Circuit Court for Montgomery County
Case No. 149491-FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 37

September Term, 2020

CHOO WASHBURN

v.

ROBERT MCCARTHY

Fader, C.J.,
Reed,
Alpert, Paul E.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: September 30, 2021

In July of 2018, the Circuit Court for Montgomery County judged Choo Washburn, appellant, "unable to manage her property and affairs effectively" and appointed Robert M. McCarthy, Esq., appellee, as the permanent guardian of her property. In 2019, appellee filed with the court an "Annual Fiduciary Report" and a "Petition for Approval of Guardian of the Property's Fees." Appellant unsuccessfully moved for leave to oppose both the fiduciary report and the petition for fees.[1] The court denied that motion, and on February 7, 2020, approved the fiduciary report and granted the fee petition, thereby awarding appellee $9,314.01, payable from the guardianship estate. Appellant's statement of the "Questions Presented" spans three pages of her brief, and is unduly detailed, unnumbered, and convoluted. *See* Md. Rule 8-504(a) ("A brief shall . . . include . . . [a] statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail."). We have consolidated and recast those questions as follows:

I. Did the court abuse its discretion by approving the fiduciary report?

II. Did the court err or abuse its discretion by awarding appellee guardian fees in the amount of $9,314.01?

III. Did the court abuse its discretion by denying appellant leave to oppose appellees' fiduciary report and fee petition?

We answer these questions in the negative and shall therefore affirm.

[1] In an order entered on February 2, 2018, the court declared appellant a vexatious litigant and, therefore, "enjoined [her] from filing as a self-represented litigant any new pleadings or motions in [the divorce or guardianship] cases or any new case involving [appellant] or her family without first filing a motion for permission from the Administrative Judge of this Court[.]"

BACKGROUND

On January 11, 2016, Larry Washburn, appellant's then husband, filed a complaint for absolute divorce or, in the alternative, limited divorce.[2] The court entered a judgment of absolute divorce in Mr. Washburn's favor on March 23, 2017. In that order, the court awarded appellant a 36.28% interest in an annuity from the Office of Personnel Management ("the OPM annuity"), a 50% interest in Mr. Washburn's Vanguard 401k, and indefinite monthly alimony in the amount of $1,500. The court also ordered the sale of jointly owned real estate, with the net proceeds to be divided equally between the parties.[3]

On November 20, 2017, the Montgomery County Department of Health and Human Services ("MCDHHS") petitioned the court for an evaluation of appellant's mental capacity and requested that it appoint a guardian to protect her property and to manage her financial affairs. The court found that a mental disorder from which appellant suffered rendered her "unable to manage her property and affairs effectively." Accordingly, on November 29th, it appointed appellee temporary guardian of appellant's property "with all the rights, duties[,] and powers set forth in § 13-204 of the Estates and Trusts Article . . . , including the specific authority . . . to close any accounts in any financial institutions and/or

[2] Although they are not included in the record, we take judicial notice of the docket entries in the divorce case, as they are available on the Maryland Judiciary website. *See Lewis v. State*, 229 Md. App. 86, 90 n.1 (2016) (taking judicial notice of docket entries available on the Maryland Judiciary's website pursuant to Maryland Rule 5-201), *aff'd*, 452 Md. 663 (2017).

[3] The court valued one such property at $338,574 with a lien of $236,579, amounting to net equity of $101,995. It valued a second property at $856,648 with two liens for $299,690 and $40,000, amounting to net equity of $516,958.

re-title such accounts in his . . . name as guardian." In a subsequent order entered on January 9, 2018, the court directed appellant to undergo two functional capacity evaluations. In signed certificates, the physicians who conducted those evaluations opined that the mental disorder from which appellant suffered interfered with her ability to make or communicate responsible decisions regarding her financial affairs. According to one certifying physician, appellant lacked "sufficient mental capacity to understand the nature of guardianship . . . and consent to the appointment of a guardian."[4]

