

Circuit Court for Montgomery County
Case No. 440963V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1007

September Term, 2019

DEBBIE K. SOUDER

v.

DAPHNE E. SOUDER

Fader, C.J.,
Nazarian,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: July 6, 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.

Debbie K. Souder, the appellant, asks this Court to reverse an award of attorneys' fees and expenses entered by the Circuit Court for Montgomery County against her and in favor of Daphne E. Souder, the appellee. Because the circuit court awarded these sanctions without making the express findings the Court of Appeals has held are required before imposing sanctions under Maryland Rule 1-341, we must vacate the sanctions award and remand for further proceedings.

BACKGROUND

The Probate Proceedings

The sanctions award at issue emanates from a probate dispute between sisters Debbie and Daphne Souder, beneficiaries of the Estate of Paul Walter Ritchie Souder, Jr.¹ The Orphan's Court for Montgomery County initially appointed the sisters as co-personal representatives of the Estate, but later removed them due to recurring disagreements. The court then appointed Robert McCarthy as successor personal representative of the Estate.

During the probate proceedings, Debbie filed several challenges to Mr. McCarthy's actions as personal representative, including through exceptions to his first account of the Estate, a motion to remove him as personal representative, and exceptions to his second and final account. In these filings, Debbie alleged that Daphne and Mr. McCarthy had mismanaged Estate property in various respects, such as allowing Daphne to take personal

¹ Because the parties share the same last name, for simplicity and clarity we will deviate from our usual convention and refer to them by their first names. We mean no disrespect in doing so.

property without authorization or account. The Orphan’s Court resolved the exceptions against Debbie and ultimately approved Mr. McCarthy’s final account.

The Circuit Court Proceedings

While the probate proceedings were pending, Debbie filed a complaint in the Circuit Court for Montgomery County for injunctive and other relief against Daphne and Mr. McCarthy. Debbie’s complaint presented many of the same issues she had raised in the probate proceedings, including that Mr. McCarthy had permitted Daphne to remove certain personal property from Mr. Souder’s home without authorization or account. In the circuit court proceedings, Debbie contended that some of the personal property at issue belonged to the Estate and some belonged to Debbie.²

Before Debbie served Daphne with the complaint, Mr. McCarthy moved to dismiss on the grounds that the circuit court lacked jurisdiction over probate matters and that the Orphan’s Court had already resolved the claims raised in the complaint. The circuit court granted Mr. McCarthy’s motion, which is not at issue in this appeal.

Subsequently, as a condition of making the final distributions of the Estate assets in the probate proceedings, Mr. McCarthy required both sisters to execute a General Release, which expressly included Debbie’s circuit court lawsuit. After both sisters executed the release, Daphne’s attorney sent a letter to Debbie’s attorney urging him to discontinue the circuit court litigation.

² Notwithstanding the different characterization, Daphne contends that the same property was at issue in both proceedings. Because of the grounds on which we resolve this appeal, we need not delve into that dispute.

Once Debbie served Daphne in the circuit court action, Daphne filed a motion to dismiss or for summary judgment in which she reiterated the arguments Mr. McCarthy had previously advanced and also argued that the General Release precluded Debbie's claims. Daphne also sought an award of attorneys' fees and expenses under Rule 1-341 on the ground that Debbie's continued prosecution of her lawsuit after the dismissal of the claims against Mr. McCarthy was "an 'unjustified proceeding' maintained in 'bad faith' or 'without substantial justification.'" (emphasis removed) (citing Md. Rule 1-341(a)).

On April 1, 2019, at the conclusion of a hearing on the motion, the court granted summary judgment in favor of Daphne. The court concluded that Debbie's circuit court action was an improper attempt "to make an end run" around the probate action. After the court explained its ruling on the merits, Daphne's counsel asked if the court could rule on Daphne's request for sanctions. The court answered, "I think sanctions are appropriate, yes. Definitely." The court then established a schedule for filings regarding the amount of sanctions to be imposed, but did not further address the imposition of sanctions. A written order signed on the day of the hearing and entered on April 3 reflected the court's oral rulings, including its award of summary judgment and its determination that Daphne was "entitled to an award . . . pursuant to Md. Rule 1-341."

On April 17, Daphne submitted a verified statement and supporting billing documents, seeking \$21,208.63 in legal fees and expenses. In her response, Debbie argued, among other things, that she should not be sanctioned for having continued the suit because it "is simply incorrect as it relates to [Daphne] Souder" that "the issues raised in the instant

case had been litigated in the [Orphan’s Court].” On July 1, the court entered an order requiring Debbie to pay Daphne \$21,000 in attorneys’ fees and expenses within 15 days. Debbie noted an appeal on July 25.

On August 22, having received no payment from Debbie, Daphne filed a motion (1) to enter, record, and index the July 1 order as a money judgment, and (2) for additional attorneys’ fees. In an order entered on October 7, the court granted the motion as to the recording and indexing of the judgment but denied the request for additional attorneys’ fees. The clerk entered a notice of judgment that same day.

