UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2594

September Term, 2014

STEPHEN D. CHAMBERLAIN

v.

JUDITH C. CHAMBERLAIN

Krauser, C.J.,
Friedman,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: August 24, 2016

After a hearing spanning two days, the Circuit Court for Anne Arundel County found appellant Stephen D. Chamberlain in contempt of court for failing to comply with a June 5, 2014 Consent Order. The court set a purge amount of $14,000 and ordered appellant to pay $3,600 in counsel fees to appellee Judith C. Chamberlain's counsel pursuant to Maryland Rule 1-341.[1]

The Consent Order was the subject of a prior appeal to this Court. We affirmed the validity of the Consent Order in an unreported opinion. *Chamberlain v. Chamberlain*, No. 719, Sept. Term 2014 (Apr. 21, 2015) (hereinafter *Chamberlain I*).

Appellant, in proper person, presents seven questions from which we discern four issues:[2]

1. Did the circuit court err in denying appellant's motion for recusal?

2. Did the circuit court err in holding appellant in contempt?

[1]Although the court stated it could consider another basis for the award of counsel fees in the alternative, it appears that the court based its decision on Rule 1-341.

[2]The questions, as posed by appellant are:

> "1. Did the judge err by not recusing himself?
> 2. Did the Circuit Court err using its contempt powers?
> 3. Did the Circuit Court deny Mr. Chamberlain's due process right to be heard on the matter of attorneys' fees?
> 4. Did the Circuit Court abuse its discretion by awarding attorneys' fees?
> 5. Did the Circuit Court abuse its discretion in the amount of attorneys' fees awarded?
> 6. Did the Circuit Court err when it set the amount necessary for the defendant to purge himself from the contempt charges?
> 7. Did the Circuit Court err when it denied the stays of judgment?"

3. Did the circuit court err in awarding appellee counsel fees?

4. Did the circuit court err in denying appellant's motion for a stay?

We shall affirm in part and reverse in part.

I.

In 2009, the Circuit Court for Anne Arundel County granted appellant and appellee a divorce. As part of the divorce proceedings, the parties entered into a marital separation agreement that, *inter alia*, contained provisions concerning the financial responsibilities of the parties for their children's college educations. As we recounted in *Chamberlain I*, the parties disagreed about how their youngest child selected which college to attend, prompting the litigation that led to the June 5, 2014 Consent Order.

The Consent Order provided that appellant would contribute $14,000 per year to the youngest child's college expenses, which appellant could split between the two semesters of the academic year. Appellant challenged the validity of the Consent Order. He argued that the circuit court lacked subject matter jurisdiction to entertain the matter because both parties had withdrawn their motions before the hearing during which appellant assented to the consent agreement, thus any issue was moot and the circuit court did not have jurisdiction

over the matter. Appellant also argued that he had been coerced into the agreement. We rejected those contentions and affirmed the circuit court. *Chamberlain I* at *12.[3]

In the fall of 2014, the child notified appellant of his expenses for the semester in accordance with the Consent Order. Appellant did not send payment to the child, nor did he respond in any way to communications from the child and appellee. Appellee filed a Petition for Contempt, seeking to hold appellant in contempt for his failure to comply with the requirements of the Consent Order. The circuit court scheduled a show cause hearing on November 21, 2014 before a master.

In response, appellant filed a Motion for Stay of Judgments, a Motion to Vacate Order and Dismiss Petition for Contempt, and a Motion to Cancel Contempt Hearing Date. The circuit court denied appellant's Motion to Vacate Order and Dismiss Petition for Contempt—which prompted appellant to file a Motion to Revise Denial of Motion to Vacate Order—and the court concluded that the Motion to Cancel Contempt Hearing Date was moot.[4] Appellant then filed a Motion for Recusal, seeking the recusal of Judge Paul F. Harris from the case.

[3]Appellant petitioned the Court of Appeals for a writ of *certiorari*, which was denied. *Chamberlain v. Chamberlain*, 442 Md. 743 (2015). The Court also denied appellant's subsequent motion to reconsider.

[4] The Motion to Revise Denial of Motion to Vacate Order was assigned initially to Judge Paul A. Hackner. Judge Hackner wrote a letter to appellant in which he explained that he did not have the authority to vacate Judge Paul F. Harris's order. Judge Hackner referred the matter back to Judge Harris.

As a result of the plethora of motions, the circuit court reset the show cause hearing to January 16, 2015, before a judge and notified the parties that the court would consider appellant's Motion for Recusal on the same day as the Petition for Contempt. Meanwhile, appellant continued to file motions, including a Motion for Specific Assignment and Request for Expedited Ruling Pursuant to Maryland Rule 2-535(b), which sought to have the case assigned specifically to Judge Paul A. Hackner, and a Motion to Bifurcate the hearing on recusal from the hearing for contempt. The court did not rule on these motions prior to the January 16th hearing.

