

Circuit Court for Prince George's County
Case No. CAE17-36418

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 106

September Term, 2018

JEANNE M. ELLIS

v.

SAMIRA JONES

Reed,
Friedman,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: February 4, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On November 17, 2017, Samira Jones (“Appellee”) filed a Notice of *Lis Pendens* in the Circuit Court for Prince George’s County against Jeanne Ellis (“Appellant”) individually and the Estate of John Moore, of which Appellant is the personal representative. The *lis pendens* pertained to real property located at 910 Linwood Street in Hyattsville, Maryland (“the Property”). The trial court closed the *lis pendens* action on November 22, 2017, leaving the *lis pendens* in effect. On January 31, 2018, Appellant filed a motion to terminate the *lis pendens*, along with a request for sanctions against Appellee. The trial court ultimately denied Appellant’s motion and request for sanctions on February 16, 2018.

On March 19, 2018, Appellant filed a notice of appeal with this Court and a motion to revise the trial court’s February 16 order. On June 30, 2018, the trial court transmitted the record on appeal to this Court, and on July 5, 2018, entered an order denying Appellant’s motion to revise. It is from the denial of Appellant’s motion to terminate and request for sanctions that Appellant now appeals.

In bringing her appeal, Appellant presents three questions for our review, which we have condensed to two and rephrased:¹

¹ Appellant presents the following questions:

- I. Did the trial court err in declining to release a *lis pendens* asserted in a separate case and not as part of any existing case involving the ownership of the Linwood home?
- II. Did the trial court err in declining to release a *lis pendens* predicated on the false and fraudulent claims that [Appellee] is the plaintiff in Case No. CAL14-10836 and that she seeks in that case “to declare the

- I. Did the trial court err in declining to release the *lis pendens* attached to the Property?
- II. Did the trial court err in not awarding sanctions against Appellee and her counsel pursuant to Maryland Rule 1-341?

For the foregoing reasons, we reverse in part and affirm in part.

FACTUAL AND PROCEDURAL BACKGROUND

i. Case No. CAL14-17989

Samira Jones (“Appellee”) was appointed personal representative to the Estate of John Moore (“Moore”) pursuant to a Last Will and Testament dated February 8, 2012 (“the 2012 Will”). Among other assets, Moore’s estate includes a one-half interest in real property located at 910 Linwood Street in Hyattsville, Maryland (“the Property”). On or about June 12, 2012, Jeanne Ellis (“Appellant”) filed a Petition to Caveat the 2012 Will. On February 25, 2012, the Orphans’ Court granted Appellant’s motion, denied the admission of the 2012 Will into probate, and appointed Appellant as successor personal representative of Moore’s estate. The decision of the Orphans’ Court was appealed by Appellee.

On April 9, 2014, Appellee filed a Motion to Admit Will Dated August 31, 2011

rightful heir” of the Linwood home, where Case No. CAL14-10836 is a breach of fiduciary duty case filed by [Appellant] against [Appellee] in which the ownership of the Linwood home is not an issue?

- III. Did the trial court err in not awarding sanctions against [Appellee] and her counsel under Maryland Rule 1-341 where [Appellee] and her counsel, well knowing the nature of CAL14-10836, falsely and fraudulently claimed that [Appellant] is the plaintiff in that case and that it involves the ownership of the Linwood home?

(“the 2011 Will”) in Case No. CAL14-17989 with the Orphans’ Court, which was denied. Appellee also appealed this decision of the Orphans’ Court.

On or about December 15, 2015, the Circuit Court for Prince George’s County signed a final judgment remanding Case No. CAL14-17989 to the Orphans’ Court for further proceedings regarding the 2011 Will. Appellant noted a timely appeal, and this Court subsequently issued a mandate remanding the question regarding the 2011 Will back to the circuit court. On remand, the circuit court issued a September 5, 2017 order ruling that the 2011 Will would be admitted to probate. Furthermore, the circuit court stayed the imposition of that order pending further appeal. Appellant appealed the September 5, 2017 order to this Court before voluntarily dismissing her appeal on or before June 1, 2018.

