Circuit Court for Howard County
Case No. 13-C-18-114549

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0007

September Term, 2020

EDWARD J. BROWN

v.

ROGER R. MUNN, JR.

Fader, C.J.,
Beachley,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: March 29, 2021

This case returns following a remand to the Circuit Court for Howard County to determine the amount of a monetary sanctions award against Roger R. Munn, Jr. and Law Offices of Roger R. Munn, Jr. (collectively, "Mr. Munn"), the appellees, and in favor of Edward J. Brown and Edward J. Brown, LLC (collectively, "Mr. Brown"), the appellants. We will assume that the reader is familiar with our prior opinion and so will not retread what is covered there. *See Paralegal Consultants, LLC v. Edward J. Brown, LLC*, No. 2057, Sept. Term 2018, 2019 WL 6002116 (Md. Ct. Spec. App. Nov. 13, 2019). In that opinion, we stated that, "[o]n remand, the court should identify the time period for which it will award attorney's fees; set forth its rationale for reaching a specific award amount; and issue findings on the record regarding the reasonableness of that amount." *Id.* at *14. On remand, the circuit court did just that. Mr. Brown nonetheless contends that the circuit court abused its discretion by: (1) selecting the wrong time period to use in calculating the fee award; (2) failing to award him his costs; and (3) making a mathematical error in computing the amount of the fee award.

Because Mr. Brown did not timely appeal from the court's order awarding sanctions, the only order properly before us is the court's order denying Mr. Brown's motion for reconsideration of the sanctions order. As to that latter order, we discern no abuse of discretion in the court's decision to deny that motion with respect to the time period used to calculate the fee award or the decision not to award costs. We will, however, vacate the award and remand for the circuit court to enter a new judgment that corrects a mathematical error.

BACKGROUND

This case arose out of accusations that Mr. Brown made in filings in a different lawsuit against Valerie M. Nowottnick, a former client of Mr. Munn's. Ms. Nowottnick and her company, Paralegal Consultants, LLC, retained Mr. Munn to bring this lawsuit against Mr. Brown for defamation and related causes of action. Because Mr. Brown had made the accusations in filings in a lawsuit, however, the circuit court concluded that the judicial proceedings privilege precluded Ms. Nowottnick's claims, dismissed her complaint, and awarded sanctions. In our prior opinion, we upheld the circuit court's determination that Mr. Munn was subject to sanctions for maintaining the action after being alerted to the application of the judicial proceedings privilege. However, we vacated the award of monetary sanctions so that the circuit court could comply with the requirements of *Christian v. Maternal-Fetal Medical Associates of Maryland, LLC*, 459 Md. 1 (2018), concerning calculation of the amount of a sanctions award. *See generally Paralegal Consultants*, 2019 WL 6002116.

On December 18, 2019, the circuit court entered a memorandum opinion and order in response to this Court's mandate. The court imposed an award of sanctions of $10,000, which is the same amount it had awarded initially. As it had in its original decision, the court stated that in determining this amount, it "reviewed the billing data and affidavit submitted by [Mr. Brown], the case history and filings, and arguments of counsel and the parties." The court then made the following findings:

- Mr. Brown "had incurred $27,090.00 in counsel fees prior to filing [the] motion to dismiss[.]"

- Mr. Brown's "total counsel fees for the matter were $36,750.00 through July 24, 2018," when he filed the motion for sanctions. (Footnote omitted).

- Even if Mr. Munn were not previously aware of the judicial proceedings privilege, "after the first motion to dismiss, it is presumed that counsel would have researched the issue and learned that his case could not be maintained."

- The court intended "to impose a sanction on counsel for continuing to maintain this action after he was on notice that his case lacked legal basis," which "at a minimum [was] from May 31, 2018 when the Defendants filed the Motion to Dismiss. At that point, lacking substantial justification to proceed, the matter should have been dismissed."

- Mr. Brown's primary counsel charged $350.00 per hour, which was a customary and reasonable amount for her services.

- Because "it was necessary . . . to file the motion" to dismiss, Mr. Brown "should be allowed a fair and reasonable amount for the fees incurred in the development of the motion." Nonetheless, the court determined that the "well over $10,000 in fees for research, drafting and revision related to the Motion to Dismiss" was "excessive," and "reduced the charges" for that motion to $4,000, "which the Court [found] would be the fair and reasonable charge for those activities in this case."

