Circuit Court for Anne Arundel County
Case No. C-02-FM-16-000663

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1200

September Term, 2023

KASIMIER JAROSZ

v.

DONNAMARIE JAROSZ

Graeff,
Arthur,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: February 11, 2025

*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 to Rule 1-104(a)(2)(B).

Donnamarie Jarosz, appellee, filed a motion for sanctions in the Circuit Court for Anne Arundel County against her ex-husband, Kasimier Jarosz, appellant, seeking an award of attorney's fees and costs that she incurred in defending a petition for contempt that he filed. The court granted the motion, finding that the petition was filed in bad faith and without substantial justification. It ordered Mr. Jarosz to pay Ms. Jarosz the sum of $9,733.50.

On appeal, Mr. Jarosz presents three questions for this Court's review,[1] which we have consolidated and rephrased into the following two questions:

1. Did the circuit court err in finding that Mr. Jarosz's petition for contempt was filed in bad faith and without substantial justification?

2. Did the circuit court abuse its discretion in awarding fees and costs to Ms. Jarosz?

[1] The questions presented in appellant's brief are:

1. Was there sufficient competent material evidence to support the trial court's finding that the appellant's petition for contempt was filed in bad faith and without substantial justification?

2. Did the trial court err in finding that the appellant's petition for contempt was filed in bad faith and without substantial justification where the allegations of the petition supported appellant's claim that appellee had failed and refused to comply with the plain terms of the subject order?

3. Did the trial court abuse its discretion when it awarded fees and costs in the absence of factual or legal support for its finding that the appellant's petition for contempt was filed in bad faith and without substantial justification?

Ms. Jarosz has moved to dismiss the appeal as moot, based on events that occurred after the appeal was filed. Specifically, she filed a notice of satisfaction in the circuit court, in which she stated that she was "deeming payment of zero dollars ($0.00) as full satisfaction" of the judgment.

For the reasons set forth below, we shall deny the motion to dismiss, affirm the portion of the judgment finding that the petition was filed in bad faith and without substantial justification, and vacate as moot the portion of the judgment awarding sanctions.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Divorce, Contempt Petitions, and Motion for Sanctions

The parties were married in 1990. They divorced in February 2017. Pursuant to the parties' property settlement agreement, which was incorporated into the Judgment of Absolute Divorce, the parties became equal shareholders of a government contracting business ("the Company") that they created during the marriage.

In March 2022, the parties filed petitions for contempt against one another, alleging violations of the terms of the property settlement agreement related to the Company. On September 13, 2022, the court issued a consent order, dismissing with prejudice the parties' respective petitions for contempt. The order provided that, because substantially all of the Company's contracts were terminated and there were no longer sufficient assets to sell the Company, "the parties shall promptly and reasonably cooperate in a voluntary dissolution

and winding up of [the Company] in accordance with Virginia corporate law." The court ordered that the documents necessary to initiate a voluntary dissolution of the Company were to be filed within 30 days of the court's order, *i.e.*, October 13, 2022.

The parties disagreed on the terms for the voluntary dissolution.

On October 13, 2022, the deadline for filing for voluntary dissolution, Ms. Jarosz filed, in the Circuit Court for Fairfax County, Virginia, a Shareholder Petition for Judicial Dissolution. She alleged that the Company's two directors were "deadlocked on voluntary dissolution" and were "unlikely to be able to break the deadlock without judicial intervention." On October 15, 2022, Mr. Jarosz was served with a summons and complaint in a separate federal civil action filed by Ms. Jarosz on October 11, 2022, alleging dereliction of duty, corporate waste, and self-dealing. On October 17, 2022, counsel for Ms. Jarosz emailed counsel for Mr. Jarosz asking whether he would accept service of a Virginia petition for shareholder dissolution.

On October 18, 2022, Mr. Jarosz filed a petition for contempt against Ms. Jarosz, alleging that she was in violation of the provision in the consent order that required the parties to "reasonably cooperate" in the voluntary dissolution process. He alleged that she refused to reasonably cooperate in the voluntary dissolution by

> disingenuously advising that she would not join in the authorization and filing of the Articles of Dissolution absent the inclusion of unnecessary and superfluous commitments by the Defendant to, among other things, personally relinquish his security clearance and to agree to the preservation of the parties' claims or causes of action against each other in respect to [the Company] (thus attempting to "end around" their settlement of and express *dismissals with prejudice* of numerous such causes of action against each other in the Consent Order entered only weeks before).