Prior to the circuit court’s September 5, 2017 ruling, Appellant filed a Petition to Caveat the 2011 Will. On or about July 17, 2018, Appellant filed a request to transmit the issues involving her Petition to Caveat to the circuit court for trial by jury. A hearing was scheduled in the Orphans’ Court for Prince George’s County on December 14, 2018, to frame the issues to be transmitted to the circuit court.

ii. Case No. CAL14-10836

Simultaneous to the aforementioned litigation, Appellant filed suit on or about May 7, 2014, against Appellee and her former husband, Will Jones, on behalf of Moore’s estate in Case No. CAL14-10836. In that suit, Appellant alleges that Appellee breached her fiduciary duty associated with the Estate. Specifically, Appellant claims that Appellee deposited in excess of \$200,000 to a joint account she controlled with her former husband, as well as her own personal bank account. Appellant argues that this left the Estate with no

liquid assets and prevented the Estate from being able to pay Moore’s outstanding medical bills or property taxes for the Property.

The complaint against Appellee asserts two causes of action: Count 1 sets forth a cause of action for breach of confidentiality and fiduciary duty based on Appellee’s exploitation of her personal relationship with Moore and her use of a power of attorney procured from Moore to deprive him of all of his bank funds by the time of his death. Count Two sets forth a claim for wrongful conversion. The complaint does not ask for any relief pertaining to the Property, and Appellee did not file a counterclaim seeking such relief.

Following a multi-day trial, the trial court ruled that the Estate had failed to meet its burden of proof. This Court reversed that ruling in an unreported opinion filed January 5, 2018, *Estate of John Moore through Jeanne Ellis, Personal Representative v. Samira Jones*, No. 2231 (September Term, 2015). In so ruling, this Court held that the trial court erred in requiring the Estate to prove that Appellee had spent Moore’s funds improperly rather than placing the burden on Appellee to prove that her expenditures were proper.

Shortly before this Court issued its decision regarding the appeal, Appellee filed a *lis pendens* action regarding the Property on November 17, 2017. In her pleading, Appellee stated the following:

NOTICE IS HEREBY GIVEN that an action seeking to declare the rightful heir of the real property commonly known as 910 Linwood Street, Hyattsville, MD 20783-3060 in the Estate [of] John Moore, has been filed in the Circuit Court for Prince George’s County, Maryland, **Case No. CAL14-10836** . . . (emphasis added).

Appellee also stated that “[t]he Plaintiff, [Appellee], is seeking to declare one-half of the property part of the Estate of John Moore, Estate No. 90379.” Throughout both Appellant’s

case against Appellee and Appellee's *lis pendens* action, Appellee was represented by Ralph W. Powers, Jr., who is also the attorney representing Appellee in this appeal.

Upon learning that Appellee's *lis pendens* action was preventing Appellant from selling the Property, Appellant filed a motion to terminate. In her motion, Appellant asserts that (1) Maryland Rule 12-102 does not allow a party to file a *lis pendens* action as a separate stand-alone case, but only as part of an existing case; and (2) the *lis pendens* action is based upon misrepresentations concerning the nature of the breach of the fiduciary duty case. In support of her second argument, Appellant provided a copy of the complaint from Case No. CAL14-10836 as well as a deed showing that Moore's share in the Property was deeded to Appellant on October 2, 2015, through a personal representative deed. Appellant also pointed out that the transfer of Moore's one-half ownership share to her had been reported in several accountings filed with the Register of Wills, and that no exceptions were filed to those accountings.

The trial court, without receiving any response from Appellee regarding Appellant's motion to terminate, denied the motion to terminate without explanation on February 16, 2018. Subsequently, Appellant filed a motion to revise, reiterating the two arguments made in her motion to terminate while also emphasizing the trial court's order in Case. No. CAL14-10836 to show that the case had nothing to do with the ownership of the Property. The trial court ultimately denied Appellant's unopposed motion to revise in a July 6, 2018 order, which included the following handwritten note:

This court finds that the appeal in the Estate of John Moore through Jeanne Ellis vs. Samira Jones dealt with money and not property. Therefore it is not the same cause of action. The Motion to Revise is denied.

This appeal followed.

DISCUSSION

i. Lis Pendens

A. Parties' Contentions

Appellant contends that the *lis pendens* action should have been terminated by the circuit court because the breach of fiduciary duty claim does not affect the title to the Property. Relying on *DeShields v. Broadwater*, 338 Md. 422 (1994), Appellant argues that the fiduciary duty cases are not directly involved with the ownership of the Property. Furthermore, Appellant asserts that the Appellee failed to file her *lis pendens* action for nearly two years after the Property was deeded to Appellant on October 27, 2015, thus failing the second test under *DeShields*. Finally, Appellant then argues that the trial court erred in failing to provide justification for denying the motion to terminate.