On the day of the hearing, the parties appeared before Judge Harris. The court first addressed appellant's Motion for Recusal. After hearing extensive arguments, Judge Harris denied the motion.

The court then considered appellee's Petition for Contempt. Appellee testified that she and the youngest child had complied with the requirements of the Consent Order in notifying appellant of the college expenses. Appellant admitted that he had not made any contribution to the child's college expenses, as required by the Consent Order. At the conclusion of the proceeding—which the court extended to February 5, 2015, to permit time for appellant to present additional argument—the circuit court determined that appellant had "totally disregarded and thumbed [his] nose at [his] obligation" under the Consent Order. The court held him in contempt and set a purge provision, permitting appellant to avoid contempt by paying $14,000 to the child within thirty days of the hearing. Additionally, the

court determined that appellant had no justification for defending against appellee's petition and ordered him to pay $3,600 in counsel fees to appellee's counsel pursuant to Rule 1-341.

Following the February 5th hearing, appellant noted an appeal. On March 2, 2015, he filed separate motions for a stay of the contempt sanction and a stay of the award of counsel fees. The circuit court denied the motions on April 7, 2015. Appellant failed to purge his contempt, and the court granted appellee's request to enter the sanctions as a judgment.

Appellant timely appealed from the February 5, 2015 order finding appellant in contempt and awarding counsel fees to appellee. As discussed further below, appellant raises the order of April 7, 2015 denying his motions to stay the contempt sanction and stay the award of counsel fees, but that order, filed after appellant noticed this appeal, cannot be considered in this appeal.

II.

Appellant argues before this Court that the trial judge erred and abused his discretion by not recusing himself. He asserts that Judge Harris was required to recuse himself pursuant to the "Due Process Clause of the United States Constitution, the Maryland Constitution, and Maryland law." Appellant contends that because Judge Harris conducted the April 2014 hearing, at which the parties entered into the consent agreement, without jurisdiction, Judge Harris gained a personal interest in the outcome of the case because if his decision were

reversed on appeal, Judge Harris might then be liable for a civil rights violation, or his pay and benefits would be affected. Appellant also argues that Judge Harris was biased against him and was not be able to review fairly and impartially the evidence in the contempt hearing, which was based on the same events from the hearing that led to the Consent Order.

Appellant argues that the trial court committed two errors in holding him in contempt. First, he contends that the court could not hold him in contempt for failing to pay pursuant to the Consent Order because it is a contract that cannot be enforced through contempt proceedings as appellee is required to enforce it with a lawsuit for breach of contract. He argues also that he cannot be found in contempt because the Consent Order was an unlawful order. Appellant argues that the Consent Order is akin to a separation agreement that has been incorporated, but not merged, into the divorce decree, and contempt proceedings cannot be used in such cases. Second, appellant argues that the court erred in setting the purge provision for the contempt because he did not have the ability to pay it.

Appellant argues that the court erred and abused its discretion in awarding $3,600 in counsel fees to appellee. He asserts that the court committed an error of law in awarding counsel fees in this case as such an award is not appropriate. Appellant contends also that the court abused its discretion in awarding the amount of counsel fees to appellee because the three days of hearings on the recusal and contempt petitions, which increased appellee's counsel fees, were the fault of the court. He also argues that the court violated his due process rights because he was not afforded an opportunity to be heard on the issue.

Lastly, appellant contends that the court erred in denying his motions to stay the contempt finding and the award of counsel fees. Appellant argues that he complied with Rules 2-632 and 8-422 and posted a *supersedeas* bond, which should have stayed the judgments.

Appellee argues that appellant's Motion for Recusal was without merit. She contends that appellant sought Judge Harris's recusal merely because he was dissatisfied with the court's prior rulings. Appellee maintains that consent orders are orders of the court that may be enforced with contempt proceedings. She argues that Maryland Code (1984, 2012 Repl. Vol.), Family Law Article ("FL") § 8-105(a)(2) controls and permits contempt proceedings to enforce the terms of a consent order. Appellee argues that the court did not abuse its discretion in holding appellant in contempt and awarding her counsel fees. She contends that appellant's arguments against the contempt petition were frivolous and without merit, thus the hearing was unnecessary, and awarding her counsel fees was not an abuse of discretion.

Appellee argues that the issue of the court denying appellant's motions to stay the contempt finding and the award of counsel fees are not properly before this Court. She points out that the court found appellant in contempt and awarded the counsel fees at the conclusion of the February 5, 2015 hearing. Appellant filed his notice of appeal on February 10th. Appellant filed the separate motions to stay on March 2nd, and the court denied them on April 7th. Appellee notes that appellant did not file an additional notice of appeal to contest those orders, arguing that the April 7 orders are not raised properly in this appeal.

III.

