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

Nos. 142 and 795
September Term, 2022

EDWARD C. MCREADY

V.

SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL 500

Graeff,
Leahy,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by McDonald, J.

Filed: April 6, 2023

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* At the November 8, 2022, general election, Maryland voters ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022, while these appeals were pending.

This appeal arose out of a union member's dissatisfaction with the representatives assigned by his union to assist him in a grievance against his employer. During the fall of 2016, Appellant Edward C. McReady was a part-time professor at Montgomery College. Faculty members at the College, including Mr. McReady, were represented by Appellee Service Employees International Union, Local 500 ("Union"). Mr. McReady disagreed with a decision that the College had made regarding his pay, and asked the Union to represent him in a grievance concerning that subject. Displeased with the representatives whom the Union had assigned to his matter, Mr. McReady dismissed them, proceeded on his own, filed more grievances, and lost them all. He sued the Union and Union employees in the Circuit Court for Montgomery County alleging, among other things, that the Union had violated its duty to represent him fairly in his grievances against his employer – in the language of labor law, the "duty of fair representation" that a union owes its members.

Only the count of the complaint alleging breach of the duty of fair representation survived a motion to dismiss the complaint. Two days before a hearing at which the Circuit Court was to consider motions for summary judgment regarding that count, Mr. McReady filed the first of two motions for sanctions, alleging that opposing counsel had "suborned" perjury by a Union employee in an affidavit submitted with the Union's summary judgment motion. The alleged perjury was closely related to the allegations underlying Mr. McReady's assertion that the Union had breached its duty of fair representation.

At the hearing, the Circuit Court granted summary judgment in favor of the Union with respect to the fair representation count on several alternative grounds. Among other

things, the court held that, on the undisputed facts, Mr. McReady could not establish that the damages he claimed were a result of the alleged breach of the Union's duty of fair representation.

Mr. McReady filed a notice of appeal of the summary judgment ruling before the Circuit Court ruled on his first motion for sanctions. After noting his appeal, Mr. McReady filed a second motion for sanctions in the Circuit Court, alleging that opposing counsel had also suborned perjury by the same Union employee in deposition testimony about the same facts. Ultimately, the Circuit Court declined to grant the first motion on the ground that his appeal of the summary judgment ruling had divested it of jurisdiction while that appeal was pending. Consistently with that approach, the Circuit Court did not resolve the second motion.

Mr. McReady's appeal of the summary judgment ruling, which came to include the initial orders of the Circuit Court relating to his first sanctions motion, is the subject of Case No. 142. He also filed notices of appeal of subsequent additional orders of the Circuit Court re-affirming its decision concerning the first sanctions motion. Those appeals are the subject of Case No. 795.[1]

We have consolidated Mr. McReady's two pending appeals for decision and have reached the following decisions concerning the two issues that he has briefed.[2] First, with

[1] In all, Mr. McReady filed five notices of appeal. *See* Part I.A.5 of this opinion below.

[2] In briefs filed both before and after the Clerk of this Court advised that these appeals would be decided on the briefs, Mr. McReady requested that the court hold oral

respect to the claim that the Union breached its duty of fair representation, Mr. McReady conceded, both in the Circuit Court and in his appellate brief, that he cannot prove a necessary element of that claim – that the Union's alleged violation of the duty of fair representation caused the College to reject his grievances. Accordingly, the Circuit Court correctly granted the Union's motion for summary judgment on the sole remaining count of his complaint.

Second, the Circuit Court also correctly concluded that his appeal of the summary judgment ruling divested that court of jurisdiction over sanctions motions based on the same allegations as his fair representation claim. Nevertheless, even if those allegations could be seen as grounded in fact – something we do not suggest – Mr. McReady's motions lack merit as a matter of law. Accordingly, a remand to the Circuit Court for consideration of those motions is unnecessary.

I

Background

The centerpiece of Mr. McReady's appeal concerns the Circuit Court's disposition of his claim that the Union violated its duty of fair representation of him as a member of the bargaining unit. We begin with a brief primer on the law governing such a claim. We then describe the undisputed facts as set forth in the record and the somewhat convoluted procedural path that led to these consolidated appeals.

argument on his appeals. Pursuant to Maryland Rule 8-523(b), we confirm that these appeals are being decided on the briefs.

A. A Union's Duty of Fair Representation and an Employee's Remedy for its Breach

1. The Duty of Fair Representation

A union's duty of fair representation to the members of a bargaining unit it represents is rooted in its certification under statute as the exclusive bargaining agent for that unit. F.T. Golder & D.R. Golder, Labor and Employment Law, §2:29 (Nov. 2022 update). The United States Supreme Court first defined the contours of the duty of fair representation during the mid-20th century in cases interpreting the federal labor laws. *E.g.*, *Steele v. Louisville & N.R. Co.*, 323 U.S. 192 (1944); *Vaca v. Sipes*, 386 U.S. 171 (1967).[3] In *Vaca*, the Court specified that the duty comprises three obligations: "[1] to serve the interests of all members without hostility or discrimination toward any, [2] to exercise its discretion with complete good faith and honesty, and [3] to avoid arbitrary conduct." 386 U.S. at 177. The Maryland courts have adopted that formulation in construing the duty of fair representation under Maryland law. *Stanley v. Am. Fed'n of State & Mun. Emps. Loc. No. 553*, 165 Md. App. 1, 15 (2005).

Pertinent to this case, at the time of the events at issue, the Maryland Code incorporated the duty of fair representation and required that a union certified as the exclusive representative of Montgomery College employees represent "fairly and without

[3] In *Steele*, the Supreme Court held that certification of a union as an exclusive bargaining representative under the federal Railway Labor Act imposed a duty on that union to represent all employees of the bargaining unit fairly and prohibited the union from engaging in discrimination based on race or union affiliation in carrying out that function. 323 U.S. at 199-204. In *Vaca*, the Supreme Court noted that the duty of fair representation had been recognized with respect to a union certified as an exclusive bargaining representative under the federal National Labor Relations Act. 386 U.S. at 177.

discrimination all public employees in the unit without regard to whether the employees are members…." Maryland Code, Education Article ("ED"), §16-412(e)(2) (as of 2016).[4]

2. Cause of Action for Violation of the Duty

From the outset, the courts have recognized that a member of a bargaining unit has a cause of action against a union for the union's alleged violation of the duty of fair representation. *E.g.*, *Steele*, 323 U.S. at 207 (recognizing implied judicial cause of action for damages arising from a union's breach of duty of fair representation); *Jenkins v. Wm. Schluderberg–J.T. Kurdle Co.*, 217 Md. 556, 574-76 (1958). Such an action is often brought in tandem with an action against the employer for breach of a provision of the collective bargaining agreement. Accordingly, such an action is sometimes referred to as a "hybrid action" as it is based both on the union's statutory duty of fair representation and on the collective bargaining agreement between the union and employer. *E.g.*, *DelCostello v. Int'l Bhd. Of Teamsters*, 462 U.S. 151, 164-65 (1983). Such an action may seek a remedy based on the collective bargaining agreement – for example, damages consisting of back pay – and contract principles thus apply.[5]

[4] That statute was later repealed and effectively replaced by a more general regime governing collective bargaining of community college employees that took effect on September 1, 2022. Chapter 16, 1st Spec. Sess., Laws of Maryland 2022. The new law contained an identical requirement concerning a union's duty of fair representation. *See* ED §16-706(b)(2).