A hearing was scheduled for March 30, 2023. On March 29, 2023, the parties filed a stipulation to dismiss with prejudice the October 18, 2022 contempt petition.

On April 18, 2023, Ms. Jarosz filed a motion for sanctions, pursuant to Maryland Rule 1-341, alleging that the petition for contempt had been filed and prosecuted in bad faith.[2] She requested an award of $57,461.45 in attorney's fees and costs that she incurred in responding to the petition for contempt and preparing for the hearing. Ms. Jarosz attached two verified declarations to her motion, each with numerous supporting exhibits, including various email communications showing that Mr. Jarosz acquiesced in the filing of a petition for judicial dissolution and agreed that judicial dissolution was consistent with the September 2022 consent order.

On May 4, 2023, Mr. Jarosz filed a response to the motion for costs and fees, attaching an affidavit of Mr. Jarosz's corporate attorney, as well as several additional exhibits. He alleged that Ms. Jarosz waived her right to move for sanctions because she first requested sanctions in her answer to the contempt petition, but then she stipulated to a dismissal. He contended that he filed his contempt petition with substantial justification

[2] Md. Rule 1-341 provides:

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

because Ms. Jarosz "brazenly refused to cooperate in the voluntary dissolution . . . leaving a judicial dissolution as the only option for winding up the business." Mr. Jarosz also challenged the amount of the attorney's fees that Ms. Jarosz requested as "beyond overreaching."

On May 19, 2023, the Circuit Court for the County of Fairfax, Virginia, issued an order for judicial dissolution of the Company. It appointed a receiver to wind up and liquidate the Company's business and affairs.

II.

Hearing on Rule 1-341 Motion

On June 23, 2023, the circuit court held a hearing on Ms. Jarosz's motion for sanctions. Ms. Jarosz's attorney argued that Mr. Jarosz's contempt petition was pursued without substantial justification because he "knew the premise of the contempt petition was false and he encouraged the very conduct that he then turned around and challenged." He contended that the petition also was filed in bad faith "to extract benefits in separate litigation pending in Virginia." He pointed to an October 12, 2022 email from Mr. Jarosz's counsel stating that the Board should file for judicial dissolution of the Company, noting that Ms. Jarosz filed the petition only after Mr. Jarosz expressly endorsed the course of action. Counsel argued that Mr. Jarosz had unclean hands, pointing to additional emails attached to his declaration that showed that Mr. Jarosz had agreed that judicial dissolution was the "appropriate way to implement" the consent order directing the parties to dissolve the Company because the parties were deadlocked on the terms and conditions of voluntary dissolution.

Counsel for Ms. Jarosz argued that suing for contempt and seeking incarceration after agreeing to judicial dissolution was "downright abusive," and the petition was filed in an attempt to obtain concessions from Ms. Jarosz with regard to the Virginia petition for judicial dissolution. Counsel explained that, although the parties agreed to seek voluntary dissolution in the September 2022 consent order, they did not agree to waive their rights to impose conditions on the voluntary dissolution under Virginia law. Because the parties disagreed on the appropriate conditions, there was a deadlock and "[b]oth sides agreed that judicial dissolution was appropriate and that's what w[as] pursued."

Counsel asserted that the timing of certain events after Ms. Jarosz petitioned for judicial dissolution evidenced Mr. Jarosz's bad faith. Specifically, Mr. Jarosz filed his contempt petition just a few days after being served in a separate damages case filed by Ms. Jarosz and one day after counsel requested that he accept service in the judicial dissolution action. Counsel concluded by stating that Mr. Jarosz had endorsed judicial dissolution multiple times since the September 2022 consent order.

Counsel for Mr. Jarosz argued that Ms. Jarosz did not have any evidence to prove that Mr. Jarosz acted without substantial justification or in bad faith, noting that neither Mr. Jarosz nor his corporate attorney were there to offer testimony. He asserted that "you can't win a case on affidavits." He also argued that, in stipulating to dismiss the petition for contempt, Ms. Jarosz did not reserve the right to pursue the Rule 1-341 sanctions she requested in her answer.

