

Circuit Court for Anne Arundel County
Case No. 02-C-13-182114

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1530

September Term, 2016

EVELYN FAYE CARTRETTE

v.

R-A BROOKLYN PARK, LLC

Friedman,
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: April 26, 2018

*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 invokes, among others, the first law of holes, which suggests that when one finds oneself in a hole, stop digging. Evelyn Faye Cartrette, appellant here, has failed to follow this important (if informal) law.

FACTS

Cartrette was formerly married to Bernard Odell Jeffers. Jeffers was the sole owner of Brooklyn Cycle World, Inc., a motorcycle dealer. When they divorced, Jeffers was ordered to pay Cartrette a monetary award of approximately \$2.3 Million and indefinite alimony of \$7,500 per month. Jeffers did not comply with all of these obligations and owed Cartrette money. When Brooklyn Cycle then sold real property,¹ Cartrette first attempted to garnish proceeds belonging to Jeffers and then filed suit against the purchaser, R-A Brooklyn Park, LLC, alleging fraudulent conveyance and seeking to set aside the transfer. The parties filed cross motions for summary judgment. The circuit court granted R-A Brooklyn Park's motion and denied Cartrette's. Thereafter, the circuit court found that Cartrette's lawsuit had been brought "in bad faith and without substantial justification" and awarded attorneys' fees in the amount of \$21,288.17. Cartrette appealed from these judgments. This Court, in an unreported opinion, affirmed the grant of summary judgment but reversed the attorneys' fee award, remanding the matter to the circuit court for it to "determine ... with greater clarity ... precisely when the bad faith [or lack of substantial justification] began." *Cartrette v. Jeffers*, Case. No. 2082 Sept Term. 2014, 2015 WL

¹ The property is located at 5808 Ritchie Highway, next to Brooklyn Cycle World's showroom, and is the location of a Rite Aid pharmacy.

7225404 at *7 (quoting *Optic Graphics, Inc. v. Agee*, 87 Md. App. 770, 792 (1991)). Cartrette sought certiorari review by the Court of Appeals but was denied.

On remand, Cartrette did not limit herself to the scope of the remand, but argued, notwithstanding our opinion, that summary judgment had been improperly awarded to R-A Brooklyn Park. She also argued that an award of attorneys' fees against her was not justified. Despite her objections, however, the circuit court declined to reconsider the summary judgment and entered two awards of attorneys' fees: (1) for the period of November 11, 2013 to July 31, 2014, in the amount of \$21,288.17; and (2) for the period from August 1, 2014 to July 31, 2016, in the amount of \$64,021.68. Back in this Court, Cartrette continues to argue that both summary judgment and attorneys' fees were improperly awarded.

ANALYSIS

I. SUMMARY JUDGMENT AND LAW OF THE CASE

Cartrette's first argument is that summary judgment was improperly awarded. She has lots of reasons to support this assertion: factual errors; legal mistakes; logical inconsistencies.² None of these matter. Even if we assume everything Cartrette says is true,

² Cartrette provides a laundry list of alleged errors. Among these are: (1) R-A Brooklyn Park's motion was not supported by proper affidavits; (2) the trial and appellate courts applied different evidentiary standards to her affidavits than they did to R-A Brooklyn Park's affidavits; (3) R-A Brooklyn Park never produced any evidence establishing who really owned the LLC; (4) the tax returns produced by Brooklyn Cycle reflected that only the lease was sold, not the property itself; (5) the HUD statement from the sale revealed numerous irregularities, including that there were no payments for prorated property taxes or utility bills, no property survey was conducted, no settlement fees were charged, no attorneys were involved in the transaction, and only a one percent commission was paid on the sale; (6) Frank Dimick, R-A Brooklyn Park's principal, did

none of these errors, nor all of them together, provide a reason for reconsidering our prior decision.

To the uninitiated, the “law of the case” doctrine, which compels this result, must seem harsh. Under the law of the case doctrine, once a decision becomes final in an appellate court, it is binding in all subsequent proceedings in the trial courts. *Hawes v. Liberty Homes, Inc.*, 100 Md. App. 222, 231 (1994). This rule applies even if, maybe especially if, the original decision in the appellate court was wrong. There are two important reasons for this rule. *First*, it encourages parties to bring all claims and defenses at the outset. *Second*, it promotes the finality of judgments. The result is clear: the time for Cartrette to have argued her motion for summary judgment has long since passed. She may not argue it again.