Appellee asserts that while the fiduciary duty claim is not directly related to the Property, a separate case in which Appellant and Appellee parties are involved does directly relate to the title of the Property. Appellee contends that the *lis pendens* action was mistakenly filed in Case No. CAL14-10836 when it should have been filed in Case No. CAL14-17989. Had it been filed in the correct case, Appellant argues, the *lis pendens* action would be proper and satisfy both requirements of *DeShields*. As such, Appellant believes the trial court simply committed harmless error and, because Appellant has failed to show prejudice based on the trial court's alleged harmless error, this Court should affirm. We disagree.

B. Analysis

The doctrine of *lis pendens* is well-established in Maryland. See *Corey v. Carback*, 201 Md. 389, 403–04 (1953); *Hall v. Jack*, 32 Md. 253, 263–64 (1870); *Applegarth v. Russell*, 25 Md. 317, 320 (1866); *Inloes' Lessee v. Harvey*, 11 Md. 519, 524–25 (1857); *Feigley v. Feigley*, 7 Md. 537, 563 (1855); *Warfel v. Brady*, 95 Md. App. 1, 7 (1993), *cert. denied*, 331 Md. 88 (1993); *Permanent Financial Corp. v. Taro*, 71 Md. App. 489, 492, *cert. granted*, 311 Md. 193 (1987) *appeal dismissed*, January 26, 1988. A *lis pendens* is a specialized cause of action whose sole function is to put the world on notice that a property is the subject of other litigation. As a result, if someone purchases the property under *lis pendens*, their purchase is subject to the outcome of the other litigation. See also *Warfel*, 95 Md. App. at 7; *Angelos v. Maryland Cas. Co.*, 38 Md. App. 265, 268 (1977); Black's Law Dictionary 840 (5th Ed. 1979). Under the doctrine, an interest in property acquired while litigation affecting title to that property is pending is taken subject to the results of that pending litigation. *Applegarth*, 25 Md. at 320; *Inloes' Lessee*, 11 Md. at 524–25; *Angelos*, 38 Md. App. at 268; *Creative Development Corp. v. Bond*, 34 Md. App. 279, 284 (1976). Thus, “[u]nder the common-law doctrine of *lis pendens*, if property was the subject of litigation, the defendant-owner could transfer all or part of his or her interest in the property during the course of litigation, but not to the detriment of the rights of the plaintiff.” Janice Gregg Levy, Comment, *Lis Pendens and Procedural Due Process: A Closer Look After Connecticut v. Doe*, 51 Md. L. Rev. 1054, 1056 (1992).

The doctrine “‘is founded upon a great public policy,’ to prevent alienation during the progress of the suit and to prevent endless litigation.” *Applegarth*, 25 Md. at 323 (quoting Story's Eq. Jur. § 406). As such, *lis pendens* has no applicability except to proceedings directly relating to the title to the property transferred or in which the ultimate interest and object is to subject the property in question to the disposal of a decree of the court. *Feigley*, 7 Md. at 563; *see also Applegarth*, 25 Md. at 320–21.

Here, the *lis pendens* action was filed in Case No. CAL14-10836. As Appellant correctly asserts, that case centers on a breach of fiduciary duty claim and has no relation to the Property as the subject of the *lis pendens* action. While this Court understands that the *lis pendens* action was erroneously filed in the wrong case, Maryland case law makes clear that a *lis pendens* has no applicability “except to proceedings directly relating to the title to the property transferred or in which the ultimate interest and object is to subject the property in question to the disposal of a decree of the court.” *Feigley*, 7 Md. at 563. Had the *lis pendens* action been filed in Case No. CAL14-17989, which dealt with who would serve as personal representative to Moore’s estate and thereby have control of the Property, the *lis pendens* would have been proper. But because the proceedings in Case No. CAL14-10836 are not directly related to the title of the Property, the circuit court erred in denying Appellant’s motion to terminate.

i. Motion for Sanctions

A. Parties’ Contentions

Appellant contends that the trial court erred in not awarding sanctions against Appellee and Appellee’s counsel for filing a *lis pendens* action in a case regarding a breach

of fiduciary duty claim. Appellant asserts both that Appellee acted in bad faith and outside the “realm of legitimate advocacy” in instituting a *lis pendens* action. Appellant emphasizes that the fiduciary duty claim has no relation to the Property, as well as the *lis pendens* language describing Appellee as the plaintiff when Appellee was the defendant in the fiduciary duty case. Arguing that Appellee presented flagrant falsities, Appellant believes that the trial court should have granted sanctions against Appellee and her attorney.