A party moving for a judge's recusal faces a "heavy burden to overcome the presumption of impartiality." *S. Easton Neighborhood Ass'n, Inc. v. Town of Easton, Md.*, 387 Md. 468, 499 (2005) (quoting *Attorney Grievance Comm'n v. Blum*, 373 Md. 275, 297 (2003)). In Maryland, as elsewhere, there is a strong presumption that judges are impartial, and the duty to preside when qualified is as strong as the duty to refrain from presiding when not qualified. *In re Elrich S.*, 416 Md. 15, 33 (2010).

Rule 2.11(a) of the Maryland Code of Judicial Conduct (Md. Rule 16-813), requires that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned," including situations where "[t]he judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding." A judge is also required to recuse himself or herself if "[t]he judge knows that he or she . . . has a significant financial interest in the subject matter in controversy or in a party to the proceeding . . . ." Maryland Code of Judicial Conduct Rule 2.11(a)(3).

Ordinarily, a judge's decision to not recuse will be overturned only upon a showing of an abuse of discretion. *S. Easton*, 387 Md. at 499. In this context, "[a]n abuse of discretion standard is objective—'whether a reasonable member of the public knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned.'" *Id.* (quoting *In re Turney*, 311 Md. 246, 253 (1987)).

Appellant asserts before this Court that Judge Harris had a pecuniary interest in the outcome of the case. In the context of recusals, a financial interest in the case means that the judge has a monetary stake in a litigant or an outcome. Appellant did not present such an argument to the circuit court. As such, it is not preserved for our review. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . .").

Furthermore, even if we considered this issue, Judge Harris did not have a financial interest in the outcome of the case. Appellant does not assert that either he or appellee were connected financially to Judge Harris in any way. Rather, appellant contends that Judge Harris had a pecuniary stake in the case because if he were reversed, he could be liable for a civil rights violation, which might make him liable personally for damages under 42 U.S.C. § 1983. Appellant has failed to demonstrate how Judge Harris's decision in any way affected his constitutional rights. Moreover, when acting in a judicial capacity, judges enjoy absolute immunity from an action pursuant to 42 U.S.C. § 1983. *Stump v. Sparkman*, 435 U.S. 349, 359-60 (1978).

Appellant contends that Judge Harris had a personal bias or personal knowledge of the facts that required him to recuse himself. During the hearing, Judge Harris pressed repeatedly for appellant to argue on this issue, inquiring several times why appellant believed he could not be fair. Appellant's argument was that Judge Harris entertained the April 2014

proceeding without jurisdiction and presided over the entry of the Consent Order, but he did not raise any material factor beyond the case to support his contention.

Appellant has failed to demonstrate that Judge Harris was biased in such a manner that required his recusal. For recusal "'the alleged prejudice must result from an extrajudicial source and parties cannot attack a judge's impartiality on the basis of information and beliefs acquired while acting in his or her judicial capacity.'" *In re Elrich*, 416 Md. at 34 (emphasis added) (quoting *Boyd v. State*, 321 Md. 69, 77 (1990)). Indeed, "a disqualifying prejudice cannot be definitively established simply from the exercise of related judicial functions." *Id.*

Appellant did not allege nor establish an extrajudicial source of Judge Harris's alleged bias and appellant has not overcome the presumption of impartiality. He has demonstrated only that Judge Harris entered a consent order that appellant later regretted. Mandatory recusal was not required in this case, as Judge Harris's impartiality could not be questioned reasonably by an objective observer. The judge did not abuse his discretion in denying the recusal motion.

IV.

Contempt proceedings are a means of compelling an uncooperative party to abide by a court order. *Station Maint. Solutions, Inc. v. Two Farms, Inc.*, 209 Md. App. 464, 481 (2013). Civil contempt is intended to compel obedience to orders and decrees and is generally remedial in nature, intended to coerce future compliance. *Id.* Rule 15-206 governs

the requirements for a constructive civil contempt proceeding.[5] In the civil context, "'civil contempt requires a purge provision with which the defendant is able to comply in order to purge, *i.e.*, clear or exonerate, him or herself of the contempt.'" *Rawlings v. Rawlings*, 362 Md. 535, 549 (2001) (quoting *Lynch v. Lynch*, 342 Md. 509, 529 (1996)).

