

Circuit Court for Frederick County
Case No. C-10-CV-19-000155

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 277

September Term, 2023

ZAK GILLANI, et al.

v.

AKRAM GILLANI

Berger,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: January 22, 2024

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

This case is before us on appeal from an order of the Circuit Court for Frederick County denying a motion for sanctions pursuant to Maryland Rule 1-341 filed by Zak Gillani and 211 East Main St., LLC (“Appellants”).¹ Appellants prevailed in a civil action brought by Zak Gillani’s nephew, Akram Gillani (“Appellee”). Following trial, Appellants moved for an award of attorneys’ fees, arguing that Appellee pursued his claims in bad faith and without substantial justification. The circuit court denied Appellants’ motion and Appellants filed a timely appeal. On appeal, Appellants present a single question for our review, which we rephrase as follows:²

Whether the trial court erred in denying Appellants’ request for attorneys’ fees pursuant to Maryland Rule 1-341.

For the reasons explained herein, we shall vacate the order of the Circuit Court for Frederick County and remand for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

On September 19, 2014, a winning lottery ticket was purchased at an Edgewood, Maryland gas station that would yield a million-dollar prize. The facts of this case arise

¹ Zak Gillani is the sole owner and partner of 211 East Main St., LLC.

² Appellants’ original question presented reads as follows:

Whether the trial court abused its discretion when it denied Appellant’s motion for attorneys’ fees pursuant to Rule 1-341 without any explanation even though there was overwhelming evidence supporting the award of fees, including Appellee’s perjury.

from a family dispute over the ownership of that winning lottery ticket and the subsequent purchases made with the lottery winnings.

Appellants assert that on September 19, 2014, Appellant’s sister, Farhat Mahmoud, purchased a winning lottery ticket at the Sunoco gas station that she owns in Edgewood, Maryland. Zak Gillani accompanied Ms. Mahmoud to the lottery headquarters to redeem the prize on September 30, 2014, where they learned that the ticket was a winning ticket for the million-dollar prize. According to Appellants, Ms. Mahmoud gifted the ticket to Zak Gillani “to repay his kindness and generosity over the years.” Zak Gillani contends that he placed the ticket in his safe, where it remained until October 8, 2014. Zak Gillani asserts that he agreed to let Appellee claim the ticket in his name, but that Appellee explicitly agreed to do so with the understanding that Zak Gillani would remain the sole beneficial owner of the winning lottery ticket and its proceeds.

Appellee presents a different understanding surrounding the purchase of the lottery ticket. Appellee asserts that he purchased the winning lottery ticket from Farhat Mahmoud’s gas station in Edgewood, Maryland. Appellee originally insisted he bought the ticket in October 2014, but later testified that he bought the ticket in September 2014.³

³ Appellee filed his complaint on February 19, 2019 and his amended complaint on July 11, 2019. Both pleadings assert that Appellee purchased the lottery ticket in October 2014. Appellee also stated that he bought the ticket in October 2014 in response to interrogatories from Appellants. Subsequently, in a deposition on July 19, 2019, he testified that he “[did not] exactly know the date” that he bought the ticket, but that he believed it was in September 2014. Appellee also testified at trial that he bought the ticket in September 2014. Evidence introduced by Appellants at trial included a receipt of the ticket purchase, which confirmed the ticket was purchased on September 19, 2014.

He told his family members about his winnings, including Zak Gillani, and asserts that he kept the winning ticket in his diary until October 8, 2014. Appellee and other family members testified that the family congratulated Appellee on his winning ticket at a family gathering celebrating the Muslim holiday, Eid, on October 4, 2014. Appellee also made statements to the press indicating that he had won the million-dollar lottery prize.

Zak Gillani and Appellee returned to the lottery headquarters on October 8, 2014 to claim the prize money. A check in the amount of \$519,000 was issued to Appellee. Appellee and Zak Gillani opened a joint bank account with Middletown Valley Bank and deposited the check into that account. The lottery winnings were then used to buy two properties that became central to the dispute between the parties.

