

Circuit Court for Montgomery County
Case No. 139152-FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1655

September Term, 2019

THERESA A. JORDAN

v.

PAUL NICHOLS ROMANI

Leahy,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: January 29, 2021

*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.

Theresa A. Jordan, appellant, and, Paul Nichols Romani, appellee, were granted a Judgment of Absolute Divorce on May 23, 2017, in the Circuit Court for Montgomery County. A written settlement agreement between the parties that resolved all support and property rights was incorporated into the judgment. Relevant to the issues on appeal, the settlement agreement provided that the parties would equalize funds in their respective Thrift Savings Plan (“TSP”) retirement accounts, according to the value of the accounts on the date of the divorce.

After entry of the judgment of divorce, Ms. Jordan filed a motion seeking relief in the form of interest on her share of Mr. Romani’s TSP account that had accrued from the date of the divorce to the date of transfer, which occurred on August 2, 2018. Mr. Romani filed a motion for summary judgment, asserting that the settlement agreement contained no provision for investment gains or losses beyond the date of divorce. He requested Ms. Jordan pay attorney’s fees that he incurred to defend the motion for an award of interest. The court granted summary judgment in favor of Mr. Romani and ordered Ms. Jordan to pay the attorney’s fees. Ms. Jordan filed an appeal from that order, presenting numerous questions, many of which are duplicative or are not properly before this Court. We have consolidated and distilled Ms. Jordan’s questions into three:¹

¹ Ms. Jordan presents the following questions in her brief:

1. Did the court err in granting appellee summary judgment failing to apply law to facts?
2. Did the court fail to adjudicate the case actually before it?
3. Did the Court err in refusing to hear appellant’s case of unjust enrichment, violating Maryland Rules 18-100.4, 18-101.1, 18-101.2, 18-102.2, 18-102.3, and 18-102.6?

1. Did the court err in granting summary judgment in favor of Mr. Romani?
2. Did the court err or abuse its discretion in awarding attorney’s fees to Mr. Romani?
3. Did the court abuse its discretion in denying Ms. Jordan’s motion for sanctions?

For the reasons that follow, we vacate the order granting attorney’s fees and remand for further proceedings. We otherwise affirm the judgments of the circuit court.

BACKGROUND

The parties were married in 1981. In 2016, Ms. Jordan filed a complaint for absolute divorce. On February 14, 2017, a mediation conference was held and the parties reached an agreement that resolved support and property rights, including alimony, retirement assets, life insurance, attorney’s fees, health insurance, vehicles, and personal property. The terms of that agreement were set forth in a three-page written document (“settlement

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4. Did Appellee fail to meet the test entitling him to attorneys’ fees under Maryland Rule 1-341?
 5. Did the court fail to consider the correctness of the amount to which Appellee would be entitled if he were entitled to attorneys’ fees?
 6. Did the court fail to acknowledge/consider Appellee’s perjury, counsel’s subornation of perjury, etc. involved in padding the bill for the attorneys’ fees?
 7. Did the court demonstrate bias that prevented proper adjudication of the matter?
 8. Did the court refuse to acknowledge evidence or consider Appellee’s bad faith and nefarious acts?
 9. Did the court engage in *ex parte* communication with Appellee’s counsel, prohibited by Rule 18-102.9?
 10. Did the court fail to adjudicate fairly/justly as required by MD Rules of judicial conduct?
 11. Did the court err in failing to acknowledge Appellee’s counsel’s misrepresentations, actions inconsistent with and outside Rules, violations of Rules of Professional Conduct and criminal acts?

agreement”) that was signed on that date by both parties, their respective counsel, and the senior judge who mediated the case.

With respect to retirement assets, the settlement agreement provided as follows:

- The parties agree to equalize their TSP accounts, valued on the date of divorce
- [Ms. Jordan] will receive 50% of [Mr. Romani’s] FERS pension, and [Mr. Romani] will select the full survivor benefit annuity the cost of which the parties will share equally.
- [Mr. Romani] waives his right to [Ms. Jordan’s] FERS pension.
- [Ms. Jordan] waives any right to [Mr. Romani’s] IRA

The settlement agreement further provided that: “[t]he parties^[1] signature below indicate[s] an acknowledgment by the parties of their agreement to these terms and that their attorneys will more fully set forth these terms along with other agreed upon language into a Separation and Property Settlement Agreement.” The parties did not, however, enter into a subsequent agreement.

