Circuit Court for Anne Arundel County
Case No. C-02-FM-18-000826

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1016

September Term, 2021

AFSHAN HINA

v.

SYED HYAT

Kehoe,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Leahy, J.

Filed: March 7, 2022

Afshan Hina ("Mother"), appellant, and Syed Hyat ("Father"), appellee, are the divorced parents of an almost 5-year-old son, A.[1] Mother appeals from four orders entered by in the Circuit Court for Anne Arundel County arising from her motions to modify foreign custody, visitation, and child support orders. For reasons we will explain, only an order awarding attorneys' fees to Father under Rule 1-341 is properly before this Court. Because we conclude that the circuit court failed to make the necessary findings to support a Rule 1-341 sanction and because the sanction cannot be sustained on this record, we reverse it.

BACKGROUND

Mother and Father married in May 2016 and lived together in Falls Church, Virginia. A. was born in February 2017. The parties separated shortly after A. was born.

Mother is an Indian citizen. She came to the United States in 2006 on a student visa and has lived here since. She is trained as a computer engineer and, during the marriage, earned $75,000 annually working as a contractor for the International Monetary Fund. While on maternity leave, she lost her job and her work visa. After the parties separated, Father terminated his sponsorship of her green card petition. Because of her immigration status, Mother is unable to work in the United States.

Father is a mortgage underwriter employed by Fannie Mae. In 2019, he earned a gross monthly income of $12,017.

[1] To protect the child's identity, we refer only to the first initial of his first name.

The Virginia Custody Order

In December 2017, when A. was less than a year old, the parties reached an agreement concerning custody and visitation, which was entered as an Agreed Custody and Visitation Order by the Juvenile and Domestic Relations District Court of Fairfax County, Virginia ("Virginia Custody Order"). Under the terms of that order, the parties shared joint legal custody of A., Mother had primary physical custody of A., and Father had access to A. under a graduated visitation schedule that culminated in alternate weekend visits from Saturday morning through Sunday afternoon.[2] The order also established a detailed holiday and summer access schedule. By a separate order, Father was directed to pay $993 per month in child support, in addition to $1,791 in spousal support ("Virginia Support Order").

On March 2, 2018, Mother, now living in Hanover, Maryland, moved to register the Virginia Custody Order and the Virginia Support Order in the Circuit Court for Anne Arundel County. Father was then living in Arlington, Virginia. The orders were registered on April 18, 2018.

Mother's Motion for Modification of Custody, Visitation and Child Support

About a year later, on March 29, 2019, Mother, who is self-represented, moved to modify visitation and child support in the Circuit Court for Anne Arundel County. She alleged two changes of circumstance since the entry of the Virginia Custody Order: 1)

[2] Father's access increased over a period of six months.

that Father had relocated to Washington, D.C. to a studio apartment without a bedroom for A., causing "disturb[ance]" to A during overnight visits, and 2) that A. was older and needed more bonding time with Father. She asked the court to stop the alternating weekend overnight visitation unless Father provided a bedroom for A. and to increase Father's time with A. during the week. In her motion to modify child support, Mother alleged that Father had switched jobs and his income had increased by 18% and that A.'s expenses also had increased.

Meanwhile, the parties were litigating a contested divorce case in Virginia. On June 24, 2019, the Virginia court held a merits trial on the issues of property, spousal support, child support, and attorneys' fees, but concluded that it no longer had jurisdiction over child custody. The parties were divorced by decree entered on September 27, 2019. In the decree, Father was ordered to pay $1,051 per month in child support and $2,100 per month in alimony ("Amended Virginia Support Order").

Mother's Amended Motions to Modify Custody, Visitation, and Child Support

A month after the entry of the divorce decree in Virginia, in October 2019, Mother amended her motion to modify custody, visitation, and child support to request that she be awarded sole legal custody and to request additional changes to the Virginia Custody Order, originally entered in December 2017. She continued to allege that Father's move to a studio apartment was a material change of circumstances justifying a cessation of overnight visitation. She also alleged that Father routinely violated the access terms by not exercising his visitation and asked the court to modify the order to eliminate the

"unnecessarily lengthy" visitation periods and instead require Father to provide 2 weeks' notice of his intended visits. She also requested a modification to permit her to travel with A. internationally or within the United States.