[5] Presumably for that reason, Maryland courts have sometimes referred to such actions as arising under State law for breach of contract. *Stanley*, 165 Md. App. at 15; *Byrne v. Mass Transit Admin.*, 58 Md. App. 501, 508 (1984).

In the context of a Union motion for summary judgment in a fair representation case, a plaintiff employee must be able to adduce facts on the element of breach that demonstrate "arbitrariness, discrimination, or bad faith, or a combination of these bases." *Stanley*, 165 Md. App. at 16. The focus of that inquiry is on the union's conduct. *See, e.g., id.* (addressing whether the union's conduct breached its duty); *see also Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 568 (1976) (in a fair representation case brought under federal law, referring to the breach inquiry as focused on the union's "failure to act").

3. Damages Remedy

A member of a bargaining unit who seeks a contract remedy such as damages in a cause of action based on a union's duty of fair representation must do so consistently with general contract principles. Thus, in the context of a union motion for summary judgment, the plaintiff must demonstrate that those damages were the result of the union's violation of that duty.[6] For example, a member of a bargaining unit who brings such an action seeking damages in the form of back pay allegedly owed to the member under the collective bargaining agreement must be able to adduce facts that the alleged violation of the duty of fair representation resulted in a breach of the collective bargaining agreement and the loss of pay owed to the employee under the collective bargaining agreement.

[6] Under Maryland contract law, when the defendant moves for summary judgment on the ground that the alleged breach did not result in the alleged damages, the plaintiff must present facts evidencing not merely that the plaintiff sustained damages, but also that the defendant's breach proximately caused them. *See, e.g., CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 429 n.41 (2012) ("Proximate cause analysis applies in contract actions as well as tort actions."), *citing Wlodarek v. Thrift*, 178 Md. 453, 462 (1940) (for the proposition that "recovery depend[s] upon finding 'that the plaintiff suffered other than nominal damages ... as the proximate result of the breach of contract by the defendants'").

Proof of the causation element of a cause of action for damages based on an alleged breach of the duty of fair representation focuses not on "the reasons for the union's failure to act," but instead on whether, despite what was decided in the contractual grievance proceedings, "the employer breached the contract and whether there is substantial reason to believe that a union breach of duty contributed to the erroneous outcome of the contractual proceedings." *Hines*, 424 U.S. at 568. An employee's mere allegation that a union's failure to act caused the employee to lose rights under a collective bargaining agreement is insufficient "without the facts as to the agreements which were in force." *Fiorita v. McCorkle*, 222 Md. 524, 530 n.3 (1960), *quoting Fray v. Amalgamated Meat Cutters, Etc*., 101 N.W.2d 782, 787-88 (Wis. 1960). A union, however, is not answerable for damages that are attributable solely to the employer's breach of contract. *Vaca*, 386 at 197 (in such a case, "we see no merit in requiring the union to pay the employer's share of damages.").

B. Mr. McReady's Disputes with the College and the Union[7]

1. Mr. McReady Disputes his Pay

From 2014 through early 2017 the College employed Mr. McReady as a part-time faculty member under term-by-term contracts. In Mr. McReady's view, he was being compensated at a pay scale lower than what his qualifications merited. In the fall of 2016, Mr. McReady presented his claim to the College informally. The College changed his classification and raised his pay for the current semester but denied his claim for back pay

[7] The facts in this section are derived from a summary of undisputed facts cited by the Circuit Court, as well as other undisputed matters in the record.

for prior semesters. Mr. McReady decided to dispute the College's denial of his claim for back pay and enlisted the aid of the Union for that purpose.

2. Grievance Procedure under CBA Between College and Union

The College and the Union had entered into a collective bargaining agreement ("CBA") that included a three-step grievance process and an opportunity for final and binding arbitration after completion of the three steps. The CBA authorized the Union to represent employees such as Mr. McReady in grievances subject to the CBA when the employee had given the Union "express permission" to do so. The Union's policy was to require the grievant to do so in writing. Union policy did not permit members to choose their Union representative in grievance proceedings.

3. Mr. McReady Obtains Union Assistance for his Grievance

Mr. McReady sought the Union's assistance in November 2016. The Union representative initially assigned to his case asked the College for an extension of time in which to file the grievance. Mr. McReady complained to the Union that he considered the extension unnecessary, but nonetheless gave the Union written authorization to represent him.

The Union reassigned Mr. McReady's grievance to another representative, George Donahue. According to Mr. Donahue, he initially filed Mr. McReady's grievance on November 14, 2016, at Step 2 of the process on the basis that Mr. McReady had already dealt with the College concerning the substance of the grievance and in the belief that in those circumstances the College, like other employers, would waive the earlier step of the grievance process. A series of communications about that event ensued. Those

communications later became the focus of Mr. McReady's litigation against the Union and of his motions for sanctions against the Union's counsel.[8]

4. Communications about Filing at Step 1 versus Step 2

In an email to Mr. McReady dated November 21, 2016, Mr. Donahue reported that he had filed the grievance at Step 2 of the process, rather than Step 1. He did so, he explained in the email, because Mr. McReady himself had made earlier efforts that had not succeeded. Then, according to Mr. McReady, a College administrator told him on November 28 that the administrator had told Mr. Donahue to file the grievance with the dean, which was consistent with Step 1 of the grievance process rather than Step 2.

On November 29, Mr. McReady sent an email to Mr. Donahue asking why Mr. Donahue had sent the grievance to the dean, instead of to the vice president or other officers to whom a Step 2 grievance would be directed. Meanwhile, the College administrator separately told Mr. Donahue that the College would process the grievance as properly filed at Step 1. On November 30, Mr. Donahue's supervisor, Susan Gindes, told Mr. McReady that Mr. Donahue, who was then away from work, had told her that the grievance had been filed at Step 1.

Mr. McReady inferred from the information he received from the College administrator and from Ms. Gindes that Mr. Donahue had lied to him when Mr. Donahue

[8] Mr. McReady sent numerous emails about his pay dispute and other matters to the Union and other recipients that need not be revisited here. Also, this summary need not repeat the disparaging tone in which he often addressed the recipients. For example, in a series of contentious emails sent to opposing counsel during discovery, he addressed them in insulting terms and made irrelevant references to what he apparently believed to be their ethnic and religious background.

had originally related that he was filing the grievance at Step 2. On December 1, Mr. McReady emailed the Union president and demanded a new representative.

