

Circuit Court for Baltimore City  
Case No. 24-C-20-000970

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 2094

September Term, 2021

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STANDARD CONSTRUCTION &  
COATINGS, LLC

v.

BELMORE PROPERTIES

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Leahy,  
Zic,  
Ripken,

JJ.

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Opinion by Leahy, J.

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Filed: December 22, 2022

\*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.

This marks the second appeal in an ongoing dispute arising out of a construction contract between appellant, Standard Construction & Coatings, LLC (“Standard”), and appellee, Belmore Properties (“Belmore”). In the parties’ first appeal, we held that Standard’s petition to compel arbitration of the parties’ contractual dispute and complaint for declaratory relief was properly dismissed by the Circuit Court for Baltimore City, Maryland. *Standard Constr. & Coatings, LLC v. Belmore Props.*, No. 460, Sept. Term 2020, slip. op. at 2-3 (filed Oct. 22, 2021) (“*Standard I*”). With respect to the petition to compel arbitration, we concluded that dismissal was warranted because Standard’s attempt to compel arbitration in the circuit court functioned as an attempt, in violation of the final judgment rule, to relitigate an interlocutory order by the District Court of Maryland—where Belmore’s initial breach of contract action was pending—which functioned as a denial of Standard’s efforts to compel arbitration. *Id.* at 2. Regarding the claim for declaratory relief, we reasoned that, because Belmore’s breach of contract action was still pending in the District Court and raised the same issues, Standard’s complaint was properly dismissed under the principle that Maryland courts will not entertain a declaratory judgment action when the same issue(s) can be resolved between the same parties in another action pending before another court. *Id.* at 3-4 (citing *Hanover Investments, Inc. v. Volkman*, 455 Md. 1, 17 (2017)).

Now, Standard returns to this Court seeking reversal of an order entered by the circuit court awarding attorneys’ fees to Belmore under Maryland Rule 1-341. Standard

presents four questions for our review, which we have condensed and rephrased as follows:<sup>1</sup>

- I. Did the circuit court err in concluding that Standard filed its circuit court action without substantial justification?
- II. Did the circuit court err in awarding fees relating to the litigation of the first appeal and in finding that the appeal lacked substantial justification?
- III. Did the circuit court err in awarding fees when Belmore’s counsel did not adequately support the amount of fees claimed?

For the reasons that follow, we hold that the circuit court did not err or abuse its discretion in awarding attorneys’ fees against Standard and affirm the judgment of the circuit court in all respects.

## **BACKGROUND**

### **Belmore’s District Court Action**

In *Standard I*, we detailed the circumstances leading to the parties’ first appeal. As we noted, this case started when,

[i]n May [of] 2017, Belmore filed a complaint against Standard Construction for breach of contract in the District Court of Maryland for Baltimore City. In August 2017, Belmore agreed to voluntarily dismiss the suit without prejudice so that the parties could resolve their dispute through arbitration. Under circumstances that are not entirely clear from the record, the arbitration negotiations broke down, and Belmore refiled its complaint in November 2017.

*Standard I*, slip op. at 4. Belmore’s re-filed complaint set out the bases for Count I of its breach of contract action against Standard as follows:

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<sup>1</sup> Standard’s lengthy questions as presented in its opening brief are included in the Appendix to this Opinion.

On June 22, 2015, [Belmore] purchased the real property located [in] . . . Baltimore, Maryland [] with the intent to renovate and sell the property. In furtherance of that plan, [Belmore] engaged the home improvement services of [Standard Construction]. The relationship was memorialized by way of a Contractor Agreement, dated September, 2015 (“Baltimore Street Agreement”).

[Standard Construction] performed the renovation work on Baltimore Street and thereafter concluded the work in June of 2016. [Belmore] sold Baltimore Street to the subsequent purchaser by way of deed dated July 8, 2016.

Shortly after the sale of Baltimore Street, the parties met to discuss the final accounting on the project. Upon review of [Standard Construction]’s performance under the Baltimore Street Agreement, it became evidence [sic] that [Standard Construction] received monetary amounts to which [it] was not entitled in the approximate amount of \$5,600.00. [Belmore] thereafter made demand for the unearned monies.

