

Circuit Court for Prince George's County
Case No. CAE17-29226

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1970

September Term, 2022

ALEXI E ORTIZ

v.

ALFRED D WALSH, JR.

Graeff,
Leahy,
Getty, Joseph
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: November 28, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

This is the second appeal filed in this Court by Alexi Ortiz, appellant, in connection with a tax sale foreclosure of right of redemption. In this appeal, he challenges the orders of the Circuit Court for Prince George’s County imposing sanctions, and ordering him to pay attorneys’ fees to Alfred Walsh, Jr., appellee.

Appellant presents the following questions for this Court’s review:

1. Did the circuit court err when it granted sanctions against appellant under Rule 1-341 only seven days after the request for sanctions was filed when Rule 1-341(c) permits fifteen days for a response to be filed?
2. Did the circuit court err when it granted sanctions against appellant under Rule 1-341 without making any express finding that appellant acted in bad faith or that appellant acted without substantial justification?
3. Did the circuit court err when it denied appellant’s motion to reconsider the order granting sanctions without considering the factual evidence appellant presented, which had not been previously considered by the court when it granted the request for sanctions?

For the reasons set forth below, we shall vacate the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

In our earlier unreported opinion, *Ortiz v. Walsh*, No. 3454, Sept. Term, 2018, 2020 WL 4187842 (Md. App. July 21, 2020), *cert denied* 471 Md. 125, 141 S. Ct. 2465 (2021), we noted that, in May 2016, Mr. Walsh purchased a tax sale certificate for property located at 1702 Hannon Street, Unit 1, Hyattsville, Maryland (the “Property”). On June 26, 2018, the Circuit Court for Prince George’s County issued a judgment foreclosing Right of Redemption. *Ortiz*, 2020 WL 4187842, at *1. Mr. Ortiz challenged the judgment, arguing improper notice. *Id.* at *2–5. In July 2020, we affirmed the circuit court’s order denying Mr. Ortiz’s Motion to Vacate Judgment Foreclosing Right of Redemption because Mr.

Ortiz failed to pay the taxes owed on the Property, and therefore, he had not satisfied a condition precedent to overturning the tax sale. *Id.* at *4. The Supreme Court of Maryland and the Supreme Court of the United States denied Mr. Ortiz’s petitions for a grant of *certiorari*. See *Ortiz*, 471 Md. 125 (2020); 141 S. Ct. 2465 (2021). On August 16, 2022, the Director of Finance and Collector of Taxes for Prince George’s County executed a deed transferring title to the Property to Mr. Walsh.

In September 2022, Mr. Walsh filed a Motion for Order of Judgment Awarding Possession. The court denied the motion, pending verification that Mr. Walsh mailed a copy of the notice to the tenant on the Property of his intent to take possession. On November 9, 2022, Mr. Walsh filed an Amended Motion for Order of Judgment Awarding Possession, including a copy of notice to: “Alexi E. Ortiz and/or all occupants of 1702 Hannon Street, T2 (legally described as Unit 1), Hyattsville, Maryland 20783.” The notice, dated November 7, 2022, advised that Mr. Walsh intended to take possession of the property after 30 days.

On November 11, 2022, Mr. Ortiz filed a response to the motion. He argued, as he did in the earlier proceedings, that notice was not proper. He asked the court to: (1) deny Mr. Walsh’s amended motion; (2) vacate its previous order to foreclose Mr. Ortiz’s right of redemption; (3) hold a status hearing on the matter; and (4) “grant such further relief deemed just and proper.”

On December 2, 2022, Mr. Walsh filed a reply to Mr. Ortiz’s response, as well as a motion for sanctions and request for attorneys’ fees in the amount of \$2,870.00. Mr. Walsh

explained that Mr. Ortiz had repeatedly argued that the Property was not “Unit 1,” but rather “T2,” but counsel researched the deeds and determined that the Property was Unit 1. Mr. Walsh argued the courts previously had rejected the improper notice arguments, and Mr. Ortiz’s motion was made “in bad faith and without substantial justification.”