Appellant contends that he could not be found in contempt because the Consent Order was an unlawful order. Appellant does not cite authority for the proposition that he can ignore a lawful order of the court while the case is on appeal. Instead, appellant points to authority that stands for the proposition that courts may not use contempt proceedings to enforce invalid orders. Appellant fails to note language in the very same cases he cites that refute his argument. *See United States v. United Mine Workers of Am.*, 330 U.S. 258, 293 (1947) (noting that the court, alone, has the power to determine jurisdiction, and in making a private determination of the law, party acted at their own peril, with disobedience punishable as contempt); *Sheets v. City of Hagerstown*, 204 Md. 113, 124 (1954) ("Indeed, even if the decrees had been appealed and reversed, a finding of contempt for their violation, while they were in effect, would not fall with them."); *Donner v. Calvert Distillers Corp.*, 196 Md. 475, 489 (1950) ("[Order] must be obeyed until such time as it is stricken out on application, or reversed on appeal, or otherwise ceases to be a vital and subsisting direction

[5]Direct contempt involves behavior committed in front of the judge. *Station Maint. Solutions, Inc. v. Two Farms, Inc.*, 209 Md. App. 464, 481 (2013) (quoting Md. Rule 15-202(b)). Constructive contempt is anything that is not direct. *Id.* at 481-82 (quoting *Fisher v. McCrary Crescent City, LLC*, 186 Md. App. 86, 115 (2009)).

of a court with proper jurisdiction over the parties to the case."). Accordingly, even if the court acted without jurisdiction in entering the Consent Order—and we reiterate that was not the case, *see Chamberlain I*—it is the court, not Appellant, that determines the issue of jurisdiction and the validity of the order. Until a court invalidates the Order, appellant is required to comply with it.

Appellant next contends that the Consent Order was a contract, enforceable only through a separate lawsuit for breach of contract. He has mistaken, apparently, a conversation between the court and appellee's counsel for a ruling. Appellant refers to the following colloquy:

> "THE COURT: The contempt?
>
> [APPELLEE'S COUNSEL]: Correct.
>
> THE COURT: Which, preliminarily, I need to ask you why did—why is this a contempt case? I can't do much under the law. I cannot put him in jail.
>
> [APPELLEE'S COUNSEL]: Uh-huh.
>
> THE COURT: This is a college tuition situation.
>
> [APPELLEE'S COUNSEL]: Uh-huh.
>
> THE COURT: It's not—I mean, it's not child support or alimony. The young man whose tuition is at issue is over 18—
>
> [APPELLEE'S COUNSEL]: Uh-huh.
>
> THE COURT: —so this is a straight contract action.

[APPELLEE'S COUNSEL]: Your Honor, it is a contempt case, because we—

THE COURT: What if I were to find him in contempt? What do you suggest I can do?

[APPELLEE'S COUNSEL]: Your Honor, you could enter a judgment. The Court has broad authority, even in a general civil contempt situation that isn't directly related—

THE COURT: Right.

[APPELLEE'S COUNSEL]: —to child support or alimony, fashion the appropriate relief.

* * *

[APPELLEE'S COUNSEL]: What we are requesting, Your Honor, is some assistance from the Court on collecting the monetary relief that my client and [Mr. Chamberlain] agreed to—

THE COURT: He works. You could have filed in District Court and gotten a judgment.

[APPELLEE'S COUNSEL]: I—

THE COURT: Probably had it resolved by now.

[APPELLEE'S COUNSEL]: I don't know that we could have done that.

THE COURT: Why?

[APPELLEE'S COUNSEL]: The other issue, too, is my client has been consistently incurring attorneys' fees not just on this contempt—

* * *

> [APPELLEE'S COUNSEL]: Your Honor, I don't necessarily believe that the Court is without authority to fashion an appropriate award in this situation to coerce compliance with a valid court order, which is what we have. Mr. Chamberlain has adamantly—and I think we could even stipulate to the ultimate issue here on the contempt—adamantly refused to comply with the Court's order. He will not pay. He will not pay anything. He will not pay a dollar."

Appellant appears to believe from this exchange that the Consent Order is a contract between the parties and not enforceable as an order of the court. He is incorrect. This colloquy was not an order. Appellee petitioned the court to enforce the Consent Order by finding appellant in contempt and to award her counsel fees. The court did not mandate that appellee dismiss the contempt proceedings in favor of a separate breach of contract lawsuit. Moreover, consent orders are orders of the court, enforceable through contempt proceedings. *See Gertz v. Md. Dep't of the Env't*, 199 Md. App. 413 (2011) (contempt proceeding involving violation of consent order); *Bahena v. Foster*, 164 Md. App. 275 (2005) (same).

Appellant argues that the court erred in setting the purge amount because he did not have the ability to pay it. He contends that he presented evidence of his income and expenses and demonstrated that he lacked the ability to pay the purge amount. Accordingly, as he could not pay the purge, the court could not find him in contempt.

In the event a litigant is held in civil contempt, "the court must issue a written order specifying (1) the coercive sanction imposed for the contempt, and (2) how the contempt may be purged." *Fisher v. McCrary Crescent City, LLC*, 186 Md. App. 86, 120 (2009); Md.

