UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1744

September Term, 2014

MARK T. MIXTER

v.

M.E. BURTON, LLC, ET AL.

Graeff,
Zarnoch,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: September 15, 2015

This appeal addresses the order of the Circuit Court for Washington County ordering Mark T. Mixter, appellant, and Nancy Railey, appellee and cross-appellant, to pay sanctions to J.G. Cochran Auctioneers & Associates, James G. Cochran, and Leo Cline (the "Cochran Defendants"), appellees. The court awarded sanctions in the amount of $111,886.25 based on its finding that the complaint filed against the Cochran Defendants was pursued in bad faith and without substantial justification because they knew, or should have known, that it possessed no merit.

The initial litigation arose from an auction, held on June 28, 2009, in which Nancy Railey purchased the right for her company, Railey Mountain Lake Vacation Rentals, LLC ("Railey LLC"), to remove trees from a property owned or managed by Patrick Ellis, M.E. Burton, LLC, and J.H. Burton and Sons, LLC (the "Burton Defendants").[1] Subsequently, Ms. Railey learned that there were outstanding liens on the property, and she was unable to remove the trees located thereon.[2] Ms. Railey and Railey LLC (the "Railey Plaintiffs") retained Mr. Mixter to seek compensation due to their inability to remove the trees pursuant to the right purchased at the auction. On July 22, 2010, Mr. Mixter filed a complaint in the Circuit Court for Washington County against the Cochran Defendants and the Burton Defendants, asserting numerous causes of actions against each. After more than a year of litigation, summary judgment was granted in favor of the defendants on all counts.

[1] Ms. Railey states in her brief that Mr. Mixter incorrectly identified her company, and the correct corporate name is Railey Mtn. Lake Vacations, LLC.

[2] The Cochran Defendants characterize the transaction as a purchase of trees and, "in effect," a license to go on the property and remove the trees.

The Cochran Defendants then moved for sanctions pursuant to Maryland Rule 1-341, alleging that Mr. Mixter and the Railey Plaintiffs acted in bad faith and without substantial justification in bringing the lawsuit against the Cochran Defendants and then propounded "a veritable barrage of frivolous motions, discovery requests, notices of depositions and subpoenas all to drive up litigation costs unnecessarily in this suit that was moribund from the time it was filed." After multiple proceedings, discussed *infra*, the court granted the motion and assessed sanctions totaling $111,886.25 against Mr. Mixter and found Ms. Railey jointly and severally liable for $10,000 of that amount.

On appeal, Mr. Mixter presents three issues for our review, which we have reorganized and rephrased, as follows:

1. Did the circuit court err in imposing sanctions?

2. Did the circuit court err in determining that the amount of the sanctions imposed was reasonable?

3. Did the circuit court err in not holding Ms. Railey jointly and severally liable for the full amount of the sanctions?

Ms. Railey noted a cross-appeal, which we will address with Mr. Mixter's third argument. She presents one issue for our review, which we have rephrased, as follows:

1. Did the circuit court err in holding Ms. Railey jointly and severally liable for a portion of the sanctions award?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Complaint

On July 22, 2010, Mr. Mixter filed a complaint on behalf of the Railey Plaintiffs. The complaint alleged that, on June 28, 2008, Ms. Railey attended an auction organized by J.G. Cochran Auctioneers and Associates and conducted by Mr. Cochran and Mr. Cline.[3] At the auction, Ms. Railey, on behalf of Railey LLC, purchased a nursery stock containing approximately 9,000 trees owned by J.H. Burton for the price of $183,000. Pursuant to the terms of the sale, the entire stock of trees was to be removed by December 31, 2008.

Subsequently, Mr. Ellis, an agent of M.E. Burton, LLC and J.H. Burton & Sons, LLC, placed conditions on the removal of the trees that were not disclosed at the time of the auction, including that Railey LLC: (1) obtain "blanket insurance" in the amount of $3,000,000; (2) require its contractors to provide certificates of workman's compensation and liability insurance to Mr. Ellis; (3) notify Mr. Ellis in writing at least 24 hours prior to any contractor entering the property; and (4) fill any holes caused by removal operations by the end of the day on which the holes were created. Moreover, despite that Railey LLC had purchased the rights to the trees, Mr. Ellis removed some of the trees and sold them for the benefit of the Burton Defendants. He did not compensate Railey LLC for the trees he removed.

[3] The complaint alleged that J.G. Cochran Auctioneers & Associates, LTD later changed its name to J.G. Cochran Auctioneers, Inc., and the latter entity was named a party in the action.

The conditions imposed by Mr. Ellis prevented Railey LLC from removing the trees by December 31, 2008. As a result, Railey LLC entered into a lease agreement with the Burton Defendants allowing it to remove trees through December 31, 2009, in exchange for $15,000 paid to Mr. Ellis. Under the terms of the lease, Mr. Ellis would compensate Railey LLC for any trees he removed from the property, at a varying rate of $30 for each evergreen tree and $60 for each deciduous tree. Additionally, Mr. Ellis assumed the responsibility of maintaining the grounds of the property and pruning the trees, and Railey LLC paid $30,000 for these services.

The complaint further alleged that Queenstown Bank had a security interest in the property, of which the Railey Plaintiffs were not aware. On July 16, 2009, Queenstown Bank filed a foreclosure action for the property, and the property (including the trees) was auctioned on October 1, 2009. After the auction, Railey LLC no longer was able to harvest trees. Furthermore, in September 2009, Mr. Ellis "threatened Ms. Railey by telling he[r] it was not safe for her to be investigating the cause of the missing trees from her property."

Count I of the complaint alleged negligence, based on a duty owed by Mr. Cochran and Mr. Cline to make themselves aware of any encumbrances on the property prior to auctioning it, and that each breached that duty by failing to discover Queenstown Bank's interest in the property. The Railey Plaintiffs relied "upon the fact that [there] were no security interests in the trees" in purchasing the right to harvest them, and they suffered damages as a result of Mr. Cochran's and Mr. Cline's breaches.

Count II alleged negligent misrepresentation, based on Mr. Cochran and Mr. Cline's failure to disclose that there was a security interest in the trees. Count III alleged fraud,

asserting that Mr. Cochran and Mr. Cline each intentionally and falsely represented that there were no security interests in the trees, and the Railey Plaintiffs relied on this misrepresentation. Count IV alleged *respondeat superior* liability against J.G. Cochran Auctioneer & Associates as a result of the actions of Mr. Cochran and Mr. Cline, as detailed in Counts I, II, and III, which were committed in the course of their employment with J.G. Cochran Auctioneer & Associates.

Counts V, VI, and VII, alleged claims against the Burton Defendants, claims that are not relevant to this appeal.[4] Count VIII alleged assault, stating that Mr. Ellis "acted with the intent and capability to do bodily harm to Ms. Railey and to place her in reasonable apprehension of danger, by telling her that it was not safe for her to be investigating the cause of the missing trees." Ms. Railey alleged that the statement was made with actual malice and put her in reasonable apprehension of an imminent battery. Furthermore, Ms. Railey alleged that Mr. Ellis was acting on behalf of each of the defendants to the lawsuit, including the Cochran Defendants, "to sell trees without paying the [Railey Plaintiffs] pursuant to their contract," and that the other defendants "failed to object" to Mr. Ellis' actions after being advised of them, "thereby adopt[ing] these acts as their own."