On December 9, 2022, seven days later, the court issued an order granting judgment for possession of the Property to Mr. Walsh. The order stated that, based upon all the pleadings, “and noting the participation and actions by the Defendant, along with the actions and decisions of the Maryland Court of Special Appeals, this Court independently finds service and notice to be proper and possession warranted.” The court further stated that, “based upon the thorough filings, related supporting documents and arguments and representations of both Plaintiff and Defendant contained therein, the Court finds a hearing unnecessary and sanctions and attorney’s fees to be justified.” The court then granted the motion for sanctions and ordered that a judgment of attorneys’ fees in favor of Mr. Walsh against Mr. Ortiz be entered “in the amount of \$2,870.00.”

On December 12, 2022, Mr. Ortiz filed a motion to reconsider the order granting sanctions against him and requested a hearing. Mr. Ortiz noted that the Maryland Rules allow a party 15 days to respond to a request for sanctions, but the court issued the order awarding sanctions within seven days, “without affording [him] the opportunity to respond to [Mr. Walsh’s] request for sanctions.” He also argued that sanctions were not warranted because counsel requested that Mr. Ortiz file a response regarding the issue of notice. Finally, he argued that the fees sought were “not reasonable, nor related to [his] motion.”

On December 23, 2022, Mr. Walsh filed a response to the motion. He argued that Mr. Ortiz was attempting “to defend this action without substantial justification and in bad faith by repeatedly raising the same notice arguments that [had] been fully litigated and adjudicated.” Mr. Walsh stated that he exercised due diligence in verifying the sufficiency “of the location/address of the Subject Property,” and the court properly found that service and notice were proper. He argued that additional fees of \$1,575 were incurred in responding to the motion, and asked the court to enter an order granting those fees and enter a money judgment in his favor in the amount of \$4,445.00.

On December 26, 2022, Mr. Ortiz filed a reply. He asked the court to reconsider its imposition of sanctions, stating that “sanctions and attorney’s fees [were] inappropriate in light of the communication and conduct by and between counsel *prior* to any response being filed.” Mr. Ortiz noted Mr. Walsh’s failure to controvert his assertion that Mr. Walsh’s attorney suggested he file a response to the amended motion for judgment awarding possession.

On December 29, 2022, the court issued an order stating, without elaboration, that Mr. Ortiz’s requests for reconsideration and a hearing were denied, and Mr. Walsh’s request for sanctions and additional attorneys’ fees was denied.

This appeal followed.

DISCUSSION

Although the circuit court did not state that it was awarding sanctions pursuant to Maryland Rule 1-341(a), that was the rule cited by Mr. Walsh in his motion, and the parties

proceed on the basis the sanctions were awarded pursuant to this rule. We will proceed on that basis as well.

Md. Rule 1-341(a) provides:

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 the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys’ fees, incurred by the adverse party in opposing it.

Bad faith “exists when a party litigates with the purpose of intentional harassment or unreasonably delay.” *Toliver v. Waicker*, 210 Md. App. 52, 71, *cert. denied*, 210 Md. App. 52 (2013) (quoting *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999)). “In analyzing whether an attorney lacked substantial justification to file a claim, the issue is ‘whether [the attorney] had a *reasonable basis* for believing that the claims would generate an issue of fact.’” *Id.* (quoting *RTKL Assoc. Inc. v. Baltimore Cty.*, 147 Md. App. 647, 658 (2002) (alteration and emphasis in original)).

Mr. Ortiz contends that the circuit court erred in granting the motion for sanctions for three reasons. First, Mr. Ortiz argues that the circuit court violated his due process rights because “he was not given 15 days to respond” to Mr. Walsh’s request for sanctions pursuant to Rule 1-341. Second, Mr. Ortiz challenges the sanctions order on the ground that “the circuit court did not make any factual findings that [Mr. Ortiz] acted in bad faith or without substantial justification.” Third, Mr. Ortiz asserts that the “circuit court failed

to consider the totality of the circumstances when it denied [his] motion to reconsider without considering facts alleged in [his] response.”