Rule 15-207(d)(2). The purge provision is important in that "'a civil contemnor is said to have the keys to the prison in his own pocket.'" *Id.* (quoting *Jones v. State*, 351 Md. 264, 281 (1998)). The contemnor may raise a defense to contempt, however: "[A] *present* inability to comply with the prior court order, or with the purging provision if it is different from the prior order, is a defense in a civil contempt action and precludes the imposition of a penalty." *Dodson v. Dodson*, 380 Md. 438, 449 (2004). Stated another way, "[u]nder settled Maryland law, one may not be held in contempt of a court order unless the failure to comply with the court order was or is willful. A negligent failure to comply with a court order is simply not contemptuous in the legal sense." *Id.* at 452. The inability to pay must be established by a preponderance of the evidence. *Rawlings v. Rawlings*, 362 Md. 535, 544 (2001).

Appellant does not contest the court's finding that he failed willfully to pay the amounts required by the Consent Order. He admitted as much at the hearing. As to appellant's ability to pay the purge amount, the court heard the following evidence:

> "[APPELLEE'S COUNSEL]: Mr. Chamberlain, you are currently employed?
>
> [APPELLANT]: That is correct.
>
> [APPELLEE'S COUNSEL]: And you're employed with Southwest Airlines; is that correct?
>
> [APPELLANT]: That is correct.

[APPELLEE'S COUNSEL]: All right. And you're employed as a pilot, correct?

[APPELLANT]: That is correct.

[APPELLEE'S COUNSEL]: And you have not had any lapses of employment or any periods of unemployment since April 18th of 2014; is that correct?

[APPELLANT]: No periods of unemployment.

* * *

[APPELLEE'S COUNSEL]: Now, at least as of 2013, you were making approximately $300,000 a year as a result of your employment; is that correct?

[APPELLANT]: As a result of the litigation from 2011—

[APPELLEE'S COUNSEL]: Sir, it's a yes-or-no question.

[APPELLANT]: I'm sorry. Could you repeat it then again?

[APPELLEE'S COUNSEL]: As of 2013, you were making approximately $300,000 a year as your gross income?

[APPELLANT]: I believe that was the number on the tax return, yes.

* * *

[APPELLEE'S COUNSEL]: Okay. And do you agree with Mr. Chamberlain's statement that he earned approximately $300,000 in 2013?

[APPELLEE]: Yes.

[APPELLEE'S COUNSEL]: And was that consistent with his income—well, let me strike that. Was Mr. Chamberlain employed as a pilot during the course of your marriage?

[APPELLEE]: Yes.

[APPELLEE'S COUNSEL]: All right. And was that $300,000 consistent with the income that he received during the course of your marriage?

[APPELLEE]: Approximately, yes.

* * *

[APPELLANT]: I'd like to provide a little background on this issue. I am paying permanent alimony until I die. Permanent. I've already paid for two girls to go to the University of Alabama. I paid for car insurance. I paid for health insurance coverage. I pay $1,500 per month in contractual support—

* * *

[APPELLANT]: . . . $1,500 per month contractual support until my son is almost 23 or out of college. If I live until I'm 80, I will have provided $1.8 million to my ex-wife and children.

THE COURT: Did you agree to all that, sir?

[APPELLANT]: I agreed to that to stay—

THE COURT: Okay.

[APPELLANT]: —out of family law court.

THE COURT: Okay. Go ahead. Finish.

[APPELLANT]: I gave this to stay out of court. I absorbed $150,000 in marital debt, 100 percent of the marital debt. The last litigation, I absorbed $65,000 in complete loss on the

marital home. I absorbed a hundred percent of my student loans my daughters had that we had an agreement to share.

* * *

THE COURT: You have paid zero under your obligation, so what's it about? I'm curious.

[APPELLANT]: It's about abusing the legal process to change a contract. It's about punishment, frivolous and vexatious legal action to create enough duress to get us into this point. I offered to pay for Auburn University. He asked me to go to that school. He walked away, and I'm being sued to the tune of—it's going to be 200 grand if this Court determines he is allowed to go to a school I can't afford.

THE COURT: Your obligation, sir, is 7,000 a semester.

[APPELLANT]: My obligation is to agree to a college, and I agreed to the college.

* * *

[APPELLANT]: I had about $20,000 saved up to get him started at Auburn University, and he walked away from a scholarship in that school.

THE COURT: Okay. So let me—again, you don't have an attorney, so I want to ask you.

[APPELLANT]: Yes, Your Honor.

THE COURT: You said you had the money put away for Auburn, okay?

[APPELLANT]: Yes, Your Honor.

THE COURT: So you had the ability to comply with this order.

[APPELLANT]: No, Your Honor. [Prior counsel] has all that money.

THE COURT: Well, then that's between you and [prior counsel].

[APPELLANT]: Well, it's between everybody, because the money that was saved for college got lost in the legal process, so when somebody is going to say they don't have money to pay for legal fees, I don't have money to pay for legal fees. I committed to a college that, at the time, I did not know I could even afford, but I had enough to start the first or second semester.

