Circuit Court for Prince George's County
Case No.: CAE18-15505

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1975

September Term, 2022

PATRICIA A. ROBINSON

v.

MICHELE Z. DARBEAU

Graeff,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: March 18, 2024

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

This is the second time that this case has come before this Court. Appellant, Patricia A. Robinson, appeals from an order of the Circuit Court for Prince George's County determining that she acted in bad faith and without substantial justification in defending the action of Appellee, Michele Z. Darbeau, for sale in lieu of partition. Ms. Robinson presents five questions for our review, which we have rephrased and reduced below:[1]

1. Did the circuit court violate Ms. Robinson's right to due process?

2. Was the circuit court's finding that Ms. Robinson acted in bad faith and without substantial justification clearly erroneous?

3. Did the circuit court abuse its discretion in awarding Ms. Darbeau 100% attorneys' fees and costs?

Ms. Darbeau has moved to dismiss Ms. Robinson's appeal as premature. She also cross-appeals from the circuit court's order directing her to reimburse Ms. Robinson for

[1] Ms. Robinson phrased her questions, verbatim, as:

1. Did the trial court err in interpreting Md. Rule 1-341 when it imposed sanctions, *sua sponte*, without a motion by an "adverse party"?

2. Did the trial court violate Ms. Robinson's Constitutional right to Due Process by imposing Md. Rule 1-341 sanctions without notice or an opportunity to be heard?

3. Did the trial court clearly err by failing to make detailed factual findings regarding Ms. Robinson's conduct before imposing sanctions pursuant to Md. Rule 1-341?

4. Did the trial court abuse its discretion by failing to make detailed factual findings regarding the actual expenses incurred by Ms. Darbeau in defending against the sanctionable conduct before awarding her attorneys' fees and costs?

5. Was the trial court's finding of sanctionable conduct by Ms. Robinson inconsistent with its award of attorneys' fees to her former counsel?

mortgage and tax payments Ms. Robinson made on the parties' joint property after Ms. Darbeau vacated it. She presents one question for our review, which we have rephrased below:[2]

1. Did the circuit court err in ordering Ms. Darbeau to pay contribution?

For the reasons discussed below, we deny Ms. Darbeau's motion to dismiss, vacate the circuit court's award of attorney's fees, otherwise affirm its judgment, and remand the case for further proceedings.

BACKGROUND

Ms. Robinson and Ms. Darbeau owned two real estate properties in Prince George's County as joint tenants with the right of survivorship: the "Livingston Property"[3] and the "Arya Property."[4] They also ran a childcare business named Little Foot Enrichment Learning Center, LLC ("Little Foot"), a Delaware limited liability company. Ms. Robinson and Ms. Darbeau operated Little Foot out of the Livingston Property and used the Arya Property as their residence. They lived together and jointly operated Little Foot until May 2017. At that time, the parties severed their personal and professional relationships with

[2] Ms. Darbeau phrased her question, verbatim, as:

1. Whether the circuit court erred when it ordered Ms. Darbeau to pay 50% of the mortgage and annual utility assessments on the Arya property from June 2017 to December 2021.

[3] The Livingston Property is located at 15404 Livingston Road, Accokeek, Maryland 20607.

[4] The Arya Property is located at 12911 Arya Drive, Brandywine, Maryland 20613.

Ms. Darbeau vacating the Arya Property and ceasing her involvement in Little Foot's operations.

One year later, Ms. Darbeau sued Ms. Robinson seeking a sale in lieu of partition of the two properties and a forced sale or dissolution of Little Foot. Ms. Robinson counterclaimed to compel Ms. Darbeau to contribute to various property-related expenses, including mortgage payments, taxes, and expenses related to improvements. She also asserted claims of embezzlement, theft, deceit, breach of contract, and fraudulent conversion, alleging that Ms. Darbeau stole money from Little Foot and otherwise breached her fiduciary duties to the business. Ms. Robinson brought these claims in her personal capacity, not on behalf of Little Foot.

