Circuit Court for Frederick County
Case No. C-10-CV-21-000538

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2046, September Term, 2023

and

No. 453, September Term, 2024

CONSOLIDATED CASES

N. ISAAC, ET AL.

v.

NANCY HUNTER, ET AL.

Zic,
Tang,
Kehoe, S.,

JJ.

Opinion by Zic, J.

Filed: April 3, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This consolidated appeal arises from a residential contract of sale between Laura and Logan Isaac ("Isaacs"), appellants, and Nancy and David Hunter ("Hunters"[1]), appellees, for 16 E. Frederick St, Walkersville, Maryland ("the Property"). Approximately one month after the parties closed on the Property, the Isaacs' one-year-old daughter, N.,[2] was diagnosed with elevated blood lead levels. The Isaacs filed a three-count complaint in the Circuit Court for Frederick County, claiming negligence, violation of the Maryland Consumer Protection Act, and negligent misrepresentation. The Hunters filed a motion for summary judgment, which was granted by the court in an oral opinion on November 21, 2023, and in a written order entered on January 5, 2024. The court additionally awarded the Hunters attorneys' fees following a hearing on February 14, 2024. The Isaacs separately appealed the grant of summary judgment and the award of attorneys' fees.

QUESTIONS PRESENTED

The Isaacs present eight questions for our review, which we have recast and rephrased as two:[3]

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[1] Ray Hunter is also named on the residential contract for sale as a seller, however, based on the record before us, Ray Hunter passed away prior to the execution of the contract and his estate is listed as a party to the litigation. The record does not further explain the relationships between Nancy, David, and Ray.

[2] In order to protect the minor child's privacy, we refer to her by her first initial.

[3] The Isaacs presented the following five questions in their brief in Appeal No. 2046:

> 1. Did the trial court commit legal error when it granted Defendants' motion for summary judgment on the

(continued)

grounds that minor plaintiff N[.] lacked contractual privity with the Defendants?

2. Did the trial court commit legal error when it granted Defendants' motion for summary judgment on the grounds that Plaintiffs Laura Isaac and Logan Isaac assumed the risk of injury, barring the claims of their lead-poisoned daughter?

3. Did the trial court commit legal error when it granted Defendants' motion for summary judgment based on a Mediation Clause in the contract not raised by Defendants until after discovery closed in the case?

4. Did the trial court commit legal error in making findings of fact derived from the motions concluding that there was "no evidence" that the Hunters' sales contract contained misstatements that misled the Isaacs, or that the Defendants failed to provide Plaintiffs with the Failed Inspection Certificate?

5. Did the trial court commit legal error in granting Defendants motion for summary judgment on the grounds that Plaintiffs had no evidence that the Hunters' painter was not Certified to perform lead paint remediation work when COMAR 26.16.02.03 requires the owner to maintain records on the contractor's certification, and the work that was performed?

The Isaacs presented the following three questions in their brief in Appeal No. 453:

1. Did the trial court commit legal error when it granted Defendants' petition for attorneys' fees despite Defendants' failure to comply with Md. R. Civ. P. 2-705?

2. Did the trial court commit legal error when it granted Defendants' motion for leave to file a counterclaim on May 17, 2023, the date discovery closed in the case?

3. Did the trial court commit legal error by permitting Defendants to file a petition for attorneys' fees on January 11, 2024, after discovery closed in the case, and after the December 06, 2023 deadline set by the court for filing a petition for attorneys' fees pursuant to Md. R. Civ. P. 2-705?

1. Whether the circuit court erred in granting the Hunters' motion for summary judgment.

2. Whether the circuit court abused its discretion in awarding attorneys' fees to the Hunters.

For the following reasons, we affirm.

BACKGROUND

The Contract

On June 27, 2020, the Isaacs, as Buyer, executed a residential contract of sale ("Contract") with the Hunters, as Seller, for the Property. Paragraphs 16.A-16.C of the Contract address lead-based paint. Paragraph 16.A provides that federal law "requires the disclosure by Seller of information regarding lead-based paint and lead-based paint hazards in connection with the sale of any **residential** real property on which a residential dwelling was constructed prior to 1978." Paragraph 16.B addresses renovation, repair, and painting of property built prior to 1978, and Paragraph 16.C addresses requirements under Maryland law for properties built prior to 1978.

