

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1845

September Term, 2015

CHARLES WINGLER

v.

STEPHANIE WILKING

Woodward,
Arthur,
Leahy,

JJ.

Opinion by Arthur, J.

Filed: November 29, 2016

*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.

Four months after prevailing on summary judgment, the two defendants moved for an award of their fees and expenses under Md. Rule 1-341. The Circuit Court for Carroll County granted the motion and awarded almost \$54,000.00 in fees and expenses against their adversary, Charles Wingler, and his attorney. Mr. Wingler has appealed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This case has its origins in a controversy concerning the administration of the estate of Mr. Wingler's late sister, Charlene Wingler.

Ms. Wingler died on January 8, 2011. Her longtime friend, Stephanie Wilking, opened an estate on April 1, 2011.

Mrs. Wilking submitted a one-page, handwritten will for administrative probate. Although the will had purportedly been witnessed by two persons, it was attested and signed by only one, making it invalid under Maryland law. *See* Md. Code (1974, 2011 Repl. Vol.), § 4-102 of the Estates and Trusts Article (“E&T”). Nevertheless, the Orphans' Court for Carroll County initially admitted the will to administrative probate and appointed Mrs. Wilking as the personal representative.

During the course of her administration of the estate, Mrs. Wilking filed an inventory, two amended inventories, and a first and second administration account. Those filings described the assets of the estate and transactions involving those assets.

Under the laws of intestate succession, Mr. Wingler, as the decedent's sole surviving family member, would be entitled to the assets of the estate if the will was invalid. *See* E&T § 3-104(b). Consequently, Mr. Wingler was an “interested person” in

the estate (E&T § 3-101(i); Md. Rule 6-316), who had a right to receive the administration accounts and to file exceptions to them. *See* Md. Rule 6-417.

In accordance with Rule 6-417, Mrs. Wilking sent the accounts to Mr. Wingler. He filed no exceptions.

Among the assets of the estate was the decedent's residence in Manchester, Maryland. The undisputed facts in the record reveal that at the time of the decedent's death the residence was in a state of abject squalor.

Shortly after her appointment as personal representative in April 2011, Mrs. Wilking attempted to list the decedent's residence for sale. A real estate broker informed Mrs. Wilking that there would be no market for the property until it was cleaned and disinfected; the floors, cabinets, bathroom fixtures, appliances, roof, and windows were replaced; and the well, septic system, sump pump, hot water heater, and plumbing were repaired. The broker advised Mrs. Wilking to make the repairs before listing the house for sale.

During 2011, Mrs. Wilking arranged for tens of thousands of dollars in repairs. She paid for the repairs with assets in the estate and detailed those payments in the administration accounts. When it became apparent that the estate did not contain a sufficient amount of liquid assets to fund all of the repairs, Mrs. Wilking unsuccessfully attempted to sell the house.

In January 2012, the Register of Wills observed that the will contained only one signature. He asked Mrs. Wilking to file a petition requesting that the will be admitted to

administrative probate. She complied. Although Mrs. Wilking gave notice to Mr. Wingler, he did not respond to her petition or attend the subsequent hearing in the orphans' court.

By order dated April 2, 2012, the orphans' court withdrew the will from probate, finding that Ms. Wingler had died intestate. Mrs. Wilking, however, remained as the personal representative.

Meanwhile, Mrs. Wilking had continued to pay the mortgage on Ms. Wingler's house. Mrs. Wilking was concerned that the house would be lost to foreclosure because of the inability to find a purchaser and the lack of assets in the estate to complete the repairs and pay the mortgage debt. Consequently, on April 17, 2012, Mrs. Wilking and her husband entered into a contract to purchase the house for \$130,000, its appraised value as of the date of Ms. Wingler's death, minus a six percent real estate commission.

On May 10, 2012, Mr. Wingler, through counsel, filed a motion in the orphans' court in which he requested that Mrs. Wilking be removed as personal representative. Among other things, Mr. Wingler complained that Mrs. Wilking had arranged to buy the decedent's house for less than its fair market value. Less than a week later, on May 16, 2012, Mrs. Wilking and her husband cancelled the contract to purchase the property from the estate.

On August 28, 2012, Mrs. Wilking withdrew as personal representative. Mr. Wingler replaced her. On October 2, 2012, Mr. Wingler, as successor personal representative, sold the house for \$180,000.00.