- In the period between May 31, 2018 and July 23, 2018, Mr. Brown incurred a total of $8,435 in counsel fees. The court found that the fees for that period "[we]re reasonable and necessary, with the exception of the billing for two attorneys attending the hearing on the Motion to Dismiss." The court reduced the fees incurred for those services by $2,100, leaving "a net of $6,335.00" for that period.

The court then added together the amounts it determined should be awarded—$4,000 and $6,335—"rounded the total down to $10,000," and ordered that Mr. Munn pay that amount to Mr. Brown within 30 days.

The Motion for Reconsideration

On January 17, 2020, Mr. Brown filed a "Motion for Reconsideration and Revision of Award of Md. Rule 1-341 Fees and Costs," in which he asserted that the court had "mistakenly calculated" the amount of the sanctions award. Mr. Brown contended that the

circuit court had erred in: (1) calculating the award of fees beginning from May 31, 2018, when he filed a subsequent motion to dismiss, rather than on April 16, 2018, when he filed his original motion to dismiss; (2) failing to include an award of $3,403.05 in costs he incurred in defending the action; and (3) undercalculating the amount of fees incurred from May 31 through July 23 by $2,695. Mr. Brown requested that the court increase its award of sanctions against Mr. Munn by an additional $17,038.05.

In response, Mr. Munn first pointed out that the court had expressly stated that it had examined billing data preceding May 31 and purposely decided to award only $4,000 for preparation of the motion to dismiss from that period. He further argued that the award of $10,000 was reasonable and consistent with Rule 1-341's requirement that the award "be apportioned based on the particular claims requiring compensation and must be limited to those claims[.]" (Quoting *Christian*, 459 Md. at 32). Addressing costs, Mr. Munn argued that they were "not compensable" under Rule 1-341 because they did not relate to the motion to dismiss but instead were incurred in preparing for depositions and in pursuing sanctions.

On February 18, 2020, the court denied the motion for reconsideration. Mr. Brown noted this appeal on March 3, 2020, which was 76 days after the court's December 18, 2019 sanctions order and 14 days after the court's order denying reconsideration.

DISCUSSION

I. OUR REVIEW IS LIMITED TO THE COURT'S DENIAL OF MR. BROWN'S MOTION FOR RECONSIDERATION, WHICH WE REVIEW FOR ABUSE OF DISCRETION.

Both parties have briefed this appeal as though the order under review was the court's December 18, 2019 sanctions order. Because Mr. Brown failed to note an appeal within 30 days of the entry of that order, however, his appeal was untimely as to it. The only order from which his appeal was timely was the court's order denying his motion for reconsideration.

An appeal generally must "be filed within 30 days after entry of the judgment or order from which the appeal is taken." Md. Rule 8-202(a). "Rule 8-202(c) provides for an exception that tolls the running of that appeal period while the court considers certain motions, including motions to alter or amend that are filed within ten days of entry of the judgment or order[.]" *Johnson v. Francis*, 239 Md. App. 530, 541 (2018); *see* Md. Rule 2-534. "A motion for reconsideration filed more than ten days, but within 30 days, after entry of a judgment or order may still be considered by the trial court, pursuant to Rule 2-535, but it does not toll the running of the time to note an appeal" from the original judgment or order. *Johnson*, 239 Md. App. at 541; *see* Md. Rule 2-535(a) ("On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment[.]"). Put simply, if a revisory motion "is filed within ten days of judgment, it stays the time for filing the appeal; if it is filed more than ten days after judgment, it does not stay the time for filing the appeal." *Johnson*, 239 Md. App. at 541 (quoting *Pickett v. Noba, Inc.*, 114 Md. App. 552, 557 (1997)).

Here, the order awarding sanctions was entered on December 18, 2019. Mr. Brown's motion for reconsideration, filed on January 17, 2020, did not toll the time to note a timely appeal from the sanctions order. As a result, his notice of appeal, filed on March 3, 2020, was timely only as to the order denying his motion for reconsideration and "does not serve as an appeal from the underlying judgment[.]"[1] *See Wormwood v. Batching Sys.*, 124 Md. App. 695, 700 (1999).