Father, through counsel, moved to dismiss Mother's amended complaint to modify the Virginia Custody Order and the Virginia Support Order. He argued that the circuit court lacked jurisdiction to modify child support because Mother had not registered the Amended Virginia Support Order in Maryland. On the merits, Father maintained that Mother did not allege any change in his income or A.'s expenses since the divorce hearing justifying an upward modification of the support order. With regard to visitation, Father argued that his move from a one-bedroom apartment in Virginia to a studio apartment in Washington, D.C. was not a material change of circumstances affecting A.'s best interests. Further, Mother's desire for Father to take on a more active role in A.'s life was not a basis upon which the court could modify custody and visitation. He asserted that Mother filed her motions to modify in bad faith and with lack of substantial justification under Rule 1-341 and requested an award of fees.

On February 11, 2020, the circuit court held a hearing on the motion to dismiss and denied it. The court directed Mother to register the Amended Virginia Support Order within 30 days, which she did.

Father answered Mother's motions to modify custody, visitation, and child support, asked the court to deny the motions, and reiterated his request for an award of attorneys' fees under Rule 1-341.

The Hearing on Mother's Motions to Modify Custody, Visitation and Child Support

The Circuit Court for Anne Arundel County held a merits hearing on March 26, 2021. Mother represented herself, and Father appeared with counsel. Mother testified in her case about A.'s "severe medical issues," which included surgery at the age of 4 weeks, admission to the intensive care unit for a week at age 14 months following a febrile seizure, and a second febrile seizure when he was two years old. She also testified that A. has developmental delays, including a speech delay and would benefit from preschool. Mother tried to enroll A. in pre-kindergarten through Anne Arundel Public Schools but he did not qualify. Father was unwilling to pay for a private preschool program for A. Mother testified generally that Father was disinterested and uninvolved with A., aside from his alternating weekend visits. She characterized their communication as "a black box," explaining that Father did not share any information with her during or after his visits with A. and that A. returned from visits "exhausted."

At the close of Mother's case, Father's lawyer moved for judgment, arguing that Mother had failed to meet her threshold burden of establishing a material change in circumstances. The circuit court granted judgment in favor of Father. It ruled that it lacked jurisdiction to modify the Amended Virginia Support Order under the Maryland Uniform Interstate Family Support Act, Maryland Code (1984, 2019 Repl. Vol.), Family Law Article ("FL") §§ 10-301 – 10-371. The court reasoned that it only was permitted to modify a support order issued by the tribunal of another state that was registered in Maryland if the requirements of FL § 10-350 or § 10-352 were met. *See* FL § 10-349

(explaining that a Maryland court may enforce a child support ordered issued in another state if it has been registered in Maryland but may not modify it unless certain statutory criteria are satisfied). Section 10-350 was not satisfied because it required, among other criteria, that Mother be a non-resident of Maryland and, at that time, she was a resident. FL § 10-350(a)(1)(ii). Section 10-352 was not satisfied because it required that both Mother and Father reside in Maryland, and Father resided in Washington, D.C. FL § 10-352(a).

Turning to custody and visitation, the circuit court explained that Mother took the position that Father was "not involved enough in the child's life, either physically or in decision making," but that she also testified that that had "always been the case." On that basis, the court reasoned that this was not a material change in circumstances since the entry of the Virginia Custody Order. Second, Mother asserted that Father's move to a studio apartment was a change in circumstances. Though the court agreed that the move to a studio apartment was a change, the court concluded that it was not a material change affecting A.'s welfare. The court was not persuaded by Mother's testimony that A. had developmental disabilities. It found that A. having experienced two febrile seizures in four years after visits with Father likewise did not amount to a material change. With respect to Mother's request that Father care for A. on a 50/50 basis, the court emphasized that it would not be in A.'s best interest to increase Father's time with him against Father's wishes. Further, the court determined that Mother's position that Father was not

adequately caring for A. during his alternating weekend visits and her request to increase Father's access to A. were inconsistent.

Regarding Father's request for attorneys' fees under Rule 1-341, the court found that Mother had filed her motions to modify "without substantial justification" and advised that it would "entertain a motion for attorney's fees with required documentation." The court directed Father's attorney to file a motion within 15 days. Mother questioned how she could be ordered to pay attorneys' fees when she has "no ability to pay." The court explained that she would have an opportunity to respond to Father's motion but added that it anticipated ruling on Father's motion without a hearing given that it already had heard the testimony.