Prior to the purchase of the winning lottery ticket, Zak Gillani had entered a contract to purchase a residential property located at 10905 Baltimore National Pike in Myersville, Maryland (the “Residential Property”). He intended to purchase this property to serve as the residential home for the extended Gillani family, including Appellee. In order to finance the purchase of that property, Zak Gillani took out a mortgage loan on which Appellee agreed to be a joint obligor, and lottery proceeds were used to fund the downpayment on the home. At closing, the mortgagee bank required that Appellee’s name appear on the deed because he was a joint obligor on the mortgage. Appellants allege that Appellee promised to remove his name from the deed once Zak Gillani was able to independently refinance the mortgage within the next year.

In addition to the Residential Property, Zak Gillani used lottery proceeds to buy a gas station at 211 East Main Street in Middletown, Maryland (the “Commercial Property”) on behalf of 211 East Main St., LLC. Appellee alleges that he never authorized Zak Gillani to use the lottery proceeds to purchase the Commercial Property.

The rising tensions between uncle and nephew grew until reaching a breaking point in December 2015, when Appellee accused Zak Gillani of stealing his lottery winnings and vacated the Residential Property. Appellee claims that he was forced out of the home, but Appellants dispute this contention. Neither party pursued any legal action for years after this incident. On February 19, 2019, Appellee filed suit in the Circuit Court for Frederick County against defendants Zak Gillani, 211 East Main St., LLC, and Middletown Valley Bank. Appellee’s amended complaint also named Ms. Mahmoud as a defendant. The amended complaint contained eleven counts, including a claim for sale of the Residential Property in lieu of partition, action for possession, unjust enrichment, and trover and conversion. The defendants filed a counterclaim and amended counterclaim on May 2, 2019 and November 8, 2019, respectively.

Appellants thereafter filed two motions for summary judgment: one on August 21, 2019 solely as to counts II through IX and count XI, and one on September 13, 2019 as to counts I and X. The circuit court ultimately dismissed all claims against Ms. Mahmoud and granted summary judgment on all counts except the following: count I (sale of real property in lieu of partition); count X (action for possession of real property); and count XI (seeking a declaratory judgment as to the parties’ ownership rights of the lottery ticket

and its proceeds). The circuit court similarly entered summary judgment on all counts of Appellants' amended counterclaim except their claims for possession and sale in lieu of partition. Therefore, the only issues for consideration at trial were sale in lieu of partition, action for possession, and a declaratory judgment as to the owner of the lottery proceeds.

The circuit court held a lengthy bench trial that commenced on January 17, 2023. Zak Gillani and Appellee both took the stand to testify, and the court heard testimony from various family members. In its ruling on January 27, 2023, the circuit court noted:

At the end of the day, this case came down to credibility -- period -- of the witnesses. One side had witnesses who lied, and one side had witnesses who told the truth about the core issue. There may have been dishonesty on both parts, both sides, about certain things, but you can't -- they both didn't -- both stories cannot be true. One is true; the other is not true. So somebody perjured themselves in this courtroom, and there's nothing that I can do about that, but it does not sit well with me that that happened.

The circuit court concluded that Appellee “was not able to meet [his] required burden of proof in this case” and found that Zak Gillani was the owner of the lottery ticket and all proceeds. The court further concluded that the parties had entered a binding agreement under which Appellee agreed to remove his name from the deed to the Residential Property upon his release from the mortgage. Finally, the court found that Appellants were the sole owners of the Commercial Property.

The circuit court entered its order granting judgment for Appellants on February 15, 2023. On February 23, 2023, Appellants filed a motion for attorneys' fees under Maryland Rule 1-341. Appellants argued that Akram Gillani perjured himself in his sworn testimony

and that this perjury constituted bad faith and lack of substantial justification. The circuit court denied Appellants’ motion on March 15, 2023 without making any factual findings. This timely appeal followed.

DISCUSSION

On appeal, Appellants argue that the circuit court erred by denying their motion for attorneys’ fees under Maryland Rule 1-341. The rule provides:

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

Md. Rule 1-341(a). This rule “is intended to prevent abuses of the judicial process in the form of claims or defenses that are frivolous or posed in bad faith.” *Blitz v. Beth Isaac Adas Israel Congregation*, 115 Md. App. 460, 487–88 (1997), *rev’d on other grounds*, 352 Md. 31 (1998) (citing *Legal Aid Bureau, Inc. v. Farmer*, 74 Md. App. 707, 722 (1988)). “[A]warding attorneys’ fees under this rule is an extraordinary remedy, and it should be used sparingly.” *Major v. First Va. Bank–Cent. Md.*, 97 Md. App. 520, 530 (1993). Ordinarily, these sanctions should be imposed “only when there is a clear, serious abuse of judicial process.” *Black v. Fox Hills N. Cmty. Ass’n*, 90 Md. App. 75, 84 (1992).