Counsel argued that the September 2022 consent order did not provide for the parties to add terms and conditions to an agreement for voluntary dissolution, and Ms.

Jarosz did not reasonably cooperate in the dissolution process. Rather, counsel for Ms. Jarosz "created the deadlock" to force judicial dissolution, and Mr. Jarosz did not waive contempt by agreeing to judicial dissolution.

In rebuttal, counsel for Ms. Jarosz noted the court was holding a motions hearing, not a trial, and he stated that verified affidavits, with attached documents, were proper evidence. The hearing concluded with a discussion of the reasonableness of the requested attorney's fees.[3]

III.

Court's Ruling and Entry of Judgment

On July 18, 2023, the court issued a memorandum opinion. It noted that Mr. Jarosz alleged in the petition for contempt that Ms. Jarosz contravened the consent order "by filing for judicial, rather than voluntary, dissolution" of the company, and Ms. Jarosz argued that Mr. Jarosz supported and encouraged judicial dissolution, agreeing that it would comply with the consent order. The court found that Mr. Jarosz "did encourage [Ms. Jarosz] to petition for judicial dissolution, consistent with the terms of the Consent Order from September 9, 2022," and it found that Mr. Jarosz's petition for contempt "was filed in bad faith and without substantial justification." The court awarded attorney's fees to Ms. Jarosz, albeit in a reduced amount of $9,733.50. The court issued a separate order that day, ordering that Mr. Jarosz pay Ms. Jarosz $9,733.50 within 60 days, or that amount would be entered as a judgment against him.

[3] Because the amount of attorney's fees is not in dispute, we need not discuss the hearing testimony on this issue in detail.

IV.

Appeal and Post-Appeal Events

On August 17, 2023, appellant noted this appeal.

On September 20, 2023, Ms. Jarosz filed a Request for Entry of Judgment, stating that Mr. Jarosz had failed to pay the amount ordered by the court, and he had not filed a motion to stay the order pending appeal. On October 6, 2023, the court granted the unopposed request and entered a judgment against appellant. On October 10, 2023, appellant filed a motion to stay enforcement of the judgment, which the court granted.

Ms. Jarosz states in her brief that, subsequent to the entry of judgment, she offered to forgive any payment obligation and mark the judgment satisfied to end the litigation and its attendant cost to defend the appeal. Mr. Jarosz, however, "declined that offer." She then filed a Notice of Satisfaction of Judgment, advising the court that, although Mr. Jarosz had not paid any money, she was "deeming payment of zero dollars ($0.00) as full satisfaction of the October 6 judgment and excusing any further obligation thereunder by [Mr. Jarosz]." On January 12, 2024, the court issued a notice certifying that the judgment was satisfied. Ms. Jarosz asserts that she forgave the debt in an effort "to spare her depleted coffers the cost of this appeal," and she argues that, because Mr. Jarosz no longer owes any money, there is no longer any controversy between the parties, the case is moot, and we should dismiss the appeal.

DISCUSSION

Before addressing Mr. Jarosz's contentions that the circuit court erred in finding that he filed the contempt petition in bad faith and without substantial justification and

ordering that he pay Ms. Jarosz $9,733.50 in attorney's fees, we must address two preliminary issues. First, we address whether there is an appealable order before us. Second, we address whether events that occurred after the appeal was noted have rendered this appeal moot.

I.

Appealable Order

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 Cnty.*, 365 Md. 269, 273 (2001)); *Gisriel v. Ocean City Bd. of Supervisors of Elections*, 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 Ann., Cts. & Jud. Proc. ("CJ") § 12-301 (2020 Repl. Vol.).

The appeal here is from the July 18, 2023 order, which was entered as a judgment on July 19, 2023 ("the July 2023 order"), requiring Mr. Jarosz to pay Ms. Jarosz $9,733.50. The parties characterize this appeal as a statutorily-permitted interlocutory appeal from an order for the payment of money. *See* CJ § 12-303(3)(v) (Supp. 2024). If that were the case, the order would not be appealable because an interlocutory award of counsel fees imposed as a sanction under Maryland Rule 1–341 (formerly Rule 604 b) is not immediately appealable pursuant to CJ § 12-303(3)(v) as an order "for the payment of money." *Simmons v. Perkins*, 302 Md. 232, 232-36 (1985).