On December 6, the Union's counsel informed Mr. McReady that the Union would not be assigning a new representative to his case. In a December 7 email addressed to Union officials and copied to various Union and College officials as well as the College's entire part-time faculty, Mr. McReady stated, among other things, that Mr. Donahue had "lied" to him concerning the filing of the grievance, and he again requested that the Union replace Mr. Donahue as his representative. On December 8, Ms. Gindes reiterated that the Union would not replace Mr. Donahue and informed Mr. McReady that he had the right to represent himself if he so desired.

5. The Step 1 Hearing

On December 12, 2016, the dean conducted a Step 1 hearing on behalf of the College concerning Mr. McReady's back pay grievance. Although the Union had denied Mr. McReady's request for a new representative, it sent both Mr. Donahue and his supervisor, Ms. Gindes, to represent Mr. McReady at the hearing. At the outset, Ms. Gindes told the dean that Mr. Donahue had told her that he had intended to file the grievance at Step 2 but then changed his mind and filed it at Step 1. The grievance form that had been executed by Mr. McReady and that was filed on his behalf does not indicate on its face the step at which the grievance was to be filed or actually was filed.

Mr. McReady again stated that the Union had lied to him. Mr. McReady immediately dismissed both Union representatives and proceeded to represent himself at

the Step 1 hearing. He later testified in a deposition that he believed that the Union representatives were "openly hostile" to him at the hearing.

On January 3, 2017, the instructional dean who had conducted the hearing denied Mr. McReady's back pay grievance at Step 1 on the grounds that Mr. McReady, who had worked at the College during a prior period, was a "rehire" and thus not entitled to the pay scale adopted for instructors hired after the effective date of the CBA. The decision advised Mr. McReady of his right to appeal the decision to the Provost of the College. Mr. McReady attempted to appeal that determination to Step 2 of the process. The College rejected his appeal to Step 2 on the ground that he had not properly filed it.[9]

Mr. McReady has not pointed to any evidence, either in the Circuit Court or on appeal, that the College's decision to process his back pay grievance beginning at Step 1 was incorrect or that the way in which Mr. Donahue filed the grievance affected the outcome at Step 1 or his ability to pursue further steps of the grievance process in response to the denial at Step 1.

6. Later Grievance Concerning Teaching Assignment

On February 7, 2017, Mr. McReady filed another grievance in which he stated that the College had refused his requests to teach a certain course in the spring semester and had violated the CBA by assigning that course to a faculty member with less seniority. Mr. McReady did not authorize the Union to represent him in that grievance. Instead, he checked the box for "I do not authorize [the Union] to represent me in this grievance."

[9] He attempted to grieve the rejection of his Step 2 filing, but the College rejected that grievance as untimely.

After filing the form for this grievance, he told the Union that he "would like" the Union to represent him, but only if it would replace both Mr. Donahue, who, he said, had "blatantly lied" to him and had not apologized, and Ms. Gindes, who, he said, had "refuse[d] to hold [Mr. Donahue] accountable for his deceit" and had been "openly hostile" to him. On February 10, the Union's counsel again told Mr. McReady that Union members could not select a representative and that the Union would not represent him unless he amended his grievance to check the box giving the Union authority to do so.

Mr. McReady did not amend the form to authorize representation by the Union for this grievance. Nor did he authorize the Union either to appeal the College's decisions on any of his grievances through the latter two steps of the grievance process or to request arbitration of any of his grievances.

7. Violation of College Email Policy

Meanwhile, in what the College deemed to be a violation of its policy on the acceptable use of College email accounts, Mr. McReady had been using his College email account to send messages to many College officials and the entire part-time faculty,[10] first about his pay dispute and then about what he termed the Union's "malfeasance" in handling his grievance. On November 21, 2016, the College asked him to refrain from copying other College employees on his emails concerning his grievances, noting that some employees had requested that he stop doing so. He did not accede to that request; instead,

[10] Mr. McReady testified that he believed that the number of recipients of these mass emails totaled more than one thousand individuals.

he sent the December 7, 2016 mass email described earlier and then six more mass emails in early 2017.

On February 16, 2017, the College reprimanded him for misusing his College email account in violation of College policy and warned him that the College could take additional disciplinary action if he continued to violate the policy. On February 17, Mr. McReady yet again copied the entire part-time faculty and various Union and College officials on an email, this time on the subject of his "Repeated Requests" to the Union to replace Mr. Donahue "On the Basis of His Blatant and Unapologetic Lie."

On February 27, the dean recommended to the College's human resources department that the College suspend Mr. McReady for the rest of the Spring 2017 semester for violating the College's policy on the acceptable use of College technology. Mr. McReady was suspended the next day. At the same time, the College withdrew his College email privileges and advised him that he had the right to grieve that decision under the CBA.

On March 6, 2017, the College informed Mr. McReady that it was denying his request for an appointment for the 2017-2018 academic year under the section of the CBA that permitted the College to withhold course assignments for faculty who had been disciplined for violating College policies. Mr. McReady has not taught at the College since that time. He sued the college in federal court, which dismissed his complaint.[11]

[11] In his responses to requests for admission in the Circuit Court, Mr. McReady admitted that he "did not appeal or grieve, by any means, any termination or constructive termination by Montgomery College, with the exception of the lawsuit filed by him in the United States District Court for the District of Maryland."

C. Mr. McReady Sues the Union

1. The Complaint

In December 2019, Mr. McReady initiated the case that led to this appeal when he sued the Union and five Union employees in the Circuit Court for Montgomery County. As amended a few weeks later, the complaint consisted of 10 counts. Count IX of the complaint (also referred to as the "fair representation count") named only the Union as a defendant and alleged that the Union breached "its contractual obligation to provide [him] support and due care in the processing of his grievances against the College for violations of the [CBA]."[12] In support of that claim, he alleged, among other things, that Mr. Donahue and other Union officials and employees had variously lied to him about the step at which his grievance had been filed, failed to "take responsibility for the November 21 lie," failed

Mr. McReady's federal lawsuit was filed four months before his suit against the Union that resulted in this appeal. In August 2019, Mr. McReady – as in this case, in a *pro se* capacity – sued the College and various College officials in federal district court alleging that his teaching assignments at the College, his pay, and the discipline that had been imposed against him for misuse of the College email system violated various federal and State constitutional and statutory provisions. The federal district court dismissed that complaint in its entirety. *McReady v. Montgomery Community College*, 2020 WL 5849481 (D. Md. 2020). That court also denied his subsequent motion to alter or amend the judgment – a ruling affirmed by the Fourth Circuit Court of Appeals. *McReady v. Montgomery Community College*, 2021 WL 2805836 (D. Md. 2021), *aff'd*, 2021 WL 6101645 (4th Cir. 2021).