On May 23, 2017, the court entered an order granting Ms. Jordan an absolute divorce that incorporated the terms of the settlement agreement. The court reserved jurisdiction “for the receipt, entry, alteration and/or amendment . . . of any appropriate order(s) pertaining to retirement benefits so as to effectuate the intent of the parties as expressed in their agreement[.]”

On July 31, 2017, Ms. Jordan filed a line striking the appearance of her attorney and indicating her intent to act on her own behalf.² On the same date, Ms. Jordan filed a motion seeking an order to compel Mr. Romani to sign the Qualified Domestic Relations Order

² Ms. Jordan is an unrepresented litigant in this appeal.

(“QDRO”)³ to effectuate the transfer of her share of Mr. Romani’s TSP account.⁴ Ms. Jordan alleged that she signed the QDRO on June 1, 2017 and promptly forwarded it to Mr. Romani’s counsel, but that Mr. Romani failed to sign and submit the QDRO to the court. Ms. Jordan requested the court issue an order compelling him to sign it, and that the court order him to pay attorney’s fees for the preparation and processing of the QDRO.

On September 18, 2017, Mr. Romani filed an opposition to the motion to compel, denying Ms. Jordan’s allegation that there was an “undue delay” in the QDRO process, and explaining that the parties’ attorneys had been actively engaged in “numerous conversations.” Attached as an exhibit to the opposition was the fully executed QDRO, which, according to Mr. Romani, rendered the motion to compel moot. According to the QDRO, Ms. Jordan’s share of Mr. Romani’s TSP account, as of the date of the judgment of divorce, was \$191,198.14. Ms. Jordan then withdrew her motion to compel.

³ QDRO’s or Qualified Domestic Relations Orders are orders of a domestic relations court that come under an exception to the spendthrift provisions of ERISA (Employee Retirement Income Security Act, 29 U.S.C. §§ 1001–1461). The ERISA provisions generally prevent the assignment or distribution of the proceeds of an ERISA qualified plan to third parties. A domestic relations order meeting certain qualifications (hence the QDRO moniker) for support or distribution of property may, however, require the allocation of all or part of a plan participant’s benefits to an alternate payee. Use of this ERISA exception allows state trial courts effectively to alter title to otherwise untouchable pension plans without violating federal law.

Fischbach v. Fischbach, 187 Md. App. 61, 94–95 (2009) (quoting *Jenkins v. Jenkins*, 112 Md. App. 390, 397 n.3 (1996)).

⁴ Ms. Jordan’s motion also sought to compel Mr. Romani to sign a QDRO for the transfer of funds in Mr. Romani’s pension account. That matter was apparently resolved and is not at issue in this appeal.

On February 7, 2018, over three months after the motion was withdrawn, Ms. Jordan filed a second motion to compel, alleging that she withdrew the previous motion to compel based on a belief that the issue had been resolved, but Mr. Romani failed to submit the original signed QDRO to the court and had not provided any reason for his failure to do so.⁵ Ms. Jordan requested Mr. Romani be held in contempt of court, compelled to provide the court with the original signed document, and ordered to contribute to attorney’s fees in connection with the preparation of the QDRO.

Two days later, on February 9, 2018, a fully-executed QDRO, signed by the court, was entered on the court docket. On March 16, 2018, the court denied Ms. Jordan’s motion to compel and for sanctions as moot.