Following a December 19, 2017, show cause hearing (in the guardianship case) and status hearing (in the divorce action), the circuit court recommended that Judge Robert A. Greenberg, the Administrative Judge of the Circuit Court for Montgomery County, enter an order requiring that appellant "seek court approval before filings any future pleadings." Judge Greenberg adopted that recommendation in an "Order Prohibiting Filing of Vexatious Pleading." In his order, Judge Greenberg recounted the December 19th testimony of a MCDHHS social worker, according to which appellant had made multiple scurrilous allegations against Mr. Washburn, including that he had poisoned her and, "[a]s a result, [she] use[d] bottled water to bathe and drink." Judge Greenberg further noted that the voluminous record in the divorce case (which had amassed a staggering 14 volumes) included "numerous frivolous, stream-of-consciousness pleadings filed by [appellant] containing multiple scandalous and impertinent allegations, including suggestions that

[4] The second certifying physician disagreed with this assessment, opining that "the patient has a sufficient mental capacity to understand the nature of a guardianship and **can** consent of the appointment of a guardian." (emphasis retained).

members of the bar [had] committed various crimes in carrying out their duties." Finally, he observed that appellant had filed eight *pro se* motions in the guardianship proceeding, all of which the court had denied at the December 19th hearing.[5] For the foregoing reasons, Judge Greenberg enjoined appellant "from filing as a self-represented litigant any new pleadings or motions in these cases or any new case involving [appellant] or her family without first filing a motion for permission from the Administrative Judge of this [c]ourt."

Following a competency hearing, the court again found appellant "unable to manage her property and affairs effectively due to mental disability" and appointed appellee as permanent guardian of her property. Approximately six months later, appellee filed an annual fiduciary report pursuant to Maryland Rule 10-706, which consisted of an accounting of the guardianship assets and the disbursements made to appellant and on her behalf. Apparently discontent with the fiduciary report and the expenditures reflected therein, appellant filed an action for replevin in the District Court for Montgomery County. Ruling from the bench, the court dismissed the case, finding that appellee had been properly appointed to oversee and manage appellant's property. In yet another action, also filed in the district court, appellant alleged that appellee had misappropriated her share of the OPM annuity. That case was also dismissed.

On January 13, 2020, appellee submitted a second annual fiduciary report accounting for guardianship transactions conducted between November 22, 2018, and

[5] Appellant filed these motions *pro se* despite her having then been represented by counsel.

November 21, 2019. That same day, he filed a petition for approval of guardian fees, to which he attached time sheets indicating that he, as well as a member and employees of his law firm had collectively logged over 48 hours in the guardianship proceeding, the misappropriation suit, and the replevin action. In that petition, appellee averred:

> Robert M. McCarthy has incurred fees and expenses in the amount of $9,314.01. Robert M. McCarthy charges $280.00 per hour, Kevin D. McCarthy, Esq.'s hourly rate is $175.00 per hour. Paralegals are billed at $100.00 per hour. Robert M. McCarthy has reduced his rate to $250.00 per hour.

Appellant responded with motions for leave to oppose the fiduciary report and the petition for fees, both of which were denied. Accordingly, by orders entered on February 10th, the court approved the fiduciary report and awarded appellee the requested fees.

We will include additional facts as necessary to our resolution of the issues.

DISCUSSION

I.

We will first address appellant's contention that the court abused its discretion by approving appellee's second annual fiduciary report. She offers three arguments in support of that assertion. First, she claims that appellee illegally retitled her share of the OPM annuity and Mr. Washburn's Social Security benefits. She further asserts that appellee violated what is now Maryland Code, § 8-801 of the Criminal Law Article ("CR"), by participating in the sale of former marital real estate located in Chevy Chase ("the Chevy

Chase Property").[6] Finally, she complains that appellee failed to attach supporting documents to the fiduciary report, as purportedly prescribed by Maryland Rule 10-706.

Appellee responds that "[i]n taking control of her property, [he] did exactly what the guardianship statute requires and what the circuit court appointed him to do." Appellee further maintains that he properly complied with the requirements of Rule 10-706. We agree with appellee on both points.

