

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2403

September Term, 2013

G. PHILIP NOWAK, et. ux.

v.

JOHN L. WEBB, SR., et. ux.

Eyler, Deborah S.,
Arthur,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: May 6, 2015

*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.

The issue in this case is whether the Circuit Court for Washington County erred in declining to award attorneys’ fees, costs and reasonable expenses to appellants.

G. Philip Nowak and Barbara O. Nowak, appellants, were involved in a property dispute with their neighbors, John L. Webb, Sr. and Ruth G. Webb, appellees. Following a bench trial on October 25-26, 2010, the Circuit Court for Washington County entered judgment in favor of appellants and against appellees. The Court of Special Appeals and the Court of Appeals affirmed. *Webb v. Nowak*, 433 Md. 666 (2013); *Webb v. Nowak*, No. 2315, Sept. Term 2010 (July 25, 2012). Pursuant to Maryland Rule 1-341, appellants moved to recover from appellees costs and reasonable expenses, including attorneys’ fees.¹ The circuit court denied the motion. Appellants present two questions for our review:

“1. Whether the Circuit Court’s finding that ‘the action brought by [appellees] was maintained in good faith and with substantial justification’ was clearly erroneous. . . .

2. Whether the Circuit Court’s failure to sanction [appellees] and [appellees’ counsel] for seeking punitive damages without a basis in fact was clearly erroneous. . . .”

We shall hold that the circuit court’s findings were not clearly erroneous and affirm.

¹Maryland Rule 1-341 states as follows:

“(a) **Remedial Authority of Court.** 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.”

I.

Appellants contend that the circuit court clearly erred when it declined to order appellees to pay the reasonable expenses, including attorneys’ fees, that appellants incurred in defending against the lawsuit brought by appellees. That suit, which appellants claim appellees brought and maintained in bad faith and without substantial justification, led to protracted litigation that included a trial and appellate review by this Court and the Court of Appeals. Appellants ask us to issue an order directing “the Circuit Court to issue an order directing [appellees] and [their attorney] to pay the costs and reasonable expenses, including attorney’s fees, incurred by [appellants].” We decline to do so.

Because appellants challenge the basis on which appellees brought and maintained their suit, we will recite the underlying facts in some detail. Appellants and appellees are neighbors who became involved in a property dispute. The original dispute centered on what appellant’s surveyor called a “survey overlap.” This “overlap” meant that two different deeds — appellants’ and appellees’ — each showed the disputed property as belonging to the person owning under that deed. To make matters more complicated, appellants and appellees each had their property surveyed in the decade leading up to litigation and were each told, by their own surveyor, that they were the rightful owners of the disputed property. Appellees commissioned their survey in 2000, the same year that they purchased the property, and from 2000-2007 used the disputed property without incident. In 2007,

however, appellants commissioned their own (ultimately deemed to be correct) survey, which concluded that they owned the property. It was then that the conflict began.

Appellants’ surveyor realized that his survey differed from appellees’ earlier survey and recommended that appellants work out a solution with their neighbors or seek clarification from a court. Instead, appellants hired a contractor to demolish the fence, remove the trees and other vegetation from the disputed property and erect a new fence located approximately along the border shown by appellants’ survey.

Appellees filed a complaint alleging a violation of § 5-409 of the Natural Resources Article² and trespass. First, appellees alleged that appellants had violated § 5-409 when appellants or their agents “willfully, negligently, recklessly, wrongfully and maliciously . . . injured or destroyed, merchantable trees and timber of [appellees] on [appellees’ property].” Second, appellees alleged that appellants had committed common law trespass by wrongfully entering and causing damage to appellees’ real property. Appellees requested compensatory and punitive damages.

Appellants responded and, in a counter-complaint to quiet title, alleged that they owned the land and pled adverse possession and trespass. The court bifurcated the trial and held a trial first to determine title. On the ownership issue, the court ruled in favor of appellants. This Court affirmed in *Webb v. Nowak*, No. 2315, Sept. Term 2010 (July 25,

² Unless otherwise indicated, all subsequent references herein to the Maryland Code (1973, 2012 Repl. Vol.) shall be to the Natural Resources Article.