The Maryland Lead Poisoning Prevention Program Disclosure, attached to the Contract, states that "any leased residential dwelling constructed prior to 1978 is required to be registered with the Maryland Department of the Environment" ("MDE"). The Hunters initialed that the Property was not registered, and all parties signed the disclosure. The federal disclosure form is also attached to the Contract and the Hunters initialed that the Property was constructed prior to 1978 and that known lead-based paint and/or lead-based paint hazards are present. The form includes a handwritten statement that reads, "Had property tested over 10 yrs ago – passed inspection at that time." The

Hunters also initialed that they did not have any reports or records pertaining to lead for the Property. The Isaacs waived the opportunity to conduct an inspection for the presence of lead on the Property by initialing a box on the same disclosure form.

The Contract also includes an "As Is" Addendum, signed by the Isaacs and the Hunters, which provides that "Seller makes no warranty, express or implied, as to the condition of the Property" and granted the Isaacs the option to have the Property inspected and to terminate the contract within ten days of acceptance if the inspection results were unsatisfactory.

The Property

Prior to selling, the Hunters rented the Property to a family from 2013 through 2019. According to records maintained by the MDE, the Property was registered as a rental property with the MDE's Lead Poisoning Prevention Program from 2007 through 2010, and 2013 through 2019. The MDE records also indicate that a dust inspection of the Property was conducted on November 7, 2006. The Property failed the inspection on that date.

An affidavit of one of the Hunters' tenants stated that, during her family's tenancy, the Hunters hired an individual who removed "a front porch that had deteriorated chipping and flaking paint" and "used a power washer to remove paint from the front of the house and the rear of the house." The removed paint was "left in the front and rear yards of the house." The tenant further stated that this work was done shortly before she received a letter from Ms. Hunter requesting that her family vacate the Property because Ms. Hunter planned to sell the Property.

Mr. Isaac toured the Property on June 11, 2020, before to entering into the Contract. During his deposition, Mr. Isaac acknowledged that he knew that the Property was built prior to 1978 and knew that that meant the Property might contain lead-based paint. Mr. Isaac further testified that, when he toured the Property on that date, he saw multiple areas where there was missing paint, and he took a video showing the same.

On September 10, 2020, approximately one month after closing on the Property, N. was diagnosed with elevated blood lead levels. The following day, a representative of the MDE provided Mr. Isaac with a copy of the inspection certificate from November 7, 2006, when the Property had failed a dust inspection. The MDE representative also provided Mr. Isaac with a copy of Form D, which, as the representative explained via email, indicates that the Property was re-inspected due to its initial failure, and that Form D amends the previously failing certificate into a passing certificate.

Following N.'s diagnosis, at the request of the Isaacs, the MDE opened an investigation into the Property. The MDE collected and analyzed dust and soil samples and conducted limited testing of paint throughout the Property. The resulting Environmental Investigation Report identified nineteen locations around the Property that contained some quantity of lead-based paint. The Report further indicated that one dust sample and three soil samples contained levels of lead above the standards.

Procedural History[4]

On November 30, 2021, the Isaacs filed a complaint on behalf of themselves and their minor daughter, N.[5] As relevant here, the second amended complaint raised three claims against the Hunters: negligence, violation of the Maryland Consumer Protection Act, and negligent misrepresentation. The Hunters filed a motion for summary judgment on July 21, 2023, raising eleven arguments. The Isaacs opposed the motion.

On May 16, 2023, the Hunters filed a counterclaim against the Isaacs alleging breach of contract, contractual indemnification, common law indemnification and contribution, and seeking attorneys' fees. The Hunters filed a motion for summary judgment for their counterclaim on July 18, 2023. The Isaacs filed an opposition on August 1, 2023.

The court held a hearing on the Hunters' motions for summary judgment on September 21, 2023. The court then issued an oral opinion on November 21, 2023, making the following conclusions and granting summary judgment in favor of the Hunters.

[4] The procedural history provided includes a recitation of the filings relevant to this consolidated appeal. There were numerous additional motions filed throughout the pendency of this case that are not described for the sake of brevity.