*Id.*

With respect to Count II, Belmore’s complaint “contained allegations related to another property owned by Belmore in Baltimore City for which it engaged Standard Construction to perform home improvement services under another agreement—the ‘Keswick Road Agreement.’” *Id.* at 5. The complaint alleged that Standard “agreed to complete its work under the Keswick Road Agreement by November 2015” but failed to do so. *Id.* The parties then agreed to extend the deadline to complete the work “until July 1, 2016 in exchange for the addition of liquidated damages provisions . . . that would apply if Standard Construction failed to meet the new deadline.” *Id.* The complaint further alleged that Standard failed to meet the July 1 deadline and, therefore, owed liquidated damages in the amount of \$22,965.00—a sum which Standard refused to pay. *Id.*

Finally, Belmore added a third count alleging a “Rule 1-341 Bad Faith Defense.” *Id.* According to Belmore, it had agreed to dismiss the original May 2017 complaint in reliance on Standard’s representations that it would engage in binding arbitration. *Standard I*, slip op. at 5. Standard then frustrated these efforts and, according to Belmore, “refused to schedule arbitration,” thus causing Belmore to incur additional attorneys’ fees in the amount of \$1,000.

### **The Motion to Dismiss and Compel Arbitration**

In January 2019, Standard filed a motion to dismiss, compel arbitration, and stay the proceeding. In that motion, Standard argued that, because “the issues involved in this case are subject to arbitration[,]” the circuit court was required to “stay this matter pending issuance of an order compelling arbitration and dismissing this action.” On March 5, 2019, the district court stayed that motion and ordered the parties to submit to arbitration by May 6, 2019. The court further ordered that “[i]f arbitration has not commenced prior to 5/6/2019, the arbitration clause shall be deemed waived, and the matter shall be re-set for a pre-trial conference.”

Nonetheless, “[a]fter receiving this order, the parties engaged in extensive email correspondence about how to proceed with the arbitration” but were “unable to reach an agreement by the date set by the district court.” *Standard I*, slip op. at 6. Thereafter, Standard filed a renewed motion to dismiss, which was denied by the district court on June 10, 2019. *Id.* Standard then attempted to appeal from the denial of its motion to dismiss,

but the notice of appeal was not processed by the district court due to the lack of a final judgment. *Id.*

### **Standard’s Circuit Court Action**

On February 19, 2020, Standard filed a petition and complaint in the Circuit Court for Baltimore City along with a motion to stay the district court proceedings. *Id.* Count I of Standard’s pleading set forth its “petition[] to compel Arbitration and/or declare that [Belmore] has forfeited its rights.” *Id.* Count II set out Standard’s request for a judgment declaring that Belmore had forfeited its claims against Standard due to its alleged refusal to participate in binding arbitration. *Id.* at 6-7. On March 9, 2020, Belmore filed a motion to dismiss Standard’s petition and complaint, arguing that it was an improper attempt to delay the proceedings in the district court. *Standard I*, slip op. at 7. As we noted in *Standard I*, Standard’s petition was its “*sixth* attempt to either compel arbitration or dismiss Belmore’s lawsuit, under the same premise that there was failure to arbitrate between the parties.”<sup>2</sup> *Id.* at 7 (emphasis added).

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<sup>2</sup> In *Standard I*, we listed the prior five attempts:

- (1) the agreement in August 2017 under which Belmore agreed to voluntarily dismiss its complaint in favor of arbitration;
- (2) the January 2019 motion to dismiss;
- (3) the April 2019 motion for sanctions including dismissal with prejudice; and
- (4) the July 2019 notice of appeal of the denial of the April 2019 motion.

*Standard I*, slip op. at 7 n.3. Standard Construction also apparently filed another motion to dismiss which was denied by the district court on March 30, 2018, but the motion is not in the record. *Id.*

The circuit court held a hearing on the motion to dismiss on May 29, 2020, and ultimately dismissed Standard’s claims in an oral ruling from the bench. The court noted that “[w]hether it was erroneous or not, the district court did indicate by a date certain if the parties didn’t arbitrate, that the clause would be deemed waived by that court.” As a result, while Standard’s action “may not be titled or called an interlocutory appeal, it essentially is the plaintiff’s attempt to [get] that adjudicated again.” Since any error would be reviewable by the circuit court upon entry of a final judgment, Standard’s petition to compel arbitration was dismissed as a premature interlocutory appeal. Finally, with respect to the claim for declaratory relief, the court observed that “the case law is solid on the fact that this court will not entertain a declaratory judgment action” when another action involving the same parties and the same issues remains pending.

On June 11, 2020, the circuit court entered a corresponding order dismissing Standard’s petition and complaint “for the reasons stated on the record.” The motion to stay the district court proceedings was denied by an order entered on the docket on May 29, 2020.