* * *

[APPELLANT]: So we—we heard a little bit about financial status and inability to pay an attorney. I still owe [prior counsel] I don't know how many thousands of dollars, and it's been six months, and he wants it, and I don't have it. My gross income was listed in 2013 as 299. Ten percent of that has to go to retirement, because if I don't put a dollar towards retirement, they don't match it. I don't have a retirement in my company. The retirement I have, I must put in my own money. That reduces that 299 to money that I have available.

I paid $50,761 in taxes in 2013; 60,000 in alimony; 18,000 in contractual support; almost 4,000 in student loans for the girls, 23,266 in the minimum debt payments on all the debt that this has caused; and I reduced my mortgage almost by half by leaving Maryland and going to Colorado. I only paid 28,800 in mortgage interest.

That leaves me with $85,000.

THE COURT: You knew all of those expenses. They all existed around the time you entered into this agreement; am I correct?

[APPELLANT]: I was aware all these expenses exist.

THE COURT: Okay. So, once again, I have to ask you, why did you agree to do this?

[APPELLANT]: Because your decisions and conduct indicated to me that you would ignore what the contract said—

* * *

[APPELLANT]: I believe the evidence substantiates it. While doing this, I have reduced my debt by 134,000, but I still almost have—I still have about the same amount of debt left.

[Appellee] indicated she makes 2,000, $2,500 per month, plus the 6,500 I give her, 9,000, 9,500, working at $13 an hour, someone who used to manage a clothing store.

* * *

[APPELLANT]: I support a wife, a 3-year-old son. The Court is all about let's make sure we take care of the children, the child. What—why should we hurt the child?

She is an independent—she has no obligations that she has. She may have obligated herself to certain things. I have substantial obligations. I have all this marital debt to pay off. I have all these—this future debt to pay off. I have a set of student loans that's still coming. It's never-ending.

If I—I'm pay—minimum payments would take me more than 20 years to pay off. I've got 13 until I retire, and then my income goes to zero by law, because I can't fly anymore.

2011 litigation, I already indicated, added to—already giving everything away, $65,000 loss on that home, a hundred person [sic] of the loans for the girls, and I paid 48,800 in legal fees to get out of what they were doing to me. I already indicated all the other things I paid for.

If I only did what my job requires, I'd made 205,000. I am forced to work 30, 35 percent more than anybody else. It's unhealthy, it's not right, and as soon as I make the money to get out of this enormous debt, someone comes to the Court and says, 'He's got plenty of money.'

* * *

[APPELLEE'S COUNSEL]: Sir, you went through some expenses that you have now, and I just wanted to confirm, you had those same expenses in April of 2014, correct?

[APPELLANT]: I had less.

[APPELLEE'S COUNSEL]: Well, you were married in April of 2014, correct?

[APPELLANT]: Yes.

[APPELLEE'S COUNSEL]: And your wife doesn't work; is that correct?

[APPELLANT]: She is working now, but she was out on medical leave.

[APPELLEE'S COUNSEL]: Okay. So you were actually—you had less combined income in April of 2014 than what you have right now?

[APPELLANT]: It's very difficult to explain. Her work rate is much less than mine. When she works, I often don't make as much money, because my rate is so much higher, and we—

[APPELLEE'S COUNSEL]: Sir, I'm just asking you with regard to your wife, she was not working in April of 2014, correct?

[APPELLANT]: It did not include her—yeah. Correct.

[APPELLEE'S COUNSEL]: She is working now, correct?

[APPELLANT]: Yes.

[APPELLEE'S COUNSEL]: All right. And you have a son with your current wife—

[APPELLANT]: Yes.

[APPELLEE'S COUNSEL]: —is that correct? And you had that child in April of 2014, correct?

[APPELLANT]: He existed in—

[APPELLEE'S COUNSEL]: Okay.

[APPELLANT]: Yes.

[APPELLEE'S COUNSEL]: And you agree that—how old is your son?

[APPELLANT]: Three.

[APPELLEE'S COUNSEL]: All right. So you agree that there were expenses associated with having a child who was younger in April of 2014, that things like diapers and certain types of food that kids eat, those expenses get less over time, correct?

[APPELLANT]: And as children grow, they get more.

[APPELLEE'S COUNSEL]: Sir, it's a yes-or-no question.

[APPELLANT]: Infant expenses get less, yes.

[APPELLEE'S COUNSEL]: Okay. Now, you stated—you admitted that you made 299,000 in 2013, and you stated that your base income, if you were working the minimum amount of time, would be 205,000; is that correct?

[APPELLANT]: That—not the minimum amount of time. That is the assigned time. It's a contractual amount.

[APPELLEE'S COUNSEL]: How much did you actually make in 2014?

[APPELLANT]: In 2014, I don't know.

[APPELLEE'S COUNSEL]: You don't have a W-2?

[APPELLANT]: No.