[5] The original complaint listed Nancy Hunter, David Hunter, and the Estate of Ray Hunter as defendants. Nancy Hunter passed away during the pendency of this case and the complaint was amended on January 13, 2023, to substitute in the Estate of Nancy Hunter, with David Hunter as the personal representative. The complaint was amended again on June 15, 2023.

The court began by finding that "[n]o mediation occurred which was a condition precedent that the parties elected to include in their contract and are bound by, absent some other showing that has not [been] met." The court continued, finding that "there is no evidence presented that the sellers hired untrained and uncertified contractors[,]" and that registration with MDE is only required for rental properties, which the Property is not, and, therefore, registration is not relevant to the present case.

Turning to Count 1 in the second amended complaint, negligence, the court found that the Hunters did not conceal the presence of lead-based paint hazards throughout the Property, that there was no evidence the hazards were created by the Hunters, and that there was no evidence of any violation by the Hunters of "statutes, rules, or regulations[.]" Regarding Count 2, the Maryland Consumer Protection Act claim, the court found that "[t]here was no unfair or deceptive trade practices" and that the Hunters "fully disclosed that the property contained lead base[d] paint and lead base[d] paint hazards."

Moving to Count 3, negligent misrepresentation, the court found that the Hunters "repeatedly" disclosed the presence of lead-based paint hazards on the Property and the Isaacs, having knowledge of the hazards, waived their right to further inspection, and, therefore, assumed the risk. Finally, the court found that "there's no contractual privity between N[.] and these sellers and this lawsuit arises entirely out of the [C]ontract between the parties." The court granted summary judgment in favor of the Hunters.

The court entered written orders granting both summary judgment motions on January 5, 2024. The Isaacs appealed the grant of summary judgment only as to the second amended complaint.

At the conclusion of the oral ruling, the court stated that pursuant to paragraph 36 of the Contract, the prevailing party "shall be entitled" to attorneys' fees and invited counsel to submit an affidavit accordingly. The accompanying written order requested the Hunters submit evidence of attorneys' fees to the court by December 6, 2023. The Hunters filed a statement regarding attorneys' fees and costs on January 11, 2024. The Isaacs filed a response to the Hunters' request for attorneys' fees on January 15, 2024, arguing that the Hunters' request did not comply with Maryland Rule 2-705 and that, therefore, the request was not timely filed.

The court held a hearing on attorneys' fees on February 14, 2024. Following the hearing, on May 2, 2024, the court entered an order granting the Hunters' request for attorneys' fees and costs in the amount of $100,841. The Isaacs appealed the order granting attorneys' fees.

Additional facts are provided below as necessary.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN GRANTING THE HUNTERS' MOTION FOR SUMMARY JUDGMENT.

The Isaacs present five arguments to support their position that the circuit court erred in granting summary judgment on their second amended complaint. We address each argument in turn below.

A. Standard Of Review

Summary judgment is proper when "there is no genuine dispute as to any material fact and [] the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). "We review the circuit court's grant of summary judgment *de novo*." *Bd. of Cnty. Comm'rs of St. Mary's Cnty. v. Aiken*, 483 Md. 590, 616 (2023) (citation omitted). "We conduct an independent review of the record to determine whether a general dispute of material facts exists and whether the moving party is entitled to judgment as a matter of law." *Id.* (citation omitted). "We review the record in the light most favorable to the non-moving party and construe any reasonable inferences which may be drawn from the facts against the movant." *Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022) (quoting *Md. Cas. Co. v. Blackstone Int'l, Ltd.*, 442 Md. 685, 694 (2015)). "We do not endeavor to resolve factual disputes, but merely determine whether they exist and are sufficiently material to be tried." *Gambrill*, 481 Md. at 297 (citing *Newell v. Runnels*, 407 Md. 578, 607 (2009)). Furthermore, it is a "well-established general rule that in appeals from the granting of a motion for summary judgment, absent exceptional circumstances, Maryland appellate courts will only consider the grounds upon which the [circuit] court granted summary judgment[.]" *Selective Way Ins. Co. v. Fireman's Fund Ins. Co.*, 257 Md. App. 1, 34 (2023) (citation and quotation marks omitted).