DISCUSSION

I. DEBBIE’S CHALLENGE TO THE PROPRIETY OF THE SANCTIONS AWARD IS PROPERLY BEFORE THIS COURT.

Before addressing the merits of Debbie’s challenge to the court’s sanctions award, we must first address several of Daphne’s preliminary arguments challenging the scope of what is properly before us.

Daphne makes two contentions regarding the timeliness of the appeal, both of which suffer from a misconception regarding when an order or judgment becomes ripe for appeal. Contrary to Daphne’s contentions, Debbie’s appeal was neither premature nor late. Because the appeal was noted within 30 days from the entry of the circuit court’s order resolving finally the request for sanctions under Rule 1-341, it was filed right on time.

“[A] party may appeal from a final judgment entered in a civil or criminal case by a circuit court.” Md. Code Ann., Cts. & Jud. Proc. § 12-301 (Repl. 2013, Supp. 2019). “Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed

within 30 days after entry of the judgment or order from which the appeal is taken.” Md. Rule 8-202(a). “Under Maryland Rule 2-601(a)(4), a final judgment becomes effective once it is set forth on a ‘separate document,’ as required by Maryland Rule 2-601(a)(1), and is entered [on the docket] in accordance with Maryland Rule 2-601(b).” *Lee v. Lee*, 466 Md. 601, 621 (2020). To be considered a final judgment, an order must “clearly indicate to the parties [and] the public that the court ha[d] adjudicated fully the issues presented to it and ha[d] reached a final, unqualified decision.” *See id.* at 628 (quoting *Hiob v. Progressive Am. Ins.*, 440 Md. 466, 495 (2014)); *see also Kona Props. v. W.D.B. Corp.*, 224 Md. App. 517, 542 (2015) (“To be a final judgment in the traditional sense, an order must not only settle an entire claim but also must ‘be intended by the court as an unqualified, final disposition of the matter in controversy[.]’” (quoting *Rohrbeck v. Rohrbeck*, 318 Md. 28, 40 (1989))). “An order is an ‘unqualified final disposition’ if it determines and concludes the rights involved, or denies the appellant the means of further prosecuting or defending his rights and interests in the subject matter of the proceeding.” *Kona Props.*, 224 Md. App. at 542 (quoting *Schuele v. Case Handyman & Remodeling Servs.*, 412 Md. 555, 570-71 (2010)).

Here, although the circuit court ruled in April that “sanctions are appropriate,” it did not finally resolve the sanctions issue because it neither determined the amount of the sanctions nor ordered Debbie to pay them. The court did not finally resolve the matter until July 1, when it issued an order awarding \$21,000 in attorneys’ fees and expenses to

Daphne, to be paid by Debbie. Debbie’s appeal on July 25 was thus timely as to all aspects of the court’s award of sanctions under Rule 1-341. *See* Rule 8-202(a).

With that background, we turn to Daphne’s timeliness arguments. Daphne first argues that Debbie’s appeal was premature, and that Debbie should not have appealed until after the court’s October 7 order recording and indexing the sanctions award as a money judgment. For two reasons, we disagree. First, the July 1 order was a final, appealable order because it was an unqualified resolution of Daphne’s request for sanctions. The October 7 order did not resolve any issues as between the parties regarding the award of sanctions, because there were none remaining to resolve. Instead, the October 7 order simply reduced the award to a money judgment for enforcement purposes. *See Kona Props.*, 224 Md. App. at 540 n.22 (“[P]ursuant to Maryland Rule 2-648(a), a circuit court may enter a money judgment to the extent of any amount due if a party fails to comply with a judgment mandating the payment of money.”). Second, even if Debbie’s notice of appeal had been premature when filed, it would have been deemed to be filed timely as soon as the October 7 order was entered, *see* Md. Rule 8-602(f), thus allowing the appeal to proceed.

Daphne alternatively argues that Debbie’s appeal was too late to challenge any aspect of the sanctions award except the amount. According to this alternative argument, Debbie would have had to note an appeal within 30 days of April 3 to contest the court’s decision to award sanctions, and then file a separate appeal within 30 days of July 1 (or October 7) to contest the amount of the sanctions. That argument is meritless. A litigant

is no more permitted—much less required—to pursue piecemeal appeals of sanctions awards than other claims in litigation. The court’s award of sanctions was not ripe for appeal until July 1.

In addition to timeliness, Daphne also argues that Debbie waived any arguments regarding the amount of the fee award by failing to make those arguments before the circuit court. Although true to a point, Daphne’s argument is also irrelevant: Debbie’s appeal challenges the merits of the sanctions award, not its amount.

Lastly, Daphne argues that Debbie should not be able to use this appeal to relitigate issues that were disposed of on summary judgment or before the Orphan’s Court, none of which Debbie appealed. Again, although we do not disagree with the general proposition, it is not relevant to this appeal. Debbie’s arguments focus on the merits of the sanctions award, not the ruling on summary judgment, and she has not asked us to undo any other determination of the circuit court or the Orphan’s Court. To the extent Daphne suggests that Debbie is precluded from arguing that her position on summary judgment had merit and was taken in good faith and with substantial justification, Daphne is incorrect. That is the crux of the dispute regarding sanctions and, as we explain below, a party is not subject to sanctions merely for losing on the merits.