On February 1, 2013, Mr. Wingler, in his individual capacity and in his capacity as successor personal representative of his sister’s estate, filed suit in the Circuit Court for Carroll County against Mrs. Wilking and NGM Insurance Company, the company that had issued a fiduciary bond to her as personal representative. The complaint alleged that Mrs. Wilking had breached her fiduciary duty to the estate while acting as personal representative. The complaint also alleged that NGM was liable to Mr. Wingler for Mrs. Wilking’s alleged misconduct. Mr. Wingler sought \$350,000.00 in damages.

The complaint specifically alleged that Mrs. Wilking had used estate assets to repair the house and had arranged to convey it to herself using a “false appraisal.” In addition, the complaint contained vague allegations to the effect that Mrs. Wilking had “secured” other assets “unto herself.” At various times, Mr. Wingler has suggested that those assets include motor vehicles, jewelry, and investment accounts. In an exhaustive deposition, Mr. Wingler was repeatedly forced to concede that he had no factual basis for virtually any of his allegations.

After discovery, Mrs. Wilking and NGM moved for summary judgment. In brief, they detailed the absence of any evidentiary support for Mr. Wingler’s allegations of misconduct. In addition, they cited *Fairfax Savings Bank, F.S.B. v. Kris Jen L.P.*, 338 Md. 1 (1995), for the proposition that *res judicata* barred Mr. Wingler’s complaints about the alleged disposition of estate assets, because he had had an opportunity to raise those complaints in exceptions to the administration accounts, but had failed to do so.

By order dated November 25, 2013, the circuit court granted the motion for

summary judgment judgment. Mr. Wingler did not appeal.

Over four months later, on April 14, 2014, Mrs. Wilking and NGM filed a Rule 1-341 petition for attorneys' fees. In support of the petition, they argued that Mr. Wingler had brought and pursued his complaint in bad faith or without substantial justification.

Mr. Wingler moved to strike the petition, alleging that it was untimely. The court denied the motion to strike and, after a hearing, granted the petition.

In granting the petition, the circuit court found that Mr. Wingler lacked substantial justification. The court reasoned that, by the time Mr. Wingler had filed suit, all issues, except for one, had already been foreclosed because of his failure to file exceptions to the administration accounts. On the remaining issue, concerning the aborted sale of the decedent's house, the court reasoned that the estate had suffered no damages, as Mrs. Wilking had cancelled the sale before it went through. Mr. Wingler later sold the house for \$180,000.00, which yielded a \$3,000.00 gain after adding the \$47,000.00 in repairs to the \$130,000.00 value as of the decedent's date of death.

The circuit court entered judgment, jointly and severally, against Mr. Wingler, individually and as personal representative of the estate, and against Mr. Wingler's attorney. The judgments in favor of Mrs. Wilking and NGM were in the amounts of \$34,699.87 and \$19,260.00, respectively.¹

¹ Mr. Wingler did not dispute the necessity of the work that his adversaries' counsel had performed or the reasonableness of their rates and fees. Nonetheless, the court properly conducted its own review of the bills before finding that they were reasonable and that the work was necessary as a result of Mr. Wingler's lawsuit.

Mr. Wingler moved to alter or amend the judgment. The court denied his motion. This timely appeal followed.

QUESTIONS PRESENTED

Mr. Wingler presents two questions for review, which we quote:

1. Did the court have jurisdiction to consider the late Maryland Rule 1-341 petition?
2. Was there sufficient evidence that [Mr. Wingler] had either initiated or continued this litigation as personal representative to recover estate assets either in bad faith or without substantial justification?

DISCUSSION

I. Timeliness of the Petition

Mr. Wingler contends that the court did not have “jurisdiction” to consider the Rule 1-341 petition because, he says, it was filed in an untimely manner. His contention has no merit.

The order granting summary judgment was entered on the docket on December 2, 2013. Consequently, Mr. Wingler asserts that the judgment became “final,” at least in the sense that it was no longer appealable, on January 2, 2014, at the latest. From that premise, Mr. Wingler proceeds to assert, without citation to authority, that the court “lost jurisdiction over the subject matter,” so that it was unable to consider the Rule 1-341 petition that Mrs. Wilking and NGM filed three months later. To the extent that Mr. Wingler’s argument has any cognizable basis, he appears to view a Rule 1-341 petition as a type of revisory motion, which a party must bring within 30 days of the judgment (Md.

Rule 2-535(a); Md. Rule 2-535(c)), except in cases of fraud, mistake, or irregularity (Md. Rule 2-535(b)) or clerical mistakes. Md. Rule 2-535(d).