B. The Circuit Court Did Not Err In Finding That The Isaacs Failed To Satisfy The Mediation Clause Of The Contract.

The Isaacs argue that the court incorrectly found that the mediation clause barred the claims because the Hunters did not raise the issue until after the close of discovery and, therefore, waived any right to mandatory mediation. The Hunters maintain that, in light of the mediation clause in the Contract, the Isaacs "failed to meet a condition precedent prior to filing suit" and that the Isaacs provide no support for their argument that the court is responsible for curing this deficiency or that the Hunters were obligated to notify the Isaacs of this defect.

"Where a contract is plain and unambiguous, there is no room for construction, and it must be presumed that the parties meant what they expressed." *Shutter v. CSX Transp., Inc.*, 226 Md. App. 623, 635 (2016) (citation and internal marks omitted). Furthermore, "[w]e rel[y] upon the long-held rule that, where a cause of action depends on satisfaction of a condition precedent, the plaintiff must allege performance of such condition or show legal justification for nonperformance." *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 289 (2018) (citations and internal quotation marks omitted).

The mediation clause in the Contract between the Isaacs and the Hunters provides:

> Buyer and Seller agree that neither party shall commence any action in any court regarding a dispute or claim arising out of or from this Contract or the transaction which is the subject of this Contract, without first mediating the dispute or claim, unless the right to pursue such action or the ability to protect an interest or pursue a remedy as provided in this Contract, would be precluded by the delay of the mediation.

The mediation clause in the Contract unambiguously creates a mandatory precondition to filing a lawsuit arising from either the Contract or the underlying transaction. Neither party can file a claim in any court without first mediating. The Isaacs do not allege that they have satisfied the condition precedent and do not provide any legal justification for non-performance. *Davis*, 457 Md. at 289. As such, we conclude that the circuit court did not err in finding that no mediation occurred, and that the Isaacs failed to satisfy a mandatory condition precedent to filing a lawsuit under the Contract.

C. The Circuit Court Did Not Err In Finding That There Is No Contractual Privity Between N. And The Hunters.

The Isaacs contend that the court "erred in granting summary judgment on the grounds that the minor Plaintiff lacked privity of contract" because parental reliance may be imputed to a minor child for a misrepresentation claim. The Hunters maintain that contractual privity is only relevant regarding whether the Hunters owed a duty to the Isaacs under the Contract. The Hunters further assert that the Isaacs fail to allege what reliance by the parents should be imputed to the minor child.

As far as we can discern from the record before us, the Isaacs did not previously raise, and the circuit court did not address, whether N. can maintain a claim against the Hunters under a theory of imputed reliance. We will, therefore, only briefly address whether N. has contractual privity with the Hunters. *Selective Way Ins. Co.*, 257 Md. App. at 34 ("In our review, we are generally confined to the bases relied on by the circuit

court, and we will not affirm the grant of summary judgment for a reason not relied on by the circuit court." (citations and internal marks omitted)).

"Privity is defined as '[t]he connection or relationship between two parties, each having a legally recognized interest in the same subject matter (such as a transaction, proceeding, or piece of property); mutuality of interest[.]'" *Bank of New York Mellon v. Georg*, 456 Md. 616, 657 (2017) (quoting *Privity, Black's Law Dictionary* (10th ed. 2014)).

Turning to the Contract at issue here, the only parties to the Contract, and therefore the only parties who have a legal relationship under the Contract, are Laura Isaac, Logan Isaac, Nancy Hunter, and David Hunter. Thus, we conclude that the circuit court did not err insofar as the court found there is no contractual privity between N. and the Hunters.

D. The Circuit Court Did Not Err In Finding That The Isaacs Assumed The Risks.

Next, the Isaacs argue that they did not assume the risks associated with lead paint and, even if the evidence demonstrated that they had assumed the risks, contributory negligence cannot be imputed to N. to bar any claims. The Hunters respond that they did not argue, and the court did not find, that N. assumed the risk of her injuries and that the Isaacs argument that contributory negligence cannot be imputed does not relate to the grant of summary judgment.

During the hearing on the motions for summary judgment, counsel for the Hunters repeatedly stated that they are not claiming that the contributory negligence of the Isaacs

can be imputed to N.: "We're not disputing the established case law that their negligence can't be imputed to their child." The court also did not make any finding as to imputation of contributory negligence. As such, we will only address whether the Isaacs themselves assumed the risks.