We detailed the events leading to the circuit court's grant of Ms. Darbeau's petition in the parties' prior appeal. *See Robinson v. Darbeau*, No. 2117, Sept. Term, 2019, 2021 WL 2018654, at *1–4 (App. Ct. Md. May 20, 2021) ("*Robinson I*"). In brief, the circuit court granted Ms. Robinson's motion for partial summary judgment against Ms. Darbeau's request for sale or dissolution of Little Foot.[5] The court exercised its discretion under the internal affairs doctrine and directed that all disputes over the "membership or the internal operations of" Little Foot be determined by the appropriate court in Delaware. Ms. Robinson then moved to stay the remaining proceedings pending the outcome of any Delaware litigation—which had not yet been filed—about the ownership of Little Foot.

[5] Though not discussed in our prior opinion, it is relevant here to mention that in this same order, the circuit court also deferred for future ruling a Motion for Attorneys' Fees filed by Ms. Darbeau.

The court stayed Ms. Robinson's counterclaims but did not stay Ms. Darbeau's petition for sale in lieu of partition. The court ultimately granted Ms. Darbeau's petition on December 4, 2019. Ms. Robinson appealed to this Court, challenging the circuit court's decision to stay only her counterclaims and its decision to order sale in lieu of partition. *Robinson I*, 2021 WL 2018654, at *1. We affirmed. *Id.*

In finding that the circuit court had not abused its discretion by denying a stay, we observed that Ms. Robinson had "made the strategic decision to litigate the overall dispute in separate jurisdictions, and she knew or should have known that the circuit court had no obligation to put [its] case on hold pending resolution of the Delaware litigation." *Id.* at *6. We also noted that Ms. Robinson waited until just one month before trial—despite the circuit court having granted her motion on the internal affairs doctrine two months earlier—before seeking a stay. *Id.* And in all that time, she had not even filed suit in Delaware. *Id.* Indeed, when she filed her motion, she had only just begun the process of retaining Delaware counsel. *Id.* We determined that "[t]he timing of Ms. Robinson's actions undermined" the circuit court's ability "to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay." *Id.* We concluded that the circuit court "had an ample basis to deny Ms. Robinson's request for a stay." *Id.* Finally, we noted—in *dicta*—that, "[b]ased on the factual allegations contained in her counterclaim, Ms. Robinson's claims for embezzlement and breaches of fiduciary duty appear to be claims that would belong to Little Foot, not to [her] personally." *Id.*

The Delaware litigation resolved while *Robinson I* was pending in this Court. *Id.* at *3 n.13. The Chancery Court found that Ms. Darbeau was an owner of Little Foot. *Id.*

Shortly after *Robinson I* resolved, the properties were sold to Ms. Robinson. All that remained was for the circuit court to determine distribution of the sale proceeds and the merits of Ms. Robinson's counterclaims.

Trial on these remaining issues began May 24, 2022. The court held three merits hearings over the next four months.[6] Ms. Darbeau announced in her opening statement that she was seeking attorneys' fees based on Ms. Robinson's actions having needlessly delayed resolution of the case for four years. As to Ms. Robinson's contribution counterclaim, Ms. Darbeau's sole argument throughout the proceedings was that Ms. Robinson had not personally paid the expenses she was claiming. She alleged that they were instead paid by Little Foot, which was co-owned and co-managed by both parties. During the second merits hearing, on July 7, 2022, Ms. Darbeau sought to introduce evidence related to the claim for attorneys' fees, but the court signified that it was not inclined to grant them at that time. Trial concluded on August 9, 2022.

Just over a month later the court orally delivered its rulings. The court first observed that, other than her claim for contribution, Ms. Robinson had not made "any real specific request" with respect to her counterclaims, but the court still addressed their merits. On Ms. Robinson's claims of embezzlement, deceit, fraudulent conversion, and breach of fiduciary duty, the court held that they were fatally deficient for the simple reason that

[6] The court held an additional hearing on July 19, 2022, that related solely to the adjudication of a lien sought by Ms. Robinson's prior attorney for fees he earned before withdrawing his appearance. The outcome of that hearing is relevant to this appeal only to note that the court ultimately granted the lien. Ms. Robinson does not challenge the merits of that decision here.