When a circuit court evaluates whether to impose sanctions under Maryland Rule 1-341, the court must first “make a specific finding as to whether the conduct at issue was either in ‘bad faith’ or ‘without substantial justification’ or both.” *Blitz, supra*, 115 Md.

App. at 488. The court’s finding must be supported by “some brief exposition of the facts upon which the finding is based and an articulation of the particular finding involved[.]” *Talley v. Talley*, 317 Md. 428, 436 (1989). We review this finding under a clearly erroneous standard. *Inlet Assoc. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267 (1991). “A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.” *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). In our review of the circuit court’s factual findings,

this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case. Instead, our task is to search the record for the presence of sufficient material evidence to support the [circuit court’s] findings. Additionally, all evidence contained in an appellate record must be viewed in the light most favorable to the prevailing party below.

Id. (citing *Maryland Metals, Inc. v. Metzner*, 282 Md. 31, 41 (1978)).

If the circuit court finds that a party has acted in bad faith or without substantial justification, “the court must use its discretion and determine whether the wrongdoing warrants the imposition of sanctions.” *Blitz, supra*, 115 Md. App. at 489. Accordingly, “even if the circuit court determines that a party has acted in bad faith or without substantial justification,” the court may nevertheless “*decline to impose sanctions, in the exercise of its discretion.*” *Matter of Jacobson*, 256 Md. App. 369, 413 (2022) (quoting *Blitz, supra*, 114 Md. App. at 489) (emphasis in original). On appeal, the circuit court’s denial of a motion to impose sanctions “will be affirmed unless it was an abuse of discretion.” *Inlet Assoc., supra*, 324 Md. at 268. An abuse of discretion exists “where no reasonable person

would take the view adopted by the circuit court.” *Williams v. State*, 457 Md. 551, 563 (2018); *see also Jenkins v. State*, 375 Md. 284, 295–96 (2003) (“Abuse occurs when a trial judge exercises discretion in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law.”). Furthermore, “[w]hen a court must exercise discretion, the failure to do so usually constitutes reversible error.” *Blitz, supra*, 115 Md. App. at 492.

Appellants argue that Appellee brought this action in bad faith and without substantial justification, and that the circuit court erred in failing to make any factual findings to support its denial of Appellants’ motion for attorneys’ fees under Maryland Rule 1-341. Appellants further contend that they provided sufficient evidence in their motion to support a finding of bad faith and lack of substantial justification. For example, Appellants’ motion emphasizes that Appellee repeatedly provided inconsistent information as to when he allegedly purchased the winning lottery ticket. In Appellee’s complaint and amended complaint, Appellee asserted that he purchased the ticket in October 2014. He also indicated that he purchased the ticket in October 2014 in his response to interrogatories. This contradicts the ticket receipt introduced into evidence by Appellants confirming that the ticket was purchased on September 19, 2014. Appellant then testified at his deposition and at trial that he believed he purchased the ticket in September 2014.

Appellee also repeatedly stated that he purchased the ticket while running errands for a family party in observance of the Muslim holiday, Eid, on October 4, 2014. Later, when he insisted that he bought the ticket in September 2014, he asserted that he must have

been running errands for a different family gathering. Finally, Appellee testified that he called Zak Gillani after buying the lottery ticket. When expert testimony and phone records introduced at trial did not support this contention, Appellee testified that he had a second cell phone from which he made the call. Appellants' motion emphasizes that Appellee never disclosed the existence of the second phone in response to interrogatories or at any time before trial.

Appellants contend that Appellee's inconsistencies and his "invented testimony" amount to perjury justifying the imposition of attorneys' fees under Rule 1-341. In doing so, Appellants highlight the trial court's statement asserting that "somebody perjured themselves in [the] courtroom." Appellants suggest that, because the circuit court denied Akram Gillani's claims, the perjury referred to by the court is necessarily that of Akram Gillani.