"Assumption of risk rests upon an intentional and voluntary exposure to a known danger, and therefore, consent on the part of the plaintiff to relieve the defendant of an obligation of conduct toward him and to take his chances from harm from a particular risk." *Marrick Homes LLC v. Rutkowski*, 232 Md. App. 689, 716 (2017) (citations and internal quotation marks omitted). "For the assumption of risk doctrine to bar recovery, a plaintiff must voluntarily expose him or herself to a *known danger*[.]" *Id*.

The Contract, which was signed by the Isaacs, included multiple lead-based paint disclosures and an "As Is" addendum. Both of the Isaacs initialed each of these separate disclosures acknowledging the presence of lead-based paint and lead-based paint hazards on the Property. Additionally, the Isaacs affirmatively waived their right to have the Property inspected for lead-based paint prior to closing. The Isaacs, therefore, voluntarily exposed themselves to a disclosed danger. Accordingly, we hold that the circuit court did not err in finding that the Isaacs assumed the risks associated with lead-based paint hazards.

E. The Circuit Court Did Not Err In Finding That The Hunters Did Not Violate State And Federal Statutes, Codes, and Regulations.

The Isaacs argue that the circuit court erred in granting summary judgment because the Hunters "violated federal and state statutes, codes and regulations" and the

Isaacs are "unquestionably within the class of persons sought to be protected[,]" which constitutes evidence of negligence to be submitted to a jury. More specifically, the Isaacs contend that the Hunters failed to comply with the Maryland Lead Poisoning Prevention Program by falsely stating that the Property passed a lead inspection and denying that the Property was registered with MDE. The Isaacs also argue that the Hunters violated the federal Residential Lead-Based Paint Hazard Reduction Act by failing to provide the Isaacs with the failing inspection certificate.

The Hunters first respond that the Isaacs are raising a factual dispute, and that the Isaacs are "falsely maintaining that there are no records showing the Property passed an inspection." The Hunters further argue that there was no evidence that they concealed lead reports and state that the Isaacs cite to "no controlling authority" to support their argument that the Hunters had a duty to produce lead paint reports that they did not possess.

"To make out a *prima facie* case in a negligence action based on the breach of a statutory duty, a plaintiff must show (a) the violation of a statute or ordinance designed to protect a specific class of persons which includes the plaintiff, and (b) that the violation proximately caused the injury complained of." *Polakoff v. Turner*, 385 Md. 467, 483 (2005) (citation and quotation marks omitted).

As far as we can discern from the briefs and the record, the only specific Maryland Code provisions that the Isaacs allege were violated are Md. Code Ann., Env't §§ 6-811, 6-815, and 6-817 (1982, 2013 Repl. Vol., 2024 Supp.). All of those sections are only

applicable to "affected property" which is defined as rental properties and properties that contain rental units. Md. Code Ann., Env't § 6-801(b).[6]

The Property once was, but is no longer, a rental property, and so, whether the Hunters previously complied with the cited sections of the Maryland Code is not applicable to the present matter because the Property does not fall within the definition of "affected property" in the context of this appeal.

Turning to federal law, the Lead-Based Paint Hazard Reduction Act requires that a seller make the following disclosures to the purchaser of property built prior to 1978:

> (A) provide the purchaser or lessee with a lead hazard information pamphlet, as prescribed by the Administrator of the Environmental Protection Agency under section 406 of the Toxic Substances Control Act;
>
> (B) disclose to the purchaser or lessee the presence of any known lead-based paint, or any known lead-based paint hazards, in such housing and provide to the purchaser or lessor any lead hazard evaluation report available to the seller or lessor; and
>
> (C) permit the purchaser a 10-day period (unless the parties mutually agree upon a different period of

[6] Section 6-801(b)(1), as modified in 2019, defines "affected property" as:

> (i) A property constructed before 1950 that contains at least one rental dwelling unit;
>
> (ii) On or after January 1, 2015, a property constructed before 1978 that contains at least one rental unit; or
>
> (iii) Any residential rental property for which the owner makes an election under § 6-803(a)(2) of this subtitle.