The court signed an order encompassing these rulings, which was entered on March 29, 2021. That same day, Mother filed a notice that she was seeking in banc review of the order pursuant to Rule 2-551 and the Maryland Constitution.

Father's Petition for Attorneys' Fees

Meanwhile, within 15 days, Father filed a verified motion for attorneys' fees seeking $31,303.58 in fees and attaching documentation. Father argued that Mother had been put on notice at the hearing on his motion to dismiss that she needed to demonstrate a material change of circumstances or potentially be ordered to pay fees under Rule 1-

341. He attached a brief excerpt of the transcript from the motions hearing.[3]

Mother moved to dismiss Father's motion for attorneys' fees. She argued that attorneys' fees should not be awarded while her in banc petition was pending; that Rule 1-341 should not be used to punish litigants who unsuccessfully pursue colorable claims; that the court should consider her financial status and needs under FL § 12-103(2)(b) before awarding fees; and that another judge who heard Father's request for attorneys' fees in relation to a successful contempt petition in this case had determined that because Mother's only income was her spousal support, she could not afford to pay attorneys' fees.

On August 18, 2021, Mother's in banc petition was denied by the panel in a memorandum opinion and order.

Two days after the decision of the in banc panel, the circuit court entered an order directing Mother to pay Father $7,500 in attorneys' fees and costs incurred in defending the motions to modify child support, child custody, and visitation.[4]

Father's Emergency Motion and the *Pendente Lite* Order

In the interim, on August 14, 2021, Mother filed an address change request, notifying the court of her intended move to Illinois. In response, Father filed a complaint

[3] Interestingly, the three-page excerpt of a more than 40-page transcript reflects that the judge who heard argument on the motion advised Mother that she had "alleged facts which colorably could lead to a motion for modification."

[4] That order was signed on May 4, 2021. It appears that the court waited to enter the order until the in banc panel had resolved Mother's appeal.

to modify custody, visitation, and child support along with an emergency motion for temporary custody or, in the alternative, for an expedited *pendente lite* hearing. On September 8, 2021, an *ex parte* emergency hearing took place before a family law magistrate, who recommended that the emergency relief be denied, but that Father's request for an expedited *pendente lite* hearing be granted. The recommendation was adopted by the court that same day and an order was entered setting the *pendente lite* hearing for September 13, 2021.

The next day, on September 14, 2021, Mother filed her first notice of appeal to this Court, specifying that she was appealing from the September 8, 2021 order setting the expedited hearing. Three days later she filed a second notice of appeal, specifying that she was appealing from the March 29, 2021 order denying her motion to modify custody, visitation, and child support, as well as from the August 20, 2021 order awarding Father attorneys' fees. These notices of appeal were consolidated in the instant appeal.

The *pendente lite* hearing went forward on September 13, 2021, though Mother did not appear. On September 14, 2021, the court entered a *pendente lite* order that "slightly modified" Father's weekend access and holiday access schedule and ordered Mother to arrange for and pay the costs associated with transporting A. for the visits. A

little over one week later, Father voluntarily dismissed his complaint to modify custody, visitation, and child support.[5]

We shall include additional facts as necessary to our discussion of the issues.

DISCUSSION

I.

Motion to Dismiss

In her two informal briefs filed in this Court,[6] Mother challenges four orders entered by the circuit court: 1) the September 8, 2021 order denying Father's emergency motion for temporary custody and ordering the parties to appear for an expedited *pendente lite* hearing on September 13, 2021; 2) the September 14, 2021 *pendente lite* order modifying Father's access schedule; 3) the March 29, 2021 order denying Mother's motion to modify child support and visitation, finding that Mother lacked substantial justification for bringing the proceeding and directing Father to file a motion for

[5] Mother later moved for reconsideration of the *pendente lite* order and to quash it. Father moved to strike her motion for reconsideration given that she failed to appear for the *pendente lite* hearing and again requested attorneys' fees under Rule 1-341. The court denied the motion for reconsideration and directed Father to submit a statement of attorneys' fees. Father submitted a statement of fees and, by order entered December 10, 2021, the court determined that the fees were reasonable and ordered Mother to pay $1,207 in attorneys' fees. On December 13, 2021, Mother filed a third notice of appeal, which is designated in this Court as No. 1605, September Term 2021. That appeal has yet been briefed and is not before this panel.