I.

Due Process

Mr. Ortiz contends that the circuit court violated his right to due process by issuing its order of sanctions before he was given the opportunity to respond. He notes that, although Rule 1-341(c) provides that a party has 15 days to respond to a motion for sanctions, the circuit court issued its order granting Mr. Walsh’s request for sanctions seven days after receiving the request.

Mr. Walsh contends that the circuit court did not violate Mr. Ortiz’s due process rights. He notes that Mr. Ortiz “had the opportunity to and did in fact file a Motion for Reconsideration” of the court’s order, “directly responding to [Mr.] Walsh’s request for sanctions and attorney[s’] fees.” He asserts that the court then considered Mr. Ortiz’s response in denying his request. Mr. Walsh contends that the timing of Mr. Ortiz’s response, “whether before or after the Order, had no impact on his due process rights.” He argues that Mr. Ortiz’s due process rights were not violated, stating: “He was heard. He was considered. He was denied.”

As Mr. Ortiz argues, procedural due process guarantees under the constitution are “applicable to the assessment of attorney’s fees for litigation misconduct.” *Talley v. Talley*, 317 Md. 428, 434 (1989). Consequently, “due process requires ‘at a minimum, that before sanctions are imposed pursuant to Rule 1-341, there must be notice and an opportunity to

respond.” *Fowler v. Printers II, Inc.*, 89 Md. App. 448, 482 (1991) (quoting *Zdravkovich v. Bell Atl-Tricon Leasing, Corp.*, 323 Md. 200, 209 (1991)), *cert. denied*, 325 Md. 619 (1992). At its core, ““due process is the right to notice and a meaningful opportunity to be heard.”” *Roberts v. Total Health Care, Inc.*, 349 Md. 499, 509 (1998) (quoting *LaChance v. Erickson*, 522 U.S. 262, 266 (1998)).

“The question of whether a party is deprived of the right to due process involves an issue of law and not of fact.” *Regan v. Bd. of Chiropractic Exam’rs*, 120 Md. App. 494, 509 (1998), *aff’d*, 355 Md. 397 (1999). “As such, the standard of review applied by an appellate court is *de novo*.” *Id.*

Here, Mr. Walsh filed the motion for sanctions on December 2, 2022. The certificate of service reflects that a copy of the motion was sent to Mr. Ortiz and his attorney. Mr. Ortiz does not argue that he did not receive notice of the request for sanctions.

Mr. Ortiz contends, however, that the court’s ruling prior to the 15-day time to respond, provided in the rules, and in the absence of a response by him, deprived him of the opportunity to be heard. Counsel for Mr. Walsh conceded, appropriately, at oral argument on appeal that the court erred in ruling so soon without a response from Mr. Ortiz. Counsel argued, however, that because Mr. Ortiz subsequently filed a response, which the court considered before denying the request to reconsider the sanctions ordered, Mr. Ortiz was provided with the opportunity to be heard.¹

¹ Mr. Ortiz’s due process argument in his briefs relied entirely on the timing of the initial order awarding attorneys’ fees. He did not argue that the court erred by granting the

Based on the circumstances, we conclude that Mr. Ortiz was not deprived of due process. Although the court prematurely granted the motion for sanctions, Mr. Ortiz was permitted to file a motion explaining his position, which the court subsequently considered and denied.

II.