Guardianships of Property

The appointment of a guardian of property is governed by Maryland Code (1974, 2017 Repl. Vol.), § 13-201 of the Estates and Trusts Article ("ET"), which provides, in pertinent part:

> (c) A guardian shall be appointed if the court determines that:
>
> (1) The person is unable to manage his property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, detention by a foreign power, or disappearance; and
>
> (2) The person has or may be entitled to property or benefits which require proper management.

ET § 13-201(c). "[T]he true guardian of every guardianship estate is the court itself." *Seaboard Sur. Co. v. Boney*, 135 Md. App. 99, 113 (2000), *cert. denied*, *Boney v. Seaboard*, 363 Md. 206 (2001). As such, the court "has all the powers over the property of the . . . disabled person that the person could exercise if not disabled[.]" ET § 13-203(c)(1). The individual assigned the honorific "guardian," on the other hand, "'is merely an agent or

[6] In her brief, appellant mistakenly cites a non-existent "Rule 8-801."

arm of [the court] in carrying out its sacred responsibility.'" *Owings v. Foote*, 150 Md. App. 1, 14 (2002) (quoting *Kicherer v. Kicherer*, 285 Md. 114, 118 (1979)).

Subject to judicial control, "[t]he appointment and qualification of a guardian vests in [the guardian] title to all property of the . . . protected person that is held at the time of appointment or acquired later." ET § 13-206(c)(1). Although a guardian need not submit to the instructions or control of the ward, he or she is statutorily obligated to "utilize [the] powers conferred . . . to perform the services, exercise his discretion, and discharge [the guardian's] duties for the best interest of the . . . disabled person[.]" ET § 13-206(c)(1). In other words, "the fundamental duty of a guardian of property is to preserve the property in the guardianship estate for the benefit of the ward and other persons with an interest in that property." *Seaboard Sur. Co.*, 135 Md. App. at 112.

As the court's agent, a guardian must submit for judicial approval an annual accounting of the guardianship estate's assets. Md. Rule 10-706(b). As we will discuss in greater detail below, for this and other services rendered on behalf of the estate, the guardian is generally "entitled to the same compensation and reimbursement for actual and necessary expenses as the trustee of a trust." ET § 13-218(a).

Title to and Sale of Guardianship Assets

Appellant's claim that appellee illegally retitled her share of the OPM annuity and Mr. Washburn's Social Security benefits is entirely without merit. As addressed *supra*, ET § 13-206(c)(1) expressly provides that "[t]he appointment and qualification of a guardian vests in [the guardian] title to all property of the . . . protected[.]" While a court may, at its

discretion, limit the powers conferred upon a guardian, *see* ET § 13-215, the court imposed no such restrictions in this case. As appellee succinctly states, by taking title and control of appellant's assets, "[appellee] did exactly what the guardianship statute requires and what the circuit court appointed him to do."

Appellant's argument that appellee illegally authorized the sale of the Chevy Chase Property is equally unavailing. In challenging the legality of that sale, appellant relies on CR § 8-801(b), which prohibits a "person [from] knowingly and willfully obtain[ing] by deception, intimidation, or undue influence the property of an individual that the person knows or reasonably should know is a vulnerable adult with intent to deprive the vulnerable adult of the vulnerable adult's property." That prohibition is inapplicable, however, where, as here, "a person who, at the request of . . . the court appointed guardian of the [vulnerable adult], has made a good faith effort to assist the [vulnerable adult] in the management of or transfer of the [vulnerable adult's] property." CR § 8-801(f). In this case, the court unqualifiedly conferred upon appellee "all the rights duties and powers set forth in [ET] §§ 13-213 and 15-102," including the right to "sell . . . any property, real or personal." ET § 15-102(c). Having been imbued with such unfettered authority, we perceive no impropriety in the sale of the Chevy Chase Property and, therefore, no abuse of the court's discretion in approving the report of said sale.