II. THE SANCTIONS AWARD MUST BE VACATED SO THAT THE CIRCUIT COURT MAY MAKE THE REQUIRED FINDINGS.

Debbie argues that in awarding sanctions against her, the circuit court “failed to state on the record the requisite findings and failed to state the basis for those findings.”

We agree and, therefore, must vacate the award of sanctions and remand for further proceedings.

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.’” *Id.* (quoting *Talley v. Talley*, 317 Md. 428, 436 (1989)). 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.

Second, should the court determine that a litigant or attorney acted in bad faith or without substantial justification, it “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. The latter finding “will be upheld on appellate review unless found to be an abuse of discretion.” *Fort Myer*, 452 Md. at 72. 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))).

Moreover, 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,” *Christian*, 459 Md. at 31 (quoting *Barnes v. Rosenthal Toyota*, 126 Md. App. 97, 106 (1999)), 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 32-34.

Here, during the April 1 hearing, after the court explained its ruling on the merits and awarded summary judgment in favor of Daphne, her counsel asked the court to rule on the request for sanctions. The court responded: “I think sanctions are appropriate, yes. Definitely.” In the order that the court signed that day and entered on April 3, the only mention of sanctions is the following paragraph:

ORDERED, that upon a finding of this Court that the Plaintiff has maintained or continued an “unjustified proceeding,” in “bad faith” or “without substantial justification,” that Daphne Souder, Co-Defendant, is entitled to an award to be paid by Plaintiff of costs and expenses, including reasonable attorney’s fees, incurred in defense of this proceeding, pursuant to Md. Rule 1-341, and that counsel for Daphne Souder may submit to this Court a verified statement setting forth the information required by Rule 1-341 (b)(2) and (b)(3) in support of such award, within 20 days of entry of this Order, for further consideration of the Court thereon. *and Plaintiff has 10 days to respond.*^[3]

³ The text identified in italics is handwritten on the order.

From these rulings, we do not know whether the court found that Debbie acted without substantial justification or in bad faith (or perhaps both) because the court did not make express findings on those issues. The court also did not provide a “brief exposition of the facts upon which [its finding] is based,” *Fort Myer*, 452 Md. at 72 (quoting *Talley*, 317 Md. at 436), which is necessary to permit effective appellate review.

Moreover, the circuit court did not make an explicit finding that Debbie’s “conduct merit[ed] the assessment of costs and attorney’s fees.” *Fort Myer*, 452 Md. at 72. Although the court ruled against Debbie on the merits in awarding summary judgment against her, and explained the basis for that ruling on the record, that does not lead ineluctably to an award of sanctions. The Court of Appeals has emphasized 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 “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). “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. Rule 1-341 sanctions should be awarded “sparingly” as “an ‘extraordinary remedy’ . . . in rare and exceptional cases.” *Christian*,

459 Md. at 19 (quoting *Barnes*, 126 Md. App. at 105; *Major v. First Va. Bank-Cent. Md.*, 97 Md. App. 520, 530 (1993)). In imposing sanctions, therefore, a court must go beyond explaining why the losing party did not prevail on the merits; the court must identify the reasons why the conduct at issue “merits the assessment of costs and attorney’s fees.” *Fort Myer*, 452 Md. at 72.

The circuit court did not make the required findings on April 1 or 3; nor did it do so on July 1. The court’s order entered on July 1 reiterated that the April 3 order had “[found] that Defendant, Daphne Souder, was entitled to an award of attorney’s fees and expenses,” and ordered “that Plaintiff [and/or her attorney in this action, Keith R. Havens], pay over to Defendant, by her attorney in the amount of \$21,000” within 15 days.⁴

In the absence of findings explaining the basis for the court’s award, we are unable to assess Debbie’s contention that the court erred as a matter of law in awarding sanctions, and therefore do not address her second question presented. We will vacate the award and remand for further proceedings to permit the circuit court to make the required findings.

⁴ The July 1 order did not explain how the court arrived at its decision to award \$21,000. “The findings of the amount of fees awarded must be clearly delineated” and the basis for an award “must be ascertainable in order to survive appellate review.” *Christian*, 459 Md. at 31. In *Christian*, the Court of Appeals identified factors a court may consider in determining the amount of fees to award, including “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.” 459 Md. at 32 (quoting *Major*, 97 Md. App. at 540). The court also may refer to the considerations for a reasonable fee identified in Rule 2-703(f)(3). Regardless of how it calculates any award, however, the court must issue “findings . . . on the record” regarding the reasonableness of the chosen fee. *See Christian*, 459 Md. at 30-31, 33.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
REGARDING RULE 1-341 SANCTIONS
VACATED AND REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY THE APPELLEE.**