[12] Four counts of the complaint alleged, in several iterations, that the Union and its employees had tortiously interfered with Mr. McReady's past, current, and future "financial and economic relations with the Union." Four other counts alleged, in similar iterations, that the Union and its employees had tortiously interfered with his past, current, and prospective "employment rights as a part-time College faculty member." The final count of the complaint alleged that the defendants had interfered with his free speech rights under the First Amendment of the United States Constitution and Article 40 of the Maryland Declaration of Rights.

to respond to all of his emails, failed to replace Mr. Donahue as his representative, cited the wrong CBA section on his grievance form, and made remarks to him or in his presence that he considered "hostile."

With respect to the fair representation count, Mr. McReady asked the court to award him compensatory damages in the amount that the College had allegedly underpaid him from 2014 through the spring of 2017 plus interest. He did not specify how the actions that allegedly comprised a breach of the duty of fair representation had resulted in the damages he sought.

2. Dismissal of the Complaint with Leave to Amend Fair Representation Count

The Union moved to dismiss Mr. McReady's complaint in its entirety. The Union argued, among other things, that Mr. McReady had not alleged facts that would establish that the Union's alleged conduct caused the College to decide his grievances and other employment matters adversely to him.

At the hearing on August 31, 2020, on the Union's motion to dismiss, the Circuit Court asked Mr. McReady what role the Union had played in the reprimand that the College had issued to him for improper use of his College email account. Mr. McReady conceded that, although Union representatives had accompanied him to the meeting at which the College presented him with the reprimand, the Union had not caused him to receive the reprimand; at that point, Mr. McReady stated, the reprimand had already been issued.

Ruling from the bench, the Circuit Court dismissed nine counts of the complaint with prejudice and dismissed the fair representation count with leave for Mr. McReady to

amend that count to allege "causation."[13] With respect to the claim that the Union had violated its duty of fair representation, the Circuit Court explained to Mr. McReady that causation "is something that the union did ... or didn't do ... [that] was ... [the] proximal cause of the damage you've claimed." Further, the court suggested that Mr. McReady would have difficulty demonstrating that the College would not have otherwise taken action against him even had there been "stellar representation" by the Union.

On October 19, 2020, Mr. McReady filed an amended complaint that added allegations to the fair representation count.[14] The new allegations included an explicit reference to the Union's duty of fair representation of Montgomery College employees under the then-existing ED §16-412(e)(2). The amended complaint also elaborated on the Union's alleged breach of the duty of fair representation and the damages he allegedly incurred as a result.

As to breach, Mr. McReady alleged that the Union had violated its duty of fair representation by refusing to assign him representatives who were "not dishonest, deceitful, and openly hostile to him in the processing of his grievances" and that various Union officials "knew or should have known" or "were deceitful in covering up" the alleged lies

[13] Thus, all of the counts that alleged claims against individual defendants were dismissed with prejudice, leaving the Union as the only potential defendant in an amended complaint.

[14] In relation to that amended complaint and a subsequent proposed amended complaint filed a year later, Mr. McReady asked for leave to re-allege the nine counts that had been dismissed with prejudice and to add five new counts. The Circuit Court denied his motions as to both amended complaints except for the fair representation count that had been dismissed with leave to amend.

and hostility. As to causation, Mr. McReady asserted that the Union's alleged "actions and inactions … damaged [him] by preventing him from submitting his grievances properly processed through the procedures set forth in [the CBA] to binding arbitration" and that the Union's "failure" was the "direct and proximate cause of [his] loss of compensation for his services performed, and reasonably expected to be performed, under his current and future employment relations with the College."

3. The Summary Judgment Proceedings

After the Circuit Court denied the Union's initial motion to dismiss the amended fair representation count and after the parties conducted discovery, the parties filed cross-motions for summary judgment.

Union Motion

The Union's motion for summary judgment on the fair representation count was based on multiple grounds. For purposes of this opinion, we need describe only its arguments as to causation and breach.

First, as to causation, the Union argued that Mr. McReady had pointed to no evidence that the Union's alleged conduct had caused him damages. The Union noted that Mr. McReady had fired the Union representatives during the College's hearing on his pay grievance, had not asked the Union to represent him in any appeals of that or any other grievance pertinent to the damages he claimed, had failed to perfect the one appeal he attempted to file on his own behalf, and had never asked the Union to request arbitration. Further, the Union argued, Mr. McReady had no evidence that the College would have granted the relief sought in his grievances but for the alleged misconduct of the Union.

When asked in deposition to specify what the Union had done to prevent him from winning his grievances, Mr. McReady had responded only that the Union was required to provide him with "honest" and "nonhostile representatives." Asked whether he had refused to allow the Union to represent him, Mr. McReady stated that he would have authorized the Union to represent him if it had replaced the representatives who were working on his case. Finally, the Union asserted that the actions taken by the College regarding Mr. McReady's use of his College email account did not fall within the scope of the CBA and, in any event, were solely attributable to Mr. McReady's own conduct.

Second, as to the breach, the Union argued that Mr. McReady could not prove that the Union had violated its duty of fair representation. The Union again pointed to the fact that Mr. McReady had not asked it to pursue his grievances through to arbitration and that he had thus effectively abandoned them. Additionally, referring to the federal courts' formulation of the elements of a fair representation action, the Union asserted that there was no evidence that the Union had either acted arbitrarily regarding its representation of Mr. McReady or had discriminated against him and that the Union did not owe Mr. McReady any duty to acquiesce to his demand for a representative other than the several who had been assigned to his initial grievance.

Mr. McReady's Cross-Motion

Mr. McReady cross-moved for summary judgment. He asserted that there was "no genuine issue of material fact" concerning his claim that the Union had violated its duty of fair representation. In support of that argument, he maintained that the first Union representative assigned to represent him was "dishonest" about the need for an extension,

that Mr. Donahue was "dishonest" about filing his grievance at Step 1, and that Union officials were "complicit" in Mr. Donahue's conduct or displayed open "hostility" towards him in various ways. He argued that the Union had breached its duty to him by assigning "dishonest" representatives to his grievance matter and that the Union's refusal of his request for another representative other than the three who had been assigned to assist him was "bad faith and arbitrary" conduct.

With regard to causation, Mr. McReady quoted the conclusory allegation in his complaint that the Union's refusal to assign his case to another representative "damaged [him] by preventing him from submitting his grievances properly processed through the procedures set forth in [the CBA]" and that the "Union's failure in this regard ... was the direct and proximate cause of [his] loss of compensation for his services performed, and reasonably expected to be performed [at the College]." At the same time, Mr. McReady explicitly stated that, "as a result of [the] written reprimand [that he had received for misuse of his email account]," he had been "stripped of his seniority rights for good faith consideration of course assignments going forward...." Mr. McReady did not present either facts or argument to the effect that the College had decided his pay dispute wrongly and would have decided in his favor but for the alleged breach of the duty of fair representation that he had alleged.