Little Foot had never been made a party to the case. The court further found that the parties' personal relationship was far closer than Ms. Robinson claimed throughout the litigation, which led to "general sloppy keeping of the financial books and records" and money being moved into personal accounts, "just as [it is] with all couples[.]" This, the court held, further barred Ms. Robinson's embezzlement claim and also barred her theft claim. As for Ms. Robinson's breach of contract claim, the court found that there was no contract between the parties, and, in any event, Ms. Robinson never alleged what provision Ms. Darbeau breached. The court also found, however, that Ms. Robinson was entitled to contribution for 50% of the mortgage and taxes she paid after Ms. Darbeau vacated the Arya Property.[7]

The court then moved to Ms. Darbeau's request for attorneys' fees. The court observed that Ms. Robinson's conduct had led to a "four[-]year long and protracted road of litigation." It was clear to the court that she did not want to lose the properties. The court stressed how Ms. Robinson's efforts had repeatedly delayed the proceedings—including her appeal to this Court and, "after an extended period of time," filing suit in Delaware, both of which proved meritless. The court also found that Ms. Robinson had repeatedly made false claims throughout the litigation. At the end of the hearing, the court declared a finding that Ms. Robinson had acted in bad faith, but it reserved on making a

[7] The court's ruling made several additional findings as to how distribution of the sale proceeds would be calculated. Those findings are not relevant to this appeal, however, and so we need not discuss them.

final decision on attorneys' fees to allow her to file a response and to allow Ms. Darbeau's counsel to file the required supporting documents.

A week later, Ms. Robinson filed a motion asking the court to reconsider its finding of bad faith, which the court addressed at a follow-up hearing on November 21, 2022. Ms. Robinson argued, in part, that the court was sanctioning her for errors committed by counsel. The court, however, found that any defects in the legal theories presented by Ms. Robinson's counsel stemmed from her misleading or knowingly false testimony. The court believed attorneys' fees were appropriate based on Ms. Robinson's bad faith attempt to block Ms. Darbeau from divesting herself from the ownership of the properties. The court considered Ms. Robinson's "periods of clear stalling, and the four[-]year period of time it took to complete this simple case." It ultimately concluded that "all along [Ms. Robinson] w[as] motivated by pure emotion and not reason." The court then declared that it found Ms. Darbeau's attorneys' fees fair and reasonable and awarded her the full amount of $91,132.50 plus costs of $1,304.82 because it "just simply f[ound] that there was no basis to oppose the request that Ms. Darbeau divest herself of ownership in that real property as first put forth by her." The court directed Ms. Darbeau's counsel to prepare a proposed order by December 5, 2022.

Following that hearing, Ms. Robinson filed another motion for reconsideration of the court's attorneys' fees award. The court held another hearing on December 5 to discuss the exact breakdown of distribution of the proceeds from the sale, but because Ms. Darbeau still had time to respond to Ms. Robinson's motion, the court did not address the merits of the motion at that hearing.

On December 16, 2022, the clerk entered on the docket a "Judgment" against Ms. Robinson for the full amount of attorneys' fees and costs awarded by the court. This document was signed only by the clerk, not the judge. Ms. Robinson filed her notice of appeal on January 13, 2023. Then, on January 30, the court entered three orders—all signed January 17 by the judge—detailing the disposition of all the remaining issues in the case, including its attorneys' fees award. Ms. Darbeau noted her cross-appeal on February 6.

DISCUSSION

I. Ms. Robinson's appeal is timely.

We must first address Ms. Darbeau's motion to dismiss Ms. Robinson's appeal. "Generally, parties may appeal only upon the entry of a final judgment." *McLaughlin v. Ward*, 240 Md. App. 76, 82 (2019) (citations omitted). A final judgment exists when "(1) the court intends for the judgment to constitute an unqualified final disposition of the matter; (2) the court adjudicates all of the claims of the parties; and (3) the clerk properly records the judgment in accordance with Maryland Rule 2-601." *Royal Fin. Servs., Inc. v. Eason*, 183 Md. App. 496, 499 (2008) (citing *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)). Unless an appeal is taken from a final judgment or is otherwise allowed by law, this Court lacks subject-matter jurisdiction and must dismiss the appeal. *McLaughlin*, 240 Md. App. at 83; *see also* Md. Rule 8-602(b).