Maryland Rule 10-706

Appellant also challenges the approval of the fiduciary report on the basis that appellee did not attach supporting documentation thereto, claiming that his failure to do so violated Maryland Rule 10-706. Maryland Rule 10-706 provides, in pertinent part:

> (b) **Annual fiduciary accounts.** *Generally.* When the court has appointed a guardian of the property or has assumed jurisdiction over a fiduciary estate, the fiduciary shall file each year an account in substantially the form set forth in Rule 10-708. The end of the accounting year shall be (A) the anniversary of the date upon which the court assumed jurisdiction over the estate or appointed the fiduciary, or (B) any other anniversary date fixed with the consent of the trust clerk or the court. The account shall be filed not later than 60 days after the end of the accounting year, unless the court or trust clerk extends the time for good cause shown. The fiduciary shall furnish a copy of the account to any interested person who requests it.

When interpreting the Maryland Rules, we begin by examining their plain language. *See Williams v. State*, 457 Md. 551, 568 (2018) ("It is well established that when we interpret the Maryland Rules, we first examine the plain language." (citation omitted)). "Where the language of the rule is clear and unambiguous, our analysis ends." *Burson v. Simard*, 424 Md. 318, 324 (2012) (quotation marks and citation omitted). We will not read into a rule a requirement that is "not expressly stated or clearly implied" therein. *Allfirst Bank v. Department of Health and Mental Hygiene*, 140 Md. App. 334, 364 (2001). Nor will we add or delete words "in order to give it a meaning not otherwise evident by the words actually used." *Williams*, 457 Md. at 568 (quotation marks and citation omitted). Only when the language of a rule is ambiguous will we "examine the history of the rule to aid in determining the reasonable intendment of the language used in the light of the purpose to be effectuated." *Burson*, 424 Md. at 324.

Nothing in the plain language of Rule 10-706 supports appellant's contention that a guardian must, on his or her own initiative, submit supporting documents evidencing the transactions reflected in a guardian's fiduciary report, and we decline to read such a requirement into the Rule. Moreover, while Rule 10-706(b)(4) permits the trust clerk to "require the fiduciary to furnish proof of any transactions shown in the account," the record does not reflect that any such requirement was imposed in this case. Accordingly, we hold that appellee complied with the requirements set forth in Rule 10-706.

For the foregoing reasons, appellant has neither demonstrated that appellee's exercise of authority exceeded his statutorily conferred powers, nor has she rebutted the "strong presumption" that the clerk and court "properly perform[ed] their duties." *Schowgurow v. State*, 240 Md. 121, 126 (1965). Accordingly, we perceive no abuse of discretion in the court's approval of the fiduciary report.

II.

Appellant further challenges the court's award of $9,314.01 in guardianship compensation. First, she asserts that $2,750.00 of those fees were "illegal banking and booking disbursement activity fees." Relying on our opinion in *Frison v. Mathis*, 188 Md. App. 97 (2009), she further contends that Maryland Rule 1-341 prohibited the court from compensating appellee for defending against appellant's actions for replevin and

misappropriation of guardianship funds.[7] In so doing, she both characterizes appellee's role in those suits as that of a *pro se* attorney litigant and refers to his compensation as "attorney's fees."

Appellee responds that appellant's reliance on *Frison* is misplaced, arguing that the fees were awarded pursuant to ET § 13-218—and not Maryland Rule 1-341. Appellant's invocation of Rule 1-341, appellee continues, amounts to a tacit admission that "she ha[d] conducted litigation in bad faith or without substantial justification."

Standard of Review

Whether a circuit court has the authority to award fees is a question of law, "which we review *de novo*." *Barufaldi v. Ocean City, Maryland Chamber of Commerce, Inc.*, 206 Md. App. 282, 296 (2012), *aff'd*, 434 Md. 381 (2013). If the allocation of such fees is authorized by law, "the award is a factual matter which lies within the sound discretion of the trial judge and will not be overturned unless clearly erroneous." *Holzman v. Fiola Blum, Inc.*, 125 Md. App. 602, 637 (1999) (quotation marks and citations omitted). When awarding fees, a court abuses its discretion when the award "'is shown to be so

[7] Maryland Rule 1-341 governs the award of sanctions for maintaining or defending a proceeding "in bad faith or without substantial justification," and provides, in pertinent part:

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

unreasonably small or so unreasonably high as to amount to an abuse.'" *Battley v. Banks*, 177 Md. App. 638, 662 (2007) (quoting *Wolfe v. Turner*, 267 Md. 646, 653 (1973)).