The order is appealable, however, as a final judgment. It resolved the remaining open claim in the case. *See FutureCare NorthPoint, LLC v. Peeler*, 229 Md. App. 108, 119 (2016) (an order is a final judgment if (1) it is "intended by the court as an unqualified, final disposition of the matter in controversy," (2) it "adjudicate[s] or complete[s] the adjudication of all claims against all parties," (3) it is "set forth and recorded in accordance with Rule 2–601[,]" and (4) it is "set forth on a separate document signed by the judge or clerk").

The parties appear to believe that the final judgment in this case was the October 6, 2023 order, which entered judgment against Mr. Jarosz. We disagree. Pursuant to Maryland Rule 2-648(a), the circuit court may enforce a judgment by entering a money judgment "[w]hen 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 July 2023 order, stating that the amount awarded would be "entered as a judgment" if not paid, did not take away from the finality of the July order, but rather, it provided that, if Mr. Jarosz did not pay the money awarded, the court would *enforce* the obligation to pay (pursuant to Rule 2-648) by entering a *money judgment* against Mr. Jarosz. In other words, the court, via its order, issued an enforceable judgment on the merits of the attorney's fees issue. At that point, if Mr. Jarosz did not pay the money, the court, upon request, would enforce the judgment by imposition of a money judgment.

The Alabama Court of Civil Appeals addressed a similar issue in *Ex parte State Department of Human Resources*, 47 So. 3d 823, 828 (Ala. Civ. App. 2010). In that case, a juvenile court issued an August 2009 judgment 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 to pay an enforceable judgment, even though it provided that, if DHR failed to pay as directed, "then said sum [would] be reduced to a judgment . . . from which execution may lie." *Id.* at 827-28. The appellate court concluded that "the juvenile court intended that DHR's failure to comply would result in [a] further enforcement action," but that did "not render the August 2009 judgment nonfinal." *Id.* at 828.

Similarly, here, the circuit court's July order awarding sanctions constituted a final judgment. The provision regarding enforcement of that judgment as a money judgment did not affect the finality of the judgment. Accordingly, the appeal here was from a final judgment.

II.

Mootness

We next address Ms. Jarosz's contention that we should dismiss this appeal as moot due to events that occurred after the appeal was filed. She argues that, because the judgment had been deemed satisfied with no payment and Mr. Jarosz no longer owes any money, there is no longer any controversy between the parties, the case is moot, and we should dismiss the appeal.

Mr. Jarosz disagrees that the appeal is moot. He contends that Ms. Jarosz's "*gratis* entry of a satisfaction of judgment" does not preclude an appeal of the court's underlying

reasoning for the sanctions order, and the validity of the court's "bad faith" finding is still an existing controversy. He asserts that, although he declined to end the litigation by marking the judgment satisfied, he proposed to resolve the appeal by filing a joint stipulation to vacate the July 2023 order imposing sanctions and finding bad faith. He contends that Ms. Jarosz's solution was an attempt to preserve the court's finding of bad faith.

"A case is moot when there is no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant." *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 68 (2015) (quoting *Prince George's Cnty. v. Columcille Bldg. Corp.*, 219 Md. App. 19, 26 (2014)), *cert. denied*, 446 Md. 293 (2016). "This Court does not give advisory opinions; thus, we generally dismiss moot actions without a decision on the merits." *Id.* (quoting *Green v. Nassif*, 401 Md. 649, 655 (2007)).

There are several situations, however, where an issue that may appear to be moot need not be dismissed under the mootness doctrine. For example, "mootness will not preclude appellate review in situations where a party can demonstrate that collateral consequences flow from the lower court's disposition." *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 352 (2019). Additionally, there are exceptions to the mootness doctrine where a situation is capable of repetition yet evading review or is an issue of public concern. *Id*. *Accord Trusted Sci. & Tech., Inc. v. Evancich*, 262 Md. App. 621, 641-43, *cert. denied*, 489 Md. 253 (2024). With respect to the public concern exception, "we must be persuaded that there exists an 'urgency of establishing a rule of future conduct in matters

of important public concern' which 'is both imperative and manifest.'" *Green*, 401 Md. at 656 (quoting *Hagerstown Reprod. Health Servs. v. Fritz*, 295 Md. 268, 272 (1983)).