### **First Appeal**

After Standard filed a timely notice of appeal, we affirmed the circuit court’s decision dismissing Standard’s petition and complaint. Regarding Standard’s effort to compel arbitration, we agreed with the circuit court that Standard’s petition was functionally equivalent to an impermissible appeal from an interlocutory order insofar as it attempted to perform an end-run around the final judgment rule. *Standard I*, slip op. at

12. We reasoned that the district court’s order was not a final judgment because it “had the same effect as an order denying a motion to compel arbitration: it kept them in court rather than in arbitration.” *Id.* at 12. We also noted that Standard’s petition could have been construed as something akin to a petition for writ of mandamus because it “sought to compel action in the district court, and it was filed as an original action in another court with appellate jurisdiction over the district court.” *Id.* at 13. Even if so construed, however, Standard’s petition was still improper because Standard had available “the specific and adequate legal remedy of an appeal from a final judgment in the district court.” *Id.*

We also held that the court properly dismissed Standard’s request for a judgment declaring that Belmore had forfeited its contractual claims because of a failure to arbitrate them. *Id.* at 16. Indeed, we reiterated the well-established principle that “the existence of the pending action on the same issues is ‘fatal’ to [a] declaratory judgment action” absent unusual and compelling circumstances. *Id.* at 14 (quoting *Sprenger v. Pub Serv. Comm’n of Md.*, 400 Md. 1, 27-28 (2007)). Applying those principles, we easily concluded that “because the declaratory judgment claim sought nothing further than to relitigate issues already pending in the district court, the existence of the district court litigation is fatal to Standard Construction’s request for declaratory relief.” *Id.* at 15 (footnote omitted). Moreover, we found that no unusual circumstances existed to justify a deviation from that rule because it was clear that “there is nothing exceptional about a party to a civil suit having to wait until after trial before appealing an interlocutory order[.]” *Standard I*, slip



op. at 16. Accordingly, we held that the circuit court’s dismissal was correct as a matter of law and affirmed the judgment in all respects. *Id.*

### **Belmore’s Motion for Attorneys’ Fees**

Prior to the parties’ first appeal, Belmore moved for an award of attorneys’ fees pursuant to Rule 1-341 after the circuit court dismissed Standard’s petition and complaint and denied its motion to stay the district court case. The original motion sought \$2,774.00 in attorneys’ fees for the time spent in defending against these filings and was supported by an affidavit from Belmore’s counsel, Brian Gallagher, detailing the time spent on each task. After our mandate issued in the first appeal, Belmore supplemented its original motion for attorneys’ fees and sought an additional \$3,173.00 in fees incurred in defending the judgment on appeal. The supplemental filing was also supported by an affidavit, this time from Belmore’s appellate counsel, N. Tucker Meneeley, detailing the time spent on each task relating to the representation of Belmore in the appeal.

Standard filed its opposition to Belmore’s motion for attorneys’ fees and the parties presented oral argument to the court during a hearing on January 14, 2022. On January 31, 2022, the circuit court issued a memorandum opinion and order granting Belmore’s motion. Pursuant to Rule 1-341, the court found that “Standard Construction’s action in this [c]ourt” as well as the appeal of the court’s dismissal were “instituted without substantial justification.” Specifically, the court found that, whether styled as an original action or not, there was no basis for the circuit court to exercise appellate review over the district court’s non-appealable interlocutory order. The court emphasized that Standard

“did not object to the [d]istrict [c]ourt’s actions with respect to arbitration until it was unhappy with the outcome[,]” causing its jurisdictional defense (*i.e.*, that only the circuit court could compel arbitration) to ring hollow. Accordingly, because Standard “contrived a way to get this [c]ourt to derail the [d]istrict [c]ourt proceedings when it was frustrated with that court’s actions” and then “prolonged the diverted proceedings by pursuing the appeal[,]” sanctions were warranted.

The court also rejected Standard’s argument that Belmore had not sufficiently supported its request for fees. The judge noted that Belmore “established all of the factors required by Maryland Rule 1-341(b)(3)(A)” by providing “detailed time records that do not improperly aggregate tasks” and showing that “the rate should be considered both customary and reasonable in this jurisdiction.” Nonetheless, the court reduced the fee award “by one hour or \$190 because [Belmore] has not explained why 3.2 hours to prepare for the hearing on May 28, 2020, and then another 2.5 hours to prepare for and attend the hearing . . . on May 29, 2020 were necessary and reasonable.” The judge also, in his discretion, reduced the award by \$570 to eliminate the time spent by Belmore’s counsel in preparing the motion for attorneys’ fees. Finally, the judge found that he had the authority to award fees incurred in defending the first appeal and that the fees claimed (*i.e.*, \$3,173 for 16.7 hours work) were fair and reasonable.

The court therefore ordered Standard to pay the sum of \$5,187.00 in attorneys’ fees to Belmore within forty-five days of the entry of the order. The order was entered on February 1, 2022. Standard noted a timely appeal on February 24, 2022.

