Circuit Court for Montgomery County
Case No. 422551

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2127

September Term, 2016

DAWN PERLMUTTER, ET AL.

v.

TRINA VARONE, ET AL.

Woodward, C.J.,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 5, 2018

This appeal concerns the sixth attempt undertaken by Dawn Perlmutter ("Perlmutter") and Thomas Bolick (collectively, "the appellants") to litigate what they perceive to be a conspiracy on the part of appellees to defraud them of the proceeds of the estate of Perlmutter's late mother, Joan Sutton, who passed away on August 21, 2010.[1] On June 22, 2016, appellants, proceeding *pro se*, filed the operative complaint in this appeal in the Circuit Court for Montgomery County, alleging fraud, conspiracy to commit conversion, accounting, negligence, and declaratory relief against all appellees.[2] All appellees, save for Scott Perlmutter ("Scott"), filed motions to dismiss, contending that the complaint was barred by *res judicata* and/or the statute of limitations.

Following a hearing, the circuit court granted these motions. The court also awarded attorney's fees to certain appellees and included a pre-filing order, prohibiting appellants from filing any further pleadings without first seeking leave of court.[3] The court subsequently denied appellants' motion for a new trial and motion to file an amended complaint (both filed in violation of the pre-filing order). On November 29, 2016, appellants filed a motion for summary judgment (in violation of the pre-filing order),

[1] The appellees in this case are: Trina Varone; Jeffrey Varone; Gary Altman, Esq.; Altman & Associates; Rabbi Shalom Raichik; Mark Roseman; and Scott Perlmutter ("Scott"). From the record, it does not appear that Scott participated in these proceedings, and he has not filed a brief in this Court. Accordingly, when we refer to appellees, we mean all appellees except for Scott, unless otherwise noted.

[2] We note that an accounting is not a cause of action but, rather, a remedy. *See Ahmad v. Eastpines Terrace Apartments, Inc.*, 200 Md. App. 362, 378 (2011). For the purposes of this opinion, that distinction is of no import to our decision.

[3] The court ordered appellants to pay attorney's fees in the amount of $12,611.50 to attorneys for the Varones and Rabbi Raichik and $1,993.20 to attorneys for Roseman.

ostensibly against all appellees, but Scott was the only appellee remaining in the case. On December 6, 2016, appellants filed a notice of appeal of the orders granting appellees' motions to dismiss and award of attorney's fees. On February 2, 2017, the court denied appellants' motion for summary judgment. On February 23rd, appellants filed an amended notice of appeal. In this Court, appellants maintain that the circuit court erred in awarding attorney's fees and imposing a pre-filing order, erred in granting appellees' motions to dismiss, and abused its discretion in denying their motion to amend the complaint.[4] For the reasons stated below, we affirm in part and dismiss in part.

Prior to any discussion of the merits of appellants' arguments, we must discern what is properly before this Court. Ordinarily, an appeal may only be had from a final judgment. *See* Maryland Code (1974, 2013 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP"), § 12-301. There has not been a final judgment in this case because there has been no ruling adjudicating appellants' claims against Scott, primarily because he has not participated in these proceedings. Indeed, when the circuit court sent appellants notice that the case would be dismissed pursuant to Rule 2-507 as to Scott only, appellants filed a

[4] Appellants also contend that the circuit court lacked the jurisdiction to deny their motion for summary judgment because they had noted an appeal to this Court. As we will explain, this Court did not gain jurisdiction over the entirety of the proceedings with the filing of the notice to appeal, however, and the circuit court retained the authority to rule on the motion. *See Schuele v. Case Handyman & Remodeling Servs., Inc.*, 412 Md. 555, 565 (2010).

motion to defer entry of dismissal, which the court granted after appellants filed an affidavit demonstrating that Scott had been served.[5]

Section 12-303 of CJP permits certain interlocutory appeals, however. Included in the list of permissible interlocutory appeals are appeals from orders granting or dissolving injunctions and orders for the payment of money. *See* CJP § 12-303(3). Accordingly, to the extent that appellants' December 6, 2016 notice of appeal challenges the court's imposition of the pre-filing orders and the payment of attorney's fees, that would be a permissible interlocutory appeal. Appellants' February 23, 2017 amended notice of appeal, however, does not encompass any additional appealable interlocutory orders. This Court, therefore, has jurisdiction solely over the court's orders awarding attorney's fees and imposing the pre-filing orders, which we hereafter refer to as "sanctions." *See Schuele*, 412 Md. at 565 (explaining exercise of appellate jurisdiction and that appellate courts will dismiss appeal where jurisdiction is lacking). We, therefore, dismiss the portion of the appeal not concerning the sanctions.