The Circuit Court scheduled a hearing on the cross-motions for February 18, 2022.

Mr. McReady's First Motion for Sanctions

Two days before the hearing on the summary judgment motions, Mr. McReady filed a motion to sanction the Union's attorneys for allegedly suborning perjury in violation of

Maryland Code, Criminal Law Article, §9-102.[15] In his motion, he asserted that the Union's attorneys had suborned the allegedly perjurious testimony in an affidavit by Mr. Donahue that the Union had submitted two months earlier in support of its summary judgment motion. In that affidavit, Mr. Donahue stated that he had filed Mr. McReady's grievance at Step 2 because Mr. McReady had already made efforts with the College to resolve the matter and that he had informed Mr. McReady of that fact on November 21, 2016; often, Mr. Donahue stated, employers would allow an employee to skip the first step when the employee had already taken the matter to the employer. Mr. Donahue further stated that a College administrator had later informed him that, while the College would not waive Step 1 of the process, it would treat Mr. McReady's grievance as though it had been filed at Step 1.

To support his contention that Mr. Donahue had lied in the affidavit, Mr. McReady relied on Ms. Gindes's statement to him on November 30, 2016 that Mr. Donahue had advised her that the grievance "had been filed at Step 1" and on the fact that Mr. Donahue had sent the grievance to the dean to whom a Step 1 grievance would properly be submitted. In sum, Mr. McReady made the same assertions about Mr. Donahue's statements that he had made in his complaint and his summary judgment papers. He did not point to any facts to the effect that Mr. Donahue's statement concerning the step at which the grievance had been filed had either prevented him from "having his grievances properly processed," as

[15] Mr. McReady filed this motion for sanctions two days after the Circuit Court had granted a Union motion that Mr. McReady be sanctioned for failing to attend his own deposition. In that February 14, 2022, order, the court ordered him to pay the Union's costs in the amount of $15,212.27.

alleged in his complaint, or that it had any effect on any of the College's decisions concerning the merits of the grievance.

Hearing and Ruling on Summary Judgment Motions

At the February 18 hearing, the Circuit Court stated that it would hear argument on the parties' motions for summary judgment but that Mr. McReady's motion for sanctions was not ripe. During Mr. McReady's argument, the court asked him whether he had proof of causation and, specifically, whether he had an expert to testify that he would have won his grievance had it proceeded. Mr. McReady stated only that he had contacted an expert who had agreed to look at the case but then was unable to do so. Citing his effort to find an expert, Mr. McReady stated, "Now, I can't prove damages. The only way I can do that is to ask you when we go to trial, to look at the facts and see if you would include that."

Ruling from the bench, the Circuit Court granted the Union's motion for summary judgment and denied Mr. McReady's motion for summary judgment. With regard to the applicable law, the court explained that Mr. McReady was required to produce facts to show both "that the defendant Union breached the duty of fair representation in handling the grievance" and that "but for the [Union]'s action which purportedly breached the duty, [Mr. McReady] would have prevailed in the grievance." As to causation, the court noted Mr. McReady's statement on the record that he lacked evidence that "but for the Union's action he would have prevailed in the grievance." The court further observed that there was no such evidence in the record. Additionally, the court stated that, as part of the causation prong, "it must be shown also that [Mr. McReady] pursued through the grievance procedure every remedy that he had. … His voluntary choice not to pursue that is an

impediment to him proving the second prong that he needs to prove." Finding that Mr. McReady had failed to exhaust his remedies, the court stated, "And now there is no evidence available to indicate to prove that he would have been successful anyway. And this is something he readily admits."

The Circuit Court also ruled that Mr. McReady had not come forward with evidence to establish that the Union had breached its duty of fair representation. As part of that ruling, the court found that Mr. Donahue's alleged "lie" about the step at which he had filed the grievance was irrelevant and had no effect on Mr. McReady's case, because Step 1 in fact was the step that a grievant was to begin with under the applicable procedures.[16]

The Circuit Court entered its summary judgment order on the day of the hearing, February 18, 2022. Thereafter, there was some confusion concerning resolution of Mr. McReady's motion to sanction Union counsel, which had been filed shortly before the hearing but not resolved at the hearing.

4. Proceedings on Mr. McReady's Motion for Sanctions

After the order concerning summary judgment had been entered, the Union's counsel asked the judge's law clerk, in an email copied to Mr. McReady, whether, in light of the order, the court expected them to respond to Mr. McReady's motion for sanctions

[16] The court adopted by reference the Union's proposed statement of undisputed facts. That statement included the facts that Mr. Donahue had filed Mr. McReady's pay grievance at Step 2 because the College had already addressed the issue in response to Mr. McReady's earlier efforts, that Mr. Donahue discussed the proper procedure with a College administrator, that the administrator had agreed to accept the grievance as properly filed at Step 1, that the College processed it as properly filed at Step 1, and that the way in which the grievance had been filed did not create any procedural hurdle for any relief to which Mr. McReady might have been entitled.

against them. On Friday, February 25, 2022, the judge's clerk conveyed to the parties that the motion for sanctions would be denied and that the order would be docketed and emailed to the parties in the next week. That day, the court issued an order denying the motion; that order was not entered until March 2, 2022.

On March 1, 2022, before the order was entered, Mr. McReady moved on an "emergency" basis, for "a protective order, sanction, and recus[al][of the judge] for obstruction of justice." In support of that motion, he stated that the judge was biased because the judge's clerk had conveyed to the Union's attorneys that they did not need to respond to Mr. McReady's motion for sanctions against them. On March 3, the judge vacated his order as issued "prematurely," directed the Union's counsel to respond within 15 days, and then recused himself.

On March 17, 2022, Mr. McReady filed a second motion to sanction the Union's attorneys, this time based on a claim that they had suborned perjurious statements in Mr. Donahue's September 17, 2021 deposition testimony about the step at which he had filed Mr. McReady's back pay grievance.[17] In that testimony, as in the later affidavit, Mr. Donahue had stated that he had filed the grievance at Step 2.

Shortly thereafter, on March 21, 2022, Mr. McReady noted his appeal of the summary judgment ruling.

[17] Mr. McReady also filed an application for a statement of criminal charges against Mr. Donahue based on his allegations of perjury, but the State's Attorney declined to prosecute.