## STANDARD OF REVIEW

We apply two standards of review on appeal from a circuit court’s grant of attorneys’ fees under Maryland Rule 1-341 that parallel the two-step process created by that Rule. First, the circuit court must make a factual finding as to the existence of “bad faith” or “lack of substantial justification” in bringing the disputed claim. *Legal Aid Bureau, Inc. v. Bishop’s Garth Assocs. Ltd. P’ship*, 75 Md. App. 214, 220 (1988) (quoting *Hess v. Chalmers*, 33 Md. App. 541, 545 (1976)). We review that factual finding for clear error. *Id.* at 220-21 (citing *Century I Condo. Ass’n, Inc. v. Plaza Condo. Joint Venture*, 64 Md. App. 107, 117 (1985)). Second, once the circuit court makes a finding as to bad faith or lack of substantial justification, the court may, in its discretion, award reasonable attorneys’ fees or choose not to award fees. *Century I Condo.*, 64 Md. App. at 120. We review that decision for an abuse of discretion and we will not disturb the circuit court’s judgment call unless it is “so far off the mark as to amount to an abuse of discretion.” *Id.*

## DISCUSSION

### I.

#### **Award of Fees Relating to the Petition to Compel Arbitration**

##### ***A. Parties’ Contentions***

Standard asserts that it properly filed its petition to compel arbitration in the circuit court “given the reasonable anticipation that any future challenge to the [d]istrict [c]ourt’s arbitration rulings would be confronted with a subject matter jurisdiction challenge.” Standard observes that, because only a court of equity has the power to compel arbitration,

the district court's order compelling and then denying arbitration was beyond its jurisdiction. Accordingly, Standard argues that its petition was substantially justified because counsel merely sought to correct its initial mistake. Standard concludes by emphasizing that Rule 1-341 sanctions are an "extraordinary remedy" intended to reach abusive claims without any good faith basis and which are not fairly debatable.

Regarding its declaratory judgment claim, Standard argues that "the failure of the [c]ircuit [c]ourt to even address Count II should in and of itself result in the reversal, or at least vacating, of the sanctions." As to the merits, Standard posits that it possessed substantial justification because it merely sought to develop the "exceptions to the general rule that a Declaratory Judgment action is unavailable if an action involving the same parties and issues is pending." Standard concludes that the unusual and compelling circumstance of being forced to go through the expense of trial instead of arbitration justified its claim for declaratory relief.

On the arbitration claim, Belmore counters that Standard "did not initiate the [c]ircuit [c]ourt action out of concern for jurisdictional issues" as demonstrated by the reality that Standard's original Petition to Compel Arbitration did not mention any concerns regarding the district court's jurisdiction. Belmore emphasizes that "[i]t was only after [Belmore] filed its Motion to Dismiss the Petition that [Standard] amended its Petition to address the possible jurisdictional issue[.]" Accordingly, Belmore concludes that "[t]he real reason why [Standard] filed the motion was to appeal the [d]istrict [c]ourt's decision to deny [Standard's] Motion to Compel Arbitration."

Belmore refutes Standard’s argument that it was justified in bringing the declaratory judgment action by asserting that “[t]he case law is clear that a court shall not issue a declaratory judgment on an issue between the same parties that is currently pending adjudication in another court.” Belmore stresses that there was “no colorable argument that [Standard’s] declaratory judgment claim could possibly be an exception to the general rule.” In Belmore’s view, Standard’s declaratory claim was simply “an attempt to relitigate the issues of the [d]istrict [c]ourt and had no reasonable basis as an exception to the general rule.”

***B. Propriety of the Fee Award***

Maryland Rule 1-341 constitutes a limited exception to the American Rule by permitting the award of attorneys’ fees when an action is brought by the offending party in bad faith or without substantial justification. Md. Rule 1-341; *Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459 Md. 1, 18 (2018). The rule functions primarily as a deterrent against abusive litigation and is “not punitive but is intended merely to compensate the aggrieved party for their reasonable costs and expenses[.]” *Id.* at 19, 38 (quoting *Beery v. Md. Med. Lab’y, Inc.*, 89 Md. App. 81, 102 (1991)). Because of that narrow purpose, an award of attorneys’ fees under Rule 1-341 is considered “an ‘extraordinary remedy’ which should be exercised only in rare and exceptional cases.” *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999) (quoting *Black v. Fox Hills N. Cmty. Ass’n, Inc.*, 90 Md. App. 75, 83 (1992)).

