Circuit Court for Baltimore County
Case No. 03-C-08-0098058

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1310

September Term, 2019

NANCY M. LEITER

v.

LIBERTY MOBILE HOME PARK, ET AL.

Berger,
Friedman,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: October 7, 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.

This case arises from an Order of the Circuit Court of Baltimore County requiring Nancy M. Leiter, Appellant/Cross-Appellee, to pay rents received in the net amount of $159,797.60 to Russell Mirabile, Appellee/Cross-Appellant. Leiter and Mirabile, brother and sister, were partners in Liberty Mobile Home Park Partnership, but sought to dissolve their partnership in 2008. In 2010, both parties signed a Settlement Agreement, which was later incorporated into a Consent Order by the circuit court. Mirabile repeatedly refused to follow the terms of the Settlement Agreement and continuously challenged the Agreement by filing many nonmeritorious motions from 2010 through 2019. In 2019, the circuit court awarded Leiter various fees pursuant to Maryland Rule 1–341. On June 17, 2019, Mirabile filed a "Motion Regarding Rents" wherein he asked the circuit court to order that the balance of a rent escrow account be released to him, and that Leiter be ordered to pay him any amount of rent she collected from any of the parties' other properties located in Baltimore City. The circuit court granted Mirabile's Motion and ordered that the balance of the rent escrow account ($58,000.00) be paid to Mirabile and that Leiter pay to Mirabile $101,797.66, the amount of rent Leiter received from the other properties since 2015.

Leiter presents two issues for our review:

1. Whether the trial court abused its discretion when it declined to invoke the doctrine of unclean hands and awarded the rents be paid to Mirabile.

2. Whether the trial court erred as a matter of law in declining to apply the doctrine of election of remedies to Mirabile's request for post-2015 rents.

Mirabile filed a cross-appeal and presents four issues for our review:

1. Whether the order entered by the trial court on August 21, 2019 constituted a final judgment eligible for appeal and review by this Court.

2. Will this Court exercise its discretion under Maryland Rule 8–131 to consider an issue that was not preserved in the trial court.

3. Whether Leiter's counsel violated Maryland Rule 19–303.3 requiring candor to the tribunal, and, if so, did such a violation affect the judgment of the trial court.

4. Whether the trial court erred in finding Mirabile in contempt of court due to his repeated refusals to perform actions necessary to carry out the terms of the settlement agreement.

For the reasons stated herein, we affirm the judgment of the Circuit Court of Baltimore County.

FACTS AND PROCEDURAL HISTORY

In 1993, Mirabile and Leiter's mother passed away, leaving them with the joint title to Liberty Home Mobile Park ("Liberty"). Leiter and Mirabile became partners in Liberty Home Mobile Park Partnership, which owned Liberty as well as another property in Baltimore County and several other properties in Baltimore City (the "Ancillary Properties"). Eventually, due to disagreements between the two siblings, Leiter and Mirabile both wished to dissolve the partnership. The parties were unable to come to an agreement on dissolution terms themselves, which prompted Leiter to file a Complaint and move for a temporary restraining order and preliminary injunction against Mirabile in 2008. In November of 2010, a four-day trial was held. The circuit court found Leiter to be a "very credible witness" and further found that Mirabile was not "believable in hardly

any respect." Additionally, the trial court found not only that Mirable was not credible, but also that "he was evasive in answering questions."

On November 19, 2010, the trial court determined that Leiter was entitled to $147,000.00 for Mirabile's failure to account to the partnership for certain rents associated with partnership property. The court also awarded Leiter $168,004.12 in income for one partnership property, and $4,800.00 associated with another property. Due to the contested nature of the dispute between the parties, the court appointed a trustee for the purpose of winding up the affairs of the partnership and ordered Mirabile to attend anger management classes.