Guardianship Compensation

As addressed *supra*, a guardian is generally "entitled to the same compensation and reimbursement for actual and necessary expenses as the trustee of a trust." ET § 13-218. Under the Maryland Trust Act, "[a] . . . trustee of any . . . trust whose duties comprise the collection and distribution of income from property held under a trust agreement or the preservation and distribution of the property are entitled to commissions provided for in [ET § 14.5-708] for services in administering the trusts." ET § 14.5-708(a)(1)(i). Although guardians are generally limited to the commissions set forth in ET § 14.5-708(b)&(c), upon petition by an interested party and notice to the ward, the court may, at its discretion, award a guardian extra compensation.[8] *See* ET § 13-218(a)(3) ("On the petition of any interested

[8] ET § 14.5-708(b)&(c) set forth the following fee schedules:

(b)(1) Accounting from July 1, 1981, regardless of whether the trust was in existence at that time, income commissions are:

(i) 6% on all income from real estate, ground rents, and mortgages collected in each year; and

(ii) 1. 6.5% on the first $10,000 of all other income collected in each year;

2. 5% on the next $10,000;

3. 4% on the next $10,000; and

4. 3% on any remainder.

(continued…)

person and on a finding by the court that unusual circumstances exist, the court may increase or decrease compensation."). *See also* ET § 14.5-708(h); *Madden v. Mercantile-Safe Deposit & Trust Co.*, 27 Md. App. 17, 48 (1975) ("A trustee . . . has the right to extra compensation for extra services, in the discretion of the court." (citations omitted)).

A. "Banking and Booking Fees"

We will first address appellant's assertion that the court abused its discretion by approving "illegal banking and booking fees." As addressed *supra*, trustees—and by extension guardians—are entitled to reasonable compensation for the proper exercise of their discretionary powers and the performance of their fiduciary duties. Among those duties is the obligation "to hold the fund, and to pay and disburse it under the [c]ourt's order." *MacNabb v. Sheridan*, 181 Md. 245, 247 (1942) (quotation marks and citation omitted). A trustee must, moreover, maintain records of all trust property and any transfers

---

* * *

(c)(1) Accounting from July 1, 1981, regardless of whether the trust was in existence at that time, commissions are payable at the end of each year on the fair value of the corpus or principal held in trust at the end of each year as follows:

(i) 0.4% on the first $250,000;

(ii) 0.25% on the next $250,000;

(iii) 0.15% on the next $500,000; and

(iv) 0.1% on any excess.

thereof, ET § 14-405(i), and "mak[e] his records available for the beneficiaries' inspection." *Madden*, 27 Md. App. at 48.

In this case, appellee, acting for the benefit of the guardianship, routinely kept financial records and prepared administration accounts. So too did he properly disburse guardianship funds both to appellant and on her behalf. Appellee was clearly entitled to reasonable compensation for these services pursuant to § ET 7-601. Moreover, the fees charged for these services were neither disproportionate nor unreasonable. While the performance of these ministerial duties did not, in and of itself, warrant extra compensation, the actions undertaken in defense of the guardianship, in conjunction with other services rendered on its behalf, justified a departure from the fee schedules set forth in ET § 14.5-708(b)&(c).

B. Compensation for Defending Against Derivative Claims

Citing our opinion in *Frison v. Mathis*, appellant contends that the court erred as a matter of law by awarding appellee, a purported *pro se* attorney litigant, attorney's fees. In that case, Mathis retained Frison to represent him in a suit filed against him by a third party. When Mathis did not prevail, he refused to pay the attorney's fees that he had incurred. Frison filed suit, *pro se*, against Mathis seeking to recover those outstanding fees. When the court ruled in Frison's favor, he filed a motion for attorney's fees pursuant to Maryland Rule 1-341. The court denied Frison's motion, reasoning that his status as a *pro se* attorney litigant prohibited the recovery of such fees.

