Circuit Court for Montgomery County
Case No. 425847V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2366

September Term, 2019

OXANA PARIKH, ET AL.,

v.

LYNN C. BOYNTON, SPECIAL ADMINISTRATOR FOR ESTATE OF DINESH O. PARIKH, ET AL.

Kehoe,
Gould,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: April 7, 2021

This is the tenth appeal of appellants, Oxana Parikh and Namish Parikh, relating to the administration of the estate of Dr. Dinesh O. Parikh. Appellants challenge an order of the Circuit Court for Montgomery County denying their motions to set aside the final judgment, remove Judge Ronald B. Rubin, and transfer the matter to Baltimore City Circuit Court. Lynn C. Boynton, the Special Administrator of Dr. Parikh's estate ("SA Boynton"), and Tina Parikh are the appellees.

Appellants' first four appeals were consolidated before this Court and decided in *In re Estate of Parikh*, No. 1226, September Term, 2017 (filed Jan. 16, 2019), *cert. denied sub nom. Matter of Estate of Parikh*, 464 Md. 597 (2019) ("*Parikh I*"). Appellants' five additional appeals were consolidated and decided in *Matter of Estate of Parikh*, No. 1480, September Term, 2017 (filed March 23, 2020), *cert. denied*, 469 Md. 665 (2020) ("*Parikh II*").

In this appeal, appellants repeat many of the arguments we previously resolved in *Parikh I* and *Parikh II*.[1] As to the remaining issues properly before us, we affirm the circuit court's decisions.

[1] Pursuant to Maryland Rule 1-104(b), "[a]n unreported opinion of either [appellate] Court may be cited in either [appellate] Court for any purpose other than as precedent within the rule of stare decisis or as persuasive authority." We refer to this Court's prior unreported opinions for background as well as for their relevance to the law of the case doctrine.

BACKGROUND FACTS AND LEGAL PROCEEDINGS[2]

Following the death of Dr. Parikh, a family dispute regarding his estate led to litigation in the circuit court and Orphans' Court of Montgomery County. The litigation began when Oxana Parikh, the ex-wife of Dr. Parikh's son, Namish, filed a petition for small estate administration[3] of Dr. Parikh's will. The will left his entire estate to Oxana[4] and designated her as the personal representative of the estate. The will made no provision for Dr. Parikh's children, Namish and Tina, or for his wife, Neela.

Tina filed a petition to caveat the will, claiming that a fraud had been committed on her father's estate. Tina also petitioned the orphans' court to remove Oxana as personal representative and appoint a successor representative. Oxana opposed both petitions, and, after a hearing, the orphans' court appointed SA Boynton as special administrator of Dr. Parikh's estate.

SA Boynton filed a complaint in the circuit court against Oxana and Namish, seeking an accounting of Dr. Parikh's assets and the return of approximately $1.14 million allegedly transferred to Namish by Oxana prior to Dr. Parikh's death.

[2] As the background facts of this case were explained in detail in *Parikh I* and *Parikh II*, we recount only those facts relevant to the resolution of the issues before us in this appeal.

[3] Small estate administration applies to estates valued at $50,000 or less. The value of the assets of Dr. Parikh's estate was reported as $25,780.57. *See Parikh I*, slip. op. at 2, n.6.

[4] For the sake of clarity and simplicity, and with no disrespect intended to the parties, we will use the first names of the members of the Parikh family discussed in this opinion.

Oxana, Namish, Tina, Neela, and SA Boynton agreed to mediation of the orphans' court case. During the mediation, counsel for the parties negotiated a settlement agreement, which provided for the division of the estate after expenses, as follows: 57% to Namish; 43% to Tina and Neela in accordance with an agreement between them; and reimbursement to Oxana for certain expenditures. Appellants subsequently repudiated the settlement agreement, prompting Tina to file an emergency motion to enforce the settlement agreement, which SA Boynton and Neela supported. The orphans' court granted the motion to enforce the settlement agreement and ordered further performance of the terms of the agreement by the parties.

