

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND

No. 2138

September Term, 2022

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HERMEN NICOLAS PORTILL CARBAJAL,  
et al.

v.

EAST OVER CAR WASH, INC., et al.

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Graeff,  
Reed,  
Ripken,

JJ.

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Opinion by Ripken, J.

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Filed: January 24, 2024

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

This appeal involves the denial of a petition for post-judgment attorneys’ fees filed pursuant to a mandatory fee-shifting provision in the Maryland Wage and Hour Law (“MWHL”). Md. Code, Labor and Employment Article (“LE”), § 3-401 to § 3-431 (Repl. Vol. 2016). In the underlying litigation, appellants Hermen Nicolas Portillo Carbajal, Rafael Najera Lazaro, Nixon Jhonson Hernandez Rojas, Antoine E. Smith, and Marquett Johnson (collectively “Appellants”), filed suit against their employers, East Over Car Wash, Inc. and He Min Lee (collectively, “East Over”), seeking to recover unpaid wages. The Circuit Court for Prince George’s County found in favor of Appellants and awarded compensatory and exemplary damages, as well as attorneys’ fees and costs. East Over exercised its rights to an appeal, first to this Court and then to our Supreme Court, but relief was denied. Appellants then filed a supplemental petition for attorneys’ fees and costs in the circuit court, seeking an award of fees and costs incurred in post-judgment litigation and collection efforts. The court found the total amount claimed to be “exorbitant” and denied the request. Appellants amended their supplemental petition for attorneys’ fees, reducing the amount claimed by twenty-five percent. The court denied the amended petition.

Appellants noted this timely appeal and present two issues for our review, which we have consolidated and rephrased: Whether the circuit court erred by denying the Appellants’ petition for an award of post-judgment attorney fees and costs under the MWHL.<sup>1</sup>

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<sup>1</sup> Rephrased from:

For the following reasons, we shall vacate the orders denying Appellants’ supplemental motions for attorneys’ fees and remand for further proceedings in accordance with this opinion.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Underlying Cause of Action, Default Judgment, and Damage Award**

In 2019, Appellants filed suit against East Over, alleging violations of the MWHL as well as the Maryland Wage Payment and Collection Law (“MWPCCL”).<sup>2</sup> A default judgment was subsequently entered against East Over as a sanction for failing to comply with a court order related to discovery. East Over filed a motion to vacate the order of default, which the court denied.

In January 2020, the court held an *ex parte* hearing on damages, and took the matter under advisement. On October 9, 2020, the court entered a memorandum opinion and order in favor of Appellants. The court found that East Over failed to pay Appellants the applicable statutory minimum wage and failed to pay overtime wages for hours worked which exceeded 40 per week, in violation of the MWHL. The court determined that each

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1. Did the Circuit Court err by denying the Appellants’ attorney fees and costs incurred after Appellants’ previous fee petition?
  2. Did the Circuit Court err by failing to calculate Appellants’ attorney fees using the lodestar method and *Johnson* factors?

<sup>2</sup> As it pertains to the facts of this case, the MWHL requires employers to pay employees the applicable minimum wage as well as overtime wages, for hours worked in excess of 40 per workweek, of at least 1.5 times the usual hourly wage. *Friolo v. Frankel*, 373 Md. 501, 513 (2003) (“*Friolo I*”). By contrast, the MWPCCL (Md. Code, Labor and Employment Article (“LE”) § 3-501 to § 3-509 (2016 Repl. Vol.)), “does not concern the amount of wages payable but rather the duty to pay whatever wages are due on a regular basis and to pay all that is due following termination of the employment. *Id.*”

individual appellant was entitled to an award of compensatory damages that ranged from \$17,156.36 to \$27,119.91. In addition, the court found that East Over’s conduct amounted to an “egregious failure[]” to comply with the MWHL, and awarded “exemplary” damages to each individual appellant in an amount equal to the award of compensatory damages for each.<sup>3</sup> The combined damage awards for all five appellants totaled \$227,151.08. In addition, the court ordered East Over to pay attorneys’ fees of \$43,340.50, and \$363.31 in costs.

### **B. Post-Judgment Litigation**

On October 16, 2020, East Over filed a motion to alter or amend the award of damages, which Appellants opposed. After the court denied the motion, East Over noted an appeal to this Court, raising three issues for review. In an unreported opinion, we affirmed the judgment of the circuit court.<sup>4</sup> East Over then petitioned the Supreme Court for a writ of certiorari. The petition was denied on May 27, 2022.

