Circuit Court for Montgomery County
Case No. 441184-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 106

September Term, 2019

STATE OF MARYLAND,
ET AL.

v.

JOHN DOE

Fader, C.J.,
Reed,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: April 16, 2020

The Circuit Court for Montgomery County entered an award of attorney's fees and costs under Rule 1-341 in favor of the appellant, John Doe,[1] and against the appellees, the State of Maryland and the Maryland Department of Public Safety and Correctional Services (collectively, the "State") and Montgomery County, Maryland and Montgomery County Police Chief Thomas J. Manger (collectively, the "County"). The court did so without finding expressly that the State and County acted without substantial justification or in bad faith, without finding expressly that their conduct merited an award of fees and costs, and without explaining its calculation of the amount of sanctions awarded. Because such express findings and explanation are required, the circuit court abused its discretion in entering the sanctions award.

Furthermore, Mr. Doe has not identified any possible basis for an award of sanctions against the County. In defending this lawsuit, the State, not the County, made and defended the decision that Mr. Doe was required to register as a sex offender. To the extent that Mr. Doe takes issue with the County's pre-litigation conduct, that is not properly the subject of sanctions under Rule 1-341. Accordingly, we will reverse the fee award with respect to the County. With respect to the State, we will vacate the fee award and remand for further proceedings consistent with this opinion.

BACKGROUND

Mr. Doe filed this action seeking a declaratory judgment that he was not required to register as a sex offender under Maryland's Sex Offender Registration Act ("MSORA"),

[1] John Doe is a pseudonym, employed after the trial court granted Mr. Doe's motion to use a pseudonym and to seal the record.

§§ 11-701–11-727 of the Criminal Procedure Article (2018 Repl.; 2019 Supp.). The Circuit Court for Montgomery County granted Mr. Doe's motion for summary judgment and then, in response to a motion filed by Mr. Doe, ordered the State and the County to pay Mr. Doe's fees and costs under Maryland Rule 1-341. We begin with a brief review of the statute at the center of the underlying dispute.

Statutory Background

Maryland established its sex offender registry in 1995.[2] *See* 1995 Md. Laws, ch. 142. As originally enacted, the law mandated registration for offenders who committed qualifying sex crimes in Maryland on or after October 1, 1995, against victims aged 14 or younger. *See* Md. Sexual Offender Advisory Bd., *Report to the Maryland General Assembly* 11 (2014), https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/021000/021771/unrestricted/20160015e.pdf (last accessed March 26, 2020). The General Assembly later expanded the registry to include offenders who committed qualifying sex crimes against older victims, 1997 Md. Laws, ch. 754, as well as those who committed qualifying sex crimes in other jurisdictions, 1998 Md. Laws, chs. 473 & 521. In addition, the requirements of registration changed over time, gradually becoming more onerous and, the Court of Appeals has held, punitive. *See Doe v. Dep't of Pub. Safety &*

[2] Maryland created its registry in response to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. 103-322, which was enacted by Congress in 1994. The Wetterling Act and subsequent federal laws incentivized states to create sex offender registries under threat of losing certain federal funds. *See* Md. Sexual Offender Advisory Bd., *Report to the Maryland General Assembly* 11-13 (2014), https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/021000/021771/unrestricted/20160015e.pdf (last accessed March 26, 2020).

Corr. Servs., 430 Md. 535, 565 (2013) ("*Doe I*") (plurality opinion) (concluding that "the dissemination of information about registrants . . . is the equivalent of shaming them, and is, therefore, punitive for *ex post facto* purposes"); *id.* at 578 (McDonald, J., concurring) (concluding that the "amendments of the State's sex offender registration law took that law across the line from civil regulation to an element of the punishment of offenders"); *see also Rogers v. State*, No. 32, Sept. Term, 2019, slip op. at *39 ("We determine that the cumulative effects of the Maryland Sex Offender Registration Act are increasingly punitive, *i.e.*, that placement on the Registry is progressively more punitive, and that case law has begun to recognize as much.").