In the circuit court, appellants filed an answer and counterclaim to SA Boynton's complaint as well as a motion to dismiss the complaint. SA Boynton filed a motion for summary judgment, a motion for sanctions for failure to provide discovery, and a motion to dismiss appellants' counterclaim. The circuit court granted all three of SA Boynton's motions and further ordered that the $1.14 million plus interest, then held in the court's registry, be disbursed to SA Boynton.

In *Parikh I*, appellants challenged, *inter alia*, the enforceability of the settlement agreement approved by the orphans' court and the grant of summary judgment in favor of SA Boynton in the circuit court. We affirmed the orphans' court's approval of the settlement agreement. We further determined that the circuit court did not err in dismissing Oxana's counterclaim and granting summary judgment as to SA Boynton's claim that Oxana had breached her fiduciary duties by gifting Dr. Parikh's assets to Namish.

Approximately one year later, appellants filed: "Motions to (a) Set Aside Final Judgment(s) Due to Fraud, Mistake, or Irregularities; (b) Remove Judge Rubin; [and] (c) Transfer [the] Matter to Baltimore City's Circuit Court[.]" SA Boynton opposed those motions and requested attorneys' fees pursuant to Md. Rule 1-341 for the costs incurred in defending against the motions, which she argued were unjustified and submitted in bad faith. Appellants responded and argued that SA Boynton's request for sanctions pursuant to Rule 1-341 should be denied.

The circuit court (Rubin, J.) entered a one-page order denying appellants' motions to: 1) set aside the judgment; 2) remove Judge Rubin; and 3) transfer the matter to Baltimore City Circuit Court. The court did not address SA Boynton's Rule 1-341 request for attorneys' fees.

This appeal followed.

DISCUSSION

Appellants' brief is a mishmash of conspiracy theories and intemperate rhetoric, so much so that it is difficult to discern actual legal arguments. As far as we can tell, appellants raise a multitude of challenges to the circuit court case that were or could have been decided in previous appeals, and are, therefore, precluded from review under the law of the case doctrine. *See Stokes v. American Airlines, Inc.*, 142 Md. App. 440, 446 (2002) ("Once an appellate court has answered a question of law in a given case, the issue is settled for all future proceedings.").

I.

STANDARD OF REVIEW

"We review the circuit court's decision to deny a request to revise its final judgment under the abuse of discretion standard." *Pelletier v. Burson*, 213 Md. App. 284, 289 (2013) (quoting *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008)). We will reverse the denial of a motion to revise a final judgment only where "no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Powell v. Breslin*, 430 Md. 52, 62 (2013) (internal quotation marks omitted).

Maryland Rule 2-535(b) provides that "[o]n a motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity." In Maryland, the terms fraud, mistake, irregularity are "narrowly defined and strictly applied," so as "to ensure finality of judgments." *Thacker v. Hale*, 146 Md. App. 203, 217 (2002).

In order to set aside a judgment under Rule 2-535(b), "a movant must show extrinsic fraud, not intrinsic fraud." *Pelletier*, 213 Md. App. at 290 (quoting *Jones*, 178 Md. at 72). Intrinsic fraud "pertains to the issues involved" in the case itself, "or where acts constituting fraud were, or could have been, litigated therein." *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990) (citing BLACK'S LAW DICTIONARY (5th ed. 1979)). In contrast, extrinsic fraud is fraud that is collateral to the matter before the court. *Id.* Extrinsic fraud "actually prevents an adversarial trial" and "prevent[s] the actual dispute from being submitted to the fact finder at all." *Id.*.