In addition to defending against East Over’s post-trial motion and appeals, counsel for Appellants engaged in efforts to collect the judgment by securing writs of garnishment on real property and bank accounts owned by East Over. East Over filed a motion to stay enforcement of the judgment pending the appeal and posted a supersedeas bond in the

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<sup>3</sup> Under the MWHL, unless the court finds that the “employer acted in good faith and reasonably believed that the wages paid to the employee were not less than the wage required[,] the court “shall award”, in addition to compensatory damages, “an additional amount” that is equal to the award of compensatory damages “as liquidated damages[.]” LE § 3-427(d).

<sup>4</sup> *East Over Car Wash, Inc., et al. v. Carbajal, et al.*, No. 1154, 2022 WL 501090 (Md. Ct. Spec. App., February 18, 2022).

amount of the judgment. The motion was granted without objection. After the petition for certiorari was denied, Appellants filed a motion to proceed against the surety of the supersedeas bond. On August 11, 2022, Appellants filed a notice stating that the judgment entered against East Over on October 14, 2020, had been satisfied in full.

### **C. Petition for Supplemental Attorneys’ Fees**

On June 17, 2022, Appellants filed a supplemental motion for attorneys’ fees in the circuit court, seeking \$54,395.96 in fees and costs incurred in post-judgment litigation. Attached as an exhibit to the motion was a 14-page document with dated entries describing work performed between February 20, 2020, and June 17, 2022, the amount of time spent on each task, the applicable hourly rate, and the total amount charged for each completed task. The petition was supported by an affidavit signed by one of Appellants’ attorneys, stating that the fees and costs were fair and reasonably necessary.

East Over opposed the motion for post-judgment attorneys’ fees on the grounds that granting the motion would “discourage legitimate appeals and attempts to correct potential mistakes made in the underlying litigation.” East Over did not contend that the hourly rate charged by Appellants’ counsel was unreasonable, nor did it challenge any particular charge(s) for legal services rendered as unreasonable or unnecessary. Instead, East Over argued that the total amount of the request was “excessive” because it was greater than the amount of fees awarded in the underlying litigation.

On August 29, 2022, the court held a hearing on the petition for supplemental attorneys’ fees. The court expressed skepticism that the amount of fees incurred in post-judgment litigation exceeded the amount of fees incurred at the trial level. At the

conclusion of the hearing, the court denied the request for post-judgment attorneys’ fees entirely, stating:

I find the request to be exorbitant. And I cannot make my final decision based upon guess work. But the calculations that have been presented to the [c]ourt, I find to be excessive.

And so I’m denying your request. I’d be more than happy to reconsider if you’re able to give me a roadmap with calculations that I deem to be more reasonable, but if it’s an all or nothing proposition at this point . . . I’m granting nothing[,] because 54 [thousand dollars] on top of [the previous attorneys’ fee award of] 48 [thousand dollars], when cert was denied, is exorbitant.

I could see if you had to litigate before both appellate courts, but you didn’t even have to litigate before the [Supreme Court]. So your request is denied at this juncture.

Counsel for Appellants noted that the court had discretion to reduce the fees and costs claimed to an amount that it found reasonable. The court responded that, because a different judge had presided over the damages hearing, it would be “guesswork” to determine what was reasonable for post-judgment fees and costs. The court stated, “I’m just looking at the bottom-line numbers. [Fifty-four thousand dollars] on top of 48 [thousand dollars] is exorbitant when you didn’t have to litigate before all three levels of court.”

On September 7, 2022, Appellants filed a renewed motion for supplemental attorney’s fees. In their renewed motion, Appellants reduced the amount claimed by 25 percent, for a total claim of \$40,796.97. At a hearing on the renewed motion, the court found that the reduced request was still “exorbitant,” and denied the motion. This timely appeal followed.

## DISCUSSION

### A. Standard of Review

A ruling on a request for attorneys’ fees and costs is ordinarily reviewed for abuse of discretion. *Pinnacle Group, LLC v. Kelly*, 235 Md. App. 436, 476 (2018). “A trial court abuses that discretion when it disregards established principles or adopts a position that no reasonable person would accept.” *Id.* (citing *Letke Sec. Contractors, Inc. v. U.S. Sur. Co.*, 191 Md. App. 462, 474 (2010)). “[T]he standard that a trial court applies in evaluating whether to award attorneys’ fees and costs is a legal decision’ that we review without deference.” *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 414 (2016) (quoting *Ocean City Chamber of Com., Inc. v. Barufaldi*, 434 Md. 381, 391 (2013)) (emphasis omitted).