The situation relevant here that weighs against dismissal under the mootness doctrine is the potential for collateral consequences from the sanction order. In *D.L.*, the Supreme Court of Maryland held that D.L. faced collateral consequences from her involuntary admission to a psychiatric facility, and therefore, her appeal was not moot, even though she had already been released from the facility. 465 Md. at 381. In *Droney v. Droney*, 102 Md. App. 672, 682 (1995), this Court explained that, even if the consequences of a contempt order cannot be remedied, the defendant is entitled to seek exoneration by having the contempt finding set aside.

Here, the monetary sanction has been eliminated, but the question is whether there are collateral consequences from the court's order. Specifically, the question is whether the court's determination that Mr. Jarosz acted in bad faith and without substantial justification precludes dismissal under the mootness doctrine. We conclude that it does.

In *Fleming & Associates v. Newby & Tittle*, 529 F.3d 631, 635 (5th Cir. 2008), the court addressed, as we do, "an award of attorneys' fees that, regardless of our decision, will never be paid." In that case, the trial court issued an order sanctioning plaintiff's counsel. *Id.* at 636. The parties subsequently settled their dispute, and the plaintiffs moved to dismiss all claims, stating that all parties would bear their own costs for attorney's fees. *Id.* Despite an agreement among the parties not to collect sanctions after the settlement, the court imposed $15,214.45 in attorney's fees. *Id.* On appeal, plaintiffs argued, among other things, that the settlement made any appeal of the sanctions moot. *Id.* at 637.

The court first noted that, if an appeal is rendered moot by circumstances outside the person's control, the court typically vacates the judgment under equitable principles. *Id.* at 638. *Accord Bd. of Supervisors of Fairfax Cnty. v. Ratcliff*, 842 S.E.2d 377, 379 (Va. 2020) (holding that "[w]hen a prevailing party voluntarily and unilaterally moots a case, preventing an appellant from obtaining appellate review, vacatur of lower court judgments is generally appropriate."). *See also Camreta v. Greene*, 563 U.S. 692, 712 (2011) (alterations in original) ("The equitable remedy of vacatur ensures that 'those who have been prevented from obtaining the review to which they are entitled [are] not . . . treated as if there had been a review.'") (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950)); *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 75 (1997) (stating agreement with the proposition that "[i]t would certainly be a strange doctrine that would permit a [party] to obtain a favorable judgment, take voluntary action [that] moot[s] the dispute, and then retain the [benefit of the] judgment"). The court vacated the award of attorney's fees as moot. *Fleming & Assocs.*, 529 F.3d at 640. It declined to vacate the entire order, however, noting that there were two components to the court's order: (1) a finding of sanctionable conduct; and (2) a compensatory award. *Id.* at 639-40. Although the settlement mooted the appeal of the compensatory sanctions, the court held that the nonmonetary portion of the sanctions was appealable because there were "residual reputational effects on the attorney." *Id.* at 640.

Other jurisdictions similarly "have considered reputational harm to be a cognizable injury when determining whether the appeal of a sanctions order is justiciable." *Grider v.*

Keystone Health Plan Cent., Inc., 580 F.3d 119, 133 (3d Cir. 2009) (rejecting argument that appeal of sanctions was moot based on settlement of case). *Accord Martinez v. City of Chicago*, 823 F.3d 1050, 1053 (7th Cir. 2016) (prosecutor could appeal nonmonetary sanction even though office had paid the monetary sanction because finding of misconduct could impact attorney's professional standing).

We agree with the reasoning in those cases. In the circumstances here, where the court awarded monetary sanctions based on a finding of bad faith, Ms. Jarosz cannot unilaterally moot Mr. Jarosz's appeal by agreeing to forgive any payment obligation, where the bad faith finding remains. Accordingly, we address the merits of the appeal as it pertains to the finding that the petition for contempt was filed in bad faith and without substantial justification.

III.

Merits of Sanction Order

A.