Here, the parties both sought to appeal from the circuit court's January 30 orders.[8] Ms. Robinson's notice of appeal, filed on January 13, was thus filed prematurely, before the entry of a final judgment. "Premature notices of appeal are generally of no force and effect." *Jenkins v. Jenkins*, 112 Md. App. 390, 408 (1996), *superseded by rule as stated in Bussell v. Bussell*, 194 Md. App. 137, 152–54 (2010). This is so because a premature appeal is a "jurisdictional defect." *Jenkins*, 112 Md. App. at 408. That said, the Maryland Rules "legitimate" premature appeals in some cases via savings provisions. These provisions do not function as exceptions to the final judgment rule. Instead, they permit an appellate court, "through application of a legal fiction, to treat the [notice of appeal] as if timely filed after a judgment." *Id.* at 410.

The provision that saves Ms. Robinson's appeal is Rule 8-602(f), which states:

> A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling,

[8] In her opposition to Ms. Darbeau's motion, Ms. Robinson seems to contend that her appeal stems from a "signed money judgment" entered by the clerk on December 16, 2022. But the trial court's decision here did more than just "allow[] recovery only of costs or a specified amount of money or deny[] all relief[.]" Md. Rule 2-601(a)(2). So, to be considered a "judgment" within the meaning of the Maryland Rules, the separate document embodying the court's decision was required to be signed by the judge. *See* Md. Rule 2-601(a)(3). The December 16 document was signed only by the clerk and was therefore not a judgment. Moreover, even if it were, it would not be an immediately appealable interlocutory order as Ms. Robinson argues. Both Maryland appellate courts have repeatedly held that an order for payment of attorneys' fees, directed toward a party, is not immediately appealable under Md. Code Ann., Cts. & Jud. Proc. § 12-303(3)(v). *See*, *e.g.*, *Simmons v. Perkins*, 302 Md. 232, 237–38 (1985); *Pattison v. Pattison*, 254 Md. App. 294, 311–12 (2022). Ms. Robinson's confusion over the order from which she appeals is also reflected in her notice of appeal and civil information report (though her opening brief identifies the correct order). Despite Ms. Darbeau's argument, however, this discrepancy is unimportant. "It is clear that the language used in [an] appellant's notice of appeal [or civil information report] does not determine what we may review." *Green v. Brooks*, 125 Md. App. 349, 363 (1999).

> decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

This Rule covers the situation in which a circuit court has made a decision or signed an order that upon being entered on the docket will be a final judgment, but the notice of appeal was prematurely filed, before the entry on the docket. Put simply, when the defect is no more than a timing issue, Rule 8-602(f) will save an appeal. *See Bussell*, 194 Md. App. at 153–54. So too here.

At the September 15 hearing, the trial court announced its ruling with respect to all the claims remaining between Ms. Robinson and Ms. Darbeau. The court further declared a finding of bad faith but reserved on the issue of attorneys' fees to allow Ms. Robinson to file a response and Ms. Darbeau's counsel to file the required itemization of her fees and costs. Had Ms. Robinson noted her appeal after this hearing, Rule 8-602(f) would not have saved it because, since the court had not declared the amount of attorneys' fees it would award, the judgment was not yet final in that regard. The trial court addressed this outstanding issue, however, at the November 21 hearing when the court (1) reaffirmed its finding of bad faith, (2) found that Ms. Darbeau's fees were fair and reasonable, and (3) awarded her the full amount of $91,132.50 plus costs of $1,304.82. All that remained after this hearing was for the court to enter a separate document memorializing its ruling. Ms. Robinson's notice of appeal filed after this hearing, though technically premature, is treated as filed the same day as, but after, the court's judgment entered on January 30 under Rule 8-602(f). Her appeal is therefore timely, and we will consider the merits.