Encouraged by Congress, *see Md. Dep't of Pub. Safety & Corr. Servs. v. Doe*, 439 Md. 201, 223 (2014) ("*Doe II*") (noting that the federal Sex Offender Registration and Notification Act "sets forth 'minimum national standards' for jurisdictions' sex offender registration and notification programs," one of which "is the application of the registration requirements to pre-Act offenders" (quoting 42 U.S.C. § 16912 (2006))), the General Assembly revised MSORA so that it applied retroactively in certain cases. As of 2007, when Mr. Doe moved to Maryland, the retroactivity provision of MSORA provided: "[T]his subtitle shall be applied retroactively to include a registrant convicted of an offense committed before July 1, 1997, and who is under the custody or supervision of a supervising authority on October 1, 2001." Md. Code Ann., Crim. Proc. § 11-702.1(a) (2001 Repl.). Currently, the same section provides:

> [T]his subtitle shall be applied retroactively to include a person who:

> (1) is under the custody or supervision of a supervising authority[3] on October 1, 2010;
>
> (2) was subject to registration under this subtitle on September 30, 2010;
>
> (3) is convicted of any felony on or after October 1, 2010, and has a prior conviction for an offense for which registration as a sex offender is required under this subtitle; or
>
> (4) was convicted on or after October 1, 2010, of a violation of § 3-324 of the Criminal Law Article, regardless of whether the victim was a minor.

Crim. Proc. § 11-702.1(a) (2018 Repl.; 2019 Supp.).

Finally, MSORA requires new residents of Maryland to register as sex offenders if they are required to register by other jurisdictions. As of 2007, § 11-704(a) of the Criminal Procedure Article (2005 Repl.) provided in relevant part:

> A person shall register with the person's supervising authority if the person is:
>
> . . .
>
> (6) an offender, sexually violent offender, or sexually violent predator who, before moving into this State, was required to register in another state or by a federal, military, or Native American tribal court for a crime that occurred before July 1, 1997; or

[3] A "supervising authority" is "an agency or person that is responsible for collecting the information for the initial registration of a sex offender." Md. Code Ann., Crim. Proc. § 11-701(n). For persons who reside in Montgomery County, such as Mr. Doe, the supervising authority is the Montgomery County Police Department. *See id.* § 11-701(n)(8) ("if the sex offender is not under the supervision, custody, or control of another supervising authority," then the supervising authority is "the local law enforcement unit where the sex offender is a resident, is a transient, or habitually lives on moving from another jurisdiction or foreign country that requires registration").

> (7) a child sexual offender, offender, sexually violent offender, or sexually violent predator who is required to register in another state, who is not a resident of this State, and who enters this State:
>
> (i) to carry on employment;
>
> (ii) to attend a public or private educational institution, including a secondary school, trade or professional institution, or institution of higher education, as a full-time or part-time student; or
>
> (iii) as a transient.

Facts

Mr. Doe was convicted in Hawaii in 1988 of two counts of second-degree rape, among other crimes. After completing terms of incarceration and probation, he was discharged by the Hawaii Paroling Authority in 1995. As Hawaii did not create a sex offender registry until 1997, Mr. Doe was not required to register there before his probation ended in 1995. Mr. Doe left Hawaii at some point thereafter and lived for a time in the District of Columbia before he moved to Maryland in 2007.[4]

In August 2017, an official in the Hawaii Criminal Justice Data Center informed a detective in the Montgomery County Police Department that "[i]f Mr. [Doe] is to return to Hawaii, he is required to register" as a sex offender. Presumably based on that information, the manager of Maryland's sex offender registry wrote to Mr. Doe in November, asserting that he was required to register as a sex offender in Maryland due to his 1988 convictions in Hawaii. The manager warned that Mr. Doe's "failure to contact [her] office by December 7, 2017 w[ould] result in the issuance of a warrant for [his] arrest." According

[4] Before the circuit court, the State alleged that Mr. Doe had also lived in North Carolina, which Mr. Doe denied. The circuit court did not resolve that matter.

to Mr. Doe, that was the first time he ever had been instructed to register as a sex offender anywhere.