On July 2, 2018, Ms. Jordan filed a “Motion to Order Transfer of Interest on TSP Funds.” She alleged the order that had been entered in February had been “created” from copies of exhibits in the court file, and that Mr. Romani had never provided the court with the fully-executed QDRO. Ms. Jordan maintained Mr. Romani had engaged in unethical delay tactics that hindered the transfer of her share of Mr. Romani’s TSP account, and he had done so “for the purpose of unjust enrichment.” She requested relief in the form of an award of interest on her share of the TSP account that had accrued since entry of the judgment of divorce.⁶

⁵ According to Ms. Jordan, the exhibits to Mr. Romani’s opposition to the motion to compel were only copies of the fully executed QDROs, not the originals.

⁶ Ms. Jordan filed an amended Motion to Order Transfer of Interest on TSP Funds on November 20, 2018. The amended motion does not differ materially from the original motion filed in July 2018.

On May 31, 2019, Ms. Jordan filed an omnibus motion which included a motion for summary judgment.⁷ The court held a hearing on Ms. Jordan’s motion for summary judgment on July 10, 2019, where she asserted that she was entitled to summary judgment under a theory of unjust enrichment. She explained that the settlement agreement provided for an equal division in TSP account funds as of the date of the divorce, but Mr. Romani’s account had increased in value by the time she received her share of those funds, and therefore, she was entitled to a pro rata share of the amount of the increase. She conceded that the settlement agreement was a contract, and it did not address the issue of interest. She explained she had not expected such a delay in the transfer of funds, and that the issue of interest “never came up.” The court denied the motion for summary judgment.

On July 12, 2019, Ms. Jordan filed a pleading entitled “Amended Motion to Recover TSP Earnings from [Mr. Romani] Due to His Unjust Enrichment” (“Amended Motion”). In the pleading, Ms. Jordan alleged that, although the settlement agreement contained no “express element” regarding earnings on TSP account funds, the parties had intended the agreement would include language providing that the TSP accounts would be valued as of the date of entry of the Judgment of Absolute Divorce, “plus or minus any investment experience through the date of transfer.” Ms. Jordan sought the same relief as in her earlier motions to transfer interest, i.e., an order awarding investment gains on her share of the

⁷ The pleading filed by Ms. Jordan was captioned “Motion to Compel [Mr. Romani’s] Discovery Responses, Motion for Sanctions, and Motion for Default Judgment or Alternatively, Motion for Summary Judgment.” The motion to compel, motion for sanctions, and motion for default judgment were denied without a hearing.

TSP account. In addition, Ms. Jordan asked the court to sanction Mr. Romani for bad faith and contempt of court for failing to file the original executed QDRO for processing.

Mr. Romani filed a motion for summary judgment on the Amended Motion, maintaining that Ms. Jordan could not assert a claim of unjust enrichment because there was an express contract that addressed the distribution and division of the parties' retirement accounts. In addition to requesting judgment as a matter of law, Mr. Romani asked the court to order Ms. Jordan to reimburse him for attorney's fees incurred to defend the unjust enrichment litigation.

On August 30, 2019, the court held a hearing on all open motions, beginning with Mr. Romani's motion for summary judgment. Counsel for Mr. Romani argued that neither the settlement agreement nor the QDRO contained a provision entitling Ms. Jordan to interest upon the transfer of her share from Mr. Romani's TSP account, and Ms. Jordan should not be permitted to renegotiate terms she had agreed to by asserting a claim of unjust enrichment. Ms. Jordan once again conceded that she had not asked for a provision regarding investment experience on the TSP account, but asserted she had a case for unjust enrichment because "the contract did not expressly address this issue[.]" and because Mr. Romani had delayed processing of the QDRO in bad faith. The court granted Mr. Romani's motion for summary judgment, stating,

the agreement reached by the parties, which is binding on the parties and resolves all property matters, says that the accounts are to be equalized as of the date of the divorce[.] . . . That was the language that was agreed to by the parties[.] . . . [T]he QDRO provided that the administrators of the TSP accounts transfer \$191,000 plus or minus, into [Ms. Jordan's] account and that would equalize the account values, as of the date of the divorce. That was done, the agreement was followed. . . . [T]here was no anticipation or

consideration of what were to happen to the account values between the day of divorce and the filing of the QDROs, the parties didn't include that in their marital property settlement. They probably could have, if they thought about it or had they anticipated it, but that wasn't done. So, this [c]ourt can't go back now and change that or alter it, given the fact that it was a mediated agreement and it was incorporated, but not merged into the final order of divorce.