### B. Parties’ Contentions

Appellants contend that, pursuant to LE § 3-427(d)(1)(iii), the court was required to award reasonable attorneys’ fees and costs, including costs incurred in post-judgment collection efforts, settlement negotiations, and on appeal. Appellants maintain that the court erred in denying the motion for supplement fees and costs without engaging in the required analysis. East Over argues that the court properly denied the request for post-judgment attorneys’ fees and costs upon a determination that the amount claimed was “exorbitant.”

### C. Analysis

“Maryland generally adheres to the common law, or American rule, that each party to a case is responsible for the fees of its own attorneys, regardless of the outcome.” *Pinnacle Group*, 235 Md. App. at 476 (quoting *Friolo v. Frankel*, 403 Md. 443, 456 (2008))

(“*Friolo III*”). “An exception to this rule exists when the legislature has included a fee-shifting provision that may obligate a party to pay the opponent’s attorneys’ fees.” *Id.* (citing *Friolo III*, 403 Md. at 456).

“[T]he goal of fee-shifting statutes in general is to ensure that individuals, when injured by violations, or threatened violations, of certain laws, have access to legal counsel by a ‘statutory assurance that [his or her counsel] will be paid a reasonable fee[.]’” *Friolo III*, 403 Md. at 457 (quoting *Friolo v. Frankel*, 373 Md. 501, 526 (2003) (“*Friolo I*”)) (brackets in original). “Critical to the achievement of this goal is providing a mechanism, here, the fee shifting statute, and an incentive, based on a realistic expectation of reasonable compensation, for attorneys to agree to take on wage dispute cases, even where the dollar amount of the potential recovery may be relatively small.” *Id.* at 457–58.

Appellants’ claim for post-judgment attorneys’ fees was based on the MWHL, the Maryland counterpart to the Federal Fair Labor Standards Act.<sup>5</sup> In relevant part, the MWHL requires “that employers pay the applicable minimum wage to their employees and . . . that they pay an overtime wage of at least 1.5 times the usual hourly wage for each hour over 40 that the employee works during one workweek.” *Friolo I*, 373 Md. at 513; LE § 3-413(b) and § 3-415.

An employee who has been paid less than the wage required under the MWHL may file a civil suit against their employer to recover the difference between the wage paid and the wage required under the statute. LE § 3-427(a)(1). The employee may also recover “an

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<sup>5</sup> 29 U.S.C.A. § 201 *et seq.*

additional amount equal to the difference between the wage paid to the employee and the wage required . . . as liquidated damages.”<sup>6</sup> LE § 3-427(a)(2).

The MWHL also contains a mandatory fee-shifting provision, which provides that, “[i]f a court determines that an employee is entitled to recovery in an action under this section, the court shall award to the employee . . . reasonable counsel fees and other costs.” LE § 3-427(d)(1)(iii). See *Prime Rate Premium Fin. Corp., Inc. v. Maryland Ins. Admin.*, 191 Md. App. 587, 592 (2010) (“[T]he use of the word ‘shall’ in a statutory provision indicates that the provision is mandatory and that no discretion was intended.”) (quoting *Resnick v. Bd. of Supervisors of Elections*, 244 Md. 55, 62 (1966)). The mandatory fee-shifting provision was added to the MWHL in 2014. See 2014 Md. Laws Ch. 262 (H.B. 295). Prior to that time, the decision to award attorneys’ fees in suits filed pursuant to the MWHL was discretionary.<sup>7</sup>

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<sup>6</sup> In a wage-withholding case, an award of liquidated damages, “though at least partially punitive in nature, may also have a compensatory element to it[.]” *Admiral Mortg., Inc. v. Cooper*, 357 Md. 533, 549 (2000). As the Supreme Court of Maryland explained:

The Legislature no doubt recognized . . . that most working people are dependent on the regular payment of the wages due them. If payment is withheld, they may face more than just the economic loss of the money, which pre-judgment interest allowable as a matter of common law ordinarily reimburses. They may suffer significant consequences from being unable to meet their own weekly or monthly obligations, ranging from embarrassment, to late charges, to repossessions, eviction, and, if the employee is responsible for child support, the prospect of coercive court proceedings and the loss of various licenses and privileges. Recovery later of just the unpaid wages . . . even if accompanied by pre-judgment interest, may not begin to compensate for those consequential losses.

*Id.* at 549-550.