> time) to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

106 Stat. 3910, as amended, 42 U.S.C. § 4852d(a)(1). The Isaacs appear only to be challenging whether the Hunters' complied with subsection (B).

As part of the federal lead disclosure form included in the Contract, the Hunters disclosed the presence of known lead-based paint and/or lead-based paint hazards on the Property and stated that the Property had passed a lead inspection ten years prior to the sale. On the same form, the Hunters indicated that they did not have any reports or records pertaining to the issue. Accordingly, the Hunters did not provide the Isaacs with any records or certificates regarding prior lead-based paint inspections.

The Isaacs dispute whether the Hunters had the failing inspection certificate from November 7, 2006, available to provide to the Isaacs; however, our review of the record indicates that there is no evidence to support this allegation. There are no genuine disputes of material fact regarding the Hunters' compliance with federal law.

For these reasons, we conclude that the circuit court did not err in finding there was no evidence of any violation of state or federal statutes, rules, or regulations and, therefore, that the Isaacs did not make out a *prima facie* case of negligence.

F. The Circuit Court Did Not Err In Finding There Was No Evidence That The Hunters' Hired Untrained And Uncertified Contractors.

The Isaacs final argument is that the circuit court erred in granting summary judgment because the Hunters "failed to produce any of the records they were required to maintain pursuant to Md. Code Regs. 26.16.02.03" regarding the training and certification of the contractor hired to remove lead-based paint. The Isaacs also state that

the contractor violated COMAR 26.02.07.08 because he improperly removed and disposed of the lead-based paint hazards.

The Hunters argue that COMAR 26.16.02.03 "has no bearing on the legal issues raised" because it applies to rental properties and was not considered by the circuit court to decide the motion for summary judgment. The circuit court did not make any findings as to COMAR 26.02.07.08. We, therefore, decline to address any issues raised related to that regulation. *See Selective Way Ins. Co.*, 257 Md. App. at 34.

COMAR 26.16.02.03(A) opens with, "The owner of a rental property shall" and lists two types of inspections that must be done to comply with Maryland law. The remaining provisions within COMAR 26.16.02.03 elaborate on the requirements for each type of inspection. Thus, the plain language of the regulation makes clear that COMAR 26.16.02.03 applies exclusively to rental properties.

As stated above, the Property was previously a rental property, but is no longer, and so, this regulation is not applicable to the present matter. Furthermore, the only finding the circuit court made on the record as to this regulation was that there was no evidence that the Hunters hired an untrained and uncertified contractor. We, therefore, conclude that the circuit court did not err in failing to find a violation of COMAR 26.16.02.03.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN AWARDING ATTORNEYS' FEES TO THE HUNTERS.

"The trial court's determination of the reasonableness of attorney's fees is a factual determination within the sound discretion of the court, and will not be overturned

unless clearly erroneous." *Myers v. Kayhoe*, 391 Md. 188, 207 (2006) (citation omitted). Generally, a trial court's decision regarding late filing or noncompliance with time limits will not be disturbed absent a showing of an abuse of discretion. *Easter v. Dundalk Holding Co.*, 233 Md. 174, 179 (1963); *Golub v. Spivey*, 70 Md. App. 147, 157 (1987).

In their second appeal before this Court, the Isaacs argue that the court erred in granting the Hunters attorneys' fees because the Hunters failed to comply with Maryland Rule 2-705(b), which governs attorneys' fees pursuant to a contract, because the Hunters failed to reference the Contract in their request for attorneys' fees. The Isaacs additionally contend that the Hunters' petition for attorneys' fees "should be denied as late and failing to comply with the court's deadline" because the petition was filed thirty-six days after the court ordered deadline. The Isaacs maintain that, due to the untimeliness of the filing, they "were deprived of any opportunity to conduct any discovery on the allegations of the Counterclaim and were deprived of due process with regard to the award of attorneys' fees."

The Hunters argue that they did comply with Rule 2-705(b) because the grounds for attorneys' fees did not arise until after the depositions of the Isaacs, which occurred on May 8 and May 12, 2023, and the Hunters filed for attorneys' fees on May 16, 2023. The Hunters also contend that the Rule does not require that they specifically state they are seeking attorneys' fees pursuant to a certain section of a contract and that the Isaacs provide no authority to support this claim. The Hunters further assert that the Isaacs failed to allege any prejudice resulting from the timing of filing and did not describe any discovery of which they were actually deprived.