On November 22, 2010, both parties signed a Settlement Agreement which outlined that Leiter would buy Mirabile's interest in the partnership and the partnership would be dissolved. The Agreement further provided that Leiter would purchase Mirabile's interest in the partnership for $1,500,000.00, which included the properties associated with Liberty, certain Ancillary Properties, and another property owned solely by Mirabile. Leiter was required to pay Mirabile $60,000.00 within ten business days of the signing of the Agreement and $1,440,000.00 at the time of closing.[1]

Pursuant to the terms of the Agreement, closing was to occur on or before March 24, 2011. The date of closing would only be extended for acts of force majeure or acts by Mirabile to delay closing or financing. If Leiter failed to close within the time period set forth in the Agreement, the decision of the circuit court was to take effect. On

[1] The Agreement did not contain a financing contingency.

November 23, 2010, Mirabile executed an Irrevocable Power of Attorney to Kevin Keene, Esquire, as his agent for all real property transactions associated with the Settlement Agreement and to convey certain personal and business interests defined in the Settlement Agreement.

The circuit court entered the Settlement Agreement as a Consent Order on December 1, 2010. Leiter applied to 49 financial institutions but was unsuccessful in obtaining financing prior to the closing date of March 24, 2011 as specified in the Settlement Agreement. On April 14, 2011, several weeks after the closing date, Harford Bank approved Leiter's request for a loan in the amount of $1,100,000.00 and a line of credit for $400,000.00. Despite this approval, Mirabile refused to extend the closing date.

From 2011 through 2019, Mirabile refused to abide by the terms of the Settlement Agreement and challenged the Agreement repeatedly through various motions and appeals.[2] On April 29, 2011, Mirabile filed a "Motion for Appropriate Relief,"[3] seeking appointment of a trustee for the sale of the real property associated with the partnership. On May 17, 2011, Leiter filed an opposition to Mirabile's motion and a "Motion to Enforce Settlement Agreement." Mirabile's motion was denied and Leiter's motion was granted. Mirabile filed a "Motion to Reopen this Case to Revise Judgment" on June 6, 2011, which

[2] Leiter applied for and obtained financing an additional six times between 2011 and 2017. Each time she was required to pay extensive fees associated with the applications and subsequent approvals.

[3] Throughout the litigation, both Mirabile and Leiter filed numerous motions and pleadings in the circuit court. We refer to those motions and pleadings by the terminology used by the parties in his filings with the trial court.

was also denied. On August 15, 2011, Mirabile filed a "Motion to Alter/Amend Judgment," which was, again, denied. On August 17, 2011, Mirabile filed a "Notice Disputing Attorneys Lien and Request for Adjudication of Rights," which was denied in August of 2012.

On September 14, 2011, Mirabile filed a "Notice of In Banc Review." On September 29, 2011, Mirabile filed a "Motion for a Protective Order," which was later denied on February 8, 2012. In March of 2012, Mirabile filed a motion to transfer the case to Harford County, which was later denied. On August 14, 2012, the In Banc panel affirmed the circuit court's decision granting Leiter's motion to enforce the Settlement Agreement. The In Banc panel found that Leiter had exercised due diligence in attempting to obtain financing to close on March 24, 2011 and had not substantially breached any obligations under the Settlement Agreement. Mirabile filed a "Notice of Appeal with this Court" from the denial of his "Notice Disputing Attorneys Lien and Request for Adjudication of Rights" on September 13, 2012. This Court dismissed Mirabile's appeal on November 30, 2012 due to his failure to file a Civil Appeal Information Report pursuant to Maryland Rule 8–205. On October 9, 2012, Mirabile filed a "Motion for Appointment of a Special Auditor." In this Motion, Mirabile alleged that Leiter was guilty of various crimes including misappropriation, embezzlement, and financial crimes against vulnerable adults related to actions Leiter took in 2005 regarding unrelated Deeds of Trust. That motion was denied on January 24, 2013. Mirabile also revoked the Irrevocable Power of Attorney that he executed in connection with the Settlement Agreement.