2012), and the Court of Appeals affirmed in *Webb v. Nowak*, 433 Md. 666 (2013). The second half of the trial, which would have determined the validity of appellees’ statutory and common law trespass claims if they had owned the disputed land, never took place.

Following their victory in the Court of Appeals, appellants filed a motion pursuant to Rule 1-341 in the circuit court requesting that the court award them reasonable expenses and attorneys fees, alleging that appellees had maintained the proceeding without substantial justification or in bad faith. The circuit court denied appellants’ motion, stating as follows:

“ORDERED, that the motion be and is denied, this Court finding that the action brought by [appellees] was maintained in good faith and with substantial justification.”

This timely appeal followed.

II.

Before this Court, appellants contend that the circuit court was clearly erroneous in concluding that appellees’ claims were maintained in good faith and with substantial justification. They allege that appellees knew, at the time that they filed their complaint, that they had sustained no damage to merchantable trees or timber. Likewise, they allege that appellees’ claim for trespass was without merit because they had sustained no damages from the alleged trespass. Additionally, appellants aver that punitive damages may be awarded only in cases where the plaintiff can prove by clear and convincing evidence that the defendant acted with actual malice. In this case, they claim appellees “had no basis in fact

for seeking punitive damages from the Nowaks and clearly did so for tactical or settlement purposes.” Finally, appellants complain that the circuit court did not make any specific findings of fact, other than that the action was maintained in good faith and with substantial justification. They argue that the court was required to make more specific factual findings when denying a motion under Rule 1-341.

Appellees respond that they filed the claims in good faith and with substantial justification, and hence, the court was not clearly erroneous in denying the request for fees and costs. According to appellees, the court was not required to make specific findings in order to *deny* a motion for sanctions under Rule 1-341. Such findings are required only when a court decides to grant a motion for sanctions.

III.

Sanctions are an extraordinary remedy available only in exceptional cases. *See Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 678 (2003). While appropriately awarded sanctions may deter frivolous litigation, intemperate awards have the potential to chill legitimate advocacy, deter attorneys from developing novel arguments and erode our usual rule that a party pays his or her own attorneys’ fees. *See Inlet Assoc. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 283 (1991) (“The more an unsuccessful litigant is required to show to justify filing or maintaining his or her claim, the greater the chilling effect”); *Needle v. White, Mindel, Clarke & Hill*, 81 Md. App. 463, 481 (1990) (“unjustified sanction orders chill

legitimate advocacy and erode the confidence of otherwise competent and ethical counsel.”) *Garcia*, 155 Md. App. at 684 (“Maryland Rule 1-341 is not, and never was intended, to be used as a weapon to force persons who have a questionable or innovative cause to abandon it because of a fear of the imposition of sanctions”). Trial courts must be particularly cautious given that appellate reversal “cannot erase the lingering doubts of legitimacy that sanctions proceedings create.” *Id.* In recent years, we have found that “[t]he judicial process is as much abused by wholesale requests for sanctions hearings as it is by conducting judicial proceedings in bad faith or without substantial justification.” *Id.* at 480-81.

Rule 1-341 provides, in pertinent part, as follows:

“(a) **Remedial Authority of Court.** 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 the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys’ fees, incurred by the adverse party in opposing it.”

In order to impose sanctions under Rule 1-341, a court must make two separate findings, subject to two separate standards of appellate review. *Inlet Assoc.*, 324 Md. at 267. First, the court must find that the party maintained or defended the action in bad faith or without substantial justification. *Id.* We review this finding for clear error. *Id.* Second, if a court finds that a party maintained or defended a proceeding in bad faith or without substantial justification, then the court *may* award sanctions, but it is not required to do so. *Id.* We

review the decision to award sanctions if a violation is found for an abuse of discretion. *Id.* The court in this case found that appellees filed their claims in good faith and with substantial justification and did not award any sanctions. We review the decision below for clear error only.

As a preliminary matter, we reject appellants’ contention that the circuit court was required to make specific factual findings in this case. Both parties rely on *Blitz v. Beth Isaac Adas Israel Congregation*, 115 Md. App. 460 (1997), which provides as follows:

“A trial court need not make factual findings in connection with every Rule 1-341 motion. Rather, if the motion is ‘patently groundless,’ *i.e.* where no basis for granting sanctions appears in the record, the trial court may summarily deny the motion without issuing factual findings. Nevertheless, as a corollary, when ‘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. Without such a finding, it is impossible for an appellate court to review the circuit court’s decision.”