A "mistake" for purposes of setting aside an enrolled judgment is limited "to jurisdictional error, such as where the [c]ourt lacks the power to enter judgment." *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 51-52 (2003) (citing *Claibourne v. Willis*, 347 Md. 684, 692 (1997)). The type of "mistake" contemplated by the rule includes the situation where there was no valid service of process. *Hughes v. Beltway Homes, Inc.*, 276 Md. 382, 387 (1975). "Mistakes" that do not warrant setting aside an enrolled judgment include "an enrolled decree in a mechanics' lien foreclosure case making reference to the wrong lot" and "a mistaken determination that summary judgment should be entered against a defendant." *Id.* at 386-87.

"[A]n irregularity in the contemplation of Rule 2-535(b) is not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a [party] had notice and could have challenged, but a nonconformity of process or procedure." *Pelletier*, 213 Md. App. at 290. "Irregularities," for purposes of Rule 2-535(b), "most often involve a judgment that resulted from a failure of process or procedure by the clerk of a court, including, for example, failures to send notice of a default judgment, to send notice of an order dismissing an action, to mail notice to the proper address, and to provide for required publication." *Thacker*, 146 Md. App. at 219-20.

II.

ISSUES 1 AND 2: ALLEGED EXTRINSIC FRAUD

Appellants contend that SA Boynton and her attorney, James Debelius, along with Paul Maloney, Tina's attorney, and Robert Grant, Neela's attorney, engaged in a fraudulent "joint defense agreement." Specifically, appellants argue that counsel "engaged in

privileged communications as co-counsel working against Dr. Parikh's Will and sole-legatee, Oxana, to execute a "joint strategy in accordance with some form of agreement[.]" In support of these allegations, appellants highlight excerpts of Attorney Maloney's billing statements showing that he communicated with Attorney Debelius and Attorney Grant prior to a hearing before Judge Richard E. Jordan. Appellants also speculate that a redacted portion of Attorney Maloney's billing records may indicate a phone call to Judge Jordan, which both Attorney Maloney and Tina deny.

In *Parikh I*, we addressed a similar issue in response to appellants' contention that the circuit court erred in dismissing their counterclaim alleging civil conspiracy. We explained:

> As to Count IV (Civil Conspiracy), appellants theorize a conspiracy (without alleging specific facts) between the special administrator and Tina, featuring covert communications before the September 9, 2016 hearing in furtherance of a plot to remove Oxana as personal representative, invalidate the Will, and distribute its assets in a way contrary to testamentary intent. The special administrator counters that Count IV failed because appellant alleged no fact that could constitute an unlawful act or unlawful means to accomplish an act not in itself illegal. In addition, the special administrator asserts that she had no information about the estate before her appointment at the September 9, 2016 hearing, which required her to investigate allegedly misappropriated funds and to take appropriate action. Nor did she take any action to invalidate the Will; the caveat was filed before her appointment. Therefore, she argues, there is no fact supporting a prior agreement between the special administrator and Tina or Neela.
>
> A civil conspiracy requires "a combination of two or more persons by an agreement or understanding to accomplish an unlawful act or to use unlawful means to accomplish an act not in itself illegal" resulting in damages to the plaintiff. *Green v. Washington Suburban Sanitary Comm'n*, 259 Md. 206, 221 (1970); *see also* Md. Civil Pattern Jury Instructions 7:6 (5th ed. 2018). We agree with the special administrator and our discussion on her motion for summary judgment will further illuminate the failure of appellants' civil conspiracy claim against the special administrator.

Parikh I, slip. op. at 51-52.

Appellants' allegation of a fraudulent joint defense agreement among SA Boynton, Tina, Neela, and their respective counsel is substantially similar to their previous failed civil conspiracy claim. Our decision in *Parikh I* rejecting this claim remains the law of the case and applies equally to appellants' fraudulent joint defense agreement claim.

Moreover, as SA Boynton and Tina point out, their interests were aligned with respect to enforcing the settlement agreement to resolve all matters between the parties. We see nothing untoward in the record that supports appellants' allegations that opposing counsel worked together to undermine appellants' interests or to perpetrate a fraud within the meaning of Rule 2-535(b).