The court granted Mr. Romani's request for attorney's fees in the amount of \$6,350, finding that Ms. Jordan had no legal basis for her claim. Ms. Jordan asked to be heard on her motion for sanctions, which the court denied. All other outstanding motions were denied. A written order reflecting the court's rulings was entered on the docket on September 16, 2019. This appeal followed.

Additional facts will be introduced in the discussion, as they become relevant.

DISCUSSION

I. The court did not err in granting summary judgment.

We recently summarized the standard of review for a grant of summary judgment as follows:

On review of an order granting summary judgment, our analysis begins with the determination [of] whether a genuine dispute of material fact exists; only in the absence of such a dispute will we review questions of law. If no genuine dispute of material fact exists, this Court determines whether the Circuit Court correctly entered summary judgment as a matter of law. Thus, [t]he standard of review of a trial court's grant of a motion for summary judgment on the law is *de novo*, that is, whether the trial court's legal conclusions were legally correct.

Cunningham v. Baltimore Cty., 246 Md. App. 630, 668, *reconsideration denied* (Aug. 26, 2020), *cert. denied*, 471 Md. 268 (2020) (quoting *Koste v. Town of Oxford*, 431 Md. 14, 24–25 (2013)) (internal citations and quotation marks omitted). “[I]f the trial court did not

specify the grounds upon which it granted summary judgment, appellate courts assume that the trial court carefully considered all of the asserted grounds and determined that all or at least enough of them . . . were meritorious.”) *Fischbach v. Fischbach*, 187 Md. App. 61, 77 (2009) (citations and internal quotation marks omitted).

Ms. Jordan concedes that the settlement agreement contains no provision regarding earned interest on Mr. Romani’s TSP account between the date of the divorce and the date of the transfer of funds. She argues the court erred in granting summary judgment because the court incorrectly assumed that she was seeking a modification of the terms of the settlement agreement and did not consider her theory of unjust enrichment. Mr. Romani contends there is no legal basis for a claim of unjust enrichment because there is a contract that addresses division and distribution of the parties’ retirement accounts, and, therefore, the court did not err in granting summary judgment in his favor. We agree.

Unjust enrichment is considered a quasi-contract claim, in other words, “a legal fiction invented by common law courts to permit recovery by contractual remedy in cases where, in fact, there is no contract, but where circumstances are such that justice warrants a recovery as though there had been a promise.” *AAC HP Realty, LLC, v. Bubba Gump Shrimp Co. Restaurants, Inc.*, 243 Md. App. 62, 70 (2019) (quoting *County Comm’rs of Caroline County v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 94 (2000)) (in turn quoting BLACK’S LAW DICTIONARY 324 (6th ed. 1990)).

“[A] claim of unjust enrichment may not be brought where the subject matter of the claim is covered by an express contract between the parties.” *Id.* at 71 (quoting *Dashiell*, 358 Md. at 96 (citation omitted)). “This rule holds the contract parties to their agreement

and prevents a party who made a bad business decision from asking the court to restore [their] expectation.” *Dashiell*, 358 Md. at 101 (citation omitted). “Although we rarely depart from this long-standing rule, we have recognized exceptions, ‘when there is evidence of fraud or bad faith, there has been a breach of contract or a mutual rescission of the contract, when rescission is warranted, or when the express contract does not fully address a subject matter.’” *Janusz v. Gilliam*, 404 Md. 524, 537 (2008) (quoting *Dashiell*, 358 Md. at 100).

Ms. Jordan does not challenge the court’s finding that the settlement agreement was a binding contract that addressed the subject of distribution of retirement account funds.⁸ She claims, nevertheless, she had a viable claim for unjust enrichment pursuant to two exceptions to the general rule. First, she asserts there was evidence that Mr. Romani acted in bad faith by intentionally delaying the required processing of the QDRO. As we have recently explained, however, the fraud or bad faith exception to the rule contemplates “bad faith or fraud in the formation of the contract, as opposed to the performance of the contract.” *AAC HP Realty*, 243 Md. App. at 72 (citations omitted). Accordingly, as a matter of law, the bad faith exception does not apply here.