The necessary factual predicate for imposing sanctions requires that an action is brought without substantial justification or where the claims are not “fairly debatable” or “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)). A lack of substantial justification exists when the claim completely lacks merit or where the party has no evidence to support its allegations. *Blanton v. Equitable Bank, Nat’l Ass’n*, 61 Md. App. 158, 165-66 (1985); *Worsham v. Greenfield*, 187 Md. App. 323, 342-43 (2009), *aff’d* 435 Md. 349 (2013) (agreeing with the circuit court in “finding that appellant lacked substantial justification for proceeding against Mrs. Greenfield” when there “was not one scintilla of evidence that Mrs. Greenfield committed any of the torts alleged.”). At a minimum, the party must be able “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’s Assocs. Ltd. P’ship*, 75 Md. App. 214, 222 (1988) (quoting Md. Laws.’ Rules of Pro. Conduct, cmt. 3.1). Nonetheless, in assessing the merits of the underlying claim, we may not “determine a lack of substantial justification from the vantage point of judicial hindsight because hindsight, judicial or otherwise, is always 20/20, irrespective of any astigmatism foresight may suffer.” *Id.* at 222 (citing *Century I Condo.*, 64 Md. App. at 118).

### 1. *The Arbitration Claim*

With the foregoing standard in mind, we consider first whether Standard’s filing of its petition to compel arbitration in the circuit court lacked substantial justification within

the meaning of Rule 1-341. Standard stresses that only a court of equity can order parties to submit to arbitration and the district courts lack equity jurisdiction except for very limited circumstances enumerated in Maryland Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article (“CJP”), § 4-402. *See* CJP §§ 4-401, 4-402. Still, that does not change the fact that Standard only invoked the circuit court’s equity jurisdiction *after* the district court issued its non-appealable interlocutory order in a case that was still pending in that court. Moreover, Standard itself *presented* this issue to the district court and abided by its ruling until it then frustrated the negotiations on arbitration. As we noted in *Standard I*, after the cutoff date for arbitration of Belmore’s contractual claims passed, the district court’s order had the force and effect of a denial of Standard’s petition to compel arbitration. It is beyond cavil that an order denying a motion to compel arbitration is not subject to immediate appeal because it is neither a final judgment nor an appealable collateral order. *Schuele v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555, 571-72, 575-77 (2010). An interlocutory order does not become appealable merely because it dismissed a request for something that was beyond the jurisdiction of the lower court. *See Salvagno v. Frew*, 388 Md. 605, 615-16 (2005) (“The mere allegation that a clearly interlocutory order is jurisdictionally deficient should not serve to halt proceedings in the trial court while an appellate court considers whether the allegation has merit.”) (quoting *Md. State Bd. of Educ. v. Bradford*, 387 Md. 353, 384 (2005)).

Additionally, as we observed in *Standard I*, even if we were to construe Standard’s petition as seeking something akin to a writ of mandamus, that remedy would have been

improper because Standard had available “the specific and adequate legal remedy of an appeal from a final judgment in the district court.” *Standard I*, No. 460, Sept. Term 2020, slip op. at 13 (filed October 22, 2021). Although not styled as an appeal, Standard’s effort to compel arbitration in the circuit court still functioned as an attempt to circumvent the final judgment rule by relitigating the arbitration issue in another forum. In *Deer Automotive Group, LLC v. Brown*, the Supreme Court of Maryland<sup>3</sup>—in extending the principle that an order denying a motion compel arbitration in an existing action is not an appealable final judgment—held that parties “should not be permitted to circumvent the final judgment rule by filing a separate cause of action to compel arbitration of a claim that is the subject of litigation in a pending lawsuit between the same parties and the party seeking to compel arbitration could have filed previously a motion to compel arbitration in the pending case.” *Deer Automotive Grp., LLC v. Brown*, 454 Md. 52, 70 (2017). To hold otherwise, according to the Court, would undermine the final judgment rule. *Id.* The same principle applies here, especially when considering that Standard *had* previously filed a motion to compel arbitration in the district court. By doing so, Standard elected the forum to litigate this issue and was required to wait until final judgment was rendered in the district court action.

Standard was required to await final judgment in the district court, but instead, attempted to circumvent the final judgment rule “by filing a separate cause of action to

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<sup>3</sup> On December 14, 2022, the name of the Court of Appeals was changed to the Supreme Court of Maryland, following constitutional amendment approved by the voters.



compel arbitration of a claim that is the subject of litigation in a pending lawsuit between the same parties and the party seeking to compel arbitration could have [and did] file[] previously a motion to compel arbitration in the pending case.” *Deer Automotive Grp., LLC v. Brown*, 454 Md. 52, 70 (2017). That being so, we must say that Standard’s effort to perform an end-run around the final judgment rule was not “fairly debatable” or “within the realm of legitimate advocacy” because it was wholly without merit. *Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459 Md. 1, 22 (2018) (quotations omitted). Accordingly, we certainly cannot say that the circuit court committed clear error in awarding Rule 1-341 sanctions against Standard for the filing of its petition to compel arbitration. *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999).