[6] Though only one brief is permitted, because the total length of Mother's two briefs together does not exceed the 15-page limit for informal briefs, we shall treat them as one. *See* https://mdcourts.gov/sites/default/files/import/cosappeals/pdfs/guidelines informalbriefs.pdf (last visited March 6 , 2022).

attorneys' fees; and 4) the August 20, 2021 order directing Mother to pay Father $7,500 in attorneys' fees.

Father moved to dismiss this appeal. By order dated January 5, 2022, this Court deferred ruling upon that motion. In his briefs,[7] Father raised additional grounds for dismissal. Upon further consideration of the motion to dismiss and Father's brief, we conclude that only the August 20, 2021 order awarding attorneys' fees to Father is properly before this Court. We explain.

A. September 8, 2021 Order Setting an Expedited *Pendente Lite* Hearing

The order dated September 8, 2021 encompasses two rulings, neither of which is appealable by Mother. First, the court denied Father's emergency motion for temporary custody. That ruling was entirely in Mother's favor and, consequently, because she is not aggrieved by it, she cannot appeal from the ruling. *See Rush v. State*, 403 Md. 68, 95 (2008) (A party "cannot appeal from a favorable ruling"); *accord Adm'r, Motor Vehicle Admin. v. Vogt*, 267 Md. 660, 664 (1973) ("Generally, a party cannot appeal from a judgment or order which is favorable to him, since he is not thereby aggrieved.") (citations omitted).

Second, the court granted Father's alternative request for an expedited *pendente lite* hearing. That order, which merely scheduled a hearing, was not a final judgment. *See* Md. Code (1973, 2020 Repl. Vol.), Courts & Judicial Proceedings ("CJP"), § 12-301

[7] Like Mother, Father filed two informal briefs. His two briefs also fall within the 15-page limit and we shall treat them as one brief.

("a party may appeal from a final judgment entered in a civil or criminal case by a circuit court"); *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989) ("To have the attribute of finality, the ruling must be so final as either to determine and conclude the rights involved or to deny the appellant the means of further prosecuting or defending his or her rights and interests in the subject matter of the proceeding.") (emphasis omitted). The order also is not the type of interlocutory order that is immediately appealable by statute, by rule, or under the collateral order doctrine. *See* CJP § 12-303 (specifying the types of interlocutory orders from which an immediate appeal may be taken, including an order that "[d]epriv[es] a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order"); Md. Rule 2-602 (permitting a court to certify an order as final in certain limited circumstances even if it adjudicates fewer than all the claims or the rights of and liabilities of fewer than all the parties); *Wash. Suburban Sanitary Comm'n v. Bowen*, 410 Md. 287, 296-97 (2009) (discussing collateral order doctrine).

B. September 14, 2021 *Pendente Lite* Order

The order dated September 14, 2021 was entered following the expedited *pendente lite* hearing on September 13, 2021. As mentioned, Mother filed two notices of appeal on September 9, 2021 and September 12, 2021, before the ruling she seeks to challenge.[8] By rule, subject to certain exceptions not applicable here, a notice of appeal must be filed

[8] As noted, she filed a third notice of appeal on December 13, 2021, more than 30 days after that ruling and the entry of the order memorializing it.

"within 30 days *after* entry of the judgment or order from which the appeal is taken." Md. Rule 8-202(a) (emphasis added). Because the notices of appeal were premature under Rule 8-202(a) and because Father moved to dismiss the appeal on this basis, an appeal does not lie as to the *pendente lite* order entered on September 14, 2021. *See Rosales v. State*, 463 Md. 552, 568-70 (2019) (holding that Md. Rule 8-202(a) is a "mandatory claims-processing rule[]" and explaining that an appeal should be dismissed for failure to satisfy the rule if the issue was not waived or forfeited).