In imposing sanctions, the circuit court determined that appellants were "vexatious litigants." In order to assess that finding, we must examine the long procedural history of this litigation. Briefly recounted, appellants have attempted to litigate these claims previously, not only in the circuit court, but also in the federal courts. On February 8, 2011, appellants filed suit in the circuit court, alleging, *inter alia*, that the Varones and Rabbi

[5] Rule 2-507(b) provides that the court may dismiss an action against a defendant who has not been served "at the expiration of 120 days from the issuance of original process directed to that defendant."

Raichik committed fraud and/or exerted duress on Sutton in the execution of her will. The circuit court granted the defendants' motions to dismiss, and we affirmed that decision in an unreported opinion. *See Perlmutter v. Varone*, No. 1518, Sept. Term 2011 (filed May 20, 2013) (hereinafter *Sutton I*).

Following the opening of Sutton's estate in the Orphans' Court for Montgomery County, appellants filed a petition to caveat the will, alleging that the will was a product of forgery and/or fraud. The Orphans' Court dismissed appellants' petition, and this Court affirmed in an unreported opinion. *See In re: the Estate of Joan D. Sutton*, No. 1323, Sept. Term 2011 (filed Aug. 7, 2013) (hereinafter *Sutton II*). While the appeals in *Sutton I* and *Sutton II* were pending, appellants filed a complaint for declaratory judgment in the Orphans' Court, making many of the same arguments as previously litigated. The Orphans' Court dismissed appellants' complaint, and this Court affirmed in an unreported opinion. *See In re: the Estate of Joan D. Sutton*, No. 2754, Sept. Term 2011 (filed Oct. 7, 2013) (hereinafter *Sutton III*).

Appellants then turned to the federal courts, first filing a complaint in the United States District Court for the District of Columbia, alleging many of the same issues previously litigated. The district court dismissed based on improper venue. *See Perlmutter v. Varone*, 59 F. Supp. 3d 107 (D.D.C. 2014) (hereinafter *Sutton IV*). Appellants then filed suit in the United States District Court for the District of Maryland, and restated several of the previous allegations and also raised new causes of action, including that appellees

violated the Racketeer Influenced and Corrupt Organizations Act ("RICO").[6] The district court dismissed the complaint, finding that *res judicata* and/or the statute of limitations barred the action. The United States Court of Appeals for the Fourth Circuit affirmed in an unpublished decision. *See Perlmutter v. Varone*, 645 F. App'x 249 (4th Cir. 2016) (hereinafter *Sutton V*).

Having failed in the federal courts, appellants again turned to the circuit court, filing the complaint that is the subject of this appeal. As we have noted, however, the only order for which we properly have jurisdiction at this juncture is the order imposing sanctions on appellants.

Appellants' brief, however, is a diatribe encompassing the whole of the proceedings from 2010 to the present. Appellants spend the vast majority of their briefs arguing that the circuit court erred in granting appellees' motions to dismiss. Those orders are not properly before us, however.

To the extent that appellants argue against the circuit court's award of sanctions, we are not persuaded that the court abused its discretion.[7] The court concluded that appellants were "vexatious litigants" and ordered them to pay attorney's fees to various appellees, as well as imposed a pre-filing order prohibiting appellants from filing any other motions or

[6] *See* 18 U.S.C. § 1961, *et seq.*

[7] Typically, we review a court's decision to award sanctions and attorney's fees for abuse of discretion. *See Legal Aid Bureau, Inc. v. Bishop's Garth Assocs. Ltd. P'ship*, 75 Md. App. 214, 221 (1988). Similarly, we review a court's decision to grant or deny an injunction for abuse of discretion. *See Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 394 (2000).

documents without the consent of the court. In their brief, appellants appear to argue that the court was prohibited from considering appellees' request for sanctions raised in their motions to dismiss because these motions included material outside of the four corners of the complaint. The material appellees included in their motions was part of the prior court records, meaning that the circuit court could take judicial notice of it. *See Abrishamian v. Wash. Med. Grp., P.C.*, 216 Md. App. 386, 413-14 (2014). Moreover, we are persuaded that the court complied with the requisite standards for imposing a pre-filing order, as specified by this Court in *Riffin v. Circuit Court for Baltimore County*, 190 Md. App. 11, 33-36 (2010), and we perceive no abuse of discretion in imposing sanctions on appellants.[8]

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IMPOSING SANCTIONS ON APPELLANTS AFFIRMED. REMAINDER OF APPEAL IS DISMISSED. COSTS TO BE PAID BY APPELLANTS.

[8] This Court observed that in order to impose a pre-filing order, the circuit court "must document a record that justifies a pre-filing order." *Riffin*, 190 Md. App. at 33. Then, the court "should make substantive findings as to the frivolous or harassing nature of the litigant's actions." *Id.* at 34. At the hearing on appellees' motions to dismiss, the court admonished appellants: "I mean at some point it just has to stop. . . . I know you feel frustrated and you feel like you've never gotten a day in court, but you have gotten a day in court on, you know, five previous times." Finally, "the court must narrowly tailor a pre-filing order." *Riffin*, 190 Md. App. at 34.