## 2. *The Declaratory Judgment Claim*

As an initial matter, we disagree with Standard that the circuit court failed to make a finding that its declaratory judgment claim lacked substantial justification in the course of its well-reasoned memorandum opinion. It is true, of course, that to award fees under Rule 1-341, the court must make an explicit finding that a claim or defense was brought in bad faith or without substantial justification. *Zradkovich v. Bell Atlantic-Tricon Leasing, Corp.*, 323 Md. 200, 210 (1991) (requiring “an explicit finding that a claim or defense was in ‘bad faith or without substantial justification’ for the ‘imposition of sanctions pursuant to Rule 1-341.’”). Upon review of the record, we hold that the circuit court complied with that standard.

Specifically, the circuit court made clear that “[w]ithout a substantial basis, [Standard] contrived a way to try to get this [c]ourt to derail the [d]istrict [c]ourt proceedings when it was frustrated with that court’s actions” and then “prolonged the diverted proceedings by pursuing the appeal from this [c]ourt’s dismissal.” Although this analysis also applied to Standard’s arbitration claim, we cannot see how the court’s finding was somehow inapplicable to Standard’s declaratory judgment claim, which effectively sought a declaration that Belmore had forfeited its contractual claims *pending in district court*. Accordingly, satisfied that the circuit court made a sufficient factual finding on the record regarding lack of substantial justification, we proceed to analyze whether that finding was clearly erroneous.

Here, we easily conclude that the circuit court’s finding of lack of substantial justification did not constitute clear error. As Belmore correctly notes, Standard’s declaratory judgment claim was foreclosed by the well-established principle “precluding a declaratory judgment to resolve an issue when there is pending another action in which the same issue can properly be resolved” absent unusual and compelling circumstances. *Haynie v. Gold Bond Bldg. Prods.*, 306 Md. 644, 652 (1986). Even now, Standard still does not offer any cognizable explanation as to the existence of unusual and compelling circumstances which would fall within the extraordinarily limited exception to that rule. *Haynie*, 306 Md. at 652. As we noted in *Standard I*, there is nothing exceptional about requiring a party to raise all its defenses within the same action and appeal from a final judgment adjudicating the merits of those defenses. *Standard I*, slip op. at 15-16.

Although Rule 1-341 is not intended to chill legitimate advocacy or expansion of the law, parties nonetheless must be able “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’s Assocs. Ltd. P’ship*, 75 Md. App. 214, 221-22 (1988) (quoting Md. Laws.’ Rules. of Pro. Conduct, cmt. 3.1). Accordingly, we hold that the circuit court’s finding that Standard’s declaratory judgment claim lacked substantial justification was not clearly erroneous.

The foregoing analysis also supplies the basis for our conclusion that the court’s award of attorneys’ fees was not “so far off the mark as to amount to an abuse of discretion.” *Century I Condo.*, 64 Md. App. at 120; *see also* discussion *infra* Section III.B. In sum, discerning no clear error or abuse of discretion in the trial court’s finding that Standard’s declaratory judgment claim lacked substantial justification, we affirm the circuit court’s award of fees relating to that issue.

## II.

### **Award of Fees Incurred in the First Appeal**

#### ***A. Parties’ Contentions***

Standard contends that Rule 1-341 is not applicable to an award of fees incurred on appeal because Rule 2-706 specifically “allows a Motion for Attorneys’ Fees related to appellate litigation to be filed in the Circuit Court” and “Rule 2-702 makes clear that this is not applicable to Rule 1-341 motions.” Standard notes that Rule 2-702(b) “expressly excludes a claim for fees brought pursuant to Md. Rule 1-341” and thereby establishes that

it is only an appellate court “which possesses jurisdiction to determine if an appeal merits Rule 1-341 sanctions[.]” Finally, Standard asserts that, even if the circuit court had jurisdiction, the fee award was improper because not prevailing on appeal “is not grounds for Rule 1-341 sanctions.”

Belmore responds that the circuit court had authority to award fees incurred in the first appeal under Rule 1-341 because it is a supplemental proceeding. Belmore further observes that “[Standard] wrongly concludes that the purpose of Rule 2-702(b) is to prevent the [c]ircuit [c]ourt from hearing any motion for attorneys’ fees incurred in an appeal brought under Md. Rule 1-341.” Rather, Belmore points out that Rule 2-702(b) merely establishes a different procedural process for claiming attorneys’ fees. Finally, Belmore concludes that the award was proper because “the Court found that [Standard’s] appeal was taken out of stubbornness and not legitimate advocacy[.]”

***B. Authority to Award Fees Incurred on Appeal***

Maryland Rule 1-341 provides “[i]n 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 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.” Because an appeal is simply a proceeding within a civil action, we have never doubted that fees incurred in defending against a baseless appeal may properly be awarded by a lower court under Rule 1-341. *See, e.g., Johnson v. Baker,*

84 Md. App. 521, 527-31 (1990); *see also, e.g., Litty v. Becker*, 104 Md. App. 370, 376 (1995) (“it is precisely because a motion for costs pursuant to Rule 1-341 is an ‘independent proceeding supplemental to the original proceeding’ that it may be filed and considered by the trial court after the appeal has been concluded.”) (quotation omitted).