We review an order denying a motion for reconsideration for abuse of discretion. *Id.* "An abuse of discretion occurs 'where no reasonable person would take the view adopted by the [trial] court' or where the court acts 'without reference to any guiding rules or principles.'" *Johnson*, 239 Md. App. at 542 (alteration in original) (quoting *Powell v. Breslin*, 430 Md. 52, 62 (2013)). In reviewing the circuit court's exercise of discretion in denying a motion for reconsideration, our scope of review is strictly circumscribed, "limited to whether the trial judge abused his [or her] discretion in declining to reconsider the judgment." *Grimberg v. Marth*, 338 Md. 546, 553 (1995); *see also Estate of Vess*, 234

[1] At oral argument, Mr. Brown argued that the court's sanctions order was not a final judgment that he could appeal because the order stated that if Mr. Munn did not make payment within 30 days, "a civil judgment will be entered for the unpaid amount upon Defendant's request." He is mistaken. That the court contemplated that it might need to reduce the sanctions award to a money judgment for enforcement purposes did not affect the finality of the award itself. The December 18 order was intended to be a final resolution of the only issue then pending before the court and met all requirements of a final judgment. *See* Md. Rule 2-601; *see generally Hiob v. Progressive Am. Ins.*, 440 Md. 466, 485-89 (2014). Furthermore, the order denying reconsideration simply left in place the sanctions award, and the court never entered the contemplated money judgment. If it were the case that the sanctions order did not constitute a final judgment, then no final judgment has been entered and Mr. Brown's current appeal would be premature and subject to dismissal. *See Won Bok Lee v. Won Sun Lee*, 466 Md. 601, 630 (2020).

Md. App. 173, 205 (2017) (stating "that the denial of a motion to revise a judgment should be reversed only if the decision 'was *so far wrong*—to wit, *so egregiously wrong*—as to constitute a clear abuse of discretion'" (quoting *Stuples v. Baltimore City Police Dep't*, 119 Md. App. 221, 232 (1998))). Indeed, we have found it "hard to imagine a more deferential standard," *Estate of Vess*, 234 Md. App. at 205, than that afforded to courts in denying a revisory motion, because "[t]he nature of the error, the diligence of the parties, and all surrounding facts and circumstances are relevant," *Wormwood*, 124 Md. App. at 700.

An additional layer of context underlies our consideration of the court's exercise of discretion here. The court's imposition of sanctions arose from its finding that Mr. Munn lacked substantial justification to maintain the underlying suit. Under Rule 1-341, even once a court determines that one party has acted in bad faith or without substantial justification, the court may "exercise its discretion not to award fees[.]" *Christian*, 459 Md. at 30 (quoting *DeLeon Enters. v. Zaino*, 92 Md. App. 399, 419 (1992)). Thus, even when the predicate for an award of sanctions exists, a court must make a separate finding of "whether the party's conduct merits the assessment of costs and attorney's fees[.]" *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 72 (2017). In other words, a party who succeeds in proving a violation of Rule 1-341 by an opposing party or attorney arising out of improper litigation conduct is not necessarily entitled to any monetary award.

With these principles in mind, we turn to the court's denial of Mr. Brown's motion for reconsideration.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE MOTION FOR RECONSIDERATION CONCERNING THE TIMEFRAME FOR CALCULATING SANCTIONS OR THE AWARD OF COSTS, BUT THE COURT SHOULD HAVE RESOLVED THE APPARENT CALCULATION ERROR.

Mr. Brown argues that the circuit court made mistakes in calculating the amount of the sanctions award by using an incorrect date for when he filed his initial motion to dismiss, in its mathematical calculations, and in failing to include costs in its award. He sought reconsideration on all three grounds. We hold that the court did not abuse its discretion in declining to reconsider its decisions about the timeframe or the award of costs, but that the court should have fixed its mathematical error.

With respect to the court's decision to begin calculating the award using the filing of the May 31 motion to dismiss rather than his initial motion to dismiss, contrary to Mr. Brown's contention, it is not at all plain to us that this was a mistake. In its order, the circuit court stated that Mr. Munn would have been on notice of the lack of substantial justification for the underlying lawsuit "at a minimum from May 31, 2018 when the Defendants filed the Motion to Dismiss." Mr. Brown assumes that date reference to be erroneous; we do not. Earlier in the same paragraph, the court referred to the "first motion to dismiss" and stated that "after" that motion was filed, "it is presumed that counsel would have researched the issue and learned that his case could not be maintained." The court did not state that it presumed that Mr. Munn would have been aware of the lack of merit in the case *immediately* upon reading that motion. It would have been reasonable for the court to provide some period of time after receiving the first motion for Mr. Munn to perform the required research to determine that the case lacked substantial merit, and we cannot say

that picking the date of filing of the subsequent motion to dismiss was an unreasonable choice. That is particularly so because the court awarded Mr. Brown all of the fees it found were reasonably incurred "in the development of that motion," which preceded the time when Mr. Munn would have been on notice.