Maryland courts have rejected Mr. Wingler’s contention that a court cannot adjudicate a Rule 1-341 petition after the time has passed for an appeal from a final judgment on the merits. *See, e.g., Worsham v. Greenfield*, 435 Md. 349, 355 n.4 (2013) (stating that court had power to consider Rule 1-341 motion filed two weeks after Court of Appeals’ denial of petition for writ of certiorari); *Litty v. Becker*, 104 Md. App. 370, 373-76 (1995) (holding that court had power to consider Rule 1-341 motion filed six months after conclusion of appeal from judgment on the merits).

Because a party’s entitlement to attorneys’ fees is considered to be collateral to the merits of the action, “[i]t is beyond cavil,” and has been so for more than 20 years, “that attorney’s fees may be sought after a final judgment has been entered.” *Litty v. Becker*, 104 Md. App. at 373. In holding that a circuit court could consider a Rule 1-341 motion even after the conclusion of an appeal, the *Litty* Court quoted the Supreme Court’s statements in *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396 (1990), which concerns F. R. Civ. P. 11, the federal analogue of Rule 1-341:

[T]he imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate. Such a determination may be made after the principal suit has been terminated.

Relying on *Cooter & Gell*, this Court concluded that Rule 1-341 motions are “independent proceeding[s] supplemental to the original proceeding,” *Litty*, 104 Md.

App. at 376 (quoting *Cooter & Gell*, 496 U.S. at 395 (internal quotation marks omitted)), and that the conclusion of the original proceeding did not divest the circuit court of “jurisdiction” to consider the motion. *Id.* Instead, “a trial court may entertain a motion for costs even though the princip[al] suit has been concluded.” *Id.* “[T]he only time limitation arises out of those equitable considerations that a [] judge may weigh in his [or her] discretion.” *Id.* (quoting *Hicks v. Southern Maryland Health Sys. Agency*, 805 F.2d 1165, 1167 (4th Cir. 1986)).

Mr. Wingler did not argue that he would suffer unfair prejudice if the circuit court considered the Rule 1-341 petition in this case; he argued only that the court lacked “jurisdiction.” Because his argument is flatly wrong, the court did not err in proceeding to decide the motion.

II. Lack of Substantial Justification

Maryland Rule 1-341(a) provides:

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.

In awarding \$34,699.87 to Mrs. Wilking, and \$19,260.00 to NGM, the circuit court found that Mr. Wingler and his counsel brought and maintained this matter without substantial justification.

A party lacks substantial justification if there is no “reasonable basis for believing that a case will generate a factual issue for the fact-finder at trial.” *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991) (quoting *Needle v. White, Mindel, Clarke & Hill*, 81 Md. App. 463, 476 (1990)). A party also lacks substantial justification 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 extension, modification or reversal of existing law.” *Id.* (quoting comment to Md. Lawyers’ R. of Prof’l Conduct 3.1). This Court will affirm a finding that a party acted without substantial justification unless “it is clearly erroneous or involves an erroneous application of law.” *Id.*

Based on the arguments that were presented to it, the circuit court was clearly correct, not clearly erroneous, in concluding that Mr. Wingler lacked substantial justification in filing the instant lawsuit. The circuit court reasoned that by the time Mr. Wingler filed this lawsuit, every issue set forth in his complaint, except for one, had been barred by the doctrine of res judicata because of his failure to file exceptions to Mrs. Wilking’s filings. The sole remaining issue, concerning damages relating to the sale of the house, had no factual basis, because no sale had ever occurred.

Maryland courts recognize that the three elements of res judicata are: “(1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and, (3) that there has been a final judgment on the merits.” *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93, 107 (2005).

A ruling may become “final,” for purposes of res judicata, if a party has the right to file exceptions to it, but fails to do so. *See, e.g., Kris Jen*, 338 Md. at 1-22 (because mortgagor abandoned exceptions to ratification of foreclosure sale, ratification was res judicata as to mortgagor’s claim that it had not defaulted on loan); *see also Grausz v. Englander*, 321 F.3d 467, 472-75 (4th Cir. 2003) (because bankrupt debtor failed to object to his counsel’s fee application, bankruptcy court order approving application was res judicata as to debtor’s subsequent legal malpractice claim).

“[A] judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action and is conclusive, not only as to all matters decided in the original suit, *but also as to matters that could have been litigated in the original suit.*” *Colandrea v. Wilde Lake Cmty. Ass’n, Inc.*, 361 Md. 371, 392 (2000) (emphasis in original) (citations omitted). Failure to assert a legal theory in a prior proceeding or action “*does not deprive the ensuing judgment of its effect as res judicata.*” *Id.* (emphasis in original) (citation omitted).