In *Johnson*, for example, we examined whether “the circuit court erred when it awarded [Appellees] attorney’s fees and costs incurred in defending against Johnson’s prior, failed appeal.” In doing so, we applied Rule 1-341’s two-step analysis and found that an award of fees incurred in the prior appeal was correct. *Id.* at 528-29. We reasoned that the trial court properly “imposed the sanctions only after Johnson pursued his appeal—when it had become patently apparent that he had no colorable claim or novel legal theory to support his actions.” *Id.* at 531. We also explicitly rejected Johnson’s contention that “an appeal of right can legitimize and give substance to an action that is otherwise without merit.” *Id.* at 530. Thus, when a party pursues a baseless claim on appeal, an award of fees that the wronged party incurred in defending the judgment on appeal is permissible because the offending party, in some sense, compounds the initial transgression.

Standard insists that only an appellate court may award fees incurred on appeal under Rule 1-341. Standard’s argument in this regard relies almost entirely on its reading of Rule 2-706, which provides that a circuit court may award attorneys’ fees incurred in appellate litigation “consistent with the *standards and procedures* set forth in Rule 2-703 or Rule 2-705, *as applicable*.” Md. Rule 2-706(b) (emphasis added). Rule 2-703, in turn, “applies to claims for attorneys’ fees allowable by law to a party in an action in a circuit

court” and, according to a Committee Note, applies to fees allowable by Rule “other than as set forth in Rule 2-702(b).” Md. Rule 2-703(a) & Comm. Note. As Standard points out, Rule 2-702(b) expressly states that “[t]he procedural requirements” of the Chapter (*i.e.*, the requirements of Rule 2-703) do not apply to a “proceeding under Rules 1-341 or 2-433[.]” Md. Rule 2-702(b). From the intersection of these Rules, Standard extrapolates that a circuit court is entirely barred from awarding fees incurred on appeal of a case in which it had rendered final judgment. We do not agree.

Standard’s circuitous argument ignores the qualified language of Rule 2-706, which provides that the procedural requirements of Rules 2-703 and 2-705 govern “*as applicable.*” Md. Rule 2-706(b) (emphasis added). That, of course, contemplates situations in which the procedures of Rules 2-703 and 2-705 would not be applicable, a straightforward interpretation confirmed by Rule 2-702(b). Indeed, Rule 2-702(b) simply provides that the *procedural requirements* of the Chapter, as set forth in Rules 2-703 and 2-705, are inapplicable to a Rule 1-341 proceeding, which is governed by its own standards and procedures. It does not even hint that Rule 1-341 is entirely excluded as a basis for awarding fees incurred in appellate litigation under Rule 2-706. Accordingly, we do not adopt Standard’s winding interpretation and reaffirm that a circuit court may properly award fees incurred in defending against a baseless appeal under Rule 1-341.

Here, the court found that “[w]ithout a substantial basis, [Standard] contrived a way to try to get this [c]ourt to derail the [d]istrict [c]ourt proceedings when it was frustrated with that court’s actions” and then “prolonged the diverted proceedings by pursuing the

appeal from this [c]ourt’s dismissal.” As we have explained, the circuit court rightfully found that both Standard’s petition to compel arbitration and declaratory judgment claim each lacked substantial justification. Accordingly, as in *Johnson*, we can discern no clear error in the circuit court’s conclusion that Standard’s pursuit of those claims on appeal lacked substantial justification when it had “become patently apparent that [it] had no colorable claim or novel legal theory to support [its] actions.” *Johnson*, 84 Md. App. at 531. Thus, we conclude that the circuit court did not err in awarding fees relating to the litigation of the first appeal and in finding that the appeal lacked substantial justification.

### III.

#### **Reasonableness of the Fee Award**

##### *A. Parties’ Contentions*

Standard asserts that Belmore failed to comply with the verified statement requirement of Rule 1-341. According to Standard, Belmore’s “summary” did not provide actual billing records or a detailed summary of the work performed. Standard also complains that Belmore “failed to set forth the required customary fee prevailing in the attorney’s legal community” because it referred to federal court guidelines that were not “county or venue specific.”

Belmore responds that counsel adequately supported its request for fees under Rule 1-341. Belmore points out that counsel “provided an itemized list of all billings including the description of each task completed.” Moreover, contrary to Standard’s argument regarding the customary fee in the community, Belmore contends that it properly used the

Local Rules of the United States District Court for the District of Maryland to determine the customary fee for similar legal services.