II. The circuit court did not violate Ms. Robinson's right to due process.

Ms. Robinson presents two arguments related to her right to due process. She first contends the circuit court erred by awarding sanctions without a motion from an adverse party as required by Rule 1-341. She then contends the court erred by awarding sanctions without notice or an opportunity to be heard. Neither argument has merit.

Ms. Robinson is correct that 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 opportunity to respond.'" *Fowler v. Printers II, Inc.*, 89 Md. App. 448, 482 (1991) (quoting *Zdravknovich v. Bell Atl-Tricon Leasing, Corp.*, 323 Md. 200, 209 (1991)). That said, due process "is a flexible concept that 'calls for such procedural protection as a particular situation might demand.'" *Knapp v. Smethurt*, 139 Md. App. 676, 704 (2001) (quoting *Wagner v. Wagner*, 109 Md. App. 1, 24 (1996)). "Just what process is due is determined by analysis of the particular circumstances of the case, including the functions served and interests affected." *Wagner*, 109 Md. App. at 12–13 (quoting *Techem Chem. Co. v. M/T Choyo Maru*, 416 F. Supp. 960, 968 (D. Md. 1976)). 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.*

Ms. Robinson's first argument fails for the simple reason that Ms. Darbeau *did* move for attorneys' fees. She filed a written motion requesting fees in 2019 before the parties' first appeal. Ms. Robinson filed a response to that motion, and the court deferred the motion for future ruling. To be sure, as Ms. Robinson points out in her reply brief, this motion specified misconduct related to a deposition and did not cite Rule 1-341 as a basis. But even if this written motion were insufficient, Ms. Darbeau raised the issue of attorneys' fees twice during the trial that spawned this appeal. Nothing in Rule 1-341 requires the initial request for sanctions to be in writing; only the supporting verified statement needs be. *See* Md. Rule 1-341(b). Indeed, when an "application to the court for an order [is] made during a hearing or trial," it need not be in writing. Md. 2-311(a). So, Ms. Darbeau's oral requests for attorneys' fees would satisfy the motion requirement.

Ms. Robinson's other due process argument is also unpersuasive. The court declared its initial finding of bad faith at the September 15 hearing. The court then specifically gave Ms. Robinson the opportunity to respond in writing and then addressed that response at the November 21 hearing. Ms. Robinson was then able to file a second motion asking the court to reconsider its ruling, which the court considered before issuing its final order. Based on the circumstances, we conclude that Ms. Robinson was not deprived of due process. Although the court prematurely announced its finding of bad faith, it still allowed Ms. Robinson to file two motions explaining her position, which the court subsequently considered and denied.

III. The circuit court's finding that Ms. Robinson acted in bad faith and without substantial justification was not clearly erroneous.

The trial court awarded fees and costs to Ms. Darbeau under Maryland Rule 1-341(a), which states:

> 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.

This Rule functions as a limited exception to the general American rule that litigants pay their own attorneys' fees. *See Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. 1, 18 (2018). It is "intended to function primarily as a deterrent against abusive litigation." *Id.* (Quotations and citations omitted).

Before awarding attorneys' fees, a court must "make two separate findings, each with different, but related, standards of review." *Id.* at 20 (citing *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267–68 (1991)). First, the court must find "that the conduct of a party during a proceeding, in defending or maintaining the action, was without substantial justification or was done in bad faith." *Id.* at 20–21. We review this factual finding for "clear error or an erroneous application of the law." *Id.* at 21. The appealing party bears the burden of demonstrating the court committed clear error. *Id.* We will affirm a court's factual finding "[s]o long as there is any competent material evidence to support [it]." *Id.*

For this 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). The record must reflect "the basis for those findings." *Id.* 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).