On November 20, 2017, the Acting Administrator of the Hawaii Criminal Justice Data Center sent Mr. Doe a letter stating that his 1988 convictions "would require [him] to register as a covered offender . . . [s]hould [he] return to Hawaii for more than 10 days or an aggregate period of 30 days in one calendar year."

Mr. Doe retained counsel, who contacted the manager of Maryland's sex offender registry. Counsel argued on Mr. Doe's behalf that the November 20, 2017 letter "makes clear that Mr. [Doe] [is] *not* required to register in Hawaii for his 1988 conviction and would only be required to register if he were to reside in that state for more than 10 days." Mr. Doe's counsel also referred to *Quispe del Pino v. Maryland Department of Public Safety & Correctional Services*, 222 Md. App. 44 (2015), which, he argued, established that Mr. Doe could not be compelled to register in Maryland. The Department of Public Safety and Correctional Services then sent Mr. Doe a letter reiterating that he was required to register as a sex offender in Maryland.

Procedural History

After receiving the Department's second letter, Mr. Doe initiated this lawsuit. He sought a declaratory judgment that requiring him to register as a sex offender in Maryland based on his 1988 convictions in Hawaii would violate the prohibition on *ex post facto*

laws contained in Article 17 of the Maryland Declaration of Rights.[5] Mr. Doe also requested "reasonable attorney fees and costs for his expenses in bringing this action as there is no good faith or substantial justification on the part of the [State and the County] in demanding [Mr. Doe] register on the Maryland sex offender registry."

The State and the County moved separately for summary judgment. The State contended that requiring Mr. Doe to register did not violate Article 17 because "[n]o dispute exists that before relocating to Maryland, [Mr. Doe] was required to register in Hawaii and the District of Columbia." As a result, the State argued, the law was not being applied retroactively to Mr. Doe. The State also invoked *Dietrich v. State*, 235 Md. App. 92 (2017), for the proposition that "it is the date [Mr. Doe] moved to Maryland, not the date of his offenses, that determine[s] his obligation to register."

The County argued that Mr. Doe's claims against it were legally insufficient because he "d[id] not plead that *the County* made the determination that [he] was obligated to register." To the contrary, the County asserted, under Maryland's sex offender registry laws, "the County's only role . . . is registration and enforcement of failures to register." The State, not the County, "made the determination that [Mr. Doe] [was] required to register" and would be "responsible for removing [him] from the registry." Because the County was not responsible for Mr. Doe's injuries, it contended, summary judgment should be granted in its favor.

[5] Article 17 provides: "That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal are oppressive, unjust and incompatible with liberty; wherefore, no *ex post facto* Law ought to be made; nor any retrospective oath or restriction be imposed, or required."

Mr. Doe opposed the State's and the County's motions and cross-moved for summary judgment. As to the State's arguments, Mr. Doe argued that the communications from Hawaii and the District of Columbia on which the State relied did not support its position. Instead, as he pointed out, both communications stated expressly that Mr. Doe would be required to register only if he returned to those jurisdictions, not that he was required to register at present. Mr. Doe also argued that (1) pursuant to *Doe I*, requiring him to register would violate his protection against *ex post facto* laws under Article 17 of the Declaration of Rights; (2) pursuant to *Quispe del Pino*, he could not be compelled to register because his offenses were committed before Hawaii or Maryland even had sex offender registry laws, which meant that he "could not have been aware at the time he committed his offenses that a sex offender registry law might apply to him"; and (3) *Dietrich* was inapposite, because unlike Mr. Doe, the offender in that case "was already being supervised by Virginia" at the time he moved to Maryland, under "laws that were validly in effect at the time of Dietrich's offenses."

Mr. Doe's opposition did not respond to the County's primary argument that it was entitled to summary judgment because it was not responsible for his placement on the sex offender registry.