On December 21, 2012, Leiter filed a "Petition for Contempt and Other Relief" against Mirabile. After holding two days of testimony, the Circuit Court for Baltimore County found that Mirabile did not abide by the terms of the Settlement Agreement. To purge himself, the circuit court ordered Mirabile to sign deeds to several properties as required by the Settlement Agreement. On February 13, 2013, Mirabile filed a "Motion to Rescind the Agreement," which was denied one week later. On February 15, 2013, Mirabile filed an appeal of the ruling on contempt with this Court. Mirabile filed another appeal with this Court regarding the denial of his motion to rescind on March 28, 2013. This Court consolidated both appeals and ultimately dismissed them both when Mirabile failed to file his brief, despite being given multiple extensions.[4]

Out of court, Mirabile's attempts to evade the Settlement Agreement continued. In 2014, Mirabile solicited the services of Jay Miller, Esquire ("Miller") to negotiate with Leiter on his behalf. Miller informed Leiter's attorney, Christine Nielson, Esquire, that Mirabile would settle "everything" for $2,500,000.00, an amount $1,000,000.00 higher than was agreed-upon in the terms of the Settlement Agreement. Leiter declined this offer. Mirabile then requested $1,500,000.00 in addition to ownership of all Ancillary Properties, contrary to the terms of the Settlement Agreement. Leiter declined this offer in a letter

[4] Mirabile also filed a defamation action against Leiter, which was addressed by this Court in an unreported opinion. *See Mirabile v. Leiter*, No. 0513, Sept. Term 2015, (filed March 15, 2016). Mirabile claimed that Leiter had defamed him by informing third parties that he was no longer a partner of the Liberty Mobile Home Park Partnership. *Id.* We affirmed the circuit court's granting of summary judgment in favor of Leiter on all counts. *Id.*

dated September 19, 2014. On September 26, 2014, Miller stated that all attempts to settle were "now off the table."

Leiter hired Mary Hammel, Esquire ("Hammel") as her closing agent and title attorney in 2014. Miller and Hammel began communication in 2015, but Mirabile thwarted any attempts to facilitate closing. Harford Bank approved Leiter for a loan once again and closing was intended for the end of January 2015. Hammel attempted to communicate with Miller to obtain documents from Mirabile which were necessary to complete closing. Hammel's efforts to obtain these documents were unsuccessful. Miller made another attempt to "settle" the matter later in 2015, which Leiter declined.

In the meantime, without Leiter's knowledge, Mirabile had an environmental study conducted on the Liberty Trailer Park in October of 2015. In the study, which Mirabile forwarded to Harford Bank, an engineer opined that the site had been filled with construction debris and that there was hazardous material contamination on the property. The engineer also stated that the cost of remediation could exceed the value of the property. The loan officer informed Leiter "[y]our brother just cost you a lot of money . . . [i]f we move forward, having received this notice, we have no choice but to reengage an environmental professional to do at the very least, a completely new Phase 1 evaluation and possibly more." During this time, Mirabile continued to collect rent from the Ancillary Properties.

On January 9, 2015, Mirabile filed a "Motion for Contempt" and on February 12, 2015, filed a "Motion to Unseal." Both motions were later withdrawn. In December of

2016, Mirabile filed a "Motion to Consolidate" the case with another case pending in the circuit court. The circuit court denied that motion on February 6, 2017. Mirabile filed another "Renewed Motion to Rescind" on February 13, 2017, which was amended on April 10, 2018. Leiter filed an opposition to Mirabile's motion on March 10, 2017 and a "Petition for Contempt and Other Relief" on July 17, 2017.