[4] Counts V and VII alleged fraud, asserting that Mr. Ellis, acting on behalf of the Burton Defendants, falsely represented to the Railey Plaintiffs that there were no security interests in the trees that the Railey Plaintiffs had purchased. Count VI alleged breach of contract, asserting that Mr. Ellis, acting on behalf of himself and M.E. Burton, breached the terms of the auction contract by: (1) removing and selling trees from the property without the permission of the Railey Plaintiffs; and (2) placing conditions on the removal of trees from the Property, which necessitated the signing of the lease extending the time during which the Railey Plaintiffs were allowed to remove trees from the property.

II.

Discovery Phase

After the defendants had filed their answers, the case proceeded to a lengthy discovery phase. We discuss this discovery process as relevant to the motion for sanctions. We also note, to put things in context, that on January 18, 2011, the court issued a scheduling order, providing, inter alia, that discovery was to be completed on August 12, 2011, and trial was scheduled for October 24, 2011.

October 25, 2010, Motion to Compel

On August 16, 2010, the Railey Plaintiffs propounded a request for the production of documents on the Cochran Defendants. On August 31, 2010, the Cochran Defendants responded, refusing to produce documents relating to two requests, as follows:

> **Request No. 13:** Any and all legal papers, pleading, correspondence or other documents in any way related to any other legal proceedings or claims against you or by you in the last 6 years.
>
> **Response:** Defendants object to this request as unduly burdensome and not likely to lead to admissible evidence in this case.
>
> **Request 14:** All documents provided to J.G. Cochran Auctioneer and Associates, Ltd. prior to the auction referred to in the Plaintiffs' Complaint.
>
> **Response:** Defendants object to this request as vague and overly broad.

Mr. Mixter objected to this response. On September 22, 2010, he sent the Cochran Defendants a letter stating, in part, as follows:

> I disagree with your refusal to respond to document request 13 and 14. Insofar as our request No. 14 is concerned, it was intended to be limited to documents received pertinent to the subject matter of this lawsuit and the defendants and the subject auction.

Mr. Mixter advised that he would file a motion to compel if the Cochran Defendants did not supplement their responses within five business days.

On September 27, 2010, counsel for the Cochran Defendants sent a response to Mr. Mixter, stating as follows:

> As to Request No. 13, Defendants still put forth the same objection as laid out in their original responses. However, subject to the objections, Defendants are producing a complaint that relates to one of the legal proceedings that defendants have been a part of within the past six years.
>
> As to Request No. 14, this request was objected to because it was vague and overly broad. It was unclear, based on the question, what information and documents you were looking for. However, in your September 22nd letter, you indicate that Request No. 14 is intended to be limited to documents received pertinent to the subject matter of this lawsuit and the defendant in the subject auction. Based on the clarification, the defendants indicate that all documents responsive to this request have already been produced.

Counsel attached a complaint for interpleader filed by J.G. Cochran Auctioneers and Associates, Ltd. related to its sale of property at an auction in 2006.

On October 11, 2010, Mr. Mixter sent a letter to counsel for the Cochran Defendants advising that the complaint provided was missing a page and requesting that counsel provide him with that page. Mr. Mixter did not otherwise challenge the supplemental responses.

On October 25, 2010, Mr. Mixter filed a motion to compel, arguing that the supplemental responses were deficient. With respect to Request 13, he asserted that the Cochran Defendants had not indicated whether the complaint they produced was the only legal matter they had been involved with in the preceding six years, that each defendant should respond separately to make clear which cases each defendant had been involved

with, and evidence of prior similar proceedings could "show a pattern of behavior which would be relevant to proving elements of their causes of action against the defendants." With respect to Request 14, Mr. Mixter argued that the joint response was insufficient to indicate: (1) whether the documents provided included all documents in the possession of each defendant; and (2) which defendant possessed which documents. He requested that each of the Cochran Defendants file a separate response.

The Cochran Defendants filed oppositions to the motion to compel, arguing that, because Mr. Mixter failed to object to the supplemental responses in his October 11 letter, he had failed to give them reasonable notice of a deficient response as required by Md. Rule 2-432. On March 4, 2011, Mr. Mixter withdrew the motion at a hearing.

November 10, 2010, Deposition of Nancy Railey

Nancy Railey was deposed on November 10, 2010. In that deposition, Ms. Railey admitted the following:

- She knew it would be impossible to remove all of the trees from the property by December 31, 2008.
- She never intended to remove all the trees from the property by December 31, 2008.
- She did not have any conversations with anyone at Cochran after the auction.
- She first learned that Queenstown Bank had a mortgage on the property approximately one year after she purchased the trees, and prior to that, she did not talk to anyone or attempt to find out whether any person or entity had a security interest in the trees.
- Mr. Ellis never threatened her in any way.

November 23, 2010, Motion to Compel

On July 29, 2010, the Railey Plaintiffs propounded interrogatories on the Cochran Defendants. In pertinent part, the interrogatories asked for the following information:

> **Interrogatory #1:** State your full name, any former names or aliases, address, date of birth, marital status, social security number and employer.
>
> **Interrogatory #6:** Give a concise statement of facts as to how you contend the dispute arose that is at issue in this case giving dates of significant events and any witnesses thereto.
>
> **Interrogatory #7:** State whether you have ever been convicted of any crimes other than minor traffic violations; if so, state the nature of said crimes, the dates of conviction, and the name and location of the Courts in which you were tried.
>
> **Interrogatory #8:** State the name and case number, as well as the jurisdiction and identity of your lawyer for any lawsuits in which you, or a business entity of yours has been a party to in the last 10 years.
>
> **Interrogatory #10:** If you contend that the economic damages now complained of by the plaintiff were the result of her actions or omissions, give a concise statement of the facts upon which you rely.
>
> **Interrogatory #23:** Give a concise statement of facts as to your relationship (contractual or otherwise) with each of the other defendants at the time of the occurrence, identify all documents evidencing that relationship or in any way relates [sic] to that relationship and identify all individuals with knowledge of such facts.

On September 15, 2010, the Cochran Defendants responded jointly with unexecuted answers. In pertinent part, the answers stated as follows:

> **Answer #1:** James G. Cochran, 6250 King Road, Boonsboro, Maryland 21713, DOB- 7/24/56, Married, Self-Employed.
>
> **Answer #6:** On Saturday, June 28, 2008, we sold the planted trees located on the grounds of J.H. Burton & Sons & Granddaughter, 8125 Chestnut Grove Road, near Frederick. We sold the planted trees to Nancy Railey,

> buyer #256 for $160,000. There were written and verbal notices that the planted trees were to be removed from the premises by December 31, 2008.
>
> **Answer #7:** None.
>
> **Answer #8:** None.
>
> **Answer #10:** Nancy Railey made a further extension of the time for allowing planted trees to remain on the premises supposedly through Pat Ellis as stated in her Complaint. We were not included in this agreement. After the auction and payments were collected and monies turned over to J.H. Burton & Sons & Granddaughter, we had no further contact with Ms. Railey other than a request for receipt which she received upon payment on sale day.
>
> **Answer #23:** Pat Ellis, J.H. Burton & Sons & Granddaughter was our principal, Nancy Railey, our customer/purchaser.

On September 20, 2010, James Cochran provided an executed set of answers to Mr. Mixter.

On October 11, 2010, Mr. Mixter sent counsel for the Cochran Defendants a letter requesting separate, individually executed sets of answers for each of the Cochran Defendants, noting that interrogatories one, two, seven, and eight required answers from each individual defendant. Mr. Mixter also argued that the answers to interrogatories six, ten, and twenty-three were deficient, and he requested the written notices referenced in the answer to interrogatory six, the receipt referenced in the answer to interrogatory 10, and any contracts related to the relationships discussed in the answer to interrogatory 23.