The circuit court held a hearing, at the conclusion of which it ruled from the bench. The court observed that *Doe I*, *Doe II*, and *Quispe del Pino* all "seem to be very much on point with the facts in this case, unlike *Dietrich*." The court found that Mr. Doe was not required to register as a sex offender when he moved to Maryland and that requiring him to do so now "would be in violation of the ex post facto law." The court therefore granted

Mr. Doe's motion for summary judgment and denied the motions of the State and County. The State and County did not appeal from that ruling.

Mr. Doe then moved for attorney's fees and costs under Rule 1-341, which the State and County opposed. Without holding a hearing or issuing a written opinion, the circuit court granted Mr. Doe's motion and directed the State and the County to pay Mr. Doe $23,105.00, the full amount sought, split evenly between the State and the County. The State and the County timely appealed.

DISCUSSION

Before imposing sanctions under Rule 1-341(a), "a court [must] make two separate findings, each with different, but related, standards of review." *Christian v. Maternal-Fetal Med. Assocs. of Md.*, 459 Md. 1, 20 (2018). First, the "court must make an explicit finding that a party conducted litigation either in bad faith or without substantial justification." *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 72 (2017). "This finding should be supported by a 'brief exposition of the facts upon which [it] is based,'" and "will be upheld on appellate review unless it is clearly erroneous or involves an erroneous application of law." *Id.* (quoting *Talley v. Talley*, 317 Md. 428, 436 (1989)). The appellate court owes "significant deference" to the trial court's "factual determinations," *L.W. Wolfe Enters. v. Md. Nat'l Golf*, 165 Md. App. 339, 344 (2005), and must view "evidence . . . 'in a light most favorable to the prevailing party,'" *Christian*, 459 Md. at 21 (quoting *Liberty Mut. Ins. v. Md. Auto. Ins. Fund*, 154 Md. App. 604, 609 (2004)). No such deference "appl[ies] to legal conclusions," however. *YIVO Inst. for*

Jewish Research v. Zaleski, 386 Md. 654, 662 (2005) (quoting *Nesbit v. GEICO*, 382 Md. 65, 72 (2004)).

Second, should the court determine that a litigant or attorney acted in bad faith or without substantial justification, it "must separately find," *Christian*, 459 Md. at 21, "whether the party's conduct merits the assessment of costs and attorney's fees," *Fort Myer*, 452 Md. at 72. The latter finding "will be upheld on appellate review unless found to be an abuse of discretion." *Id.* A court abuses its discretion when it "acts 'without reference to any guiding rules or principles,'" *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)), or "adopts a position that no reasonable person would accept," *Ibru v. Ibru*, 239 Md. App. 17, 47 (2018) (quoting *Pinnacle Grp. v. Kelly*, 239 Md. App. 436, 476 (2018)); *see also Sydnor v. Hathaway*, 228 Md. App. 691, 708 (2016) ("[A] court's discretion is always tempered by the requirement that the court correctly apply the law applicable to the case." (quoting *Scholtzhauer v. Morton*, 224 Md. App. 72, 84 (2015))). Although "[t]he trial court enjoys a large measure of discretion in fixing the reasonable value of legal services," *DeLeon Enters. v. Zaino*, 92 Md. App. 399, 419 (1992) (quoting *Head v. Head*, 66 Md. App. 655, 669 (1986)), it must support its decision with "specific findings of fact on the record" to ensure that "the imposed fees are not arbitrary" and that the appellate court "has [the] means to review [the] court's exercise of discretion to award attorney's fees," *Christian*, 459 Md. at 30-34 (quoting *Barnes v. Rosenthal Toyota*, 126 Md. App. 97, 106 (1999)).

I. THE JUDGMENT MUST BE VACATED BECAUSE THE CIRCUIT COURT DID NOT MAKE THE REQUIRED FINDINGS.

A. The Trial Court Did Not Find Explicitly that the Appellants Acted in Bad Faith or Without Substantial Justification, or that Their Conduct Merited the Assessment of Costs and Attorney Fees.