"Although a finding of bad faith may overlap with a finding of no substantial justification, the two prongs operate disjunctively and as a necessary step prior to the imposition of attorney's fees." *Christian*, 459 Md. at 21. In the context of Rule 1-341, "bad faith" means "vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons." *Inlet Assocs.*, 324 Md. at 268. "This definition is consistent with frequent dictionary definitions of 'bad faith,' which emphasize dishonest motivation." *MCB Woodberry Developer, LLC v. Council of Owners of Millrace Condo., Inc.*, 253 Md. App. 279, 307 (citing *Black's Law Dictionary*, 171 (11th ed. 2019) (defining "bad faith" as "[d]ishonesty of belief, purpose, or motive")); *Webster's Third New Inter'l Dictionary*, 816 (2002) (defining "faith" as "sincerity or honesty of intentions" and, when modified with "bad," to mean an attempt to "deceive, mislead, or defraud")). The "bad faith" prong thus addresses instances of "intentional misconduct." *Talley*, 317 Md. at 268.

A claim or litigation position lacks substantial justification if a party has no "reasonable basis for believing that the claims would generate an issue of fact for the fact finder." *Inlet Assocs.*, 324 Md. at 268. To fall under this prong, "the claim or litigation position must not be 'fairly debatable, [must] not [be] colorable, or [must] not [be] within

the realm of legitimate advocacy." *Christian*, 459 Md. at 22 (quoting *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 72–73(2017)) (alterations in *Christian*).

"Where a party has no evidence to support its allegations, the proceedings lack substantial justification from the outset." *Id.* at 23 (citations omitted). Frivolous claims—*i.e.*, claims that "indisputably ha[ve] no merit"—also lack substantial justification. *Blanton v. Equitable Bank, Nat. Ass'n*, 61 Md. App. 158, 165–66 (1985). This Court has applied the following distinction between frivolous and non-frivolous claims:

> The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

Legal Aid Bureau, Inc. v. Bishop's Garth Assocs. L.P., 75 Md. App. 214, 221–22 (1988) (quoting Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct).

Only genuine evidence can support a finding of substantial justification for a claim. *Christian*, 459 Md. at 24. That said, "questions of credibility are factual issues to be resolved by the finder of fact, and the mere finding that testimony or evidence lacks credibility does not, in itself, create a basis for attorney[s'] fees." *Id.* (citing *Bishop's Garth Assocs. L.P.*, 75 Md. App. at 223).

Here, at the close of the September 15 hearing, after the court explained its ruling on the merits and its reasons for awarding attorneys' fees to Ms. Darbeau, Ms. Robinson's

counsel asked if the court was finding that she had acted in bad faith. The court responded: "[O]n some level, yes, I am. And justiciable cause." Then, in addressing Ms. Robinson's written response at the November 21 hearing, the court elaborated on its reasons for awarding attorneys' fees to Ms. Darbeau. The court incorporated its reasons into the order signed on January 17 and entered on January 30, which had been prepared by Ms. Darbeau's attorney and included the following paragraph that the court slightly modified:

> ORDERED, that the Plaintiff is awarded the amount of Ninety-Two Thousand Four Hundred Thirty-Seven Dollars and Thirty-Two Cents ($92,437.32) in attorney's fees and costs pursuant to the Court's determination that the Defendant acted in bad faith pursuant to Maryland Rule 1-341 *and/or without substantial justification*, which shall be reduced to judgment against the Defendant, in favor of the Plaintiff, with post judgment interest at the legal rate. [9]

The court thus found that Ms. Robinson acted both without substantial justification and in bad faith. On appeal, Ms. Robinson argues that the court failed to sufficiently explain the facts on which its findings were based and that the court's findings are inconsistent with its decision to allow her former counsel to collect his fees from her. We disagree.

The court's findings that Ms. Robinson had maintained her case without substantial justification and had done so in bad faith were based partly on its belief that she had repeatedly delayed the proceedings without justification. The court discussed how Ms. Robinson waited "an extended period of time" before filing suit in Delaware, which ultimately proved meritless, and that she also delayed proceedings to pursue an

[9] The text identified in italics is handwritten on the order.

unsuccessful appeal to this Court. The court additionally noted that Ms. Robinson filed criminal charges against Ms. Darbeau alleging many of the same claims raised in her countercomplaint, which also proved to have "no apparent basis." The court concluded that Ms. Robinson took these actions, not because she believed they had merit, but to ensure she continued to maintain ownership of the properties—*i.e.*, "for the purpose of causing unjustifiable delay." *Blanton*, 61 Md. App. at 163. The court also found that, other than her claim for contribution, Ms. Robinson had no evidence to support any of her claims. And the court indicated that it believed she knew from the beginning that there was none, depriving those claims of substantial justification from the outset. *See Christian*, 459 Md. at 23. The court explained that it believed Ms. Robinson had "clearly lied" about there being no relationship between the parties—given that they were deeded both the Livingston and Arya Properties as tenants by the entirety.