Appellee reiterates that the *lis pendens* action was mistakenly filed in the wrong case. Appellee contends that there is no evidence of bad faith, and Appellee was justified in wanting to file a *lis pendens* action when Appellant was attempting to sell the Property during the course of litigation in Case No. CAL14-17989. Because the *lis pendens* would have been proper had it been filed in the correct case, Appellee argues that sanctions under Maryland Rule 1-341 are inappropriate.

B. Analysis

Maryland Rule 1–341 authorizes a court to impose sanctions on parties who pursue frivolous litigation.

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 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 attorney’s fees, incurred by the adverse party in opposing it.

In *Inlet Associates v. Harrison Inn Inlet, Inc.*, 324 Md. 254 (1991), the Court of Appeals enunciated the appropriate procedure for imposing sanctions, pursuant to Rule 1–341.

[B]efore imposing sanctions in the form of costs and/or attorney’s fees under Rule 1–341, the judge must make two separate findings that are subject to scrutiny under two related standards of appellate review. First, the judge must find that the proceeding was maintained or defended in bad faith and/or without substantial justification. This finding will be affirmed unless it is clearly erroneous or involves an erroneous application of law. Second, the judge must find that the bad faith and/or lack of substantial justification merits the assessment of costs and/or attorney’s fees. This finding will be affirmed unless it was an abuse of discretion.

Inlet Associates, 324 Md. at 267–68.

Under *Inlet Associates*, therefore, courts must follow a two-step process when imposing Rule 1–341 sanctions. First, the court must make specific findings on whether a party or attorney pursued an action in bad faith or without substantial justification. *Id.* This inquiry is subject to a clearly erroneous standard of review. *Id.* Once a court finds that a party has pursued a claim in bad faith or without substantial justification, the court must then additionally determine whether the wrongdoing actually warrants the imposition of sanctions. *Id.* We review this latter inquiry under an abuse of discretion standard. *Id.*

An award of counsel fees pursuant to Rule 1–341 is an “extraordinary remedy,” which should be exercised only in rare and exceptional cases. *Black v. Fox Hills N. Community Ass’n, Inc.*, 90 Md. App. 75, 83 (1992). Unlike Rule 11 of the Federal Rules of Civil Procedure, Rule 1–341 is not punitive in nature. *U.S. Health, Inc. v. State*, 87 Md. App. 116, 130–31 (1991). Rather, it “provides for recovery of expenses incurred in opposing the unjustified or bad faith maintenance or defense of a proceeding.” *U.S. Health*, 87 Md. App. at 131–32. In the context of Rule 1–341, bad faith exists when a party litigates with the purpose of intentional harassment or unreasonable delay. *Seney v. Seney*, 97 Md. App. 544, 554 (1993). For there to be substantial justification, the litigant’s

position must be fairly debatable and within the realm of legitimate advocacy. *Inlet Associates*, 324 Md. at 268.

As we have already discussed, had Appellee brought her *lis pendens* action in the correct case, Case No. CAL14-17989, the *lis pendens* would have been proper, as that case centers around who shall serve as the personal representative of Moore's estate and handle the Property. Furthermore, nothing in the record indicates that Appellee intentionally filed her *lis pendens* action in the wrong case. As such, there is no support for a finding that Appellee acted in bad faith or without substantial justification in bringing the *lis pendens* action; instead, Appellee committed simple error in filing the action in the wrong case. Therefore, the court did not err in declining to impose fees.

CONCLUSION

The circuit court erred in denying Appellant's motion to terminate, as the case in which the *lis pendens* action was filed was not directly related to the Property in question. However, the court did not abuse its discretion when it declined to impose fees, absent a showing of bad faith, as Appellee simply failed to file the *lis pendens* action in the correct case. Accordingly, the judgment of the Circuit Court for Prince George's County is reversed in part and affirmed in part.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY REVERSED IN PART,
AFFIRMED IN PART; COSTS TO BE
SPLIT BY THE PARTIES.**