<sup>7</sup> The prior version of the law provided that, upon a determination that an employee was entitled to recover under the MWHL, “the court *may allow* against the employer reasonable

Statutory fee-shifting provisions are not limited in scope to fees incurred at the trial level, but include fees related to “protecting the underlying judgment” and “securing the specific relief ordered by the trial court.” *Friolo III*, 403 Md. at 448. As the Supreme Court observed, it would be “a disincentive to the retention of competent counsel in [unpaid wage claim] cases to deny recovery for successful appellate advocacy[.]” *Id.*

The appropriate method to determine a reasonable counsel fee in an action filed pursuant to the MWHL is the “lodestar” approach. *Friolo I*, 373 Md. at 504–05. “The starting point for determining a reasonable fee under the lodestar approach is to multiply ‘the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.’” *Friolo v. Frankel*, 438 Md. 304, 319 (2014) (“*Friolo V*”) (quoting *Friolo I*, 373 Md. at 523).

This requires the judge, using his/her knowledge and experience, to determine (i) how many of the hours claimed, in light of the novelty and difficulty of the issues, were reasonably expended in the litigation, excluding those that are excessive, redundant, or otherwise unnecessary, and (ii) what a reasonable hourly rate would be for the services provided.

*Id.* “This amount is then adjusted by the court, depending on the effect of numerous external factors bearing on the litigation as a whole.” *Monmouth Meadows Homeowners Ass’n, Inc. v. Hamilton*, 416 Md. 325, 333 (2010). The factors to be considered, otherwise known as the *Johnson* factors,<sup>8</sup> are set forth in Maryland Rule 2-703(f), which provides, in

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counsel fees and other costs.”) *See* LE § 3-427(d) (2008 Repl. Vol. and 2013 Supp.) (emphasis added). We note that *Friolo I* and its progeny were all decided before the MWHL was amended to require an award of reasonable attorneys’ fees.

<sup>8</sup> *See Johnson v. Georgia Hwy. Express, Inc.*, 488 F.2d 714, 717-719 (1974).

pertinent part, “[i]f the court determines that . . . under applicable law an award is required, the court shall apply” the following standards to determine the amount of the award:

- (A) the time and labor required;
- (B) the novelty and difficulty of the questions;
- (C) the skill required to perform the legal service properly;
- (D) whether acceptance of the case precluded other employment by the attorney;
- (E) the customary fee for similar legal services;
- (F) whether the fee is fixed or contingent;
- (G) any time limitations imposed by the client or the circumstances;
- (H) the amount involved and the results obtained;
- (I) the experience, reputation, and ability of the attorneys;
- (J) the undesirability of the case;
- (K) the nature and length of the professional relationship with the client; and
- (L) awards in similar cases.

Md. Rule 2-703(f). “This approach may very well return a fee award that is actually larger than the amount in controversy.” *Monmouth Meadows*, 416 Md. at 334. As the Supreme Court explained, “application of the lodestar method . . . is designed to reward counsel for undertaking socially beneficial litigation in cases where the expected relief has a small enough monetary value that [other methods] would provide inadequate compensation.” *Id.* at 334–35 (brackets in original) (internal citation and quotation marks omitted).

“The setting of a fee under [the lodestar] approach is largely discretionary.” *Friolo I*, 373 Md. at 512. The court must, however, “clearly articulate the factors and reasoning used to calculate the overall figure so that an appellate court can adequately discern the soundness of the trial court’s conclusion.” *Pinnacle Group*, 235 Md. App at 481 (citing

*Frankel v. Friolo*, 170 Md. App. 441, 450–51 (2006)). If “the record does not support a conclusion that the trial court actually used [the lodestar] approach, there would be an error of law.” *Friolo I*, 373 Md. at 512. “The result of such a conclusion is . . . a remand for a further proceeding, in which the court can apply the lodestar approach and determine a reasonable fee.” *Id.*

Here, the court was statutorily required to award reasonable attorneys’ fees and costs, including fees and costs incurred after judgment was entered. Although the amount to be awarded was within the sound discretion of the court, the court was required to use the lodestar approach and consider the factors in Rule 2-703(f) in determining a reasonable fee. Because the record does not support a conclusion that the court did so, we are constrained to conclude that the court erred as a matter of law. On remand, the court shall award reasonable fees and costs incurred since the previous award using the lodestar approach and applying the factors in Rule 2-703(f).

**ORDERS DENYING APPELLANTS’  
MOTIONS FOR SUPPLEMENTAL  
ATTORNEYS’ FEES VACATED. CASE  
REMANDED TO THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY FOR  
FURTHER PROCEEDINGS IN  
ACCORDANCE WITH THIS OPINION.  
COSTS TO BE PAID BY APPELLEES.**