[APPELLEE'S COUNSEL]: You came here to court today to make an agreement [sic] about the fact that you can't afford to pay $7,000 towards your son's college expenses—

[APPELLANT]: I'm not—

[APPELLEE'S COUNSEL]: —but you don't have any documentation with you as to what—

[APPELLANT]: I—

[APPELLEE'S COUNSEL]: —you actually made?

[APPELLANT]: I did not come to court to make that argument. I came to court to defend against contempt of an unlawful order.

[APPELLEE'S COUNSEL]: So then you admit that you have the ability to pay the expenses that you agreed to pay in April; you just haven't paid them; is that correct?

[APPELLANT]: I do not have money to pay those expenses. No.

[APPELLEE'S COUNSEL]: But you have nothing here with you today—

[APPELLANT]: Yes, I—

[APPELLEE'S COUNSEL]: —aside from your own testimony to show that your income has decreased from April of 2014, when you made that agreement, to the present time?

THE COURT: Well, that would be the basis to modify the order.

[APPELLANT]: Well—

THE COURT: You know, I find it absolutely incredible that you didn't bring a 2014 tax statement here today, sir.

[APPELLANT]: Well, Your Honor, it's—

THE COURT: Incredible.

* * *

[APPELLANT]: What I have is an attorney saying I possess sufficient means to comply with your order—

THE COURT: Okay. So if you don't—

[APPELLANT]: —and I have printouts of all my balances and all my loans that I printed out this week, showing I have zero.

* * *

[APPELLANT]: I operate day to day, paycheck to paycheck. No, I do not have any—

* * *

[APPELLEE'S COUNSEL]: I'm going to show you a document. Is it correct that this is a listing of your income? Now, this is dated December 1 of 2013—

[APPELLANT]: Yes, ma'm.

[APPELLEE'S COUNSEL]: —correct?

[APPELLANT]: Yes, ma'm.

[APPELLEE'S COUNSEL]: All right. And so when I stated do you get pay stubs, this reflects at least as of December of 2013 how you're paid, what your deductions are, things of that nature?

[APPELLANT]: I can get that out of a computer. Yes, ma'm.

* * *

[APPELLEE'S COUNSEL]: How much did you contribute to your retirement in 2014?

[APPELLANT]: Ten percent of my income.

[APPELLEE'S COUNSEL]: What is that?

[APPELLANT]: $29,900, I believe.

[APPELLEE'S COUNSEL]: That would have more than covered your obligation in this case, correct?

[APPELLANT]: $29,900 would have—

[APPELLEE'S COUNSEL]: More than covered your obligation for the $7,000 that was due for the fall semester; is that correct?

[APPELLANT]: Yes, 29,900 is more than 7,000.

* * *

[APPELLEE'S COUNSEL]: How much did you owe [prior counsel] at the time that you set foot in this courtroom on April 18th of 2014?

[APPELLANT]: I believe roughly 8 to 10,000, I was in arrears.

[APPELLEE'S COUNSEL]: And—

> [APPELLANT]: We had many discussions about that, because they always want about 5,000 ahead of the game.
>
> [APPELLEE'S COUNSEL]: Okay. So you were 8 to $10,000 in arrears, and then you state that you owe how much to [prior counsel] now?
>
> [APPELLANT]: I believe about 2,500. I haven't—that's been outstanding more than six months.
>
> [APPELLEE'S COUNSEL]: So your testimony is that you somehow incurred $15,000 in attorneys' fees from April 18th of 2014 until the time that [prior counsel] filed to strike his appearance?
>
> [APPELLANT]: I have a bill for 32 or $34,000 from [prior counsel].
>
> * * *
>
> [APPELLEE'S COUNSEL]: . . . All right. So you had full knowledge of the fact that you had this debt to your attorney when you stood up here in front of the Court and everybody else and stated that you were in agreement with the terms that had been placed on the record?
>
> [APPELLANT]: As well as the other $150,000 of debt."

From this record, we conclude that the court did not err in determining that appellant had the ability to pay the amounts at the time the order was entered and the purge amount set. Appellant contends that the court relied solely on an exchange that occurred when the court ruled on the purge provision in which appellant admitted he had income of over $100,000. Appellant also persisted in his argument that the Consent Order was invalid. As we have repeated, however, the Consent Order was valid, and the court had other evidence from

which it concluded that appellant had the ability to pay the purge provision, including appellant's testimony that his annual salary was around $300,000 and that he had not had any lapses in employment since April 2014. Notably, appellant agreed to pay $14,000 in college expenses in the Consent Order, and the only evidence he presented to demonstrate an inability to pay was his testimony, which the court could believe or disbelieve. *See Attorney Grievance Comm'n v. Kepple*, 432 Md. 214, 227 (2013) (noting that credibility of witnesses is within the purview of the trier of fact). Accordingly, we find no fault with the court's purge provision.[6]

V.