C. March 29, 2021 Order Denying Motion to Modify Custody, Visitation, and Child Support

Mother did not file an appeal in this Court within 30 days of the March 29, 2021 order. Instead, Mother elected to seek in banc review of this order, which was final and appealable, before a three-judge panel of the circuit court, under Article IV, § 22 of the Maryland Constitution. As mentioned, an in banc panel affirmed the March 29, 2021 order. "For the party seeking it, in banc review serves as a substitute for an appeal to this Court." *Hartford Fire Ins. Co. v. Estate of Sanders*, 232 Md. App. 24, 37 (2017); *see also Norino Properties, LLC v. Balsamo*, 253 Md. App. 226, ___, 265 A.3d 1109, 1123-24 (2021) ("The purpose of the constitutional provision authorizing an in banc appeal was to provide a substitute or alternate for an appeal to the Court of Appeals or, in recent years, to the Court of Special Appeals." (quoting *Bd. of License Comm'rs for Montgomery Cnty. v. Haberlin*, 320 Md. 399, 406 (1990), *abrogated on other grounds by Bienkowski v. Brooks*, 386 Md. 516, 873 A.2d 1122 (2005))); Md. Rule 2-551(h) ("[a]ny party who seeks and obtains [in banc] review under this Rule has no further right of

appeal"). Having elected and received an in banc appeal from the March 29, 2021 order, Mother is not entitled to appellate review in this Court.

D. August 20, 2021 Attorneys' Fees Award

An award of attorneys' fees under a statute or rule, such as Rule 1-341, is treated as collateral to the underlying merits of the action and, thus, an unadjudicated claim for fees does not deprive an otherwise final judgment of finality for purposes of appeal. *See, e.g., Johnson v. Wright*, 92 Md. App. 179 (1992) (dismissing an appeal filed more than 30 days after judgment dismissing counterclaim, but within 30 days following adjudication of an outstanding motion for fees under Rule 1-341, because the earlier judgment was deemed final prior to that adjudication). Here, the circuit court entered a final and appealable order on March 29, 2021 that denied Mother's motions to modify custody, visitation, and child support and made a finding that she lacked "substantial justification" in bringing those motions. Because the circuit court had not yet quantified or awarded fees, however, that aspect of the order was not final.[9] Mother noted an appeal within thirty days after the entry of the August 20, 2021 order that finally adjudicated Father's claim for attorneys' fees and her appeal is timely as to this order. We thus shall reach the merits of this order.

[9] We note that Mother raised the issue of attorneys' fees in her memorandum filed with the in banc panel, but the panel declined to address that issue because "no award of attorney's fees was granted." As mentioned, the order awarding fees to Father was not entered until after the in banc panel issued its decision.

II.

Attorneys' Fee Award

A. Parties' Contentions

Mother contends that the trial court erred or abused its discretion by awarding attorneys' fees to Father because its finding that she lacked substantial justification was erroneous and because it failed to consider her financial means, as required under FL § 12-103. She emphasizes that she has no income aside from the support paid to her by Father.

Father responds that because his request for fees was made under Rule 1-341, not FL § 12-103, the court was not obligated to assess the parties' financial status or Mother's ability to pay. He maintains that upon finding that Mother lacked substantial justification for pursuing her motions to modify, the award of reasonable attorneys' fees was "mandatory." (citing *Colonial Carpets, Inc. v. Carpet Fair, Inc*., 36 Md. App. 583 (1977)).

Mother replies that "Maryland Rule 1-341 is not, and never was intended, to be used as a weapon to force persons who have a questionable or innovative cause to abandon it because of a fear of the imposition of sanctions."

B. Sanctions Under Rule 1-341

Maryland adheres to the American rule that generally requires each party to a litigation to pay its own attorneys' fees. *Bainbridge St. Elmo Bethesda Apts., LLC v. White Flint Express Realty Grp. Ltd. P'Ship, LLLP*, 454 Md. 475, 486 (2017). There are

four exceptions to this rule, including, as relevant, when "there is a statute [or rule] that allows the imposition of such fees[.]" *Id*. at 487 (quoting *Nova Research, Inc. v. Penske Truck Leasing Co*., 405 Md. 435, 445 (2008)).