On appeal, we affirmed the circuit court's judgment, reasoning:

> [T]he plain language of Rule 1-341 permits recovery of attorney's fees *incurred*. A lawyer who represents himself or herself has not incurred legal fees, *i.e.*, he or she has not paid or become liable to pay fees. Accordingly, a *pro se* attorney litigant may not recover attorney's fees pursuant to Rule 1-341.

188 Md. App. at 109 (emphasis retained). Because Frison did not *actually incur* attorney's fees, we held that the fee-shifting provision of Rule 1-341 did not apply. We further explained that permitting a *pro se* attorney litigant to recover legal fees offends public policy, as doing so "would result in disparate treatment between *pro se* litigants based on their profession." *Id.* at 108. Quoting *Swanson & Setzke, Chtd. v. Henning*, 774 P.2d 909, 913 (Idaho Ct. App. 1989), we elaborated:

> The system would be one-sided and be viewed by the public as unfair, if one party (a lawyer litigant) could qualify for a fee award without incurring the potential out-of-pocket obligation that the opposing party (a nonlawyer) ordinarily must bear in order to qualify for a similar award. Moreover, if both parties opt to litigate *pro se*, it would be palpably unjust for one of them (the lawyer litigant) to remain eligible for an attorney fee award, while the other becomes ineligible.

Frison, 188 Md. App. at 108. Predicating the award of attorney's fees on the existence of an attorney-client relationship, we concluded, guards against "the public perception of unfairness in the legal system." *Id*. at 109.

The critical distinction between *Frison* and this case—and the fatal flaw in appellant's argument—is that here the circuit court did not award attorney's fees pursuant to Rule 1-341. Indeed, it did not award "attorney's fees" at all. Rather, it granted appellant guardianship compensation pursuant to ET § 13-218 for his having used his legal acumen to defend against suits which could compromise the guardianship estate. *Compare* ET §

14-405(d) ("If a trustee has a special skill or expertise . . . , the trustee shall utilize that . . . expertise."), *with Weidlich v. Comley*, 267 F.2d 133, 134 (2d Cir. 1959) ("When the trustee's administration of the assets is unjustifiably assailed it is a part of his duty to defend himself, for in so doing he is realizing the settlor's purpose."), *Knopf v. Mercantile-Safe Deposit & Trust Co.*, 252 Md. 293, 304 (1969) ("The Restatement of Trusts, (Second) § 178, imposes upon the trustee the 'duty to the beneficiary to defend actions which may result in a loss to the trust estate[.]"), *and* G. Bogert, *The Law of Trusts and Trustees* § 581 (June 2021 update) ("Equity imposes upon the trustee the duty of defending the integrity of the trust, if he has reasonable ground for believing that the attack is unjustified or if he is reasonably in doubt on that subject.").

Appellant cites no authority—and we are aware of none—supporting the proposition that a court-appointed guardian, acting in good faith and for the benefit of a guardianship estate, is precluded from recovering commissions arising from his or her having successfully defended against an action which could compromise the ward's estate. In fact, what little relevant authority we have found supports the contrary position. *See, e.g., In re Churchman's Estate*, 187 N.Y.S.2d 919, 920 (1959) ("The fee of the attorney-trustee is allowed[.] In so evaluating the services the court has taken into consideration the distinction . . . between legal services and services rendered by the attorney in his fiduciary capacity for which he has been compensated by statutory commissions."). Based on the record before us, we perceive neither legal error nor an abuse of discretion.

III.

Finally, appellant challenges the court's enforcement of an unopposed pretrial injunction declaring her a vexatious litigant and requiring that she obtain leave of court prior to filing any further *pro se* pleadings or motions. Specifically, she claims that the court abused its discretion by denying her motions for permission to file oppositions to appellee's annual fiduciary report and his petition for approval of guardian fees. Appellee responds that "[t]here can be no question that [appellant] is a vexatious and frivolous litigant, as shown by the record . . ., her [b]rief to this Court, and the voluminous filings in other cases in which she has been involved."