Parties Contentions

Mr. Jarosz contends that the court erred in finding, as part of its analysis under Maryland Rule 1-341, that he filed his petition for contempt in bad faith and without substantial justification. He asserts that there was "no 'competent material evidence'" to support the court's finding, stating that the court improperly relied on pleadings and counsel's argument without receiving substantive evidence. He argues that, even assuming evidence had been proffered, the facts were insufficient to support the court's findings. He asserts that there was substantial justification to file the contempt petition because Ms.

Jarosz failed to reasonably cooperate in the voluntary dissolution of the Company in accordance with the September 2022 consent order.

Ms. Jarosz contends that the record contains substantial evidence supporting the court's finding that Mr. Jarosz filed his contempt petition in bad faith or without substantial evidence. She asserts that Mr. Jarosz did not challenge the authenticity of the documents verified by affidavit and attached to her motion for sanctions, and these documents show that Mr. Jarosz actually encouraged her to file for judicial dissolution.

After encouraging that action because the parties were at an impasse in their negotiations for voluntary dissolution, Mr. Jarosz filed a contempt petition premised on a completely contrary position, and therefore, Mr. Jarosz acted in bad faith. Ms. Jarosz asserts that the court was "within its sound discretion to sanction Mr. Jarosz" because his conduct was vexatious and wasteful of the court's time and resources.

B.

Applicable Law

We begin by discussing the relevant law on sanctions. Md. Rule 1-341(a) provides:

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

Bad faith "exists when a party litigates with the purpose of intentional harassment or unreasonably delay." *Toliver v. Waicker*, 210 Md. App. 52, 71 (quoting *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999)), *cert. denied*, 432 Md. 213 (2013).

"In analyzing whether an attorney lacked substantial justification to file a claim, the issue is 'whether [the attorney] had a *reasonable basis* for believing that the claims would generate an issue of fact.'" *Id.* (alteration in original) (quoting *RTKL Assocs. Inc. v. Baltimore Cnty.*, 147 Md. App. 647, 658 (2002)). Before awarding sanctions under Rule 1-341, the circuit court "must make two separate findings that are subject to scrutiny under two related standards of appellate review." *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267 (1991). *Accord Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 676-77 (2003); *Barnes*, 126 Md. App. at 104-05. The court first "must make an evidentiary finding of 'bad faith' or 'lack of substantial justification.'" *Talley v. Talley*, 317 Md. 428, 436 (1989) (quoting *Legal Aid v. Bishop's Garth*, 75 Md. App. 214, 220 (1988)). This determination is reviewed under a clearly erroneous standard. *Toliver*, 210 Md. App. at 71. Second, "if a court finds a claim was pursued in bad faith or without substantial justification, it then has to determine whether to award sanctions." *Garcia*, 155 Md. App. at 677. This determination is reviewed for an abuse of discretion. *Id.*

As indicated, we are concerned in this appeal only with the first step. In that first step, the court must make "an explicit finding that a claim or defense was 'in bad faith or without substantial justification.'" *Zdravkovich v. Bell Atl.-Tricon Leasing, Corp.*, 323 Md. 200, 210 (1991) (quoting Md. Rule 1-341). *Accord URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 72 (2017); *Talley*, 317 Md. at 436; *Garcia*, 155 Md. App. at 676. The record must reflect "the basis for those findings." *Zdravkovich*, 323 Md. at 210. As the Supreme Court of Maryland has explained, "'some brief exposition of the facts upon which the finding is based and an articulation of the particular finding involved are necessary for

subsequent review.'" *Id*. (quoting *Talley*, 317 Md. at 436). *Accord Fowler v. Printers II, Inc.*, 89 Md. App. 448, 487 (1991) (without factual findings, "it is impossible for an appellate court to review the circuit court's decision"), *cert. denied*, 325 Md. 619 (1992).

C.

Analysis

Here, there is no dispute that the court made an explicit finding of bad faith and lack of substantial justification. In support, it found, based on the motion, response, attached exhibits, and arguments of counsel, that "[Mr. Jarosz] did encourage [Ms. Jarosz] to petition for judicial dissolution, consistent with the terms of the Consent Order from September 9, 2022." The record more than adequately supports the factual finding.