In short, there was ample evidence from which the court could conclude that Ms. Robinson had acted in bad faith and without substantial justification. We cannot say that its factual findings in this regard were clearly erroneous. Further, contrary to Ms. Robinson's argument, these findings are not inconsistent with the court's award of fees to her prior counsel.

To be sure, "strategic and tactical decisions are the exclusive province of . . . counsel, after consultation with the client." *Jones v. Barnes*, 463 U.S. 745, 753 n.6 (1983) (citing ABA Model R. Prof'l Conduct 1.2(a); ABA Standards for Crim. Just. 4–5.2). "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.'" *Toliver v. Waicker*, 210 Md. App. 52, 71 (2012) (quoting *RTKL Assoc. Inc. v. Baltimore Cty.*, 147 Md. App. 647, 658 (2002) (emphasis moved) (alteration in original)). But the court here made clear that it believed Ms. Robinson had misled even her own counsel about essential facts—specifically, the true extent of the parties' personal relationship. It believed that Ms. Robinson knew that the facts supporting her claims were false from the beginning, but she intended to "make what w[ere] regular transactions and common practice for years between the [her and Ms. Darbeau] appear to be fraudulent, right when the relationship [went] sour," with the goal of depriving Ms. Darbeau of her share of the sale proceeds. Its awarding of fees to her prior counsel was thus not inconsistent with finding that *she* acted in bad faith. The court was not clearly erroneous in not faulting Ms. Robinson's prior counsel for initially believing his client.

Admittedly, during its discussion of fees, the court did discuss Little Foot's absence from the suit -- a legal error that proved fatal to many of Ms. Robinson's claims. Had this been the sole basis for awarding sanctions, it would have been clear error unless the court could specify a reason for imputing this legal failing to her. *See*, *e.g.*, *Ransmeier v. Mariani*, 718 F.3d 64, 71 (2d Cir. 2013) (sanctioning a client for a legal error when the client "affirmatively admit[ted] that she 'worked closely' with [the] [a]ttorney [] in preparing" a sanctionable motion). But in discussing the merits of those claims, the court also emphasized that they lacked merit independent of Little Foot's omission from the suit: they were based on false facts that could have come only from Ms. Robinson.

In sum, the circuit court found that Ms. Robinson acted in bad faith by delaying this case for more than four years to pursue claims she knew lacked merit. It also found that

nearly all her counterclaims lacked substantial justification because, despite what she may have told her attorneys, she knew there was nothing improper about Ms. Darbeau's financial transactions. Ms. Robinson has not met her burden on appeal of demonstrating that these findings were clear error.

IV. The Circuit Court abused its discretion in awarding Ms. Darbeau 100% of her attorneys' fees and costs.

If the court finds that a party has acted in bad faith or without substantial justification, it "must separately find that the acts committed in bad faith or without substantial justification warrant the assessment of attorney[s'] fees." *Christian*, 459 Md. at 21. We review this second finding for an abuse of discretion. *Id.* We will affirm a court's judgment "[s]o long as the hearing judge exercise[d] [their] discretion reasonably[.]" *Id.*

Here, the court awarded Ms. Darbeau 100% of her attorneys' fees and costs. But despite the court's finding of bad faith and lack of substantial justification, it does not necessarily follow that Ms. Robinson must pay every cost incurred by Ms. Darbeau. "An award of attorney[s'] fees must be apportioned based on the particular claims requiring compensation and must be limited to those claims in order to be reasonable." *Id.* at 32. In awarding Ms. Darbeau 100% of her costs, the court essentially ruled that they were *all* attributable to Ms. Robinson's misconduct. This, however, is inconsistent with the court's crediting of Ms. Robinson's contribution claim. Indeed, by awarding Ms. Robinson credit for her contribution claim, the court necessarily determined that *some* portion of her claim had merit.