Appellants further allege that contact between Attorney Debelius and Judge Debelius, his brother, constituted extrinsic fraud. Appellants contend that the "two brothers shouldn't be on a call discussing Oxana and Namish. This is prototypical for ***mandatory*** disqualification under MD. Const.Art.4, §7[,]" as it constitutes "unauthorized *ex parte* communication."

SA Boynton responds that appellants' allegations pertain to an entry dated December 14, 2016 in Attorney Debelius' billing records, which states:

> . . . TC with Judge Debelius regarding possible procedural options. TC with DCM coordinator Rick Dabbs regarding possible procedural options. Revise Consent Motion and Consent Order to seek a 60 day extension of deadlines. Long email to Gibber law firm with Scheduling Order, revised Consent Motion and revised Consent Order, and summary of conversations earlier on procedural options. TC from Sam Wood and conference call to assignment office to move 1/6/17 scheduling hearing to 1/20/17.

SA Boynton explains that, after all parties signed the mediation agreement on November 17, 2016, "[appellants'] attorney, Sam Wood, specifically requested that [A]ttorney Debelius contact the Court (including his brother[,] then Administrative Judge Debelius) in order to learn the most effective means of continuing an upcoming 1/16/17 Scheduling Conference hearing and otherwise extend discovery deadlines." Attorney Debelius produced copies of email exchanges between himself and Attorney Wood and a letter to the court dated December 14, 2016, which included copies of pleadings signed by Attorney Debelius at Attorney Wood's direction. SA Boynton and Attorney Debelius contend that no ex parte communication occurred within the meaning of Md. Rule 18-102.9.[5] We agree.

Appellants make a similar allegation of an improper ex parte phone conversation between Attorney Debelius and Judge Rubin's law clerk. Attorney Debelius maintains that

[5] Md. Rule 18-102.9 provides, as relevant:

> (a) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge out of the presence of the parties or their attorneys, concerning a pending or impending matter, except as follows:
>
> > (1) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.
> >
> > (2) When circumstances require, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:
> >
> > > (A) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and
> > >
> > > (B) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

he contacted Judge Rubin's law clerk to advise the clerk that he was emailing a proposed order concerning the complicated procedural situation regarding appellants' plan to appeal the orphans' court's order enforcing the settlement agreement. Included in the record is a copy of Attorney Debelius' email to Judge Rubin's law clerk, which he states was sent to all counsel for the parties, including Erica Davis and Sam Williamowsky, counsel for appellants.

The record indicates that Attorney Debelius communicated with Judge Debelius and Judge Rubin's law clerk on behalf of, and with the consent of, the parties. The record also shows that all parties were copied on Attorney Debelius' correspondence to the court following those contacts. We recognize the need to deal with matters expeditiously in a case involving multiple parties and unusual procedural issues. Appellants fail to demonstrate that Attorney Debelius' contact with the court, including his brother, Judge Debelius, constituted anything other than routine scheduling discussions conducted with the consent of the parties to the litigation. We see no evidence of extrinsic fraud in those communications.

III.

ISSUES 3-5: ALLEGED MISTAKES

Appellants argue that the circuit court exceeded its jurisdictional limits by permitting the "unlawful" prejudgment attachment of their bank account located outside of Maryland. Appellants also contend that the circuit court "had no jurisdiction because damages threshold was lacking[], a non-existent person cannot claim damages[,]" and a claim for accounting is within the exclusive jurisdiction of the orphans' court.

In *Parikh I*, appellants appealed the dismissal of their counterclaim, including their claim for abuse of process, which alleged that SA Boynton's prejudgment attachment of their out-of-state bank account was illegal because the bank was located in Pennsylvania. *Parikh I,* slip. op. at 49-50. We determined that appellants' abuse of process claim failed as a matter of law because "[SA Boynton's] letter to Ally Bank asking it to freeze voluntarily the funds (which it did for several days) was not the use of the appointment order in an inappropriate way." *Id*. at 50.