It is important to note that the Isaacs only appealed the order granting attorneys' fees, and not the grant of summary judgment as to the Hunters' counterclaim, so any arguments as to the counterclaim are not properly before us.

Maryland Rule 2-705 "applies to a claim for an award of attorneys' fees to attributable to litigation in a circuit court pursuant to a contractual provision permitting an award of attorneys' fees to the prevailing party in litigation arising out of the contract." Md. Rule 2-705(a). The Rule further states:

> A party who seeks attorneys' fees from another party pursuant to this Rule shall include a claim for such fees in the party's initial pleading *or, if the grounds for such a claim arise after the initial pleading is filed, in an amended pleading filed promptly after the grounds for the claim arise*.

Md. Rule 2-705(b) (emphasis added). Subsection (b) is the only provision in this Rule that directly addresses pleading requirements. *See* Md. Rule 2-705. Additionally, "[c]ontract provisions providing for awards of attorney's fees to the prevailing party in litigation under the contract generally are valid and enforceable in Maryland." *Myers*, 391 Md. at 207 (citation omitted).

Paragraph 36 of the Contract addresses attorneys' fees and provides:

> In any action or proceeding between Buyer and Seller based, in whole or in part, upon the performance or non-performance of the terms and conditions of this Contract, including, but not limited to, breach of contract, negligence, misrepresentation or fraud, the prevailing party in such action or proceeding shall be entitled to receive reasonable attorney's fees from the other party as determined by the court or arbitrator.

Because paragraph 36 of the Contract allows the prevailing party to seek attorneys' fees, Rule 2-705 applies to the present case. Rule 2-705(b), which addresses pleading requirements under the Rule, does not state that the party seeking attorneys' fees must specify in the pleadings that the claim is based on a contract provision, but rather only addresses when a pleading must be filed.

The Hunters first requested attorneys' fees in their counterclaim, which was filed on May 16, 2023. The counterclaim was filed approximately one week after the Isaacs' depositions, and the Hunters allege that the basis of their request for attorneys' fees did not arise until the depositions. Therefore, the Hunters' initial request for attorneys' fees was timely pursuant to the 30-day timeframe in Rule 2-705(b).

"[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal." *Klauenberg v. State*, 355 Md. 528, 552 (1999). *See* Md. Rule 8-504(a)(6) (requiring that briefs contain "[a]rgument in support of the party's position on each issue"); *Silver v. Greater Baltimore Med. Ctr., Inc.*, 248 Md. App. 666, 688 n.5 (2020) ("A single sentence is insufficient to satisfy [Maryland Rule 8-504(a)(6)]'s requirement"); *Bert v. Comptroller of the Treasury*, 215 Md. App. 244, 269 n.15 (2013) ("Appellant's 'argument' could also be rejected out of hand because it is inadequately briefed." (citations omitted)). "Where a party cites no relevant law on an issue in their brief, we have refused to 'rummage in a dark cellar for coal that isn't there[,]' or to 'fashion coherent legal theories to support appellant's sweeping claims.'" *Francis v. Francis*, 263 Md. App. 307, 321 (2024) (quoting *Konover Prop. Tr., Inc. v. WHE Assocs.*, 142 Md. App. 476, 494 (2002)).

Beyond providing the dates of the relevant filings, the Isaacs do not cite to any case law or any evidence in the record to support their argument that they suffered prejudice due to late filing of the statement for attorneys' fees. The Isaacs end their brief with one conclusory sentence claiming deprivation of due process. The Isaacs do not present their argument with particularity, and, thus, we cannot conclude that the court abused its discretion by accepting the Hunters' filing after the court-imposed deadline.

CONCLUSION

We hold that the circuit court did not err in making any of the findings challenged on appeal, and, therefore, did not err in granting the motion for summary judgment. We further hold that the circuit court did not abuse its discretion in awarding attorneys' fees and costs to the Hunters as the prevailing party under the Contract.

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/2046s23cn.pdf