Initially, Appellants request that this Court reverse the decision of the trial court and award sanctions under Rule 1-341. We decline to do so. As this Court has noted, "the trial court is the proper tribunal to make determinations as to whether actions before it have been brought in 'bad faith' or 'without substantial justification.'" *Fowler v. Printers II, Inc.*, 89 Md. App. 448, 481 (1991). Accordingly, "it is inappropriate for us to make any determination in the first instance as to whether sanctions should be granted." *Id.* Although it is within our purview to review the factual findings of the circuit court, the circuit court failed to make any factual findings in its order denying Appellants' motion for sanctions. As such, there are no factual findings for us to review.

Alternatively, Appellants request that this Court vacate the trial court’s order and remand this matter to the circuit court to make factual findings as to whether an award of sanctions should be granted under Maryland Rule 1-341. This Court has held that if a party’s Maryland Rule 1-341 motion is “patently groundless . . . the trial judge need not issue any findings” when denying the party’s motion. *Fowler, supra*, 89 Md. App. at 487. If, however, “the record does not clearly indicate the meritlessness of the Rule 1-341 motion, the trial court must make findings as to bad faith and/or substantial justification when denying the motion.” *Id.* We note that this rule is “consistent with the standard adopted by federal appellate courts that have reviewed analogous questions under Federal Rules of Civil Procedure 11.” *Id.*; see also *Straitwell v. Nat’l Steel Corp.*, 869 F.2d 248, 253 (4th Cir.1989) (remanding a viable motion for sanctions to the trial court for findings of fact); *Szabo Food Service, Inc. v. Canteen Corp.*, 823 F.2d 1073, 1084 (7th Cir.1987), *cert. dismissed*, 485 U.S. 901 (1988) (concluding that a court must make factual findings if denying a “serious” motion for sanctions).

We have applied this principle in two guiding cases. In *Fowler v. Printers II, Inc.*, a commercial printing company, Printers II, filed suit against a former employee and her new employer, alleging that the former employee breached her employment contract and the new employer tortiously interfered with that contract. *Fowler, supra*, 89 Md. App. at 457. Printers II also sought an *ex parte* injunction against both parties. *Id.* The circuit court granted an interlocutory injunction preventing the former employee from soliciting

business from customers of Printers II and granted judgment in favor of Printers II. *Id.* at 457–58.

After trial, Printers II moved for sanctions against the former employee pursuant to Maryland Rule 1-341. *Id.* at 458. Printers II argued that “at least portions of [the former employee’s] defense in the case were pursued in bad faith and without substantial justification,” as evidenced by the employee’s statements in a sworn affidavit that were “proved to be false and misleading in light of the evidence presented at trial.” *Id.* at 487. The circuit court denied this motion without making any factual findings. *Id.*

Printers II appealed the circuit court’s order denying its motion for attorneys’ fees under Maryland Rule 1-341. Printers II argued that the circuit court erred in failing to make any factual findings to support its denial of Printers II’s motion. On appeal, this Court noted that “we have upheld a trial court’s summary denial of a request for sanctions after concluding, upon review of the record, that there was no basis for them.” *Id.* (citing *Century I Condominium Ass’n v. Plaza Condominium Joint Venture*, 64 Md. App. 107, 115–17 (1985)). Nevertheless, our review of the record led us to conclude that it was “not clear from the record that [Printer II’s] Rule 1-341 motion was meritless.” *Id.* We, therefore, remanded the matter to the circuit court to “make the required findings of fact.” *Id.* at 487–88.

In our recent decision in *Bennett v. Ashcraft & Gerel, LLP*, we concluded that the appellant’s Rule 1-341 motion was meritless and therefore not subject to remand. *Bennett v. Ashcraft & Gerel, LLP*, ___ Md. App. ___, No. 31, Sept. Term, 2022, slip op.

at 23–24 (filed Oct. 27, 2023). *Bennett* involved a dispute between an attorney and the firm with which she was employed over an agreement regarding division of contingent fees upon the attorney’s exit from the firm. *Id.* at 1. The attorney, Ms. Bennett, asserted that the agreement violated the Maryland Attorneys’ Rules of Professional Conduct and was therefore unenforceable. *Id.* She also moved for sanctions under Maryland Rule 1-341, arguing that the firm acted in bad faith by “willfully mislead[ing]” the circuit court by “continu[ing] to make serious and significant misrepresentations regarding the scope” of the agreement without revealing to the court that the firm “failed to comply with a condition precedent to that contract.” *Id.* at 23. The circuit court denied Bennett’s motions without making factual findings. *Id.* at 23–24.