Court Findings

Mr. Ortiz contends that the circuit court erred because it did not make “any factual findings that appellant acted in bad faith or without substantial justification.” He asserts that, before a court issues sanctions under Md. Rule 1-341(c), “it must make an evidentiary finding of bad faith or lack of substantial justification,” and the finding should be “supported by a brief exposition of the facts upon which it is based.” Mr. Ortiz argues that the order here was “wholly devoid of factual support for the finding that [a]ppellant acted in bad faith or without substantial justification,” and the court “failed to provide any explanation of why it refused to reconsider its imposition of sanctions.” He takes issue with the summary denial of his motion for reconsideration given the “uncontested assertions” that counsel for Mr. Walsh requested that he file the motion for which sanctions were subsequently requested. Finally, Mr. Ortiz argues that the court’s order erroneously

motion without a hearing. We note, however, that a trial court is not required to hold a hearing prior to ruling on a motion for sanctions pursuant to Rule 1-341. *Fowler v. Printers II, Inc.*, 89 Md. App. 448, 486 (1991), *cert. denied*, 325 Md. 619 (1992).

failed to explain “how its award corresponds with [his] misconduct in bringing or maintaining an action in bad faith or without substantial justification.”

Mr. Walsh contends that the record supports the court’s finding that Mr. Ortiz acted in bad faith and/or without substantial justification. He asserts that the record clearly shows that Mr. Ortiz attempted to relitigate alleged notice deficiencies previously adjudicated, and his efforts “to relitigate issues barred by the doctrine of collateral estoppel constitute bad faith,” and they were “without substantial justification [and were made] in hopes of pressuring [Mr.] Walsh into negotiations.”

Before awarding sanctions under Rule 1-341, the circuit court “must make two separate findings that are subject to scrutiny under two related standards of appellate review.” *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267 (1991). *Accord Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 676–77 (2003); *Barnes*, 126 Md. App. at 104–05. The court first “must make an evidentiary finding of ‘bad faith’ or ‘lack of substantial justification.’” *Talley*, 317 Md. at 436 (quoting *Legal Aid v. Bishop’s Garth*, 75 Md. App. 214, 220 (1988)). This determination is reviewed under a clearly erroneous standard. *Toliver*, 210 Md. App. at 71. Second, “if a court finds a claim was pursued in bad faith or without substantial justification, it then has to determine whether to award sanctions.” *Garcia*, 155 Md. App. at 677. This determination is reviewed for an abuse of discretion. *Id.*

With respect to the first step, the court must make “an explicit finding that a claim or defense was ‘in bad faith or without substantial justification.’” *Zdravkovich.*, 323 Md.

at 210 (quoting Md. Rule 1-341). *Accord URS Corp. v. Fort Meyer Constr. Corp.*, 452 Md. 48, 72 (2017); *Talley*, 317 Md. at 436; *Garcia*, 155 Md. App. at 676. The record must reflect “the basis for those findings.” *Zdravkovich*, 323 Md. at 210. As the Supreme Court of Maryland has explained, ““some brief exposition of the facts upon which the finding is based and an articulation of the particular finding involved are necessary for subsequent review.”” *Id.* (quoting *Talley*, 317 Md. at 436). *Accord Fowler*, 89 Md. App. at 487 (without factual findings, “it is impossible for an appellate court to review the circuit court’s decision.”).

Here, the circuit court did not make an explicit finding of either bad faith or a lack of substantial justification. It merely stated that it found sanctions and attorneys’ fees to be justified. The court did not provide any facts supporting its finding, stating merely that its award of sanctions was based “upon the thorough filings, related supporting documents and arguments and representations of both Plaintiff and Defendant contained” in the record. Because the court did not make the requisite findings of fact regarding bad faith or a lack of substantial justification, the award of attorneys’ fees was clearly erroneous.

Moreover, the court did not provide the basis for its conclusion that Mr. Ortiz’s “conduct merit[ed] the assessment of costs and attorney’s fees[.]” *URS Corp.*, 452 Md. at 72. Nor did it address how the attorneys’ fees requested related to the alleged misconduct and whether all of the fees were attributable to this misconduct. Accordingly, we remand to the circuit court so it can set forth its factual findings. *See Barnes*, 126 Md. App. at 108

(remanding for the circuit court to make additional findings); *Fowler*, 89 Md. App. at 487

(remanding “to the circuit court so that it can make the required findings of fact”).

JUDGMENT VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE’S COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE SPLIT BY THE PARTIES, 50% BY APPELLANT AND 50% BY APPELLEE.