Counsel for the Cochran Defendants responded on October 18, 2010. He stated that he would provide executed copies of answers to the interrogatories completed by each defendant by October 22, 2010. He also stated that the documents Mr. Mixter requested with respect to the answers to interrogatories numbers six, ten, and twenty-three had

already been provided. On November 12, 2010, counsel provided Mr. Mixter with the promised individually answered and executed answers.

On November 23, 2010, Mr. Mixter filed a motion to compel supplemental answers to interrogatories by the Cochran Defendants. He made no reference to the supplemental information provided by the Cochran Defendants, nor that the Cochran Defendants had sent him individually answered and executed answers. Rather, he reiterated the contentions from his letter to counsel for the Cochran Defendants, arguing: (1) interrogatories number one, seven, and eight needed to be answered by each defendant; (2) the written notices referenced in the answer to interrogatory number six were not provided; (3) the receipt referenced in the answer to interrogatory number 10 was not provided; and (4) no contracts related to the relationships described in the answer to interrogatory number 23 were provided.

On November 29, 2010, counsel for the Cochran Defendants sent Mr. Mixter a detailed letter demonstrating that all of the exceptions Mr. Mixter took with the Cochran Defendants' answers to interrogatories had been remedied and requesting that Mr. Mixter withdraw the motion. On November 30, 2010, Mr. Mixter responded to counsel for the Cochran Defendants, stating that his letter was "totally devoid of any information that responds to the substance of our motion to compel." Mr. Mixter refused to withdraw the motion. Consequently, on December 8, 2010, the Cochran Defendants filed an opposition to the motion to compel. On March 4, 2011, Mr. Mixter withdrew the motion at a hearing.

Notice of Deposition and Subpoena of Roger Schlossberg

As previously noted, one of the requests for production of documents sent by Mr. Mixter requested all documents related to any lawsuits with which the Cochran Defendants had been involved in the preceding six years. On December 7, 2010, Alfred L. Scanlan, Jr., one of the attorneys for the Cochran Defendants, responded to this request, stating: "[W]e will produce all non-privileged responsive documents at my office at a mutually agreeable date and time." On December 10, 2010, however, Mr. Mixter noted the deposition of Roger Schlossberg, the other attorney for the Cochran Defendants, for January 10, 2011, and he issued a subpoena for Mr. Schlossberg.[5]

Consequently, on December 17, 2010, counsel for the Cochran Defendants filed a motion for a protective order seeking to quash the notice of deposition and the subpoena.

Notices of Deposition and Subpoena of Non-Party Witnesses

On December 16, 2010, Mr. Mixter sent a letter to counsel for the Cochran Defendants requesting the availability for deposition of ten employees of J.G. Cochran Auctioneers & Associates, none of whom was a party. On December 17, 2010, however, in an action the Cochran Defendants characterized as "unilateral," Mr. Mixter noted the depositions of each of the 10 employees for January 13, 2011. On December 27, 2010, counsel for the Cochran Defendants filed a motion to quash and for a protective order. Subsequently, at a hearing on discovery issues, the Cochran Defendants withdrew the

[5] A letter to the custodian of records of Mr. Schlossberg's firm states that, if all documents requested in the subpoena *duces tecum* were forwarded by the date of the deposition, it would not be necessary to appear for the deposition.

motion, stating that, "rather than fight about it anymore, we're just going to withdraw that and hopefully he will take focused short depositions of these people who know nothing."[6]

Motion for Default Judgment and Other Sanctions

On November 3, 2010, Mr. Mixter noted the depositions of, *inter alia*, Mr. Cochran and Mr. Cline for January 26, 2011. On January 21, 2011, counsel for the Cochran Defendants informed Mr. Mixter that, due to a business event, the scheduled depositions for Mr. Cochran and Mr. Cline would need to be rescheduled. On January 24, 2011, Mr. Mixter sent by fax a letter to counsel for the Cochran Defendants expressing concern about the cancellation of the depositions and providing three alternative dates: January 31, 2011; February 18, 2011; or March 3, 2011. Mr. Mixter stated that counsel for the Cochran Defendants where responsible for confirming the availability of the other counsel, the court reporter, and the attorney in Hagerstown providing the location of the deposition. The letter concluded: "In the event these terms are not acceptable to you and your clients fail to appear for their deposition on January 26, 2011, I will seek a default judgment against them in accordance with Rules 2-432 and 2-433." On January 26, 2011, three days later, with the discovery deadline set for August 12, 2011, Mr. Mixter filed a motion for default judgement and other sanctions based on the failure of Mr. Cochran and Mr. Cline to appear for their depositions.

On January 31, 2011, following a discussion on Friday, January 28, 2011, counsel for the Cochran Defendants sent Mr. Mixter a letter, by fax and regular mail, confirming

[6] The circuit court subsequently found that the depositions did occur at some point, and that no useful information to the Railey Plaintiffs' case was revealed.

that Mr. Cochran and Mr. Cline were available to be deposed on March 8, 2011. Because the depositions were rescheduled, counsel requested that Mr. Mixter withdraw the Motion for Default. On February 8, 2011, counsel for the Cochran Defendants sent Mr. Mixter another letter requesting that Mr. Mixter withdraw the motion, stating that the substance of Mr. Mixter's motion had been addressed because the depositions had been rescheduled and the Cochran Defendants wished to avoid having to respond to the motion, which they were required to do by February 14, 2011. Mr. Mixter did not file a line withdrawing the motion until February 18, 2011.

April 27, 2011, Motion to Compel

On March 9, 2011, Mr. Mixter sent counsel for the Cochran Defendants a letter stating that the circuit court, at a prior hearing, had stated that he was entitled to propound asset interrogatories, and he requested that counsel respond to these interrogatories within five business days or he would petition for relief, including attorneys' fees. On March 16, 2011, counsel for the Cochran Defendants responded, contending that the circuit court stated that Mr. Mixter was permitted to propound asset interrogatories to the other defendants, not the Cochran Defendants. Counsel asserted that such information was not relevant to Mr. Mixter's case against the Cochran Defendants, and because he was not entitled to this information, he anticipated that Mr. Mixter would not petition the court as stated in his letter.

Mr. Mixter did not reply to this letter, but on April 29, 2011, he filed a Motion to Compel Supplemental Discovery, seeking an order against all defendants to provide

answers to his asset interrogatories and awarding sanctions.[7] He again argued that the circuit court had expressly permitted him to propound these interrogatories to the Cochran Defendants.[8]

May 31, 2011, Motion to Compel

On March 31, 2011, the Cochran Defendants filed their expert designations. On April 18, 2011, Mr. Mixter sent counsel for the Cochran Defendants a letter requesting a supplement to his interrogatory number 13, which pertained to certain information relating to the defendants' expert witnesses. On May 9, 2011, counsel for the Cochran Defendants supplemented this answer. Despite this, on June 1, 2011, Mr. Mixter filed a motion to compel a supplemental response to interrogatory number 13.[9]

[7] In his motion, Mr. Mixter set forth the interrogatories, which essentially asked for a list of all real property or other goods in which the Cochran defendants had any interest. The Cochran Defendants objected to these interrogatories, stating:

> Were it ever to occur that the Plaintiff obtained judgment, thereafter would be the time for the Plaintiff to conduct discovery in aid of execution. Were it ever to happen the Plaintiff made out a case for punitive damages that was submitted to the trier of fact, then would be the time for disclosure of net worth documents including assets and liabilities. Seeking discovery regarding these issues is premature and inappropriate at this time.