Mr. Doe contends that the State and County defended this proceeding without substantial justification. A "litigation position is 'without substantial justification' if it is not fairly debatable, not colorable, or not within the realm of legitimate advocacy." *Fort Myer*, 452 Md. at 72 (internal citations omitted). The Court of Appeals has emphasized, however, that "lack[] [of] substantial justification . . . cannot be found exclusively on the basis that 'a court rejects the proposition advanced by counsel and finds it to be without merit.'" *Christian*, 459 Md. at 25 (quoting *State v. Braverman*, 228 Md. App. 239, 260 (2016)). "A litigant ought not be penalized for innovation or exploration beyond existing legal horizons unless such exploration is frivolous." *Christian*, 459 Md. at 20 (quoting *Dent v. Simmons*, 61 Md. App. 122, 128 (1985)). To be sanctionable, a legal argument must be "patently frivolous" and "outside the zone of what is considered legitimate advocacy." *Christian*, 459 Md. at 25, 27.

"To impose sanctions under Rule 1-341(a), a court must make an explicit finding that a party conducted litigation either in bad faith or without substantial justification." *Fort Myer*, 452 Md. at 72. In addition, that explicit finding must be "supported by a 'brief exposition of the facts upon which [it] is based.'" *Id.* (quoting *Talley*, 317 Md. at 436. In light of the "extraordinary" nature of Rule 1-341 sanctions, the record must show "that there has been a clear focus upon the criteria justifying [the sanction] and a specific finding

that these criteria have been met." *Talley*, 317 Md. at 436. Here, the circuit court neither made such an explicit finding nor provided the required exposition of supporting facts.

Moreover, even if we could overlook that deficit, the record also lacks an explicit finding that the State's and County's "conduct merit[ed] the assessment of costs and attorney's fees." *Fort Myer*, 452 Md. at 72. Rule 1-341 does not mandate that a court sanction every meritless litigation position. To the contrary, the court may "exercise its discretion not to award fees despite the existence of the predicate for doing so." *Christian*, 459 Md. at 30 (quoting *Zaino*, 92 Md. App. at 419). Indeed, the Court of Appeals has warned courts repeatedly to act "cautiously" with respect to Rule 1-341 sanctions. *E.g.*, *Christian*, 459 Md. at 19. "Unlike Rule 11 of the Federal Rules of Civil Procedure, Rule 1-341 is not punitive in nature," *Barnes*, 126 Md. App. at 105, and "does not provide for a monetary award to punish a party that misbehaves," *Major v. First Va. Bank-Cent. Md.*, 97 Md. App. 520, 530 (1993). Nor is the rule "intended to simply shift litigation expenses based on relative fault." *Worsham v. Greenfield*, 435 Md. 349, 368-69 (2013) (quoting *Zdravkovich v. Bell Atl.-Tricon Leasing Corp.*, 323 Md. 200, 212 (1991)). Instead, Rule 1-341's "purpose is to deter unnecessary and abusive litigation" by "compensat[ing] the aggrieved party for their reasonable costs and expenses." *Christian*, 459 Md. at 19; *Worsham*, 435 Md. at 369 (same).

Because attorney's fees should only be awarded "sparingly" under Rule 1-341 as "an 'extraordinary remedy' . . . in rare and exceptional cases," *Christian*, 459 Md. at 19 (quoting *Barnes*, 126 Md. App. at 105; *Major*, 97 Md. App. at 530), the court "must separately find that the acts committed in bad faith or without substantial justification

warrant the assessment of attorney's fees," *Christian*, 459 Md. at 21. That finding "requires . . . the careful exercise of judicial discretion." *Zdravkovich*, 323 Md. at 212. Here, the record contains no such finding.

Mr. Doe concedes that the circuit court failed to make the explicit findings that the Court of Appeals has held are required. He argues that we should nonetheless affirm the award of fees because the State "w[as] not prejudiced in any manner." Mr. Doe emphasizes that the State has not "alleged . . . that [it] w[as] deprived from calling a witness or presenting some piece of evidence by way of [the circuit court's] ruling without a hearing." The issue, however, is not simply that the circuit court failed to hold a hearing, but that it did not provide any explanation of the basis for its award. "Absent findings in the record, an appellate court has no means to review a court's exercise of discretion to award attorney's fees." *Christian*, 459 Md. at 33-34.