Id. at 489-90 (1997), *rev’d on other grounds*, 352 Md. 31 (1998) (internal citations omitted).

In that case, the circuit court made *no* determination as to whether there had been bad faith or a lack of substantial justification. *Id.* at 474-475. Rather, it denied the motion to end the case, reasoning as follows:

“[W]hether I ultimately come down with the decision that, yes, the scales have been tipped to show me that it was without substantial justification, even if I do that, even if I make those findings of fact, I can tell you, quite frankly, that in this kind of case the most just thing that I think a court can do, *the proper thing is to try to put this case to rest. This has to end. It has to*

end. This isn't worth this. It is not worth a few thousand dollars to have this continue. It truly isn't. It's for those reasons that the motion for sanctions filed by the Plaintiff are denied."

Id. Our requirement that a court “*must* make findings as to bad faith and/or substantial justification when denying the motion” was a reference to the total failure of the circuit court in that case to determine whether bad faith or a lack of substantial justification existed. Without such a finding, we could not determine whether the court had denied the motion because it found that the parties had filed their claims in good faith and with substantial justification or because it had exercised its discretion not to award sanctions.

Although the parties seem to agree that *Blitz* controls, we do not concur. In the instant case, the circuit court determined clearly that the proceeding was maintained in good faith and with substantial justification. This ruling was sufficient to clarify that we are at the first step of the review process discussed above, and therefore that the appropriate standard of review is clear error. Furthermore, since the court did not exercise any discretion, it was unnecessary for the court to explain the facts relevant to the exercise of its discretion. Unlike the court in *Blitz*, the circuit court in this case provided us with sufficient information to enable meaningful review.

We turn, then, to the merits of appellants’ contentions that the circuit court denied improperly their motion for attorneys’ fees, beginning with appellants’ contention that appellees did not have a substantial basis for their claims. A claim has a substantial basis as long as it is “fairly debatable” and “within the realm of legitimate advocacy.” *Inlet Assoc.*,

324 Md. at 268. An attorney need not have a fully developed case at the time the case is filed, as long as there is a “reasonable basis for believing that a case will generate a factual issue for the fact-finder at trial.” *Id.* Even if existing law does not support a party’s argument, there may be a substantial basis for the claim if the party can make “a good faith argument for extension, modification or reversal of existing law.” *Id.*

We hold that it was not clearly erroneous for the circuit court to conclude that appellees had a substantial basis for their claim under § 5-409. The provision reads, in pertinent part, as follows:

“(a) *Written permission of owner required; damages.* – Any person, his aiders, abettors, and counselors, who willfully, negligently, recklessly, wrongfully, or maliciously enters upon lands or premises of another without written permission of the owner of the lands or premises, in order to cut, burn, or otherwise injure or destroy, or cause to be cut, burned, or otherwise injured, or destroyed, *any merchantable trees or timber on the land* is liable to the party injured or aggrieved in an amount triple to the value of the *trees or timber* cut, burned, or otherwise injured or destroyed, plus the costs of any surveys, appraisals, attorney fees, or court fees in connection with the case. . . .”

§ 5-409(emphasis added).

First, appellants argue that there is no reasonable basis for arguing that the trees in this case qualify as timber. Assuming, without deciding, that appellants are correct, this argument does not support sanctions. Section 5-409, by its terms, refers to “merchantable trees or timber.” There is nothing sanctionable about arguing that the term “trees or timber”

means something more than timber alone.³ In their response to appellants’ motion for summary judgment, appellees attached several documents from the legislative history of the bill that supported a broader interpretation of the term to include at least firewood. They hired a forestry expert who stated, in his deposition, that smaller trees could qualify as “merchantable,” since they could be used for pulpwood. Appellees had a substantial basis for arguing that the trees on the disputed property constituted “merchantable trees or timber.”