[8] The record does not reflect the disposition of this motion. Moreover, we have not been provided with a record of what the circuit court stated at the December 3, 2010, attachment before judgment hearing.

[9] It appears that the motion for summary judgment was granted before this motion was addressed.

Dismissal of Leo Cline

On April 7, 2011, counsel for the Cochran Defendants requested that Mr. Mixter dismiss Mr. Cline from the suit because, despite all of the discovery that had been conducted, no information had been uncovered implicating Mr. Cline in any of the Railey Plaintiffs' claims. On May 2, 2011, Mr. Mixter responded, stating that he was willing to dismiss Mr. Cline, but he would proceed with the dismissal only if counsel for the Cochran Defendants prepared the stipulation of dismissal. Counsel did not do so, and Mr. Cline was not dismissed prior to the summary judgement ruling.

Notices of Deposition for the Cochran Defendants' Expert Witnesses

On April 18, 2011, Mr. Mixter requested the availability of the Cochran Defendants' experts for deposition. On May 20, 2011, after receiving no response, Mr. Mixter noted depositions for the Cochran Defendants' expert witnesses.

On June 6, 2011, counsel for the Cochran Defendants filed a motion to quash, motion for a protective order, and motion to stay. He argued that Mr. Mixter should not be permitted to depose defendants' expert witnesses when Mr. Mixter had not himself disclosed his expert witnesses. Counsel further noted that he recently had filed a motion for summary judgment, and he asserted that the case should be stayed until the motion for summary judgment was heard, so the Cochran Defendants could avoid Mr. Mixter's "barrage of needless discovery and depositions."

Motion for Contempt

On July 1, 2011, Mr. Mixter sent counsel for the Cochran Defendants a letter informing him that it was incumbent upon counsel to obtain a ruling on the motion for a

protective order prior to the depositions, which were scheduled for July 6, 2011, or the depositions would go forward. Mr. Mixter threatened to move to hold the expert witnesses in contempt if they failed to appear.

After the witnesses did not appear for the deposition, Mr. Mixter did, in fact, move to hold them in contempt. The Cochran Defendants opposed the motion. On July 21, 2011, the circuit court denied the motion.

III.

Summary Judgment, Motion for Sanctions, and Appeal

On September 8, 2011, the circuit court granted summary judgment in favor of all defendants. With respect to the claims against the Cochran Defendants, the court stated that it "is undisputed that the Cochran Defendants gave the Plaintiffs exactly what they bargained for; the license to remove nursery stock from the subject real estate from the time of the auction until December 31, 2008. No one, least of all the Cochran Defendants, prevented Plaintiffs from removing the trees." With respect to the existence of a lien on the trees, the court found:

> There is no evidence that any Cochran defendant made any false statements—Ms. Railey testified that no one told her anything, and that she believed the trees were unencumbered because no one told her otherwise (Railey Dep. 73-74). It is not disputed that Defendant Cochran announced prior to the auction that the realty/land would be sold for less than the amount of the liens secured against the realty, although the Plaintiff claims to not have noticed. Again, it is important to note that Plaintiff Railey's testimony shows that she did not care about the land or any encumb[]rances on it, because she was not purchasing the land; she was purchasing the right to remove trees from the land (Railey Dep. 72-73). Even viewing the facts in the light most favorable to the Plaintiffs, there were no false statements made. Moreover, there is no evidence that the Cochran Defendants ever withheld any material facts of which they may have been on notice.

On September 29, 2011, the Cochran Defendants filed a motion for sanctions pursuant to Rule 1-341, arguing that Ms. Railey "knew she had no case" against the Cochran Defendants and "admitted [so] at her deposition" when she stated that no Cochran employee had made a representation to her and Mr. Ellis had not threatened her in any way. Because Ms. Railey possessed that information from the outset of the case, the Cochran Defendants argued that the very filing of the complaint was in bad faith.

The Cochran Defendants also asserted that 10 specific actions by Mr. Mixter during discovery were done in bad faith and without substantial justification, as follows:

1. The October 22, 2010, motion to compel was improper because Mr. Mixter had not noted any further deficiencies after the Cochran Defendants had supplemented their responses to Mr. Mixter's document requests.

2. The November 23, 2010, motion to compel was baseless because the Cochran Defendants had supplemented their answers to interrogatories on November 12, 2010.

3. It was improper to unilaterally note a deposition of Mr. Schlossberg, one of the Cochran Defendants' attorneys, and a subpoena was not the appropriate way to obtain the documents that Mr. Mixter sought from Mr. Schlossberg.

4. Noting the deposition of the ten non-party witnesses was frivolous, when the purpose was to obtain information about representations made by Cochran employees, but Ms. Railey already had admitted that no Cochran employee made any representation to her.

5. Mr. Mixter refused to withdraw his January 26, 2011, motion for default judgment until after the deadline for a response had expired, even though the grievance underlying the motion had been remedied and the Cochran Defendants had twice asked him to withdraw the motion before the deadline.

6. The April 27, 2011, motion to compel was baseless because the judge at the attachment hearing had permitted Mr. Mixter to propound asset interrogatories only on defendants other than the Cochran Defendants.

7. The May 31, 2011, motion to compel was baseless because the Cochran Defendants supplemented interrogatory 13 on May 6, 2011.

8. Mr. Mixter's refusal to dismiss Mr. Cline after it had become clear that there was no cause for Mr. Cline to be named as a defendant was frivolous.

9. The unilateral noting of depositions of the Cochran Defendants' expert witnesses was abusive and necessitated the filing of a protective order.

10. The motion for contempt was abusive and baseless, particularly because there was a pending motion for a protective order.

Mr. Mixter filed a response, arguing that there was a substantial basis to file the complaint because, even if no Cochran employees made an express representation to Ms. Railey, silence or the suppression of a material fact can establish a cause of action for misrepresentation. Mr. Mixter contended that the Cochran Defendants failed to disclose the existence of liens on the property, which supported a claim of fraud and misrepresentation. With regard to the assault allegation, Mr. Mixter stated that Ms. Railey had filed an affidavit after her deposition clarifying that her testimony that Mr. Ellis had not threatened her was referring to a time when Mr. Ellis confronted and threatened another person, John Glick, not her. At a subsequent time, however, Mr. Ellis called her and said: "I'd be careful if I were you driving around alone in the woods like that, I would hate for something to happen to you." She interpreted this statement to mean that "Mr. Ellis would

hurt her if she continued to look into the trees that she perceived as being stolen from her."

Mr. Mixter asserted that these acts constituted assault pursuant to Maryland law.[10]

With respect to the discovery matters, Mr. Mixter responded as follows:

1. The October 25, 2010, motion to compel was not frivolous because he had advised the Cochran Defendants of their deficient responses to requests 13 and 14.

2. Mr. Mixter did not subpoena Mr. Schlossberg for deposition, but rather, the custodian of records at his firm, and a subpoena of that sort was appropriate to determine whether the records from prior lawsuits could show "a pattern of conduct by Cochran Defendants consistent with what occurred in this case."

3. In noting the deposition of the 10 non-party witnesses, Mr. Mixter was not "limited by any rules as to who [he] could depose," and the individuals could have had relevant information to representations made by Cochran employees.

4. The motion for default judgment was appropriate given the failures of Mr. Cochran and Mr. Cline to appear for deposition, and the motion was withdrawn after the depositions were rescheduled.

5. The April 27, 2011, motion to compel was proper because the judge at the attachment hearing expressly permitted Mr. Mixter to propound asset interrogatories on the Cochran Defendants.