To the extent that Mr. Brown contends that this Court's opinion required the circuit court to impose an award of fees dating from the first motion to dismiss, he is incorrect. We determined in our prior opinion that the circuit court "did not clearly err in finding that Mr. Munn lacked substantial justification for maintaining the action after Mr. Brown filed his first motion to dismiss." *Paralegal Consultants*, 2019 WL 6002116, at *7. Although we determined that it was appropriate for the court to limit its finding of lack of substantial justification "to Mr. Munn's maintenance of the litigation from [the filing of the first motion to dismiss] forward," *id.* at *11 n.10, our opinion cannot reasonably be read to mandate an award of all fees incurred beginning on that date. To the contrary, we expressly remanded the case to the circuit court to determine, among other things, "the time period for which it will award attorney's fees[.]" *Id.* at *14. The circuit court's choice to award fees (1) before May 31, 2018 limited only to those reasonably incurred in producing the motion to dismiss, and (2) more broadly after that date, was neither arbitrary nor inconsistent with our opinion or the court's analysis. *See Christian*, 459 Md. at 32 ("So long as the imposed fees are not arbitrary, the court will not have abused its discretion."). We discern no abuse of discretion in the court's denial of the motion for reconsideration on that ground.

The costs Mr. Brown seeks to recover consist of fees for attorney appearances, service of two subpoenas, and costs related to a deposition. Mr. Brown's contentions regarding these costs appear to assume that the court had no discretion under Rule 1-341 to not award him costs, but that is not so. Rule 1-341(a) provides that a court "*may* require the offending party . . . to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees[.]" (Emphasis added). In fashioning its sanctions award, the court determined that the appropriate award would encompass certain attorneys' fees that Mr. Brown incurred, but not the costs he seeks, the vast majority of which related to a deposition of Ms. Nowottnick that was of questionable necessity considering that this litigation was resolved with a motion to dismiss. We detect no abuse of discretion in the circuit court's determination not to reconsider its sanctions award on the ground that it did not include an award of costs.

We see more merit in Mr. Brown's contention that the court should have revisited what appears to be a mathematical error in its calculations. In its December 18 memorandum, the court stated that "[t]he fees incurred by [Mr. Brown] between May 31, 2018 and July 23, 2018 totaled $8,435.00." The court then "[found] that the fees charged for that time period [we]re reasonable and necessary, with the exception of the billing for two attorneys attending the hearing on the Motion to Dismiss." The court deducted $2,100 billed by one of those attorneys to arrive at $6,335, which it included in its final calculation. As Mr. Brown pointed out in his motion for reconsideration, the total fees incurred during the period identified by the court, less the single time entry of $2,100, amounted to $9,030, not $6,335. The difference is $2,695.

Mr. Munn has not identified any way to account for the difference, nor have we been able to discern one from the time entries or the court's memorandum. It thus appears that this was a simple computational error, which a court does not have discretion to decline to correct when timely identified. *See, e.g.*, *Pulliam v. Dyck-O'Neal, Inc.*, 243 Md. App. 134, 152-53 (2019) (remanding to correct a mathematical "mistake in the interest calculation"). Because the court expressly determined that all fees incurred during the period from May 31 through July 23, 2018 were reasonable and necessary except for the single $2,100 time entry, and because the court's sanctions award omitted $2,695 in fees that were incurred during that specified period, that amount should be added to the sanctions award. Accordingly, we will vacate the sanctions award and remand for entry of a total sanctions award in the amount of $12,695.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED IN PART AND REVERSED IN PART. SANCTIONS AWARD VACATED AND CASE REMANDED FOR ENTRY OF A NEW SANCTIONS AWARD OF $12,695. COSTS TO BE PAID 80% BY APPELLANTS AND 20% BY APPELLEES.