Second, appellants argue that § 5-409 is punitive in nature because it provides for treble damages. Appellants allege that appellees would have had to show “actual malice” in order to obtain statutory punitive damages and that they had no substantial basis for requesting such damages in this case. “Actual malice” in general includes “conscious and deliberate wrongdoing, evil or wrongful motive, intent to injure, ill will, or fraud.” *Bowden v. Caldor, Inc.*, 350 Md. 4, 23 (1998). Based on the limited evidence before this Court, we cannot conclude that appellees lacked substantial justification for their punitive damage claims in this case. Appellants’ surveyor informed them that there were overlapping surveys. Appellants nonetheless bulldozed the disputed property, destroyed every tree in the area and fenced out appellees, without prior notice to appellees or an attempt to resolve the dispute

³*Samson Constr. Co. v. Brusowankin*, 218 Md. 458 (1958), is not to the contrary. In that case, the court considered the appropriate determination of damages for the loss of trees under claims for negligence and common law trespass. *Id.* at 465-66. It cited a predecessor to § 5-409 as an example of an instance where punitive damages would be available in the event of the destruction of timber. *Id.* To the extent that the case interprets § 5-409 at all, it does not establish definitively that the provision does not apply to trees other than timber.

amicably. It is undisputed that appellants entered the property, destroyed the trees and erected the fence willfully. At the time that appellees made their allegations regarding punitive damages, ownership had not been determined, and the facts for the second half of the bifurcated trial were not developed fully. Based on the circumstances, it would not be unreasonable to conclude that appellees had reason to believe that the evidence would generate an issue for the fact-finder at trial as to appellants' ill will. It was not clearly erroneous for the court to determine that appellees had a substantial basis for arguing that appellants had acted with actual malice warranting punitive damages.

Third, it was not clearly erroneous for the circuit court to conclude that appellees had a substantial basis for their common law trespass claim. Appellants contend that, even if appellees had owned the land, there was no evidence that the property was damaged. In Maryland, “[e]very unauthorized entry upon the land of another is a trespass, and whether the owner suffers substantial injury or not, [the owner] at least sustains a legal injury, which entitles [the owner] to a verdict for some damages; though they may, under some circumstances, be so small as to be merely nominal.” *Tyler v. Cedar Island Club*, 143 Md. 214, 219 (1923). Even if they had been required to show actual damages, there was evidence in the record that would have provided a substantial basis to support that claim. Appellees’ pretrial statement avers that appellees sought damages for merchantable firewood, two fruit-bearing apple trees and one flowering dogwood tree, totaling approximately \$6,000. In

addition to the testimony of appellees themselves and other lay witnesses, appellees listed a forester and an arborist as expert witnesses.

We turn now to appellants' claim that appellees' filed or maintained their suit in bad faith. Under Rule 1-341, "In bad faith' means vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons." *Inlet Associates*, 324 Md. at 268. The Court of Appeals discussed the restrictive nature of this standard as follows:

"As frustrating as it may be to courts and litigants at all levels to become involved in extra effort because an attorney or party misreads a rule, or overlooks a requirement, or is otherwise negligent, careless, or perhaps inept, the bad faith component of Rule 1-341 does not permit the award of attorney's fees as a sanction for such conduct. *It is an extraordinary remedy, intended to reach only intentional misconduct.*"

Talley v. Talley, 317 Md. 428, 438 (1989) (emphasis added). Appellants allege that bad faith exists in this case because appellees knew that their claims lacked merit and they continued to press them and to make untrue statements. Appellants' bad faith argument is dependent on their argument that the claims lacked a substantial basis. Appellees cannot have pressed their claims *knowing* that their claims were meritless unless those claims were meritless. Similarly, appellees cannot have made knowingly untrue statements if they had a substantial basis for believing the statements to be true. It was not clearly erroneous for the circuit court to conclude that the claims were filed in good faith.

Had the second half of the trial taken place, appellees were prepared to present two expert witnesses, several lay witnesses and related documents in support of their factual

claims. They were able to cite to numerous legal authorities, including the legislative history of the governing statute, to support their statutory arguments. Although they lost the case ultimately, it was not clearly erroneous for the circuit court to determine that they had maintained the proceeding in good faith and with substantial justification.

**JUDGMENT OF THE CIRCUIT
COURT FOR WASHINGTON
COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANTS.**