The circuit court awarded counsel fees pursuant to Maryland Rule 1-341, Bad faith—Unfounded proceeding, which provides as follows:

> "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 . . . may require the offending party . . . 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."

[6] Appellant also contends that the court did not permit him to present evidence of his finances. He, however, attempted to introduce a financial statement after the presentation of evidence, which the court did not permit. Appellant is expected to know and follow the rules of procedure: "The principle of applying the rules equally to *pro se* litigants is so accepted that it is almost self-evident." *Tretick v. Layman*, 95 Md. App. 62, 68 (1993).

When awarding counsel fees for bad faith conduct or unjustified proceedings pursuant to Rule 1-341, a court should award counsel fees as an "extraordinary remedy," to be exercised only in "the rare and exceptional case." *Black v. Fox Hills N. Cmty. Ass'n, Inc.*, 90 Md. App. 75, 83 (1992).

This Court has held that courts employ a two-step process when determining whether to award fees pursuant to Rule 1-341, noting as follows:

> "First, the court must determine if the party or attorney maintained or defended the action in bad faith or without substantial justification. Bad faith, in the context of Rule 1-341, 'exists when a party litigates with the purpose of intentional harassment or unreasonable delay.' 'For there to be substantial justification, the litigant's position must be fairly debatable and within the realm of legitimate advocacy.' The action(s) must be viewed at the time it was taken, not from judicial hindsight. A trial judge must be satisfied by a preponderance of the evidence that a party has acted in bad faith or without substantial justification. We review the court's first determination under a clearly erroneous standard. . . .
>
> 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. Indeed, a court has the discretion to refuse sanctions, even if there is a finding of bad faith. On appeal, we review the court's second determination under an abuse of discretion standard."

Garcia v. Foulger Pratt Dev., Inc., 155 Md. App. 634, 676-77 (2003) (citations omitted).

The Court of Appeals has defined the test for determining lack of substantial justification as follows:

> "[T]his Court stated that, to constitute substantial justification, the parties position should be 'fairly debatable' and 'within the realm of legitimate advocacy.' Additional guidelines are also found in the comment to Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct, which states that an action is frivolous 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.' 'In bad faith' means vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons."

Inlet Associates v. Harrison Inn Inlet, Inc., 324 Md. 254, 268 (1991) (citations omitted). While imposing fees under Rule 1-341 is appropriate when "the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification," it does not reach the dilatory conduct of a party conducting a justifiable defense. *Miller v. Miller*, 70 Md. App. 1, 12 (1987).

We hold that the court erred in finding that appellant defended the contempt petition in bad faith or without substantial justification.[7] Appellant argued that the court acted without jurisdiction, and that he could not be held in contempt for violating an invalid order. While appellant's argument did not prevail, it was not without substantial justification as it was "fairly debatable" and "within the realm of legitimate advocacy." Albeit dilatory in light of the valid Consent Order, we cannot find that this self-represented litigant defended the contempt proceeding in bad faith or was unjustified in presenting his legal argument. He

[7]In light of this holding, we need not address appellant's argument that the trial court did not give him an opportunity to argue against imposition of counsel fees.

maintained that the court lacked jurisdiction to hold him in contempt and that the agreement could only be enforced in a breach of contract action. As a lay person, he should be able to do so and to defend against a contempt action without being subject to Rule 1-341 sanctions.

VI.

The circuit court found appellant in contempt and awarded the counsel fees at the conclusion of the February 5, 2015 hearing. Appellant filed his notice of appeal on February 10, 2015. Then, on March 2, 2015, he filed motions to stay the orders on contempt sanctions and the award of counsel fees. The court denied those motions to stay on April 7, 2015. Appellant did not file an additional notice of appeal to contest those orders, thus the March 2, 2015 motions are not before us. Rule 8-202(a) mandates that a "notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." As this requirement is jurisdictional, and the March 2nd motion to stay was filed after appellant filed his notice of appeal, we do not have jurisdiction to review these motions. *See Lovero v. Da Silva*, 200 Md. App. 433, 441-42 (2011).

In its ruling at the conclusion of the proceedings, the court denied appellant's motion to stay "any sanctions." Rule 8-131(a) provides that an appellate court will not review an issue "unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Accordingly, we conclude that this order of the court is properly before us because it was decided by the trial court, and appellant's notice of appeal encompassed this ruling.

This Court has noted, however: "The decision whether to grant a motion to stay a proceeding is within the discretion of the trial court, and it is reviewed for an abuse of discretion." *Geier v. Md. State Bd. of Physicians*, 223 Md. App. 404, 450 (2015). The court did not abuse its discretion in denying appellant's motion to stay the sanctions pending appeal.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY HOLDING APPELLANT IN CONTEMPT AFFIRMED. JUDGMENT AWARDING COUNSEL FEES REVERSED. COSTS TO BE PAID 50% BY APPELLANT AND 50% BY APPELLEE.