6. The May 31, 2011, motion to compel was appropriate because the Cochran Defendants' supplemental answer to interrogatory 13 was still deficient.

7. Mr. Mixter would have dismissed Mr. Cline if counsel for the Cochran Defendants prepared the one-line dismissal.

8. The unilateral noting of the expert depositions was appropriate because counsel for the Cochran Defendants did not inform Mr. Mixter of the experts' availability when asked.

[10] There was no assertion how these statements, made after the auction, were connected to the Cochran Defendants in any way.

9. The motion for contempt was appropriate because the expert witnesses refused to appear at their noted depositions in contravention of the subpoenas.

Mr. Mixter asserted that the sanctionable conduct relating to each of these events was done by the Cochran Defendants. Accordingly, he moved for sanctions pursuant to Rule 1-341.

On October 27, 2011, the circuit court denied the motion for sanctions without explanation. The Cochran Defendants appealed. This Court vacated the judgment, noting that, when a Rule 1-341 motion is not clearly meritless, the trial court must make findings as to bad faith and substantial justification. We concluded that the motion was not "clearly groundless" and remanded to the circuit court to make the required findings of fact. *J.G. Cochran Auctioneers & Assocs. v. Railey*, No. 2076, Sept. Term, 2011, slip op. at 15 (filed Apr. 1, 2013).

IV.

Proceedings on Remand

On November 13, 2013, the circuit court held a hearing. The parties reiterated the arguments in their written pleadings.

On December 3, 2013, the circuit court issued an opinion and order. The court first discussed the involvement of the Cochran Defendants in the purchase of the trees:

> James G. Cochran conducted the auction. Indeed, that was the Cochran Defendant's sole action in this entire matter. Ms. Railey was the high bidder and tendered a check for $183,000 shortly after the auction for the right to remove these trees from the land. She later paid another $45,000 to extend her license to remove the trees. The Cochran Defendant's [sic] had absolutely nothing to do with that extension. Due to several complications

> which are addressed in earlier pleadings in the Opinions and Orders of this Court, Ms. Railey and her company never removed the trees and thereafter a lien on the real estate held by Queenstown Bank was perfected and Ms. Railey lost her right to remove the trees.

The court then addressed the claims of the Cochran Defendants, stating, in part, as follows:

> The Cochran Defendants allege that there was never any merit to the filing of a complaint against them in the first instance. Cochran Defendants, as this Court previously found, were not culpable in any way in how they conducted the auction. J.G. Cochran Auctioneers and Associates were hired by the owner of the real estate to conduct the auction, they did as they were obligated to do, and Ms. Railey was the high bidder. This Court previously found in its granting of the motion for summary judgment that there was no fraud, breach of contract, breach of fiduciary duty, and certainly no assault on the part of the Cochran Defendants.
>
> As the Cochran Defendants and the Court of Special Appeals point out, Ms. Railey was deposed on November 10, 2010. In her deposition she denied that any representatives of the Cochran Defendants ever had any discussions with her prior to the auction. Therefore there were certainly no misrepresentations made to her. Furthermore Ms. Railey testified in her deposition that she herself made no inquiry whatsoever into any potential liens on the trees that were on the property or that she was misle[]d in any way by the Cochran Defendants. She testified that she assumed that there were no encumbrances on the trees simply because no one informed her of any. Moreover, even assuming there was an assault, she completely exonerated any employees of Cochran from ever having participated in any alleged assault upon her.
>
> Counsel for the Cochran Defendants argued that had this matter simply been dropped after this deposition, probably no sanctions would have been sought. It was certainly blatantly obvious after Ms. Railey's deposition that her case against the Cochran Defendants was nonexistent. Counsel for the Cochran defendants argues that Mr. Mixter proceeded nevertheless to prosecute this case up through the ultimate dismissal by way of this Court's order granting summary judgment.

The court then reviewed the Cochran Defendants' claims that Mr. Mixter created unnecessary discovery disputes and ignored "both civility and good faith attempts to resolve discovery disputes" by filing baseless and unnecessary motions to compel, improperly filing notices of depositions, failing to cooperate with scheduling of depositions, and other action.

The court ultimately concluded as follows:

> After review of the motion for sanctions and the response and after hearing arguments of counsel after remand from the Court of Special Appeals, this Court is persuaded, as indicated also by the Court of Special Appeals, that the Motion for Sanctions is meritorious. Particularly, as noted by the Court of Special Appeals, all of the claims against the Cochran Defendants should have been withdrawn after Ms. Railey's deposition which totally exonerated the Cochran Defendants. Nevertheless, after that deposition more motions, depositions and procedure were pushed by Mr. Mixter and the Plaintiff.

The court found "by clear and convincing evidence that Mr. Mixter and the Plaintiff proceeded in this case in bad faith and without substantial justification, especially after Ms. Railey's devastating deposition," and sanctions were warranted. The court ordered that there would be a further hearing to determine the appropriate sanctions to be imposed.

On April 25, 2014, the circuit court held a hearing. Mr. Schlossberg testified as to his hourly rate and his role in the litigation of this case. He identified the bills he submitted to the Cochran Defendants for the services he rendered throughout the case. Mr. Scanlan also identified the bills he submitted to the Cochran Defendants.[11] Each counsel was cross-examined at length by Mr. Mixter with respect to specific tasks for which they billed, and

[11] The bills for both counsel were later admitted into evidence.

Mr. Mixter suggested that counsel had each billed for significantly more time than certain tasks deserved. Ms. Railey separately cross-examined Mr. Schlossberg, questioning whether his fee was too high to be considered the customary fee charged to be "second chair in Washington County in a civil case."

The Cochran Defendants presented the testimony of attorney Kent Oliver, as an expert in "the reasonableness of attorney fees in the Circuit Court for Washington County." Mr. Oliver testified that he had reviewed the complaint, the docket entries, and the bills submitted by counsel for the Cochran Defendants, but he had not read the other substantive documents in the case. He stated that, in his opinion, the fees charged by counsel for the Cochran Defendants were reasonable and necessary.

After Mr. Oliver testified, Mr. Mixter moved to strike his testimony. He argued that Mr. Oliver's failure to read the substantive motions rendered his opinions regarding reasonableness baseless. Counsel for the Cochran Defendants argued that the documents reviewed by Mr. Oliver were sufficient to support his testimony, but even if they were not, the Cochran Defendants were not required to present expert testimony and were merely "gilding the lily" with his testimony. The court denied the motion, stating that the reasonableness of the attorneys' fees would be based primarily on its assessment of the fees generated, but Mr. Oliver was qualified to testify as "an expert to assist the Court in its factual determination as to whether the counsel fees for Cochran Auctions were reasonable or not."

Ms. Railey also testified. She stated that she had very little familiarity with the legal system, and she did not understand the substantive elements of her claims. She did,

however, review the complaint, and she stated that she would have corrected facts in it if she had understood them to be incorrect. Additionally, she testified that, by January or February of 2011, the case had become "so out of control" that she wanted the case to be over, but she did not request that Mr. Mixter dismiss the case.

After the hearing, Mr. Mixter submitted a "hearing brief," arguing that the Cochran Defendants were not entitled to any fees incurred subsequent to their September 9, 2011, motion for sanctions. The Cochran Defendants also submitted a "post hearing submission," in which they agreed with this argument and calculated that the amount of their fees, excluding those incurred related to the appeal, were $111,886.25. Ms. Railey submitted a "post-trial submission" arguing, *inter alia*, that she should not be held liable for any portion of the sanctions because she did not engage in any intentional conduct that formed the basis for the Cochran Defendants' motion for sanctions.