On appeal, we concluded that the circuit court was not required to make factual findings because it was “abundantly clear from the record that the motions for sanctions were patently groundless.” *Id.* at 24. We reasoned:

The motions were based on Ms. Bennett's disagreement with Ashcraft’s interpretation of the law and the facts. Ms. Bennett contended that Ashcraft had falsely represented that Ms. Bennett had waived the right to challenge the enforceability of the [agreement]. Ashcraft denied that it had agreed never, under any circumstances, to assert that Ms. Bennett had waived that right. In dismissing most of Ms. Bennett's second amended complaint . . . the court concluded that her allegations failed to state a claim upon which relief could be granted. In these circumstances, Ashcraft could not have acted in bad faith or without substantial justification.

Id. This Court, therefore, refused to remand the issue of attorneys’ fees under Rule 1-341 to the circuit court. *Id.*

In our view, the reasoning supporting Appellants’ motion for sanctions amounted to more than a mere disagreement with Appellee’s interpretation of the law and the facts in this case. Appellants’ motion for sanctions identified various contradicting statements made by Appellee under oath, including his inconsistent statements addressing when he allegedly purchased the winning lottery ticket. Indeed, the trial court aptly noted that Appellants and Appellee told diametrically opposed stories of who bought the winning ticket, asserting that “both stories cannot be true” and that “somebody perjured themselves” at trial. Although we do not hold that Appellee acted in bad faith or without substantial justification, our review of the record leads us to conclude that Appellants’ motion for sanctions under Rule 1-341 was not meritless. Accordingly, the trial court was required to provide factual findings to support its conclusion.

At oral argument, Appellee maintained that a circuit court’s determination regarding whether a party acted in bad faith or without substantial justification should never be based on witness credibility. We disagree. A trial court is not precluded from granting attorneys’ fees under Maryland Rule 1-341 simply because a party’s credibility may impact the court’s analysis. Whether credibility effects a trial court’s decision to impose sanctions for maintaining or defending any proceeding in bad faith or without substantial justification depends on the facts and context of the case.

Notably, issues related to credibility come in many different forms. For example, in a case involving a motor vehicle accident, a party may lack credibility because they were not in a place where the witness could properly observe how the accident occurred. By

contrast, a party may be found to lack credibility if they are caught in a lie or if the court determines -- as the circuit court did below -- that “somebody perjured themselves” at trial. Where, as here, when two opposing parties testify in a way that the trial judge determines that one must be lying, the court may assess credibility in determining whether the conduct of any party was in bad faith or without substantial justification. We do not consider whether Appellee brought his claims in bad faith or without substantial justification. We merely conclude that the trial court erred in failing to make the required factual findings when denying Appellants’ motion for sanctions under Maryland Rule 1-341.

Accordingly, we remand this matter to the circuit court so that it can make the required findings of fact as to whether Appellee acted in bad faith or without substantial justification. In doing so, we note that the circuit court is not required to hold a hearing to make such factual findings. *See Fowler, supra*, 89 Md. App. at 486 (holding that Maryland Rule 2-311(f) does not require a circuit court to hold a hearing to consider a motion for attorneys’ fees under Rule 1-341). Moreover, the circuit need not, but may, receive additional evidence regarding the motion for attorneys’ fees. We leave that determination to the discretion of the trial court. Finally, we reiterate that, even if the circuit court determines that Appellee acted with bad faith or without substantial justification, the court may “decline to impose sanctions, in the exercise of its discretion.” *Matter of Jacobson, supra*, 256 Md. App. at 413 (quoting *Blitz, supra*, 114 Md. App. at 489). In such a case, the court’s denial of the motion for sanctions must still include the required factual findings. *See Fowler, supra*, 89 Md. App. at 487.

We, therefore, vacate the trial court's March 15, 2023 order denying Appellants' motion for sanctions under Maryland Rule 1-341 and remand to the trial court to make factual findings consistent with our opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR FREDERICK COUNTY VACATED.
CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
APPELLEE.**