Md. Rule 6-417 sets forth the rules regarding the filing of estate accounts and exceptions thereto. The personal representative must give notice to each interested person (Md. Rule 6-417(d)), including the decedent’s heirs. E&T § 1-101(i)(4). The required notice must state that an account has been filed and “that the recipient may file exceptions with the court within 20 days from the court’s order approving the account[.]” Md. Rule 6-417(d).

An interested person must file exceptions “within 20 days after entry of the order approving the account and shall include the grounds therefor in reasonable detail.” Md. Rule 6-417(f). “If no timely exceptions are filed, the order of the court approving the account becomes final.” Md. Rule 6-417(g).

Mrs. Wilking filed first and second administration accounts on January 3, 2012, and September 26, 2012, respectively. As an heir, Mr. Wingler was an interested person, and Mrs. Wilking properly served him with the notice, as required by Md. Rule 6-417(d). Mr. Wingler did not, however, file exceptions to either the first or second administration account. Therefore, the orders of the court approving each account became final. Md. Rule 6-417(g).

The first element of res judicata -- that the parties in the present litigation are the same as or in privity with the parties to the earlier dispute -- is easily met here. Mr. Wingler did not dispute that he and Mrs. Wilking were parties to the estate proceedings, and NGM was in privity with Mrs. Wilking because it was her surety. *Mestek, Inc. v. United Pac. Ins. Co.*, 40 Mass. App. 729, 732, 667 N.E.2d 292, 294 (1996).²

The second element of res judicata -- whether the claims in the current action were or could have been raised in the earlier action -- is also met as to most of the claims. The

² In neither his opposition to the summary judgment motion, nor in any written response to the Rule 1-341 petition, nor in his brief in this Court did Mr. Wingler argue that ordinary principles of res judicata are inapplicable to the orphans’ court’s approval of the accounts, because the approval did not occur in the context of a conventional, adversarial proceeding with dueling parties. Because Mr. Wingler did not make that argument, we do not consider whether the argument would have made a difference at any specific juncture in this case.

claims against Mrs. Wilking and NGM, except for one, are identical to those which could have been raised and determined in the prior estate proceeding by filing exceptions to the accounts. However, Mr. Wingler failed to file any exceptions.

Finally, Mr. Wingler’s failure to file exceptions to the accounts resulted in final judgment on the merits of those issues in the estate proceedings. “Rule 6-417(g) makes clear that, in the absence of fraud, mistake, or irregularity, if timely exceptions are not filed, ‘the order of the court approving the account becomes final.’” *Vito ex rel. Vito v. Klausmeyer*, 216 Md. App. 376, 379 (2014) (quoting *Brewer v. Brewer*, 386 Md. 183, 198 (2005)); *see also Green v. McClintock*, 218 Md. App. 336, 361-64 (2014) (concerning the finality of interim rulings by an orphans’ court).

Therefore, Mr. Wingler’s claims in the original circuit court action, except one, were precluded by res judicata. The circuit court was not clearly erroneous in finding that Mr. Wingler lacked substantial justification when he brought and maintained claims barred by res judicata.

The circuit court found that res judicata did not preclude one issue alleged in the complaint -- whether Mrs. Wilking had caused damages for breach of fiduciary duty by entering into a contract of sale to purchase estate realty. The contract was in force from April 17, 2012, until cancelled by Mrs. Wilking on May 16, 2012.

Assuming that a person has a right to bring an action for damages for breach of fiduciary duty,³ he or she would certainly have to allege and prove harm resulting from the breach. Yet even if Mrs. Wilking breached her fiduciary duty by entering into the contract to purchase the decedent's house at less than its true value, the estate suffered no harm, because she cancelled the contract long before the sale went through. Furthermore, Mr. Wingler, as successor personal representative, eventually sold the house for more than the date-of-death appraisal plus the amount of estate assets that Mrs. Wilking had invested in repairs. Because these indisputable facts were readily apparent from the outset of the proceedings in the circuit court, the court was not clearly erroneous in finding that Mr. Wingler and his attorney had no reasonable basis to believe that the claim would generate any recovery.

In summary, because the circuit court was not clearly erroneous in finding that Mr. Wingler lacked substantial justification to bring and maintain this case, the court did not err in awarding costs and fees under Rule 1-341 to Mrs. Wilking and NGM.

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

³ Compare *George Wasserman & Janice Wasserman Goldsten Family LLC v. Kay*, 197 Md. App. 586, 631-32 (2011) (suggesting that Maryland may recognize an equitable claim for breach of fiduciary duty, but does not recognize one at law), with *Insurance Co. of N. America v. Miller*, 362 Md. 361, 388 (2001) (remanding a common-law action for breach of fiduciary duty for a determination of damages).