On September 12, 2014, the circuit court issued an order stating, in part, as follows:

> This Court now finds that the deposition of Ms. Railey so seriously undermined her complaint that she and her attorney should have known that the case against J.G. Cochran Auctioneers & Associates was frivolous from the start. Consequently, the various motions, notices of deposition and subpoenas advanced by Ms. Railey, through her attorney Mr. Mixter, were both in bad faith and without substantial justification.

The court awarded attorneys' fees incurred from the date the complaint was filed through the grant of summary judgment, in the amount of $21,037.50 to Mr. Schlossberg and $90,848.75 to Mr. Scanlan, for a total of $111,886.25. The court found that these were "reasonable fees for efforts expended in a meritless suit," and it found Mr. Oliver's testimony regarding the reasonableness of the fees to be credible. The court assessed the

fees against Mr. Mixter "for perpetrating an unnecessary lawsuit he either knew or should have known possessed no merit," and it found Ms. Railey jointly and severally liable for $10,000 "for not properly communicating with Mr. Mixter, and for not instructing Mr. Mixter to dismiss the litigation." The court concluded its order by stating:

> IT IS SO ORDERED this 12th of September, 2014, that this amount shall be reduced to a judgment in favor of J.G. Cochran Auctioneers & Associates against Mark. T. Mixter and Nancy Railey upon request if not paid within thirty (30) days.

This appeal followed.

DISCUSSION

I.

Final Judgment

Before addressing the merits of Mr. Mixter's claims, we address the Cochran Defendants' argument that the case is not properly before this Court because there has not been a final judgment rendered. They argue that the sanction order was not a judgment, but rather, it was an award of sanctions that "shall be reduced to a judgment . . . upon request if not paid within thirty (30) days." Although Mr. Mixter has not paid the award, and thirty days have passed, there has been no request that the award "be reduced to a judgment."[12] Accordingly, the Cochran Defendants argue that, because the sanction awarded has not been reduced to a judgment, there is no final judgment subject to appeal.

[12] Counsel for the Cochran Defendants represent that Ms. Railey has paid the amount she was ordered to pay.

Mr. Mixter disagrees. He argues that the court's order "has every indicia of a final judgment required by the Court of Appeals," i.e., that "the issue submitted had been fully adjudicated and a final decision on the matter had been reached." He interprets the language that, "upon request," the "amount shall be reduced to judgment" as "an enforcement action to allow a lien in post judgment interest to run," "which has no effect on the finality of the order." We agree with Mr. Mixter that the order awarding sanctions is appealable as a final judgment.

The Court of Appeals "has often stated that, except as constitutionally authorized, appellate jurisdiction 'is determined entirely by statute,'" and "'therefore, a right of appeal must be legislatively granted.'" *Gruber v. Gruber*, 369 Md. 540, 546 (2002) (quoting *Kant v. Montgomery County*, 365 Md. 269, 273 (2001)); *Gisriel v. Ocean City Election Bd.*, 345 Md. 477, 485 (1997), *cert. denied*, 522 U.S. 1053 (1998). Subject to limited exceptions, a party may appeal only "from a final judgment entered in a civil or criminal case by a circuit court." Md. Code (2006 Repl. Vol.) § 12-301 of the Courts and Judicial Proceedings Article.

This Court recently discussed what constitutes a final judgment for purposes of appeal:

> For there to be an entry of a final judgment that triggers the time for filing an appeal, the following must be present in the record: a final judgment that has the effect of putting the parties out of court, set out in a separate document that specifies the judgment and that is a document separate from the docket entry. *Hiob v. Progressive Am. Ins. Co*., 440 Md. 466, 503 (2014). The document must declare judicial action that grants or denies specific relief in an unqualified way. *Id*. Further, the document must have been signed by the judge or the clerk, and, finally, the clerk must have docketed the judgment in accordance with the practice of the court. *Id*. To be a final judgment in the

> traditional sense, an order must not only settle an entire claim but also must "be intended by the court as an unqualified, final disposition of the matter in controversy[.]" *Rohrbeck v. Rohrbeck*, 318 Md. 28, 40 (1989). An order is an "unqualified final disposition" if it determines and concludes the rights involved, or denies the appellant the means of further prosecuting or defending his rights and interests in the subject matter of the proceeding. *Schuele v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555, 570-71 (2010).

Kona Properties, LLC v. W.D.B. Corp., Inc., ___ Md. App. ___, Nos. 696, 697, 698, Sept. Term, 2014, slip op. at 20-21 (filed Aug. 28, 2015).

Here, the court's order awarding sanctions was a final judgment. It settled the entire dispute regarding the sanctions requested, and it had "the hallmark of finality in that [it] put the parties out of court." *Id.*, at 21. The order unequivocally awarded the Cochran Defendants $111,886.25 in attorneys' fees, to be paid by Mr. Mixter (and, in part, by Ms. Railey) as directed by the court. It was intended to be a final decision as to the rights and obligations of the parties on the issue. We agree with Mr. Mixter that the order at issue on appeal had "every indicia of final judgment."

The Cochran Defendants, however, argue that the order was not final until it was reduced to judgment "upon request," if not paid within 30 days. We disagree.

As this Court recently noted, after issuing a final judgment, "[c]ourts retain the power to enforce judgments." *Kona*, slip op. at 19. Pursuant to Maryland Rule 2-648(a), the circuit court may enforce an order by entering a money judgment:

> (a) **Generally.** . . . When a person fails to comply with a judgment mandating the payment of money, the court may also enter a money judgment to the extent of any amount due.

Here, the language in the court's order, stating that the amount awarded would be "reduced to a judgment . . . upon request if not paid," did not take away from the finality of the order, but rather, it provided that, if Mr. Mixter did not pay the money awarded, the court, upon request, would *enforce* the obligation to pay (pursuant to Rule 2-648) by entering a *money judgment* against Mr. Mixter and Ms. Railey. In other words, the court, via its order, entered its final judgment on the merits of the attorneys' fees issue. At that point, Mr. Mixter and Ms. Railey could pay the money, but if they did not, the court, upon request, would enforce the judgment by imposition of a money judgment. *See Kona*, slip op. at 19.

The Alabama Court of Civil Appeals addressed a similar issue in *Ex parte State Dep't of Human Res.*, 47 So. 3d 823, 828 (Ala. Civ. App. 2010). In that case, a juvenile court issued an order that the State Department of Human Resources ("DHR") pay $9,902 to a litigant within 30 days. *Id.* The appellate court held that the order was an enforceable judgment, even though it provided that, if DHR failed to pay as directed, "the said sum would be reduced to a judgment . . . from which let execution issue." *Id.* The appellate court concluded that "the juvenile court intended that DHR's failure to comply would result in further enforcement action," which did "not render the August 2009 judgment nonfinal." *Id.*

We agree with this analysis. The circuit court's order awarding sanctions constituted an appealable judgment, and the provision regarding enforcement of that judgment as a money judgment did not affect the appealability of the order. Accordingly, we hold that there was final judgment, and we will proceed to address appellant's claims.

II.

Bad Faith/Without Substantial Justification

Mr. Mixter contends that the circuit court erred in awarding sanctions. He argues that the court's finding that he acted in bad faith and without substantial justification in proceeding in filing the lawsuit was clearly erroneous. In support, he focuses only on the claims of fraud and misrepresentation, arguing that, although Ms. Railey testified at her deposition that "no 'representative[] of the Cochran Defendants ever had any discussion with her prior to the auction,'" "silence by the Appellees can amount to fraud and/or misrepresentation, which is a recognized and actionable claim." Mr. Mixter further points out that the Court of Appeals determined in *Attorney Grievance Commission of Maryland v. Mixter*, 441 Md. 416 (2015), that the record did not demonstrate that he brought the litigation in bad faith.