In a verified declaration submitted with the motion for sanctions, Ms. Jarosz's counsel submitted documentation demonstrating that Mr. Jarosz was in agreement that Ms. Jarosz should file a petition for judicial dissolution because the parties could not agree on the terms of a voluntary dissolution. In an October 6, 2022 email, counsel for Mr. Jarosz[4] suggested to counsel for Ms. Jarosz that the parties either agree to file for judicial dissolution or try to get an agreement on the voluntary dissolution. In an October 10, 2022 email from Mr. Jarosz's counsel, he stated that the parties were deadlocked in their efforts to agree on the term of a voluntary dissolution, "so an involuntary dissolution by the court is needed." (Emphasis added). Counsel for Mr. Jarosz subsequently sent an email stating that it was Mr. Jarosz's "position that that the Board should petition the [Fairfax County]

[4] Mr. Jarosz's counsel at that time was different from the one representing him on appeal.

Circuit Court for a judicial dissolution of the company . . . given that the shareholders agree that dissolution is in their best interests but have been unable to agree on a specific resolution for dissolution." (Emphasis added). The email stated that: "This course of action is consistent with the terms of the Consent Order that was entered by the Circuit Court last month." (Emphasis added). Finally, Mr. Jarosz's own evidence, an affidavit from his counsel, which was attached to his Opposition to [Ms. Jarosz's] Motion to Dismiss Petition for Contempt, stated that he advised counsel for Ms. Jarosz "that because the totality of the add-ons were not acceptable, the parties should proceed promptly with a request for a judicial dissolution of the Company, rather than continue to dispute the unnecessary inclusion of the [Ms. Jarosz's] proposed add-ons."[5] (Emphasis added).

Mr. Jarosz contends that pleadings are not evidence, and Ms. Jarosz did not offer any evidence to satisfy her burden of proof. The court, however, did not rely on just the pleadings here. Rather, there were more than ten verified exhibits attached to Ms. Jarosz's motion, including the email correspondence discussed above. To the extent Mr. Jarosz argues that the court improperly considered this email correspondence because it was not admitted as evidence on the record at the motions hearing, we are not persuaded.

[5] Ms. Jarosz directs us to additional evidence showing that Mr. Jarosz ultimately consented to judicial dissolution and even filed his own petition for judicial dissolution with a Virginia court. These actions occurred after the filing of the petition for contempt, however, and therefore, we will not consider them in our analysis. *See Kelley v. Dowell*, 81 Md. App. 338, 343 (substantial justification inquiry must be limited to review of evidence at the time of the filing), *cert. denied*, 319 Md. 303 (1990).

Rule 2-311(c) provides that: "A party shall attach as an exhibit to a written motion or response any document that the party wishes the court to consider in ruling on the motion." Rule 2-311(d) states that "[a] motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based." Here, the email correspondence considered by the court was properly verified by the declaration of counsel for Ms. Jarosz, which was attached to the motion for sanctions. The court properly considered these exhibits as evidence. *See Washington Mut. Bank v. Homan*, 186 Md. App. 372, 390-91 (2009) (court properly relied on attached exhibits and signed verified statements when ruling on motion as they were part of the record). *Accord MCB Woodberry Dev., LLC v. Council of Owners of Millrace Condo., Inc.*, 253 Md. App. 279, 308 (2021) ("[T]here are cases in which the allegations of the pleadings, exhibits incorporated therein, and other matters capable of being noticed judicially, supply evidence from which bad faith may be discernable as a matter of law.").

The evidence in the record showed that Mr. Jarosz was in agreement that Ms. Jarosz should file for judicial dissolution. He did not offer any rebuttal evidence or challenge the authenticity, or the substance, of the email correspondence that was properly before the court. The court's explicit finding that Mr. Jarosz filed his petition for contempt in bad faith and without a substantial basis was not clearly erroneous. We affirm its finding in this regard.

As indicated, because Ms. Jarosz excused payment of the sanction and the court issued a notice of satisfied judgment, any issue regarding the propriety of the sanctions

award has become moot. Accordingly, we will vacate the judgment requiring Mr. Jarosz to pay Ms. Jarosz sanctions in the amount of $9,733.50.

MOTION TO DISMISS THE APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AWARDING SANCTIONS VACATED AS MOOT. JUDGMENT OTHERWISE AFFIRMED. COSTS TO BE PAID BY APPELLANT.