Appellants' argument that the circuit court did not have jurisdiction to attach their Ally Bank account is an attempt to recast their earlier unsuccessful challenge to the attachment of their bank account and the dismissal of their counterclaim, issues which this Court previously resolved in *Parikh I*. *See Fidelity-Baltimore Nat'l Bank & Trust Co*. *v. John Hancock Mut. Life Ins. Co*., 217 Md. 367, 372 (1958) ("[Litigants] cannot prosecute successive appeals in a case that raises the same questions that have been previously decided by this Court in a former appeal . . . [or] raise any question that could have been presented in the previous appeal . . ."). The law of the case doctrine precludes us from considering another challenge by appellants to the attachment of their Ally Bank account, as that issue could have, and should have, been addressed in *Parikh I*. Moreover, appellants fail to demonstrate how the attachment of their Ally Bank account constituted a jurisdictional "mistake" within the meaning of Rule 2-535(b).[6]

[6] We note that Maryland courts may properly exercise original and ancillary jurisdiction over property located in another state. *See Mensah v. MCT Fed. Credit Union*, 446 Md. 525, 542 (2016) (garnishment of out-of-state wages was proper exercise of original and ancillary jurisdiction).

Appellants also challenge the circuit court's subject matter jurisdiction, arguing that SA Boynton failed to allege damages sufficient to meet the jurisdictional threshold set forth in Section 4-401 of the Courts and Judicial Proceedings Article ("CJP") of the Maryland Annotated Code (1974, 2002 Repl. Vol.). Appellants argue that SA Boynton's claim for an accounting was exclusively within the jurisdiction of the orphans' court.

In *Parikh I*, appellants raised a similar challenge to SA Boynton's claim for an accounting, specifically: "Was [SA Boynton's] motion for summary judgment properly granted; is there a stand-alone cause of action for breach of fiduciary duty; and, is there a stand-alone cause of action for accounting?" *Parikh I*, slip. op. at 40.

We affirmed that SA Boynton had authority to bring the accounting claim and that claim was properly filed in the circuit court, explaining:

> Because she was not a personal representative, [SA Boynton] did not have authority under [Maryland Annotated Code, Estates and Trust Article] § 7-401(y), related to the prosecution and defense of claims "for the protection or benefit of the estate." Clearly, however, [SA Boynton's] complaint related to the collection of property for estate purposes. As Gibber on Estate Administration § 11.6 (6th ed. 2018) states, "A special administrator has the authority to bring an action in the Circuit Court for return of assets to the estate or to determine title to assets claimed to belong in the estate."

Parikh I, slip. op at 44. Our previous determination in *Parikh I* that SA Boynton acted properly in bringing an action for an accounting remains the law of the case and we need not revisit the issue.[7]

[7] We note that because SA Boynton's complaint alleged both equitable and legal causes of action entitling her to a jury trial, jurisdiction was proper in the circuit court with respect to the legal claims for relief. *See* MD. CONST., Decl. of Rights, Art. 23; *Martin v. Howard Cnty*, 349 Md. 469, 489 (1998) (holding that plaintiff in an eviction action asserting equitable and legal claims was entitled to a jury trial on the legal claim).

We also reject appellants' argument that subject matter jurisdiction was lacking because SA Boynton failed to allege damages sufficient to meet the jurisdictional threshold set forth in CJP § 4-401. The complaint, which stated that the amount in controversy exceeded $75,000, as contemplated in Rule 2-305, and further alleged that SA Boynton was seeking the return of $1,132,683.77 from Namish's bank accounts, was sufficient to satisfy the circuit court's jurisdictional threshold of $75,000. *See Carroll v. Housing Opportunities Comm'n*, 306 Md. 515, 523-24 (1986) (explaining that the complaint determines the amount in controversy unless it appears to a legal certainty that the amount in controversy does not exceed the jurisdictional requirement). Appellants have made no showing that the circuit court lacked subject matter jurisdiction or that the summary judgment order was the product of a mistake within the meaning of Rule 2-535(b).