Mr. Mixter also contends that the court made "deficient factual and legal findings regarding" the discovery disputes. He addresses each of the 10 discovery disputes.

The Cochran Defendants argue that the circuit court set forth evidence supporting its findings that Mr. Mixter "filed a meritless complaint against the Cochran Defendants and pursued the litigation in bad faith and without substantial justification." They assert that these findings were not clearly erroneous, and therefore, the circuit court's "ruling should be affirmed." They further assert that, "[e]ven if this Court finds that Ms. Railey's complaint was not filed in bad faith and without substantial justification, the trial court had ample evidentiary basis to find that Appellant's subsequent abusive discovery tactics crossed the line."

Maryland Rule 1-341, provides, as follows:

> 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 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.

See Williams v. Work, 192 Md. App. 438, 467 (2010) ("[I]f a party maintains or defends a proceeding in bad faith or without substantial justification, the court may order the offending party or its attorney or both to pay for the costs of the proceeding, including reasonable attorneys[']] fees."), *aff'd*, 418 Md. 400 (2011); *Worsham v. Greenfield*, 187 Md. App. 323, 338 (2009) ("The Rule's purpose is to deter abuse of the judicial process and does so by compensating a party who opposes a party proceeding in bad faith or without substantial justification."), *aff'd on other grounds*, 435 Md. 349 (2013).

In reviewing a circuit court's decision to award attorneys' fees pursuant to Rule 1-341, we engage in a two-step standard of review. First, "[w]e review a circuit court's determination whether a party maintained or defended an action in bad faith or without substantial justification under a clearly erroneous standard." *Toliver v. Waicker*, 210 Md. App. 52, 71, *cert. denied*, 432 Md. 213 (2013). A finding is clearly erroneous only if there is "no competent and material evidence" in the record to support it. *See Green v. McClintock*, 218 Md. App. 336, 368, *cert. denied*, 440 Md. 462 (2014). Second, we review a court's assessment of sanctions for an abuse of discretion. *Worsham*, 187 Md. App. at 342.

We have explained that, "[i]n the context of Rule 1-341, bad faith exists when a party litigates with the purpose of intentional harassment or unreasonable delay." *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999). *Accord Art Form Interiors, Inc. v. Columbia Homes, Inc.*, 92 Md. App. 587, 594 ("The 'bad faith' referred to in Rule 1-341 is defined as acting 'vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons.'") (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991)), *cert. denied*, 328 Md. 567 (1992). "In analyzing whether a party lacked substantial justification in filing its claim, we must determine 'whether [the offending attorney or party] had a *reasonable basis* for believing that the claims would generate an issue of fact.'" *RTKL Assocs. v. Baltimore County*, 147 Md. App. 647, 658 (2002) (quoting *Inlet Assoc.*, 324 Md. at 268). "[T]o constitute substantial justification, a party's position should be 'fairly debatable' and 'within the realm of legitimate advocacy.'" *Inlet Assocs.*, 324 Md. at 268 (quoting *Newman v. Reilly*, 314 Md. 364, 381 (1988)).

Here, the circuit court was not clearly erroneous in concluding that Mr. Mixter acted without substantial justification in bringing this case against the Cochran Defendants. As the circuit court noted, Ms. Railey testified in her deposition that the Cochran Defendants did not make any affirmative misrepresentations to her. There was no evidence presented to suggest that she said anything inconsistent with this testimony to Mr. Mixter prior to his filing the complaint, or that questioning by Mr. Mixter regarding the basis of the claims asserted before filing the complaint would not have revealed this information. Indeed, Mr. Mixter's sole argument in his brief is that the complaint was valid to the extent that it alleged fraud and misrepresentation based on the failure of the Cochran Defendants to

disclose liens on the land on which the trees were located. Mr. Mixter does not dispute, however, that these liens were validly recorded and publicly accessible. A cause of action for fraudulent concealment requires the plaintiff to establish "that the defendant took affirmative action to conceal the [relevant fact] and that the plaintiff could not have discovered the [relevant fact] despite the exercise of reasonable diligence." *Frederick Road Ltd. P'Ship v. Brown & Sturm*, 360 Md. 76, 100 n.14 (2000). Here, such argument could not reasonably be made regarding information that was a matter of public record. Accordingly, the circuit court was not clearly erroneous in concluding that Mr. Mixter had no substantial basis to bring the suit.[13]

We also disagree with Mr. Mixter's argument that the circuit court improperly relied on our previous decision. In that decision, we noted that "Ms. Railey appeared to undermine the factual bases for many of the counts in the complaint" at her deposition. *J.G. Cochran Auctioneers & Assocs. v. Railey*, No. 2076, Sept. Term, 2011 (filed April 1, 2013), slip op. at 15. The circuit court's opinion merely stated that this Court noted Ms.

[13] Mr. Mixter notes that, in *Attorney Grievance Commission of Maryland v. Mixter*, 441 Md. 416, 506 (filed Feb. 2, 2015), the Court of Appeals stated that the record did not show that he brought the Railey litigation in bad faith. He does not argue, for good reason because the Cochran Defendants were not parties to the grievance litigation, that this finding is binding on this Court. *See Culver v. Md. Ins. Comm'r*, 175 Md. App. 645, 657 (2007) (doctrine of collateral estoppel is applicable only if the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication). In any event, the scope of the opinion in that case was different from that involved here. A finding that Mr. Mixter did not bring this complaint in bad faith does not preclude a finding, in the context of a motion for sanctions pursuant to Rule 1-341, that the complaint was brought without substantial justification. Indeed, we note that the Court of Appeals found fault in this litigation, stating that Mr. Mixter continued to pursue the litigation after Ms. Railey's deposition, "after it became clear that there was no good faith basis for doing so." *Mixter*, 441 Md. at 511.

Railey's deposition appeared to undermine her case. It did not, as Mr. Mixter suggests, rely on our prior opinion as the basis for its holding. Accordingly, we perceive no error. The circuit court was not clearly erroneous in its conclusion that Mr. Mixter's pursuit of this lawsuit was without substantial justification.

III.

Sanctions

Mr. Mixter next contends that the circuit court erred in determining that it was reasonable to award sanctions to the Cochran Defendants for attorneys' fees and costs. As indicated, a circuit court's finding that a lack of substantial justification merits the assessment of costs and/or attorneys' fees is reviewed for an abuse of discretion. *Inlet Assocs.*, 324 Md. at 267-68.

Mr. Mixter contends that the court's award of sanctions was erroneous for several reasons. First, he argues that expert testimony was necessary to establish the reasonableness of the fees, and Mr. Oliver's expert testimony should have been stricken. Second, he asserts that the Cochran Defendants failed to provide a factual basis for the court's award. Third, he asserts that the Cochran Defendants did not establish the reasonableness of their fees and costs. Before addressing these contentions, we set forth the requirements of Rule 1-341(b) regarding a request for fees, and the analysis to be undertaken by the circuit court.

A.