Mr. Doe also asserts that "the record is clear" that the trial court found *implicitly* that "the government's challenge to Doe's suit, at a minimum, lacked substantial justification." Even were that the case, however, it is insufficient. A circuit court's findings must be explicit to support an award of sanctions.

Because the circuit court neither made the findings required to support an award of sanctions under Rule 1-341, nor provided the requisite factual exposition, we must vacate the award of fees and costs in favor of Mr. Doe.

B. The Circuit Court Did Not Make Explicit Findings Regarding the Amount of Its Fee Award.

In addition to the required findings that we have already discussed, once a circuit court determines to award sanctions under Rule 1-341, it "must make findings of fact regarding its award of attorney's fees, and those findings must be made on the record." *Christian*, 459 Md. at 30-31. Although the circuit court has a "large measure of discretion in fixing the reasonable value of legal services," *Zaino*, 92 Md. App. at 419 (quoting *Head*, 66 Md. App. at 669), "[t]he findings of the amount of fees awarded must be clearly delineated lest the court abuse its discretion," and the basis for an award "must be ascertainable in order to survive appellate review," *Christian*, 459 Md. at 31.

Here, the circuit court did not delineate clearly the basis for the amount of its award of fees and costs to Mr. Doe. In making such a delineation on remand, the court may consider the factors the Court of Appeals suggested in *Christian*, which include "evidence submitted by counsel showing time spent defending an unjustified or bad faith claim or defense, the judge's knowledge of the case and the legal expertise required, the attorney's experience and reputation, customary fees, and affidavits submitted by counsel." *Id.* at 32 (quoting *Major*, 97 Md. App. at 540). The court also may refer to the considerations for a reasonable fee identified in the Maryland Attorneys' Rules of Professional Conduct, Rule 19-301.5(a). *See Maxima Corp. v. 6933 Arlington Dev. Ltd. P'ship*, 100 Md. App. 441, 454-55 (1994). Regardless of how it calculates any award, however, the court must issue

"findings . . . on the record" regarding the reasonableness of the chosen fee.[6] *See Christian*, 459 Md. at 30-31, 33.

II. WITH RESPECT TO THE COUNTY, THE JUDGMENT MUST BE REVERSED BECAUSE MR. DOE'S ALLEGATIONS DID NOT ESTABLISH ANY BASIS FOR RULE 1-341 SANCTIONS.

For the reasons already discussed, the award of sanctions in favor of Mr. Doe must be vacated. Although we will remand for further proceedings with respect to Mr. Doe's claim against the State, a remand is unnecessary with respect to his claim against the County because, as a matter of law, Mr. Doe has not identified any potentially sanctionable conduct by the County.

When Mr. Doe moved for attorney fees and costs under Rule 1-341, all of the alleged misconduct he identified concerned the actions and legal position of the State. For example, he alleged:

> (1) "[*T*]*he State* continued to rely on the false premise that Doe is currently required to register in Hawaii." (emphasis added).
>
> (2) "[*T*]*he State's* principal argument to compel Doe to register relied on the erroneous assertion that [Mr. Doe] is presently required to register in Hawaii and D.C." (emphasis added).
>
> (3) "Along with citing a repealed 1998 retroactivity provision, *the State* also cited a 2004 version of [ ] MSOR[A] to suggest [Mr.] Doe must register . . . . That subsection also no longer exists." (emphasis added).
>
> (4) "In support of its argument that [*Doe I* and its progeny] d[id] not apply, *the State* offered only *Dietrich v. State*, 235 Md. App. 91 (2017) . . . ." (emphasis added).