IV.

ISSUES 6-9: ALLEGED EXTRINSIC FRAUD, MISTAKE AND IRREGULARITIES

Issues 6 through 9 of appellants' brief have no merit. Appellants argue that Tina and Neela "abandoned" their claims when the orphans' court approved the settlement agreement; the settlement agreement was obtained with perjury; SA Boynton does not

"exist" because her name is a "pseudonym;"[8] and the circuit court erred in failing to strike SA Boynton's and Tina's oppositions to appellants' motion to set aside the final judgment.[9]

"It is black letter law in Maryland that the type of fraud which is required to authorize the reopening of an enrolled judgment is 'extrinsic' fraud and not fraud which is 'intrinsic' to the trial itself." *Oxedine v. SLM Cap. Corp*., 172 Md. App. 478, 492 (2007). We have explained that "[a]n enrolled decree will not be vacated even though obtained by the use of forged documents, perjured testimony, or any other frauds" because these "are intrinsic to the trial of the case itself." *Manigan v. Burson*, 160 Md. App. 114, 120-21 (2004) (quotation marks omitted); *see also Facey v. Facey*, ___ Md. App. ___, 2021 WL 753533 (2021) ("Extrinsic fraud *perpetrates an abuse of judicial process by preventing an adversarial trial and/or impacting the jurisdiction of the court.*"). "[T]he Court of Appeals consistently has rejected attempts to exercise revisory power over judgments that have been called into question on their merits, rather than on the basis of questionable procedural provenance." *Thacker*, 146 Md. App. at 220.

Even if appellants' assertions were meritorious, which they are not, their assertions focus on alleged errors that were intrinsic, rather than extrinsic, to the circuit court proceedings. As such, they do not amount to extrinsic fraud, mistake, or irregularity within the meaning of Rule 2-535(b), and the circuit court did not err in its decision.

[8] Elsewhere in their brief, appellants refer to SA Boynton as "[f]ake-Boynton" and accused her of "advocat[ing] bigamy."

[9] Appellants also filed a "Motion to Disqualify James J. Debelius, Esq. and Paul J. Maloney, Esq. Pursuant to Rule 19-303.7(a)" and a "Motion to Strike Oppositions Filed in Violation of Rule 19-303.7(a) at Docket Nos. 131 and 132," which the circuit court denied.

V.

ISSUE 10: DENIAL OF MOTION TO REMOVE JUDGE AND TRANSFER CASE[10]

Appellants contend that Judge Rubin erred in declining to set aside his order denying their request that the case be reassigned and/or transferred to Baltimore City. The entirety of appellants' argument on this issue is as follows:

> There are no disclosures on the docket by any Judge of numerous contacts with Debelius/Maloney. Rule 18-102.9 commands "prompt" notice/opportunity to Appellants. Appellants are complaining of a pattern of *ex parte* communications. To ensure fairness, please order this matter transferred to Baltimore City's [Circuit Court] and/or a different judge.

Though appellants allege a "pattern" of "numerous" ex parte communications, they fail to identify any incidences of alleged ex parte communication beyond the communications between Attorney Debelius and Judge Debelius, and Attorney Debelius and Judge Rubin's law clerk, which we already addressed. The circuit court did not abuse its discretion in denying appellants' motion.

[10] We rejected a similar argument by Oxana in *Parikh II*, in which she challenged the orphans' court's denial of her motion to remove that case to the Baltimore City Orphans' Court due to alleged bias and impartiality on the part of Judge Jordan. *Parikh II*, slip. op. at 21-24.

VI.

SA BOYNTON'S REQUEST FOR ATTORNEYS' FEES PURSUANT TO RULE 1-341

SA Boynton requests that this Court find that appellants acted in bad faith and without substantial justification in filing their post-judgment motions and this appeal. She further requests that we remand this case for the entry of an award of attorneys' fees.

A.