⁸ In her brief, Ms. Jordan discusses *Cochran v. Norkunas*, 398 Md. 1 (2007), in which the Court of Appeals set forth factors to be considered in determining whether there is an enforceable agreement between the parties. *Id.* at 15. Those factors are irrelevant to the issue before us, however, as it is undisputed that the settlement agreement is an enforceable contract.

Ms. Jordan also contends her quasi-contractual claim is not barred by the settlement agreement because, due to “oversight,” it was “missing language” regarding earnings. To the extent this contention is an argument that the court erred in failing to apply the exception allowing a claim for unjust enrichment where the express contract does not fully address the subject, it is without merit. Ms. Jordan conceded that, although both parties were represented by counsel at the time the settlement agreement was executed, neither party requested a provision that addressed retirement fund gains or losses. She stated that, at some point, a “re-written agreement” was drafted that included language entitling her to earnings on her share of Mr. Romani’s TSP account, but the document was never signed. Based on that information, it appears to be undisputed the parties either did not bargain for or did not agree that Ms. Jordan’s share of Mr. Romani’s TSP account would be adjusted to reflect gains or losses in value subsequent to the date of the divorce judgment. Accordingly, we cannot conclude the settlement agreement did not fully address the subject of division and distribution of retirement account funds.

In sum, based on our review of the record, the court did not err in determining, as a matter of law, that Ms. Jordan could not seek an order to recover interest on her share of Mr. Romani’s TSP account under the quasi-contract theory of unjust enrichment. Accordingly, the court did not err in granting summary judgment in favor of Mr. Romani.

II. The court did not err in granting Mr. Romani’s request for attorney’s fees.

Maryland Rule 1-341(a) 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.

The purpose of the Rule “is to deter unnecessary and abusive litigation” by “compensat[ing] the aggrieved party for their reasonable costs and expenses.” *Christian v. Maternal-Fetal Medicine Associates of Maryland, LLC*, 459 Md. 1, 19 (2018) (citations omitted). The Court of Appeals has summarized the standard of review for an award of attorney’s fees as follows:

To impose sanctions under Rule 1-341(a), a court must make an explicit finding that a party conducted litigation either in bad faith or without substantial justification. This finding should be supported by a “brief exposition of the facts upon which [it] is based.” Such a finding by a trial court will be upheld on appellate review unless it is clearly erroneous or involves an erroneous application of law. If a trial court makes the requisite finding, it must then determine whether the party’s conduct merits the assessment of costs and attorney’s fees—a determination that will be upheld on appellate review unless found to be an abuse of discretion.

URS Corp. v. Fort Myer Construction Corp., 452 Md. 48, 72 (2017) (internal citations omitted).

In awarding attorney’s fees, the court “must also make a finding that the fees requested by the aggrieved party are reasonable.” *Christian*, 459 Md. at 31. The court “must affirmatively state, for the record . . . the reasonableness of attorney’s fees.” *Id.* at 32 (quoting *Sczudlo v. Berry*, 129 Md. App. 529, 552 n.3 (1999)).

In granting Mr. Romani’s request for attorney’s fees, the court stated as follows:

[B]ased upon the language of the agreement reached by [the parties] in this case, there’s clearly no basis to file the motion that was filed here to seek earnings or to divide losses after the date of the divorce, since the agreement

provides for a simple provision of equalizing the account balances as of the date of the divorce. Every case I’ve ever seen, and every case that exists in family law, where there’s a division of pension assets, there’s always a subsequent time delay between [the date of the divorce] and when a QDRO is filed. Sometimes, it’s months, I had one, not long ago, where it was years. So, there’s always a time delay and because these TSPs are subject to [] what’s happening in the market, those account balances always change. So, that’s the reason why the language is put into this case and . . . that’s what was agreed to. So there was no basis, not even an arguable basis, under the agreement, to file the motions that were filed. So, I’ll grant the motion . . . for attorney’s fees for having to respond to motions that were filed that had no merit[.]