[6] We further note that Rule 1-341 generally "does not provide for expenses incurred in asserting the claim for sanctions." *Deitz v. Palaigos*, 120 Md. App. 380, 402 (1997) (brackets omitted) (quoting *U.S. Health v. State*, 87 Md. App. 116, 132 (1991)).

> (5) "*DPSCS* insisted that Doe was subject to 'lifetime registration requirements in Hawaii' when that agency was in possession of written correspondence indicating that such an assertion is not true." (emphasis added).

With respect to the County, conversely, Mr. Doe acknowledged (and did not refute) the County's litigation position that "it was only requiring Doe to register because the State Department of Public Safety and Correctional Services advised the county sex registration unit that Doe should register." "At the hearing for summary judgment," he observed, "the County indicated that it was taking no position on Doe's requirement to register, but it would respect whatever legal determination the Court made."

Although Mr. Doe now argues that the County should have disavowed the State's legal position and sided with him instead, he appears to misapprehend the respective roles of the State and County regarding the sex offender registry. In *Doe II*, the Court of Appeals explained that "in the context of sex offender registration databases, . . . the State is responsible for the accuracy, updating, and removal of [ ] information." 439 Md. at 237 (citing Crim. Proc. § 11-713; COMAR 12.06.01.08 (2010)). The Court elaborated:

> The Sex Offender Registry Unit, within the Department of Public Safety and Correctional Services, is in charge of the maintenance of all sex offender registration information for the State. Pursuant to Maryland regulations, the Sex Offender Registry Unit has the authority to maintain Maryland's central registry, as well as to manage and authorize termination of registration.

Doe II, 439 Md. at 237 (citing COMAR 12.06.01.01-12.06.01.01.18). Here, the State determined that Mr. Doe was required to register as a sex offender and defended that position before the circuit court. The County did not. Indeed, aside from a single statement in its motion for summary judgment requesting, "in the alternative, . . . a declaratory

judgment finding that [Mr. Doe] is required to register," the County's litigation position was one of deference.

Before the circuit court, Mr. Doe emphasized that the County had "threatened to arrest [him] if he did not register." That threat could not serve as a basis for an award of sanctions, however, because Rule 1-341 governs "the conduct of any party in maintaining or defending any proceeding," Md. Rule 1-341, not pre-litigation conduct. Once in litigation, the County's position was that

> [t]he State made the determination that [Mr. Doe] is required to register pursuant to MSORA, that he be required to register as a tier III sex offender and comply with the statutory registration requirements that accompany a tier III status. If the State determines that [Mr. Doe] is no longer required to register, the County would not then be involved with any registration activities as relates to [Mr. Doe]. Indeed, the County's only role in this process is registration and enforcement of failures to register.

In other words, the County argued that *if* the State was correct that Mr. Doe was required to register as a sex offender—a point as to which the County professed to be agnostic—then the County had a duty to enforce that determination pursuant to MSORA, which imposes registration and notice requirements on the local supervising authority, *see* Crim. Proc. §§ 11-708, 11-709, and treats the failure to register as a criminal offense, *see* Crim. Proc. § 11-721. Mr. Doe has not presented any basis for concluding that the County's position regarding its responsibilities lacked substantial justification. He thus failed to

identify any potentially sanctionable litigation conduct by the County. Accordingly, we will reverse the imposition of sanctions against the County.[7]

CONCLUSION

In sum, we hold:

(1) The circuit court erred in assessing attorney's fees and costs under Rule 1-341 without making explicit findings regarding (a) the State's and County's lack of substantial justification, accompanied by a supporting factual exposition, (b) the propriety of sanctions, and (c) the amount of the awarded fees.

(2) The County was entitled to judgment as a matter of law with respect to Mr. Doe's motion under Rule 1-341 because Mr. Doe did not identify any potentially sanctionable conduct by the County.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED IN PART, VACATED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 75% BY APPELLEE AND 25% BY THE STATE OF MARYLAND.

[7] In holding that Mr. Doe has not identified even potentially sanctionable litigation conduct by the County, we take no position with respect to his claim for sanctions against the State. That is for the circuit court to determine in the first instance.