SANCTIONS IN THE CIRCUIT COURT

Rule 1-341 "dictates the remedial authority of the court in any civil action to require a party to pay an opposing party's attorney's fees for unjustified proceedings." *Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. 1, 18 (2018). The rule provides:

> In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it.

Rule 1-341(a).

Rule 1-341 is not intended to punish legitimate advocacy, to force abandonment of questionable or innovative causes, or to penalize exploration beyond existing legal horizons. *U.S. Health, Inc. v. State*, 87 Md. App. 116, 128 (1991). In determining whether to award sanctions under Rule 1-341, the judge first must determine "whether [the appellants'] conduct in noting the appeal was 'in bad faith or without substantial

justification.'" *Blanton v. Equitable Bank, Nat'l Ass'n*, 61 Md. App. 158, 161 (1985). Second, the judge must "find that the acts committed in bad faith or without substantial justification warrant the assessment of attorney's fees." *Christian*, 459 Md. at 21 (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc*., 324 Md. 254, 267-68 (1991)).

"'In bad faith' means vexatiously, for the purpose of harassment of unreasonable delay, or for other improper reasons." *Inlet Assocs*., 324 Md. at 268. Whereas, "the test for determining lack of substantial justification . . . is whether [a party] had a reasonable basis for believing that the claims would generate an issue of fact for the fact finder." *Id*.; *accord State v. Braverman*, 228 Md. App. 239, 262 (2016). "Where a party has no evidence to support its allegations, the proceedings lack substantial justification from the outset." *Christian*, 459 Md. at 23.

When it is clear that a Rule 1-341 motion requesting sanctions is "patently groundless, *i.e*., if there is no basis for granting it apparent from the record, the trial judge need not issue any findings" in denying the motion. *Fowler v. Printers II, Inc*., 89 Md. App. 448, 487 (1991). "Where, however, the record does not clearly reflect the meritlessness of the Rule 1-341 motion, the trial court *must* make findings as to bad faith and/or substantial justification when denying the motion." *Id*. (Emphasis added). "Without such a finding, it is impossible for an appellate court to review the circuit court's decision." *Id*.

SA Boynton requested an award of attorneys' fees in the circuit court in the amount of $5,250.00, for expenses incurred in preparing her opposition to appellant's post judgment motions, which she supported with an itemization of expenses and verification

of the expenses by Attorney Debelius. As far as we can tell, the circuit court has not ruled on that motion, perhaps awaiting the outcome of this appeal. *See Dent v. Simmons*, 61 Md. App. 122, 129-30 (1985) (finding that a motion under Rule 1-341 is collateral to main case and need not be resolved prior to the perfection of an appeal). Accordingly, we shall remand this case for the circuit court to address and resolve the pending Rule 1-341 motion.

B.

SANCTIONS IN THIS COURT

SA Boynton makes a compelling argument that, in filing this appeal, appellants crossed the line that separates legitimate advocacy from vexatious and abusive litigation. For example, in their never-ending efforts to discredit and personally attack SA Boynton, appellants likened SA Boynton's use of her former married name to a "pseudonym."[11] Appellants wrote:

> The ***truth*** is "Lynn Caudle Boynton" is an unlawful pseudonym used by "Lynn Caudle Pendleton." In prior appeals, Appellant(s) alleged that "Boynton" is a pseudonym and not a real person. On 2/18/2020 Boynton finally **confessed**[.]

Appellants continue to focus on SA Boynton's use of her married name as a basis for undermining the legitimacy of the final order:[12]

[11] In her brief in *Parikh II*, Oxana likened SA Boynton's use of her former married name to the use of the stage name "Stormy Daniels" by Stephanie Clifford.

[12] In the circuit court, appellants filed a "Motion to Compel 'Lynn C. Boynton' to Produce a Notarized Photocopy of Her Maryland 'Real ID' Compliant Driver's License with DOB Redacted[.]" SA Boynton and Tina requested attorneys' fees as a sanction for the bad faith filing of the motion, which Judge Rubin denied. SA Boynton's former married name was Boynton and her present married name is Pendleton.