The circuit court denied Mirabile's "Amended Renewed Motion to Rescind" and further denied Leiter's "Counter-Motion for Breach." The circuit court granted Leiter's "Petition for Contempt" on October 31, 2018. The court denied both Leiter and Mirabile's requests for attorney's fees. On November 30, 2018, Leiter filed a "Motion Pursuant to Rule 1–341," requesting attorney's fees, which was granted in part and denied in part, awarding some of the fees Leiter requested. Leiter filed a "Motion to Alter or Amend" and the circuit court awarded additional fees and expenses for a total amount of $151,637.50 to be paid to Leiter by Mirabile. Mirabile filed an appeal of this award, and this Court affirmed the circuit court's decision.[5]

On June 17, 2019, Mirabile filed a "Motion Regarding Rents" wherein he requested the circuit court to order the rent escrow account be released to him. Additionally, Mirabile requested that Leiter be ordered to pay to him any amount she had directly collected in rent from the Ancillary Properties after she recorded the deed to the properties in 2015. Leiter filed a "Response to Motion Regarding Rents" on July 9, 2019. Mirabile and Leiter executed closing on July 12, 2019. The circuit court heard oral arguments on the "Motion

[5] *See Mirabile v. Leiter*, No. 2905, Sept. Term 2018 (filed April 6, 2020).

Regarding Rents" on August 12, 2019. The Court granted Mirabile's motion and ordered Leiter to pay to Mirabile the rents collected since 2015 and that the balance of the escrow account be released to him, totaling $159,797.66.

Additional facts shall be added where they are necessary to the issues in this appeal.

DISCUSSION

I. The trial court did not abuse its discretion in declining to apply the doctrine of unclean hands when awarding Mirabile the balance of the rent escrow account and the rents collected by Leiter since 2015.

The doctrine of unclean hands is intended to prevent a party who is "guilty of inequitable conduct, relating to the matter in which relief is sought, from receiving equitable relief." *Fischer Org., Inc. v. Landry's Seafood Rests., Inc.*, 143 Md. App. 65, 79 (2002) (citing *Hlista v. Altevogt*, 239 Md. 43, 48 (1965)). Although the doctrine is traditionally only applied in equity, it has been expanded to apply to cases at law as well. *Mona v. Mona Elec. Grp., Inc.*, 176 Md. App. 672, 713 (2007). Because "'the doctrine is not one of absolutes,' we disturb a trial court's decision to invoke the doctrine[, or not,] only when the court abuses its discretion." *Hicks v. Gilbert*, 135 Md. App. 394, 401 (2000) (quoting *Manown v. Adams*, 89 Md. App. 503, 511 (1991)).

The doctrine of unclean hands requires the satisfaction of two prongs to apply to bar recovery. *See Turner v. Turner*, 147 Md. App. 350, 419–20 (2002). First, the party seeking relief must be guilty of unlawful, fraudulent, illegal, or inequitable conduct. *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 729–30 (2007); *Hicks*, *supra*, 135 Md. App. at 400. Second, the conduct "must relate to the matter with relation to which the party seeks

assistance." *Greentree Series V, Inc. v. Hofmesiter*, 222 Md. App. 557, 571 (2015) (citing *Wells Fargo*, *supra*, 398 Md. at 729–30)). In other words, there must be a nexus between the wrongful conduct and the relief the party now seeks from the court. *Turner*, *supra*, 147 Md. App. at 420.

"A party is not guilty of fraudulent or illegal conduct by merely breaking a contractual obligation."[6] *Greentree*, *supra*, 222 Md. App. at 571. Just because a party breaches their contractual duty under an agreement, does not mean they acted wrongfully for purposes of application of the doctrine of unclean hands. *Id.* at 571–72.

We conclude that the trial court did not abuse its discretion in failing to apply the unclean hands doctrine under the facts of this case. Despite Mirabile's continuous, frivolous actions as addressed by the trial court in various proceedings, those same actions do not necessarily require a trial judge to invoke the doctrine of unclean hands. During the motions hearing on August 12, 2019 for the "Motion Regarding Rents" filed by Mirabile, the trial court stated:

> THE COURT: In this particular case, this Court issued an opinion which in essence is enforcing the contract that the parties entered into . . .
>
> But that's neither here nor there. I found that to be an enforceable agreement. As part of that enforceable agreement, I find that Mr. Mirabile is entitled to the rents until closing

[6] In *Greentree*, this Court noted that one of the reasons for not finding unclean hands was that the Substitute Trustees benefited from Greentree's actions. *Greentree*, *supra*, 222 Md. App. at 571. In fact, the Substitute Trustees recovered over $38,000 more than they would have had there been no default on the part of Greentree. *Id.* Leiter and Mirabile's situation is similar. Here, Leiter arguably benefited from Mirabile's delay in that she did not have to pay the full purchase amount due under the Consent Order for eight years.

> period. That's what's in the contract. That's what he's entitled to do.
>
> His dirty hands has been discussed in past cases, past motions. I have done what I believe was appropriate in my award of attorney's fees.
>
> But in this particular case, I find that Mr. Mirabile is entitled, in accordance with Paragraphs 13 and 14 of the agreement that Mr. Mirabile shall be entitled to collect the rents on the ancillary properties, which were defined elsewhere in the agreement, until closing.
>
> Closing was July 12th, 2019. He's entitled to rents until that point, period.

Although this Court does not countenance or condone many of Mirabile's actions in his dealings with Leiter, we cannot hold that the trial court judge abused his discretion in failing to apply the doctrine of unclean hands. In sum, although Leiter made a sufficient showing to establish that Mirabile engaged in unclean hands, it was not mandatory for the trial judge to so find. The question is not whether we, sitting as the trial court, would have applied the doctrine of unclean hands. The only question before us as appellate judges is whether the trial judge abused his considerable discretion in his failure to apply the doctrine of unclean hands. That is a very high bar, and if it is close, it is not surmounted.

In our view, the trial court did not abuse its discretion in finding that Mirabile's actions had been appropriately dealt with in the award of attorney's fees and that unclean hands did not apply under the circumstances of this case.

II. The trial court did not err as a matter of law in declining to apply the doctrine of election of remedies.

The parties have agreed that the standard of review for the issue of the doctrine election of remedies is *de novo*. We will look to see if the trial court erred in declining to apply the doctrine of election of remedies as a matter of law.

The purpose of the doctrine of election of remedies is to prevent double redress for a single wrong. *Herring v. Citizens Bank & Trust Co.*, 21 Md. App. 517, 543 (1974). When applying the doctrine, the court is attempting to prevent any inconsistent results between cases. *Preissman v. Mayor of Baltimore*, 64 Md. App. 552, 562 (1985). It is well settled that this doctrine is a harsh one and therefore "a court should not strain to employ it or seek to extend lightly its applicability." *Shoreman Developers, Inc. v. Randolph Hills, Inc.*, 269 Md. 291, 299 (1973). Instead, it "should only be applied to actions taken by the same litigant which are necessarily inconsistent." *Petillo v. Stein*, 184 Md. 644, 652 (1945).

Leiter relies on the cases of *Shoreham* and *Wolin v. Zenith Homes, Inc.*, 219 Md. 242 (1959) to support her claim that the doctrine of election of remedies bars Mirabile from seeking to recover the post-2015 rents due to his choice of filing motions to rescind earlier in the litigation. Leiter's reliance on these cases is misplaced. In *Shoreham*, the Court of Appeals dealt with the issue of whether a party could seek both rescission of a contract and restitution. *Shoreham*, *supra*, 269 Md. at 298–99. That is not the case here. We

acknowledge that Mirabile filed various motions to rescind the agreement.[7] These motions were part of the same case that this instant appeal arises from. Critically, there is no separate case from which an election of remedy can bar this determination. More importantly, Mirabile did not ask the trial court for *damages*; instead, he petitioned the court to receive the monies he was due under the Agreement.[8] Once the trial court denied Mirabile's motions to rescind the Agreement, the Agreement was ratified as to both parties and the duties must be carried out as laid out by the terms of the Agreement.

In *Wolin*, the Court of Appeals analyzed the issue of a contract created due to fraudulent misrepresentation. *Wolin*, *supra*, 219 Md. at 250–51. It is well settled that when a party to a contract discovers fraud, the party must decide between pursuing rescission of the contract or to ratify and claim damages. *Id.* Again, Leiter's reliance on this case is misplaced. There was no suggestion of fraud during any of the motions or ongoing litigation to trigger this analysis. Notably, Mirabile is not seeking damages, rather just the monies due to him under the terms of the Agreement. Accordingly, we conclude that the trial judge did not err as a matter of law in declining to apply the doctrine of election of remedies.

[7] Mirabile filed a "Motion to Rescind the Agreement" on February 13, 2013, a "Renewed Motion to Rescind" on February 13, 2017, and an "Amended Renewed Motion to Rescind" on April 10, 2018. All three of these motions were denied by the trial court.

[8] The relevant language of the Settlement Agreement, which was entered as a Consent Order on December 1, 2010, provides: "Mirabile shall be entitled to collect the rents on the Ancillary Properties until Closing."

III. The issues on appeal come from a final judgment from the trial court and are therefore reviewable by this Court.

The requirement that an appeal come from a final judgment is set out in Maryland statutory law. Md. Code (1974, 2013 Repl. Vol.), § 12–301 of the Courts & Judicial Proceedings Article ("C&JP"). Accordingly, we review whether the issue on appeal comes from a final judgment under a *de novo* standard of review. *Schisler v. State*, 394 Md. 519, 535 (2006).

It is well settled in Maryland that, with few exceptions which are not relevant to this appeal, an appeal may be taken to this court under C&JP § 12–301 "only from a final judgment entered in a civil or criminal case by a circuit court." *Gruber v. Gruber*, 369 Md. 540, 546 (2002) (internal citations omitted). The underlying policy of this rule is to "avoid piecemeal appeals." *Id.*

To constitute a final judgment, a ruling of the circuit court must be an "unqualified, final disposition of the matter in controversy." *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989). This Court has held that a ruling must have three qualities to be a final judgment:

> (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court acts pursuant to Maryland Rule 2–602(b) to direct the entry of a final judgment as to less than all of the claims or all of the parties, it must adjudicate or complete the adjudication of all claims against all parties; [and] (3) it must be set forth and recorded in accordance with Rule 2–601.

Metro Maint. Sys. S., Inc. v. Milburn, 442 Md. 289, 298 (2015). "An order need not resolve the merits of a case, however, to constitute a final judgment." *Id.* at 299.

The only prong at issue in this appeal is the first item, that is, whether the trial court intended the decision to be "an unqualified, final disposition of the matter in controversy." *Id.* at 298. Mirabile argues that this appeal is not authorized because it is not a final judgment due to the trial court's failure to order an accounting and to specifically mention his counts of breach of contract in its Memorandum Opinion dated October 31, 2018. We disagree.

Early in the midst of this years-long litigation, the trial court entered a Consent Order on December 13, 2010 which was the final judgment for purposes of this case as it addressed all of the parties concerns during the litigation. All of the motions filed by both parties and hearings since that time have been supplemental, post-judgment proceedings, each of which is appealable in its own right as they create their own final judgment. *Id.* at 299. Additionally,

> 'consent judgments should normally be given the same force and effect as any other judgment, including judgments rendered after litigation.' *Jones v. Hubbard*, 356 Md. 513, 532 (1999); *Chernick v. Chernick*, 327 Md. 470, 478 (1992). [Consent judgments are] a 'judgment and an order of court. [Their] only distinction is that [they are] a judgment that a court enters at the request of the parties.' *Hubbard*, *supra*, 356 Md. at 528. Thus, a consent order entered properly carries the same weight and is treated as any other final judgment.

Kent Island, LLC v. DiNapoli, 430 Md. 348, 359-60 (2013). Here, there is no further order to be issued nor is there any further action to be taken in the case. *In re Billy W.*, 386 Md. 675, 688–89 (2005); *Ramsey, Inc. v. Davis*, 66 Md. App. 717, 725 (1986). Therefore, the

Order from which this appeal is taken was entered on August 21, 2019 by the trial court and constitutes an appealable, final judgment.

IV. This Court will not exercise jurisdiction over an issue not heard in the trial court pursuant to Maryland Rule 8–131.