The circuit court is vested with the inherent authority to enter pre-trial injunctions to "control the actions of a vexatious or frivolous litigant," *Riffin v. Circuit Court for Baltimore County*, 190 Md. App. 11, 29 (2010), whether "'at the instance of any party or on its own initiative[.]'" *Id*. at 26 (emphasis omitted) (quoting Md. Rule 15-502(b)). "[E]ven though courts may, as a general rule, restrict vexatious litigants' access, constitutional considerations prohibit a complete ban on filings by indigent proper person litigants if the ban prevents the litigant from proceeding . . . in original civil actions that sufficiently implicate a fundamental right." *Riffin*, 190 Md. App. at 35 (quotation marks and citation omitted). A court may, however, under appropriate circumstances, require a litigant to obtain court approval prior to filing motions, pleadings, or papers.

Prior to entering a pretrial filing order, due process requires that the court afford the purportedly vexatious party notice and an opportunity to be heard. *Id*. at 32. In order to

withstand appellate review, "the court must document a record that justifies a pre-filing order." *Id*. at 33. Finally, the court "should make substantive findings as to the frivolous or harassing nature of the litigant's actions," addressing *both* the numericity *and* the frivolity of that litigant's filings. *Id*. at 34. In so doing, the court should address the following five factors:

> "(1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, *e.g.*, does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties."

Id. at 35 (quoting *Safir v. U.S. Lines, Inc.*, 792 F.2d 19, 24 (2d Cir. 1986)).

The record in this case, coupled with the docket entries in the divorce, replevin, and misappropriation actions, reveals a maelstrom of meritless motions, frivolous filings, and abortive appeals.[9] As Judge Greenberg observed, although represented by court-appointed counsel, as of the date of the vexatious litigant order, appellant had filed eight *pro se* motions, all of which were denied at the December 19th status/show cause hearing. After the denial of those motions, but before the entry of Judge Greenberg's order, appellant filed an additional three motions, which were likewise denied. In several such motions, appellant made scurrilous and, at times, criminal allegations against her ex-husband, the court-appointed trustee, appellee, and the circuit court itself.

[9] Just as we have taken judicial notice of the docket entries in the divorce case, so too do we take notice of the docket entries in the misappropriation and replevin cases.

After the imposition of the injunction, but prior to filing the motions at issue, appellant moved on five occasions for leave to file motions in the circuit court—all of which were denied. As addressed *supra*, on June 12, 2019, she initiated two additional actions in the district court, one alleging misappropriation and the other seeking replevin. The district court dismissed the former action for lack of jurisdiction and denied appellant's replevin request. When those cases were dismissed, moreover, she appealed to the circuit court, but to no avail. Finally, after noting this appeal on March 10, 2020, appellant filed a petition for *certiorari* with the Court of Appeals, which it denied on March 27th.

The allegations levied, the arguments made, and the relief sought in appellant's filings were often duplicative, if not identical, and were consistently devoid of merit. Such frivolous and vexatious litigation unquestionably imposed an unnecessary and undue burden on the courts and the financial resources of the parties. Such litigation is particularly onerous where, as here, a vexatious litigant presents a host of allegations set forth in convoluted "stream-of-consciousness" filings which the court must decipher and to which it must respond. Finally, given that appellant was undeterred by the courts' repeated denials and dismissals, we are persuaded that a less restrictive sanction would have been inadequate to protect the courts and parties.

In any event, as appellee aptly notes, appellant only challenges the enforcement of the injunction denying her motions for leave to file. She does not contest the initial imposition of that injunction, nor does she assert that she was denied due process. For the

reasons addressed *supra*, appellant's motions for leave to file were without merit. According, we perceive no abuse of discretion in the court's denial thereof.

For the foregoing reasons, we shall affirm the judgments of the circuit court.

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