Ms. Jordan asserts the court’s order granting Mr. Romani’s motion for attorney’s fees should be reversed because (1) the court erred in determining that she lacked a basis for her claim of unjust enrichment, (2) the statement of attorney’s fees that was introduced in support of the motion for attorney’s fees included charges that Mr. Romani was not responsible for paying, and (3) the fees were not reasonable.

We find no error in the court’s finding that Ms. Jordan lacked substantial justification for bringing an action for unjust enrichment. “[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.” *URS Corp.*, 452 Md. at 72 (footnotes omitted); *see also Johnson v. Baker*, 84 Md. App. 521, 529 (1990) (“conduct lacks substantial justification when there is no basis in law and/or in fact to support the plaintiff’s claim[.]”). As we have already concluded, because Ms. Jordan entered into an express contract with Mr. Romani which covered the subject of the division of retirement assets, there was no legal basis for filing a claim of unjust enrichment, and there was no factual basis which would have

warranted application of one of the rare exceptions to the general rule of law that barred her claim.

Moreover, we perceive no abuse of discretion in the court’s determination that an award of attorney’s fees was warranted. “Abuse of discretion ‘occurs when a trial judge . . . acts beyond the letter or reason of the law.’” *David A. v. Karen S.*, 242 Md. App. 1, 23 (2019) (quoting *Garg v. Garg*, 393 Md. 225, 238 (2006)), *cert. denied*, 466 Md. 219 (2019). Based on our review of the record, we cannot conclude that the court acted beyond the letter or reason of the law in granting Mr. Romani’s motion for attorney’s fees.

We find it necessary, however, to vacate the order granting attorney’s fees and remand to the circuit court for further proceedings. First, Mr. Romani does not dispute Ms. Jordan’s claim that there was an error in the statement of attorney’s fees submitted to the court. He concedes the amount of the award should be reduced. In addition, the court did not state a finding on the record regarding the reasonableness of the fees.

Accordingly, on remand, Mr. Romani shall submit a revised statement of attorney’s fees to the court, to which Ms. Jordan may respond, pursuant to Maryland Rule 1-341(c). The court shall then make a finding on the record as to whether the fees are reasonable and shall enter an order in accordance with its findings.

III. The court did not abuse its discretion in denying Ms. Jordan’s motion for sanctions

The last motion to be heard by the court at the hearing on August 30, 2019, was Ms. Jordan’s motion for sanctions. Ms. Jordan requested sanctions be imposed for Mr. Romani’s bad faith in intentionally delaying processing of the QDRO, and for failing to

update his address in court records. Ms. Jordan also requested sanctions be imposed upon Mr. Romani’s counsel for bad faith, based on an alleged misrepresentation of a certificate of service. She requested Mr. Romani and his counsel be “admonished for their behavior,” that she be reimbursed a \$40 service of process fee that was incurred because she did not have Mr. Romani’s current address, and “whatever else [the court] would deem appropriate.” The court found that sanctions were not warranted and denied the motion. As we have already explained, a court’s determination of whether an award of sanctions is warranted is reviewed for abuse of discretion. *See URS Corp. v. Fort Myer Construction Corp.*, 452 Md. 48, 72 (2017) (internal citations omitted). Even if the court had determined that either Mr. Romani or his counsel acted in bad faith, which apparently it did not, it was still within the court’s broad discretion to decline to impose sanctions. We see no abuse of discretion here.⁹

ORDER GRANTING MOTION FOR ATTORNEY’S FEES VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID BY APPELLANT.

⁹ Ms. Jordan asserts that the court committed criminal acts and violated provisions of the Maryland Code of Judicial Conduct. She further claims that counsel for Mr. Romani committed criminal acts, and that they violated provisions of the Maryland Attorneys’ Rules of Professional Conduct. She requests an order from this Court imposing sanctions on both the court and counsel for these alleged acts. We do not address these contentions as we are without jurisdiction to grant the requested relief.