Fees awarded under Rule 1-341 fall within this exception. The rule functions "'as a deterrent' against abusive litigation." *Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459 Md. 1, 19 (2018) (quoting *Worsham v. Greenfield*, 435 Md. 349, 369 (2013)). It provides:

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

It is not punitive, but rather operates as "a mechanism to place 'the wronged party in the same position as if the offending conduct had not occurred.'" *Christian*, 459 Md. at 19 (quoting *Major v. First Virginia Bank-Central Md*., 97 Md. App. 520, 530 (1993)). An award of attorneys' fees under the rule "is considered an 'extraordinary remedy,' which should be exercised only in rare and exceptional cases." *Id*. (quoting *Barnes v. Rosenthal Toyota, Inc*., 126 Md. App. 97, 105 (1999)).

Before imposing sanctions under Rule 1-341(a), "a court [must] make two separate findings, each with different, but related, standards of review." *Id.* at 20. 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)). The "logic" behind that requirement is "that before such an extraordinary sanction is imposed there should be evidence that there has been a clear focus upon the criteria justifying it and a specific finding that these criteria have been met." *Talley*, 317 Md. at 436. That finding is reviewed "for clear error or an erroneous application of the law." *Christian*, 459 Md. at 21. Second, upon a finding that the predicate for an award of sanctions exists, a court must make a separate finding of "whether the party's conduct merits the assessment of costs and attorney's fees[.]" *Fort Myer*, 452 Md. at 72. This finding "will be upheld on appellate review unless found to be an abuse of discretion." *Id*.

C. The Trial Court's Finding that Mother Pursued her Motions without Substantial Justification

A "claim or litigation position is 'without substantial justification' if it is not fairly debatable, not colorable, or not within the realm of legitimate advocacy." *Id.* (footnotes omitted). A party acts with substantial justification if he or she has a "reasonable basis for believing that the claims w[ill] generate an issue of fact for the fact finder." *Inlet Assocs. v. Harrison Inn Inlet, Inc*., 324 Md. 258, 268 (1991). "[L]ack[] [of] substantial justification . . . cannot be found exclusively on the basis that 'a court rejects the proposition advanced by [a party or his or her counsel] and finds it to be without merit.'" *Christian*, 459 Md. at 25 (quoting *State v. Braverman*, 228 Md. App. 239, 260 (2016)). To be sanctionable, a legal argument must be "patently frivolous" and "outside the zone of what is considered legitimate advocacy." *Id*. at 25, 27.

Here, the court found lack of substantial justification after ruling that it was without jurisdiction to modify the Amended Virginia Support Order and rejecting Mother's position that material changes of circumstance warranted modification to the access provisions of the Virginia Custody Order. It explained its finding as follows: "With regard to [Father]'s request for 1-341 attorney's fees, I do believe that this case was filed without substantial justification. And I will entertain a motion for attorney's fees with required documentation." This finding was not supported by a "'brief exposition of the facts upon which [it] [was] based.'" *Fort Myer*, 452 Md. at 72 (quoting *Talley*, 317 Md. at 436). The court also failed to make the secondary finding that Mother's conduct warranted the imposition of costs and attorney's fees. On these bases, we are obligated to vacate the order awarding fees. But because we also conclude that a finding of lack of substantial justification is not sustainable on these facts, we shall reverse the order awarding fees. We explain.

Mother's motion for modification of child custody and visitation was not patently frivolous. She alleged a change in Father's living conditions since the entry of the Virginia Custody Order and testified about how, in her view, that change had affected A. She further alleged that A. was negatively impacted by the lack of time with Father and argued, in the alternative, that if Father moved to a residence with a bedroom for A., she would welcome expanding his access to A. That the court rejected Mother's positions as without merit does not transform a weak but colorable claim for modification of custody and visitation into one maintained without substantial justification.

Likewise, Mother's allegations and testimony that her rental expenses had increased, that Father's income had increased since the divorce hearing, and that A. should be enrolled in a preschool to assist with an alleged speech delay all were bases upon which the court could have concluded that an upward modification in child support was warranted. The court's legal ruling that it lacked jurisdiction to modify the Amended Virginia Support Order was based upon a statutory analysis that Father's attorney did not raise in his motion to dismiss or at the merits hearing.[10] Mother's misapprehension of the law on this point did not justify the extraordinary imposition of sanctions. *See Talley*, 317 Md. at 438 (negligence or ineptitude is insufficient to warrant sanctions under Rule 1-341, which is "intended to reach only intentional misconduct.")