II. ATTORNEYS’ FEES

A critical question in the first appeal, and the point for which it was remanded was for the circuit court to determine on what date Cartrette’s bad faith (or lack of substantial justification) began. The first time ‘round, the only justification that the trial court mentioned was that Cartrette should have known that her claim was frivolous upon receipt of an affidavit prepared by Frank Dimick, R-A Brooklyn Park’s principal. *Cartrette* at *9. This Court found, however, that Dimick’s version of events was not binding on Cartrette. *Id.* (quoting *Art Form Interiors, Inc. v. Columbia Homes*, 92 Md. App. 587, 597 (1992)).

not sign any of the documents related to the transaction; and (7) rent payments for the property were still being sent to Brooklyn Cycle two months after the sale. We take no position on the merits of her contentions.

We remanded, therefore, for the trial court to determine a new, more objective date on which Cartrette knew or should have known that she had no non-frivolous basis for suing R-A Brooklyn Park. Significantly, if the date was on or before November 11, 2013 (the date R-A Brooklyn Park began accruing legal expenses due to Cartrette’s Complaint), the circuit court could reinstitute the entire amount of attorneys’ fees. But if the date was after November 11, 2013, the trial court would have to reduce the fees to only those incurred after the date.

The trial court held a hearing and issued an order finding that Cartrette knew or should have known that she had no non-frivolous basis for instituting suit against R-A Brooklyn Park before November 11, 2013:

[a]t the time the Complaint was filed, [Cartrette] had already acquired all settlement documents and a statement from Frank Dimick, the owner of R-A Brooklyn Park and the purchaser of the Subject Property, that he had no relationship with her ex-husband, Bernard Jeffers, and thus Cartrette already knew or should have known that the Subject Property was purchased by R-A Brooklyn Park, LLC in good faith, with fair consideration[,] and without any knowledge of any possible fraudulent intent by Bernard Jeffers. Accordingly, at the time Cartrette filed the Complaint, it was filed in bad faith as Cartrette was fully informed that R-A Brooklyn Park was a purchaser for fair consideration without knowledge of fraud at the time of purchase.

The trial court listed six facts supporting this finding (which we have substantially revised):

- Cartrette already had a copy of the settlement documents, and thus knew or could have known that fair consideration was paid, at the time she filed the Complaint.

- Cartrette’s then lawyer, Kevin M. Schaeffer, stated that, upon inspection of the settlement documents, he recognized the sale was valid.
- In response to a writ of garnishment filed by Cartrette, R-A Brooklyn Park answered that it had paid cash in full at closing.
- In response to a second writ of garnishment filed by Cartrette, R-A Brooklyn Park filed a plea of *nulla bona*,³ declaring that it “neither possessed nor possess any property of [Jeffers].”
- R-A Brooklyn Park provided additional information about the sale in response to a letter of inquiry from Cartrette’s next lawyer, John J. Ryan, seeking information about alleged irregularities in the sale.
- Cartrette engaged in no discovery by which she could have substantiated her claims.

While these are not as objectively-verifiable as we might perhaps have hoped (or as Cartrette would have us demand), they are a more than sufficient basis for an award of attorneys’ fees. In this regard, it is also particularly worth noting that we are in a different posture reviewing this award of attorneys’ fees than we were last time. Last time, we found that the circuit court had made insufficient findings, *Cartrette* at *10, so we remanded for it to make more findings. *Id.* On the current record, there are significant findings—the six findings that we list above. These we review for an abuse of discretion. *Major v. First Virginia Bank-Central Maryland*, 97 Md. App. 520, 529-30 (1993). Finding none, we affirm.

³ Nulla bona simply means “no goods” and by so pleading, R-A Brooklyn Park was saying that it held nothing belonging to Jeffers.

CONCLUSION

Cartrette's frustration with Jeffers is understandable. We glean, from the record that is available to us, that he is wealthy man and owes her a considerable amount of money. But it is Jeffers not R-A Brooklyn Park that owes her. Her failure to accept that has cost her dearly and will continue to do so until she stops digging.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**