Md. Rule 1-341(b)

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

> (b) **Statement Regarding Costs and Expenses, Including Attorneys' Fees.**
> (1) Generally. A motion requesting an award of costs and expenses, including attorneys' fees, shall include or be separately supported by a verified statement that sets forth the information required in subsections (b)(2) or (b)(3) of this Rule, as applicable.
> (2) Costs and Expenses Other Than Attorneys' Fees. The statement in support of a request for costs and expenses other than attorneys' fees shall itemize the type and amount of the costs and expenses requested and shall include any available documentation of those costs and expenses.
> (3) Attorneys' Fees. (A) Except as otherwise provided in subsection (b)(3)(B) of this Rule or by order of court, the statement in support of a request for attorneys' fees shall set forth:
> (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.

In assessing an appropriate award, the court may consider evidence submitted by counsel "including time spent by counsel defending an unjustified or bad faith claim, the judge's knowledge of the level of legal expertise involved in litigating the case, the attorney's experience and reputation, customary fees, and affidavits submitted by counsel." *Blitz v. Beth Isaac Adas Israel Congregation*, 115 Md. App. 460, 489 (1997), *rev'd on other grounds*, 352 Md. 31 (1998). "Rule 1-341 does not require that the court articulate

precisely the basis for its award." *Jenkins v. Cameron & Hornbostel*, 91 Md. App. 316, 337, *cert. denied*, 327 Md. 218 (1992).

B.

Testimony of Kent Oliver

Mr. Mixter argues that the circuit court erred in refusing to strike Kent Oliver's testimony, asserting that Mr. Oliver's failure to review the substantive motions in this case rendered his expert opinion testimony inadmissible. Based on the premise that expert testimony is necessary to establish the reasonableness of attorney's fees, and his argument that Mr. Oliver's testimony should have been stricken, he asserts that the court erred in determining that it was reasonable to award sanctions to the Cochran Defendants.

The Cochran Defendants disagree. They note that Mr. Mixter does not cite any cases to support his argument that Mr. Oliver was required to review the individual pleadings that formed the basis of the time entries to provide expert opinion regarding the reasonableness of the fees.

We agree with the Cochran Defendants that there was no error by the circuit court in declining to strike Mr. Oliver's testimony. Mr. Oliver reviewed invoices containing detailed descriptions of the work performed and the hourly rates charged. Mr. Mixter cites no case holding that an expert is required to review the independent pleadings to give an

expert opinion on the reasonableness of the fees. We perceive no abuse of discretion by the trial court in denying the motion to strike Mr. Oliver's testimony.[14]

C.

The Cochran Defendants' Burden

Mr. Mixter next argues that the Cochran Defendants provided the court only with a "total" of their attorneys' fees, in the amount of $160,000, without breaking down the amount. The record contradicts Mr. Mixter's argument. At the April 25, 2014, hearing, counsel for the Cochran Defendants entered into evidence their billing statements for the entirety of this litigation, which provided a breakdown of the fees charged. After the April 25, 2014, hearing, the Cochran Defendants revised their requested amount downward to account for the fact that they were not entitled to attorneys' fees incurred related to the appeal. The circuit court awarded the amount of the revised request. The record reflects that there was ample evidence from which the court could draw to formulate the amount of the award.

D.

Reasonableness of Fees and Costs

Mr. Mixter argues that the circuit court erred in finding that the attorneys' fees requested by the Cochran Defendants were reasonable. Initially, he argues that the Cochran Defendants never provided a "certified statement" in support of their costs. He then lists

[14] We also note that Mr. Mixter cites no authority in support of his position that expert testimony is needed to establish the reasonableness of attorney's fees.

numerous ways in which he contends the circuit court erred, such as that counsel for the Cochran Defendants billed twenty-eight hours to file a three-page response to a five-page motion, and that the two counsel for the Cochran Defendants billed different amounts for the same activities. For these reasons, he contends that "there can be no reasonable basis upon which the trial court found that the attorney's fees . . . were in any way fair and reasonable." The Cochran Defendants argue that "[t]he trial court was well within its discretion . . . to rely on 'the judge's knowledge of the case and the legal expertise required' to estimate the reasonableness of the fees."

After reviewing the record, we conclude that the circuit court did not abuse its discretion in its award of counsel fees. As the Cochran Defendants note, Mr. Scanlan and Mr. Schlossberg both "testified to and verified the fees, rates, and costs presented in the invoices, thus satisfying the verification requirement in" Rule 1-341.

And there was sufficient evidence for the circuit court to find that the fees requested were reasonable. As indicated, the court may consider various factors in making its determination, including "time spent by counsel defending an unjustified or bad faith claim, the judge's knowledge of the level of legal expertise involved in litigating the case, the attorney's experience and reputation, customary fees, and affidavits submitted by counsel." *Blitz*, 115 Md. App. at 489. Here, the circuit court had been involved in this case on the merits, had access to the entire record, and had heard extensive argument from the parties regarding what occurred during litigation. In light of this evidence, and in light of its knowledge and legal expertise, the court was within its discretion to determine that the fees and costs submitted by counsel for the Cochran Defendants were reasonable.

IV.

Apportionment of Sanction

In her cross-appeal, Ms. Railey contends that the court abused its discretion in holding her partially liable for the sanctions. She argues that she is not a lawyer, and she is inexperienced in litigation, with prior involvement only with her divorce and in another case in which she was represented by Mr. Mixter. She asserts that she merely relied on Mr. Mixter's advice throughout the litigation, and she had little contact with him. Moreover, Ms. Railey argues that the court erred in imposing sanctions on her based on a duty to communicate with Mr. Mixter or to instruct him to dismiss the case, a duty which she contends she did not have and that could not be the basis to hold her liable for sanctions.

Mr. Mixter, on the other hand, argues that the court abused its discretion in not holding Ms. Railey jointly and severally liable for the entire amount of the sanctions. He contends that, because he was Ms. Railey's agent, all of his actions were imputed to her, and she is as responsible for the conduct in this case as he is. Because he was held responsible for proceeding with the case, Mr. Mixter argues that Ms. Railey must be equally responsible for employing him as her agent to do so.

Initially, we reject Mr. Mixter's argument. The court issuing sanctions has discretion to allocate the sanctions award between different offending parties in the way it sees fit. *See Major v. First Virginia Bank-Central Maryland*, 97 Md. App. 520, 542, *cert. denied*, 331 Md. 480 (1993), *cert. denied*, 334 Md. 18 (1994).[15] Here, the sanctionable

[15] Although *Major v. First Virginia Bank-Central Maryland*, 97 Md. App. 520, *cert. denied*, 331 Md. 480 (1993), *cert. denied*, 334 Md. 18 (1994) involved (continued…)

conduct was proceeding in a suit without legal justification. Mr. Mixter, because of his training as an attorney, should have known that there was no legal justification for this lawsuit. Ms. Railey, the record reflects, had limited knowledge of the law. In recognition of that, the court deemed her less responsible for the sanctionable conduct than Mr. Mixter. This was not an abuse of discretion.

Ms. Railey's contention, by contrast, does give us pause. Ultimately, however, given the highly deferential standard of review that we must apply, we cannot say that the circuit court abused its discretion in imposing some portion of sanctions against Ms. Railey. Ms. Railey stated that she read the complaint, which clearly contained facts that she later admitted were false. A reasonable person could conclude that Ms. Railey bore some responsibility for allowing a baseless suit to go forward. Accordingly, we cannot determine that the circuit court abused its discretion in holding Ms. Railey jointly and severally liable for a portion of the sanctions.[16]

JUDGMENT AFFIRMED. COSTS TO BE PAID BY MR. MIXTER.

the allocation of sanctions between offending attorneys, nothing in that decision suggests that any other standard should apply when allocating an award of sanctions between a party and their attorney.

[16] We will, however, exercise our discretion not to impose additional costs against Ms. Railey.