We observe, also, the interplay in this case between Rule 1-341 and FL §12-103(a). Rule 1-341 does not mandate consideration of a party's financial status, needs, or ability to pay fees. In contrast, the statute permitting an award of attorneys' fees in custody, visitation, and child support cases does so require. Section 12-103(a) of the Family Law Article empowers a court to award "costs and counsel fees that are just and proper under all the circumstances" in those cases. At subsection (b), it mandates that the court "consider: (1) the financial status of each party; (2) the needs of each party; and (3)

[10] Father's attorney interjected during the circuit court's ruling that she had made this jurisdictional argument in her motion to dismiss. The record does not bear this out. The jurisdictional argument raised by Father in his motion to dismiss was that Mother's failure to register the Amended Virginia Support Order in Maryland precluded the circuit court from modifying it. He did not argue that even if the support order were registered, the court still would lack jurisdiction to modify it.

whether there was substantial justification for bringing, maintaining, or defending the proceeding" before making a fee award. This Court has recognized that, among its purposes, section 12-103 "allow[s] a court to ensure that the child who is the subject of a dispute is not further disadvantaged as a result of the dispute by leaving the party or parties who have custody or visitation with inadequate resources to provide for the child." *David A. v. Karen S.*, 242 Md. App. 1, 37, *cert. denied* 466 Md. 219 (2019). Section 12-103 thus ensures that the best interests of the child factor into any fee award made under the statute. *See Ross v. Hoffman*, 280 Md. 172, 174-75 (1977) (the best interest of the child standard is "firmly entrenched in Maryland and is deemed to be of transcendent importance."); *Petrini*, 336 Md. at 468 (consideration of "the benefit to the child of awarding attorney's fees to the mother" was appropriate under FL § 12-103).

Though Rule 1-341 serves a different purpose than section 12-103, we nevertheless conclude that it would be inconsistent with a child's "indefeasible right" to have his or her best interests considered in cases concerning custody, visitation, or child support to permit a party to circumvent these considerations by pursuing fees only under Rule 1-341. *A.A. v. Ab.D.*, 246 Md. App. 418, 422 (2020) (*citing Flynn v. May*, 157 Md. App. 389, 410 (2004), *cert. denied*, 471 Md. 75 (2020).[11] We are persuaded that in the

[11] Unsurprisingly, there are few appellate decisions addressing Rule 1-341 sanctions in cases involving child custody and child support and none that we have found affirming a sanction in that context. *See, e.g., Kelley v. Dowell*, 81 Md. App. 338 (1991) (reversing Rule 1-341 sanctions imposed against a father's attorney in a contested child custody case, but noting that it did not suggest that fees could not have been awarded under the Family Law Article); *Miller v. Miller*, 70 Md. App. 1, 11-13 (1987) (vacating a (Continued)

unique context of child custody and child support cases, upon making a predicate finding that a party pursued litigation in bad faith or without substantial justification under Rule 1-341, the court may need to consider the best interests of the child in making the secondary finding that a party's conduct merits an award of attorneys' fees. Here, had the court made such an assessment, it would have led to the inexorable conclusion that an order directing Mother to pay attorneys' fees to Father would disadvantage A. by depleting the limited financial resources available to his primary caregiver. Mother's sole income is the $2,100 in monthly spousal support she receives from Father. She is unable to work legally in the United States. Her testimony at the modification hearing established that her rent alone is more than her spousal support.

Accordingly, we hold that the circuit court failed to make the necessary findings that Mother proceeded in bad faith or without substantial justification to support a Rule 1-341 sanction. We also conclude that the sanction cannot be sustained on this record because there is no evidence Mother proceeded in bad faith and Mother's motion for modification of child custody and visitation was not patently frivolous as she alleged, among other things, a change in Father's salary and living conditions.

Rule 1-341 sanction against husband in a divorce case involving custody and child support because the court's findings were insufficient to support the award and remanding for additional findings under that Rule or, in the alternative, under the Family Law Article).

MOTION TO DISMISS GRANTED, IN PART, AND DENIED, IN PART; ORDER OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AWARDING ATTORNEYS' FEES REVERSED. COSTS TO BE PAID 3/4 BY THE APPELLANT AND 1/4 BY THE APPELLEE.