Because at least one of Ms. Robinson's claims had merit, the court abused its discretion by awarding Ms. Darbeau 100% of her fees and costs. We must therefore vacate the award and remand for further proceedings. *See id.* at 33. We recognize, of course, that "precise delineation may not always be practicable." *Id.* at 39 (quoting *Diamond Point Plaza Ltd. P'ship v. Wells Fargo Bank, N.A.*, 400 Md. 718, 761 (2007)). But the court here did not delineate at all. On remand, the court must make specific findings on what portion of Ms. Darbeaus's fees and costs were spent defending Ms. Robinson's sanctionable conduct and limit any award to that amount.

V. Ms. Darbeau did not preserve her arguments about the trial court's contribution award.

Finally, we turn to Ms. Darbeau's cross-appeal. She does not contend that the trial court erred in finding that Ms. Robinson made the payments for which she sought contribution. Instead, she argues that she could not be liable for contribution for two alternative reasons: either (1) because she was not obligated on the underlying debt, or (2) because Ms. Robinson ousted her from the property. We cannot reach the merits of either argument, however, because Ms. Darbeau failed to raise them in the trial court.

Under Rule 8-131(a), we will not decide an "issue unless it plainly appears by the record to have been raised in or decided by the trial court." The primary purpose of this preservation rule "is to ensure fairness for all parties and to promote orderly administration of law." *Ray v. State*, 435 Md. 1, 22 (2013) (quoting *Jones v. State*, 379 Md. 704, 713–14 (2004)). To be sure, "[w]hen an action is tried without a jury, [we] will review the case on both the law and the evidence." Md. Rule 8-131(c). But this standard of review "neither

expressly nor implicitly provides an exception to our general preservation rules[.]" *Bryant v. State*, 436 Md. 653, 668-69 (2014). Moreover, "a passing reference to an issue, without making clear the substance of the claim, is insufficient to preserve an issue for appeal, particularly in a case with a voluminous record." *Concerned Citizens of Cloverly v. Montgomery Cnty. Plan. Bd.*, 254 Md. App. 575, 603 (2022).

Ms. Darbeau did not "raise," before or during the trial, the argument that she was not liable for contribution because she was not obligated on the underlying mortgage debt. Neither, for that matter, did she seek to demonstrate when or how she was ousted from the Arya Property. Her sole argument at trial was that she was not liable for contribution because Little Foot—not Ms. Robinson—paid the mortgage after she vacated the premises. Admittedly, as Ms. Darbeau points out, there was a brief discussion in the trial court about the fact that she was not obligated on the underlying debt. And her Motion for Sale in Lieu of Partition alleged that Ms. Robinson "ha[d] refused her access" to the Arya Property. But this discussion occurred at a hearing nearly three years before the trial on Ms. Robinson's contribution claim began, and Ms. Darbeau's motion was filed earlier still.

Yet Ms. Darbeau argues nevertheless that "[t]rial judges are presumed to know the law and how to apply it properly." But a court is not required "to imagine all reasonable offshoots of the argument actually presented to [it] before making a ruling[.]" *Sifrit v. State*, 383 Md. 116, 136 (2004); *cf. Brecker v. State*, 304 Md. 36, 39–40 ("[W]hen an objector sets forth the specific grounds for his objection[,] . . . the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified."). These passing references do not make clear the substance of Ms. Darbeau's

claims and, given the voluminous record here, were therefore insufficient to preserve the issues for appeal. *Concerned Citizens of Cloverly*, 254 Md. at 603. Accordingly, because we find that the arguments Ms. Darbeau now raises are appellate afterthought, we will not reach them and shall affirm the circuit court's judgment on Ms. Robinson's contribution claim.

MOTION TO DISMISS DENIED. JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED IN PART AND AFFIRMED IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 25% BY MS. ROBINSON AND 75% BY MS. DARBEAU.