On April 20, 2022, a different Circuit Court judge heard argument on Mr. McReady's original February 16 motion for sanctions. During that hearing, referring to the Union's argument that Mr. McReady's appeal had divested it of jurisdiction over the motion, the Circuit Court asked Mr. McReady, "Is the asserted incorrect testimony or perjured testimony of Mr. Donahue at all at issue in the appeal? In other words, does that form any basis for what the appeal is about?" Mr. McReady responded, "Yes." Further, in a colloquy with the Circuit Court on what his position on appeal would be, Mr. McReady stated: "Well, on appeal the position will be on whether or not Mr. Donahue lied to me back in November 2016, five years ago. ... All, all I need to show on appeal is that [Mr. Donahue] lied and was dishonest...." At the hearing, the Circuit Court indicated that it would deny the motion on the ground that Mr. McReady's appeal of the summary judgment ruling had divested it of jurisdiction over his related sanctions motion. The court issued an order on April 20, 2022 that it amended on April 25, 2022 to add that the motion was denied "for the reasons stated on the record."

On May 16, 2022, Mr. McReady filed a motion, purportedly under Maryland Rule 2-535, to revise the order on the grounds that the court had erred in finding that it lacked jurisdiction.[18] On the next day, May 17, 2022, he also noted an appeal of that same ruling.

On May 20, the Circuit Court denied the motion to revise its order and noted in its order that "in response to questions asked of him during the April 20, 2022 hearing ..., the

[18] The order in question was not a "judgment" subject to revision under the rule cited by Mr. McReady. *Logan v. LSP Mktg. Corp.*, 196 Md. App. 684, 703 (2010).

Plaintiff candidly responded and made clear that the principal contention or issue forming the basis of his [motion] is central, not collateral to his pending appeal." Mr. McReady filed a notice of appeal that decision, too.[19]

5. Mr. McReady's Appeals

To recap, in March 2022, Mr. McReady filed an initial notice of appeal following the Circuit Court's ruling disposing of the last surviving count of his complaint. In May 2022, he filed two notices of appeal related to the Circuit Court's decision that it lacked jurisdiction to decide his first motion to sanction the Union's counsel that had been filed shortly before the hearing on summary judgment. Those appeals were docketed together in this Court as Case No. 142 of the September 2022 Term.

Subsequently, the Circuit Court twice amended its orders relating to Mr. McReady's motion for sanctions to clarify that those orders related to Mr. McReady's first motion for sanctions.[20] Mr. McReady filed notices of appeals of those orders on July 7 and July 27, 2022 respectively. Those appeals were docketed together in this Court as Case No. 795 of the September 2022 Term.

[19] We have described the sanctions proceedings sparingly. In them, Mr. McReady, a member of the Washington D.C. bar, filed papers in which he expressed his opinion of the two Circuit Court judges to whom his motions were assigned. By way of a sample, he described the first judge as "disgraced and recused," and the second as a "dupable" judge who had issued an order that Mr. McReady termed "laughable, outrageous, and disgusting on its face for [the judge's] blatant stupidity."

[20] The record does not reflect a disposition of the second motion for sanctions, and Mr. McReady's notices of appeal do not refer to a disposition of that motion.

On January 19, 2023, this Court ordered that the two cases be consolidated for decision.[21]

II

Discussion

In these consolidated appeals, Mr. McReady has briefed two issues:[22]

> 1 – Whether the Circuit Court erred when it granted summary judgment in favor of the Union on the fair representation count.
>
> 2 – Whether the Circuit Court erred when it declined to grant his motions for sanctions against opposing counsel.

For the reasons explained below, we find no merit in either contention and, accordingly, affirm the judgment of the Circuit Court. We discuss each issue in turn.

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[21] We note that Mr. McReady has filed record extracts in these two appeals comprised of 13 volumes and 4 volumes, respectively, for a total of 5,435 pages. Those pages include unnecessary duplication of numerous documents – for example, at least 11 complete copies of the CBA between the College and the Union are scattered through several volumes.

[22] In his opening brief in Case No. 142, Mr. McReady also identifies eight additional questions. Those questions relate to the counts of his complaints that were dismissed with prejudice by the Circuit Court, the Circuit Court's rulings denying his attempt to resurrect those counts and add other counts in amended complaints, and certain scheduling and procedural matters. He did not brief any of those issues, but instead requests an opportunity to do so "at the appropriate time" if we find "sufficient merit" in his first two issues.

For the reasons set forth in this opinion, we do not find merit in his first two issues. In any event, his failure to elaborate any of the other issues he identifies, even briefly, waives those issues. *See* Maryland Rule 8-504(a)(5)-(6); *Health Svcs. Cost Review Comm'n v. Lutheran Hosp. of Md., Inc.*, 298 Md. 651, 664 (1984).

While Mr. McReady is proceeding *pro se*, he is (as he himself has repeatedly noted in his filings in this case) an attorney licensed in the District of Columbia, and he has shown himself to be capable of finding and comprehending the Maryland Rules and case law.

A. Summary Judgment Ruling

1. Standard of Review

When a circuit court grants a motion for summary judgment, it has concluded that, based on the undisputed material facts, the prevailing party is entitled to judgment as a matter of law. Maryland Rule 2-501. Because that decision turns on a question of law, not a dispute of fact, an appellate court reviews whether the circuit court was legally correct in awarding summary judgment; the appellate court does not accord any special deference to the circuit court's decision. *Mathews v. Cassidy Turley Maryland, Inc.*, 435 Md. 584, 598 (2013). In conducting its review, the appellate court addresses *de novo* whether the summary judgment record contains "evidence upon which the jury could reasonably find for the plaintiff." *Crickenberger v. Hyundai Motor Am.*, 404 Md. 37, 45 (2009) (quotation and citation omitted).

When a circuit court has granted summary judgment on multiple grounds, an appellate court may affirm the judgment on any one of them that the appellate court determines to be a "separate and independent basis" for the ruling. *600 N. Frederick Rd., LLC v. Burlington Coat Factory of Maryland, LLC*, 419 Md. 413, 433-34 (2011). Thus, "in order for [an appellate court] to disturb the lower court's granting of summary judgment ..., [the appellate court] would have to determine that *all* of the grounds upon which the court relied were improper." *Monumental Life Ins. Co. v. U.S. Fid. & Guar. Co.*, 94 Md. App. 505, 523 (1993).

2. Disposition of Fair Representation Count

As noted earlier, the duty of fair representation is often expressed as requiring a union (1) to serve the interests of all members of bargaining unit without hostility or discrimination toward any, (2) to exercise its discretion with complete good faith and honesty, and (3) to avoid arbitrary conduct. As also noted earlier, Mr. McReady bore the burden of responding to the Union's motion for summary judgment with "evidence upon which the jury could reasonably find for the plaintiff" on each issue raised in the Union's motion, including that the Union breached the duty of fair representation and that the alleged breach resulted in the damages that he seeks.

As to breach, Mr. McReady's allegations focused on allegedly "dishonest" and "hostile" conduct on the part of the Union. His statements in the Circuit Court are consistent with his contentions in this Court regarding his appeal of the Circuit Court's grant of summary judgment on the issue of whether the Union breached its duty of fair representation. Here, too, Mr. McReady argues that the Union breached that duty because, among other things, it refused his demand to replace Mr. Donahue, who, Mr. McReady asserts, had lied to him about the step at which Mr. Donahue had filed the pay grievance.