> Not only does "Boynton" not have "cognizable stake" i.e, standing, but "Boynton" is not a real-party-in-interest under Rule 2-201. A threshold question, interwoven with standing is ***who owns the cause of action and is entitled to pursue that cause of action to judgment?*** Certainly not "Pendleton," for she was never appointed and, certainly not "Boynton," because a person with a stage-name cannot be appointed.

Undeterred by our previous decisions disposing of their claims, appellants pursue their unfounded narrative that "Oxana ***is*** sole 'legatee' and sole 'interested person'" and that "no caveat has prevailed and, no resulting intestacy." Appellants continue to dispute the legitimacy of our decisions in this case, contending that "***Parikh I*** (1/16/19) was allegedly obtained by perjured testimony and gross unethical conduct. ***Parikh II*** (3/23/20) was a continuation of machinations employed in *Parikh I*."

Sanctions are warranted under Rule 1-341 "only when a suit is patently frivolous and devoid of any colorable claim[,]" and "should be imposed only when there is a clear, serious abuse of judicial process." *Black v. Fox Hills N. Cmty. Ass'n, Inc.*, 90 Md. App. 75, 84 (1992). "Rule 1-341 was intended to function primarily as a deterrent against abusive litigation." *Christian*, 459 Md. at 19 (internal quotation marks omitted). The purpose of the rule is not to punish the offending party, but rather, to "put the wronged party in the same position as if the offending conduct had not occurred." *Major v. First Va. Bank-Cent. Md.*, 97 Md. App. 520, 531 (1993).

We conclude that appellants' use of the appeals process to pursue their vexatious litigation and meritless arguments warrants a finding of both bad faith and lack of substantial justification. *See Century I Condo. Ass'n, Inc. v. Plaza Condo. Joint Venture*, 64 Md. App. 107, 121 (1985) (holding that a condominium association maintained an

appeal without substantial justification when it failed to dismiss the appeal following a decision disposing of the issue); *Blanton*, 61 Md. App. at 165-66 (finding that the defendant's appeal of the denial of his motion for a continuance violated Rule 1-341 where it was without substantial justification and "it indisputably had no merit"); *Shanks v. Williams*, 53 Md. App. 670, 672-73 (1983) (affirming an award of counsel fees in connection with a motion to revise a final judgment filed by a litigant who persistently continued to relitigate a final judgment "without substantial justification").

Here, appellants did not pursue a "questionable" or "innovative" cause; nor did they explore "beyond existing legal horizons." Rather, appellants continue to relitigate the settlement agreement and the summary judgment order, long after those issues were put to bed in *Parikh I*. Appellants argue, without substantial justification, their previous failed civil conspiracy, abuse of process, and unauthorized accounting claims from *Parikh I*, and repackaged them as claims regarding a fraudulent joint defense agreement, extra-territorial attachment of their bank accounts, and a lack of subject matter jurisdiction.

Appellants devised bad faith claims of fraud, based on personal attacks and vitriolic diatribes against opposing parties and counsel. Appellants' allegations of perjury and fraudulent ex parte communications on the part of Attorney Debelius were unsupported by any credible evidence. The pursuit of the recusal of Judge Rubin and transfer of the case to Baltimore City was completely without merit and undertaken primarily to harass appellees and delay the finality of the case. We struggle to characterize appellants' challenges to Tina's share of the estate and SA Boynton's "existence" as anything short of a vengeful crusade anchored in bad faith and pursued without substantial justification. SA

Boynton is entitled to an award of reasonable attorneys' fees for the costs incurred in defending against this frivolous appeal. Accordingly, pursuant to Rule 1-341, we shall grant SA Boynton's motion for attorneys' fees. The amount to be awarded shall be determined by the circuit court on remand.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. MOTION FOR SANCTIONS IN CONNECTION WITH THIS APPEAL GRANTED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANTS.