

Circuit Court for Prince George's County
Case No. CAD18-04949

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1335

September Term, 2021

E. N.

v.

T. R.

Kehoe,
Beachley,
Shaw,

JJ.

PER CURIAM

Filed: May 3, 2022

*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.

—Unreported Opinion—

In this appeal, appellant E.N. seeks a reversal of an Order issued by the Circuit Court for Prince George’s County that denied, without a hearing, her “Motion for Award of Attorney’s Fees” against appellee T.R. We agree that the circuit court erred, and we shall reverse and remand for further proceedings.

We set forth an abbreviated procedural background to provide context for this appeal. In July 2019, the circuit court awarded T.R. primary physical and joint legal custody of E.N.’s children, concluding that T.R. qualified as the children’s *de facto* parent. We affirmed, construing *Conover v. Conover*, 450 Md. 51 (2016), as holding that a *de facto* parent relationship may be created by the conduct of one legal parent. *E.N. v. T.R.*, 247 Md. App. 234, 247 (2020). In a 5-2 decision, the Court of Appeals reversed, concluding that “where there are two existing legal parents, both parents must be shown to have consented to a third party’s formation of a parent-like relationship with a child.” *E.N. v. T.R.*, 474 Md. 346, 398 (2021).

On August 16, 2021, just over thirty days after the Court of Appeals issued its opinion, E.N. filed in the circuit court her Motion for Award of Attorney’s Fees, attaching an affidavit concerning her financial circumstances and the legal costs she incurred in the trial and appellate courts to assert and defend her custody rights. E.N. also attached an affidavit from her counsel in support of her claim for attorney’s fees. On September 3, 2021, T.R. moved to dismiss E.N.’s motion for attorney’s fees, asserting, *inter alia*, that she did not have the financial ability to pay E.N.’s attorney’s fees and that her litigation efforts were conducted in good faith and in the best interest of the children. E.N. filed a response to T.R.’s motion to dismiss on September 16, 2021, requesting a hearing. By an

Order dated September 29, 2021, the circuit court denied E.N.'s Motion for Award of Attorney's Fees as well as her request for a hearing.

Maryland Code (1984, 2019 Repl. Vol.), § 12-103 of the Family Law Article provides:

- (a) The court may award to either party the costs and counsel fees that are just and proper under all the circumstances in any case in which a person:
 - (1) applies for a decree or modification of a decree concerning the custody, support, or visitation of a child of the parties; or
 - (2) files any form of proceeding:
 - (i) to recover arrearages of child support;
 - (ii) to enforce a decree of child support; or
 - (iii) to enforce a decree of custody or visitation.
- (b) Before a court may award costs and counsel fees under this section, the court shall consider:
 - (1) the financial status of each party;
 - (2) the needs of each party; and
 - (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.
- (c) Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party costs and counsel fees.

In deciding whether to grant attorney's fees pursuant to subsection (b), the court must consider the "financial status" and "needs" of each party, considerations that require an evidentiary hearing. The court's denial of E.N.'s request for attorney's fees in the instant case was tantamount to granting a motion to dismiss her claim for attorney's fees without a hearing despite her request for a hearing. *See Rule 2-311(f)* ("[T]he court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section."); *see also Morris v. Goodwin*, 230 Md. App. 395, 410 (2016) (holding that, where a hearing was requested, a hearing was required before granting a

motion to dismiss); *Parker v. Hous. Auth. of Balt. City*, 129 Md. App. 482, 488 (1999) (same); *Briscoe v. Mayor & City Council of Balt.*, 100 Md. App. 124, 127–28 (1994) (same). Additionally, the court failed to provide any rationale for its decision. “The only way we can determine whether the court considered the statutorily mandated factors is by reviewing the court’s statements on the record.” *Walker v. Grow*, 170 Md. App. 255, 292 (2006). Because the circuit court’s denial of E.N.’s Motion for Award of Attorney’s Fees without a hearing constitutes clear error, we shall summarily reverse the circuit court’s September 29, 2021 Order, and remand this matter to the circuit court for further proceedings to consider E.N.’s request for attorney’s fees.¹

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
REVERSED. CASE REMANDED TO THAT
COURT FOR FURTHER PROCEEDINGS.
APPELLEE TO PAY COSTS.**

¹ In E.N.’s Motion for Award of Attorney’s Fees, she requested the circuit court to order T.R. to pay appellate costs. We note that both our Court and the Court of Appeals issued Mandates that included a “Statement of Costs.” As the Court of Appeals held in *Klopfer v. Werber*, 264 Md. 419, 421 (1972):

It is incumbent upon the parties to make known to the Clerk the costs they have incurred if those costs are to become part of the order of this Court evidenced by the mandate. The award of costs is of those costs shown in the mandate and if a party does not make known to the Clerk in due time the amount of each of his costs, he is deemed to have waived or abandoned his claim to repayment of any cost not furnished the Clerk.

Thus, the circuit court lacks the authority to alter the assessment of appellate costs in the respective Mandates.