But neither in the Circuit Court, nor in this Court, has Mr. McReady pointed to any evidence that would satisfy the element of causation. In contrast, the Union supported its motion for summary judgment with Mr. McReady's deposition testimony to the effect that he had neither perfected appeals of his grievances beyond the first step nor appealed the College's determination to reject his attempt to appeal its decision on his back pay grievance, with his statement that he had dismissed the Union representatives shortly after

the hearing on that grievance began, and with the undisputed fact that the College declined to renew Mr. McReady's contract because his mass emails violated various College policies on the acceptable use of its information technology, including an anti-harassment provision. Mr. McReady did not dispute these facts in the Circuit Court. In this Court, he again conceded his inability to prove that the Union's conduct caused the damages he claimed.[23]

In short, Mr. McReady has not presented disputed – or undisputed – facts that would give a jury "substantial reason to believe that a union breach of duty contributed to an erroneous outcome." *See Ash v. United Parcel Serv., Inc*., 800 F.2d 409, 411 (4th Cir. 1986) (citation omitted). Specifically, he has pointed to no facts that would support a finding that the College's decisions were erroneous, much less that the Union's conduct had contributed to an erroneous decision. Given that deficiency, the Circuit Court correctly

[23] In his reply brief in Case No. 142, Mr. McReady concedes as "true" the Union's statement that he had "adduced no evidence that he would have prevailed in any underlying grievances." He then attributes the lack of such evidence to the Circuit Court's scheduling order, which, he asserts, "effectively obliterated [his] ability to identify expert witnesses who could possibly have provided testimony showing he would have prevailed in his grievances." Had Mr. McReady properly briefed this issue in his opening brief, we would have reviewed the scheduling order for abuse of discretion. He did not do so and has therefore waived it. We note, in any event, that the events of which he complained occurred in 2016; that he sued the Union in 2019; that, at the August 2020 hearing on the Union's motion to dismiss, the Circuit Court explained to him at some length that he would ultimately have to prove causation and gave him guidance on how to do that; and that, under the scheduling order, discovery did not have to be completed until more than a year later in late November 2021. As noted earlier, Mr. McReady is a member of the Washington, D.C., bar. This is not a case in which short deadlines were imposed on an unsophisticated *pro se* plaintiff.

granted summary judgment on the "separate and independent" issue of causation.[24] *600 N. Frederick Rd., LLC*, 419 Md. at 434.

B. Motions for Sanctions

As described earlier, Mr. McReady filed his first motion for sanctions two days before the scheduled hearing on the cross motions for summary judgment and the Circuit Court understandably chose not to address it at that hearing. After Mr. McReady objected to that court's initial effort to resolve the sanctions motion following the hearing without requiring a response from the Union, the court held the motion in abeyance for such a response; in the interim, Mr. McReady filed a notice of appeal of the summary judgment ruling. Further orders by the Circuit Court and motions by Mr. McReady followed, as summarized earlier. The Circuit Court ultimately concluded that it lacked jurisdiction to decide the first sanctions motion and, presumably for the same reason, never exercised jurisdiction over Mr. McCready's second similar sanctions motion.

On appeal, Mr. McReady asserts that the Circuit Court erred when it concluded that it lacked jurisdiction over his first sanctions motion. As explained below, the denial of that motion on jurisdictional grounds applies equally to the Circuit Court's inaction as to the second similar motion.

[24] This is not meant to suggest that the Circuit Court erred with regard to any of the other alternative grounds on which it based its grant of summary judgment in favor of the Union. The issue of causation is clearly resolved on the basis of Mr. McReady's own statements and, in any event, his failure in the Circuit Court to identify any disputed facts relevant to that issue. Also, as noted in Part I.C.2 and footnote 23 of this opinion, the Circuit Court judge who addressed the Union's motion to dismiss took care early in this litigation to explain to Mr. McReady, who had identified himself as a *pro se* plaintiff, exactly what was needed to satisfy the element of causation.

1. Whether the Circuit Court Lacked Jurisdiction over the Sanctions Motions

The longstanding principles regarding a circuit court's jurisdiction over a case once an appeal has been filed are as follows:

> [T]he general rule is that the perfecting of an appeal brings the subject matter thereof within the exclusive jurisdiction of the appellate court and suspends the authority of the trial court over it during the pendency of the appeal; that the trial court lacks jurisdiction to take any further action in the case with respect to the subject matter of, or affecting, the proceeding until the receipt of the mandate of the appellate court after the appeal has been heard and decided. . . . But this general rule does not divest the trial court of jurisdiction to proceed with the trial of the case upon the filing of … an appeal from a nonappealable, interlocutory pretrial order.

Stewart v. State, 282 Md. 557, 573 (1978) (citations omitted). In other words, the filing of an appeal divests a trial court of jurisdiction[25] over the "subject matter of, or affecting, the proceeding" of the appeal unless the order from which the appeal was taken was a "nonappealable, interlocutory pretrial order." *Id.*

Here, the order that Mr. McReady appealed first was not a nonappealable, interlocutory pretrial order; instead, as a properly-entered summary judgment order that entirely disposed of Mr. McReady's complaint against the sole remaining defendant, it was

[25] As explained by the Court of Appeals, now known as the Supreme Court, "the term 'jurisdiction' can have different meanings ... depending upon the context in which it is used." *Cnty. Comm'rs of Carroll Cnty. v. Carroll Craft Retail, Inc*., 384 Md. 23, 44 (2004). Specifically, it can refer either (1) to the court's *power* to render a valid decree, sometimes referred to as "fundamental jurisdiction," or (2) to the *propriety* of granting the relief sought in a case that falls within the general class of cases to which the case in question belongs. *Id*. (citations omitted). Here, we use the term in the second sense. *See id*. at 45 (noting that, in the matter before it, the circuit court did not lack fundamental jurisdiction to strike the appellant's notice of appeal but "was certainly prohibited from exercising its jurisdiction in a way that would affect the subject matter of the appeal or appellate proceeding"); *see also Quillens v. Moore*, 399 Md. 97, 122 (2007).

a final, appealable, judgment. *See, e.g. Smith v. Lead Indus. Ass'n, Inc.*, 386 Md. 12, 21 (2005) (listing the three attributes of a final judgment for purposes of appeal[26]); *Cir. City Stores, Inc. v. Rockville Pike Joint Venture Ltd. P'ship*, 376 Md. 331, 348 (2003) (characterizing as "final judgment" an order that "disposed of every issue then in controversy – all claims against all parties").