***B. The Award Was Reasonable***

Under Maryland Rule 1-341, a motion for costs or attorneys’ fees must “include or be separately supported by a verified statement” setting forth the basis for the fees requested. The statement provided by the movant shall include the following information:

- (i) a detailed description of the work performed, broken down by hours or fractions thereof expended on each task;
- (ii) the amount or rate charged or agreed to in writing by the requesting party and the attorney;
- (iii) the attorney’s customary fee for similar legal services;
- (iv) the customary fee prevailing in the attorney’s legal community for similar legal services;
- (v) the fee customarily charged for similar legal services in the county where the action is pending; and
- (vi) any additional relevant factors that the requesting party wishes to bring to the court's attention.

Md. Rule 1-341(b)(3)(A).

When moving for an award of fees, the party “seeking an award of attorney’s fees bears the burden of demonstrating the reasonableness of the attorney’s fees sought.” *Christian v. Maternal-Fetal Med. Assocs. Md., LLC*, 459 Md. 1, 31 (2018) (citation omitted). As a general matter, the party must show “that the fees requested by the aggrieved party were incurred by the party requesting the fees[.]” meaning that “[t]he fees incurred, therefore, act as a ceiling on what is recoverable[.]” *Id.* (citations omitted). As previously noted, the amount of a fee award “to be paid by an adverse party who brought



a claim in bad faith or without substantial justification is within the discretion of the court[.]” *Id.* at 30 (citation omitted).

Here, we have no trouble in concluding that Belmore met its burden of establishing the reasonableness of its request for fees incurred in defending against both Standard’s district court action and Standard’s first appeal. In support of its request for fees incurred in the circuit court litigation, Belmore provided an affidavit from Belmore’s counsel, Brian Gallagher, detailing the time spent on each task. Likewise, Belmore’s supplemental filing was also supported by an affidavit from Belmore’s appellate counsel, N. Tucker Meneeley, detailing the time spent on each task in traditional six-minute increments. Each affidavit stated that the fees requested were based upon an hourly rate of \$190, well below Mr. Gallagher and Mr. Meneeley’s traditional rates as well as the prevailing hourly rate of \$225-330 for attorneys of their experience. In short, the affidavits submitted by Belmore were more than sufficient to comply with Rule 1-341’s requirement of a verified statement in support of the requested fees.

Nor can we discern any hint of an abuse of discretion on the part of the circuit court. The court correctly and carefully made findings on the record that Belmore’s request for fees was reasonable. Indeed, the court noted that Belmore “established all of the factors required by Maryland Rule 1-341(b)(3)(A)” by providing “detailed time records that do not improperly aggregate tasks” and showing that “the rate should be considered both customary and reasonable in this jurisdiction.” Moreover, the court actually exercised its discretion *to reduce* the amount of Belmore’s award for tasks that it felt were not

sufficiently explained. The court reduced the fee award “by one hour or \$190 because [Belmore] has not explained why 3.2 hours to prepare for the hearing on May 28, 2020, and then another 2.5 hours to prepare for and attend the hearing . . . on May 29, 2020 were necessary and reasonable.” The court also reduced the award by \$570 to eliminate the time spent by Belmore’s counsel in preparing the motion for attorneys’ fees. Accordingly, contrary to Standard’s protestations, we can find no abuse of discretion on this record and affirm the court’s award of fees against Standard.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**

## APPENDIX

Standard's questions presented to this Court, as phrased, are as follows:

I. Did the lower court err in awarding fees against Plaintiff's counsel, following counsel's realization that efforts to compel arbitration were arguably beyond the jurisdiction of the forum Court, and the ensuing commencement of an action including a Petition to Compel Arbitration in the Circuit Court (wherein no jurisdictional challenge could be raised), particularly when subject matter jurisdiction can be raised at any time, including upon appeal?

II. Did the lower Court err in awarding fees against Plaintiff's counsel for attempting to explore the exceptions to the general rule preventing declaratory judgment actions to be instituted when a substantially identical action is pending, and for attempting to develop the forfeiture law which originated in *Maslow v. Vanguri*, 168 Md. App. 298 (2006), and in failing to make express findings regarding the substantial justification regarding the Declaratory Judgment Count?

III. Did the lower Court err in awarding fees against Plaintiff's counsel related to the Prior Appeal of this matter, when there is no authority for a lower Court to determine the justification for an appeal, and when in this case, the lower Court was not presented the Briefs, the Record, or oral argument, and when no express findings were made that the appeal was not substantially justified?

IV. Did the lower Court err in awarding fees against Plaintiff's counsel when the mandatory requirements of the Rule 1-341 Verified Statement were not fulfilled by Defendant?