Besides jurisdictional issues, an appellate could will ordinarily "not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule 8–131. Although Rule 8–131 provides that this Court "may" decide another issue "if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal," this is not done frequently. *Id.*; *Chaney v. State*, 397 Md. 460, 468 (2007). Indeed, the discretion to hear an issue that was not preserved in the trial court is a discretion that "appellate courts should rarely exercise." *Chaney*, *supra*, 397 Md. at 468.

The purpose of Rule 8–131 is to "promote the orderly administration of the law and fairness to the opposite party." *Wilkerson v. State*, 420 Md. 573, 597 (2011) (quoting *Davis v. State*, 189 Md. 269, 273 (1947)). When this Court exercises its discretion under Rule 8–131, the opposing party is deprived of the opportunity to admit evidence related to that issue at trial. *Id.* "[T]he interests of fairness generally are furthered by requiring the issues to be brought first to attention of the trial court so that the trial court may pass upon it in first instance." *Jones v. State*, 379 Md. 704, 714 (2004).

There is evidence in the record that the issue Mirabile seeks to have reviewed by this Court could have been addressed in the trial court if Mirabile so desired. Mirabile alleges that the misconduct of Leiter's counsel was not discovered until he reviewed the

transcript of a hearing that occurred on January 25, 2013. Nevertheless, both Mirabile and his counsel were present at the proceedings that occurred on January 25, 2013 and heard the exact testimony Mirabile now alleges demonstrates misconduct.

Assuming *arguendo* this Court chose to exercise discretion under Rule 8–131, Leiter would be severely prejudiced as she had no opportunity to present evidence in a trial court to defend herself or her counsel. *See id.* at 715. Additionally, in our view, the exercise of discretion in this case does not promote the orderly administration of justice. *Id.* Accordingly, we decline to exercise discretion pursuant to Maryland Rule 8–131 to consider an issue not preserved in the trial court.

V. This Court will not entertain arguments on the issue of an alleged attorney violation of Maryland Rule 19–303.3 because it was not raised as an issue in the trial court.

Similarly, we decline to exercise our discretion under Maryland Rule 8–131 to entertain arguments involving an alleged attorney violation of Maryland Rule 19–303.3. This issue was not raised nor decided by the trial court and consideration would prejudice Leiter. *See supra* Section II.IV. Further, in our view, consideration of this issue not raised in the trial court would otherwise not promote the orderly administration of justice. *See supra* Section II.IV.

Although the issues related to the cross-appeal are not preserved, we note that these issues appear to be completely without merit and absurd. An example may illustrate. Mirabile executed an irrevocable power of attorney to sign the settlement documents on his behalf. Mirabile then purported to revoke the irrevocable power of attorney. In our

view, this was a frivolous attempt to revoke. But Mirabile's cross-appeal seeks to place blame for this frivolously-attempted revocation of the irrevocable power of attorney, not where it belongs, on Mirabile himself, or on Mirabile's trial or appellate lawyers, but rather on Leiter's counsel, who, it is asserted, had an ethical obligation to tell the circuit court of the frivolousness of Mirabile's position. Quite simply, it is hard for us to imagine a more frivolous position. Sadly, the cross-appeal is only the latest chapter in Mirabile's 10-year campaign of litigation foolishness.

VI. Mirabile's cross-appeal regarding the trial court's finding that he was in breach of contract was not timely filed and is therefore time barred.

Maryland Rule 8–202 provides that a "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. Mirabile's cross-appeal addresses the trial court's finding that Mirabile was in constructive civil contempt. Critically, the order holding Mirabile in contempt was entered on October 31, 2018. Mirabile filed his cross-appeal, including this issue, on September 18, 2019–almost a full year after the order was entered. Accordingly, pursuant to Maryland Rule 8–202, Mirabile's cross-appeal on this issue is time barred.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID 50% BY APPELLANT/CROSS-APPELLEE AND 50% BY APPELLEE/CROSS-APPELLANT.