Therefore, the "general rule" applicable to final judgments controls here. Under that rule, the question now is whether the basis of Mr. McReady's motions for sanctions – that is, his allegation that Mr. Donahue testified falsely about the step at which he had filed Mr. McReady's pay grievance and that the Union's attorneys "suborned" allegedly false testimony to the same effect – was a matter "with respect to the subject matter of, or affecting, the proceeding." *See Stewart*, 282 Md. at 573.

The disjunctive phrase "with respect to the subject matter of, or affecting, a proceeding" seemingly sets an amorphous standard. Here, however, the commonality of the facts between an issue on appeal (whether Mr. Donahue's alleged lie resulted in a violation of the Union's duty of fair representation and the claimed damages) and of both motions for sanctions (whether his testimony was perjury) leads easily to the conclusion that the motions were "with respect to the subject matter" of the case on appeal.

[26] Those attributes are: "(1) [the ruling] must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court properly acts pursuant to Md. Rule 2-602(b), it must adjudicate or complete the adjudication of all claims against all parties, and (3) the clerk must make a proper record of it in accordance with Md. Rule 2-601." *Smith*, 386 Md. at 21 (citations and internal quotation marks omitted).

First, Mr. McReady conceded that point, not only in the Circuit Court, where he agreed with the proposition that the sanctions motions involved issues that he had raised in his appeal, but also in this Court. Here, Mr. McReady argues more specifically that, "in arriving at [the February 18, 2022] judgments on the parties' summary judgment motions, the [Circuit Court judge] grossly abused his authority in refusing to give any substantive consideration to Appellant's earlier [motion for sanctions against the attorneys]."

Second, the record supports Mr. McReady's concessions. Mr. McReady based his fair representation claim against the Union in large part on his allegation that Mr. Donahue had lied to him on November 21, 2016, about the step at which Mr. Donahue had filed the back pay grievance. In awarding summary judgment, the Circuit Court implicitly rejected the proposition that anything said about the step at which the Union had filed Mr. McReady's grievance was material to his fair representation claim against the Union. In seeking reversal of that judgment, Mr. McReady asserts that the alleged lie was material to that claim. Meanwhile, his motions for sanctions called upon the Circuit Court to find Mr. Donahue's testimony about the November 21, 2016 communication to be "perjurious" – a ruling that would embody a finding that the testimony was material to a proceeding in court. *Palmisano v. State*, 124 Md. App. 420, 429-30 (1999). In effect, both motions called upon the Circuit Court to reverse its own findings regarding the materiality of the alleged lie at a time when Mr. McReady had placed the same issue before this Court. The Circuit Court did not err when it declined to decide the motions while Mr. McReady's initial appeal was pending.

2. Whether a Remand is Necessary

The question then is whether, having affirmed the Circuit Court's award of summary judgment disposing of the merits of the case, we should remand this case to the Circuit Court for the sole purpose of resolving Mr. McReady's sanctions motions. That is not necessary.

When an appellate court's disposition of a case leaves unresolved a loose end that the trial court has not addressed in the first instance, it is often appropriate to remand the case to the trial court, particularly when the loose end is a motion that requires findings of fact and the exercise of discretion. *See, e.g., Bodeau v. State*, 248 Md. App. 115, 154 (2020) ("Our task is to *review* the circuit court's exercise of [its] discretion for abuse—not to *exercise* that discretion on the circuit court's behalf."); *see also Silver v. Greater Baltimore Med. Ctr., Inc.*, 248 Md. App. 666, 719 (2020) (remanding to the trial court a motion to certify a class for that court's application of the correct legal standard because resolution of that question turned on various factors and thus entailed more than a purely "legal ruling.").

At the same time, Maryland Rule 8-131 authorizes an appellate court to address an issue, rather than remand it, "if it plainly appears by the record to have been raised in or decided by the trial court[.]"[27] *See Jones v. State*, 379 Md. 704, 712-13 (2004); *see also, e.g., Supervisor of Assessments of Howard County v. Scheidt*, 85 Md. App. 154, 158 n. 1

[27] In pertinent part, Rule 8-131 provides: "Ordinarily, the appellate court will not decide any other issue 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."

(1990) (reaching an issue not discussed or determined by the Tax Court or circuit court because the argument had been made in the pleadings in the circuit court.)

Certainly, the issue of whether Mr. Donahue's testimony met the definition of "perjury" was raised in the trial court; Mr. McReady filed his motions, and the Union addressed them on the merits. Further, the motions did not call upon the Circuit Court to exercise its discretion because the law on perjury left the Circuit Court no discretion to find that that crime had occurred. The elements of perjury include "the making [of] a false, material statement." *State v. McGagh*, 472 Md. 168, 199 (2021). A material statement is one "capable of affecting the course or outcome of the proceedings or the decision-making of the court," *id.* at 206 (quoting *Palmisano*, 124 Md. App. at 429-30), or "of influencing … the decision of the decision making body to which it was addressed." *Id*. (quoting *Kungys v. United States*, 485 U.S. 759, 770 (1988) (internal quotation marks omitted).

Here, as discussed above, the undisputed facts establish that nothing that Union employees said about the step at which Mr. McReady's pay grievance was filed made any difference to the College's decision; that is, nothing that they said about the step at which the grievance was filed resulted in any damages to Mr. McReady. For the same reason, Mr. Donahue's testimony about the filing of the grievance, even if it could be construed to be false, was not capable of influencing the Circuit Court's decision; as the Circuit Court put it, the alleged "lie" had "no … effect" on Mr. McReady's claim. As the Circuit Court explained, "[i]f somebody said he filed step two, but he didn't, he really filed step one, it's irrelevant. Because in fact that's the step that you start at…." Mr. McReady's sanctions motions thus had no basis in law.

Consequently, the only task left for the Circuit Court to do if this case were remanded for disposition of the sanctions motions would be to deny the motions consistent with the conclusions reached in this opinion. This Court has found it unnecessary to remand a case when the remand "would not present the trial judge with an opportunity to adjudicate any legal issues not already addressed in this [court's] opinion." *Williams v. Prince George's Cnty*., 112 Md. App. 526, 560 (1996); *see also Morris v. Goodwin*, 230 Md. App. 395, 410-11 (2016) (not remanding the case when the circuit court's "dismissal of appellant's petition [was] mandated by law" and when a remand "would be an exercise in futility and a waste of judicial resources"). This is such a case.

III

Conclusion

For the reasons set forth above, we hold:

1. The Circuit Court properly granted summary judgment in favor of the Union on the ground that, on the undisputed facts, Mr. McReady could not prove that the damages alleged in the fair representation count were the result of the alleged violation of the duty of fair representation.

2. The Circuit Court correctly concluded that it lacked jurisdiction to decide Mr. McReady's first motion for sanctions against the Union counsel because the alleged basis for the relief sought in that motion was closely related, if not identical, to the central issue on which he had filed a notice of appeal concerning the summary judgment ruling. There is no need to remand this case to the Circuit Court to decide that motion or his similar second motion for sanctions as they both lack merit.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.