Circuit Court for Prince George's County
Case No. CAL18-12589

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3048

September Term, 2018

THOMAS ALSTON

v.

SCHUCKIT & ASSOCIATES, P.C., et al.

Fader, C.J.,
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: July 6, 2020

In the Circuit Court for Prince George's County, Thomas Alston, the appellant, brought suit for defamation against the appellees - - Schuckit & Associates, P.C. ("S&A"), a law firm based in Zionsville, Indiana; Robert Schuckit, Katherine E. Carlton Robinson, and Justin Walton, three lawyers with S&A ("the S&A Lawyers"); Gohn Hankey & Berlage, LLP ("GH&B"),[1] a Baltimore law firm; H. Mark Stichel, a lawyer formerly with GH&B; and Portfolio Media, Inc. ("PMI"), operator of Law360, a subscription-based legal news service - - and also Shayna Posses and Steven Trader, reporters for Law360. Mr. Alston alleged that he had been defamed in filings in certain federal court cases and in an article in Law360 that described him as "'a serial pro se litigant' who files harassing and frivolous lawsuits."

The appellees filed motions to dismiss for failure to state a claim for which relief could be granted and requested a hearing. Mr. Alston did not file oppositions to any of the motions. After a hearing, the court granted the motions and made a finding that suit had been filed in bad faith and without a substantial basis, under Rule 1-341. The court received affidavit evidence from S&A and the S&A Lawyers about their attorneys' fees and costs, and ordered Mr. Alston to pay fees and costs in the amount of $3,673. From the final judgment entered, Mr. Alston noted this timely appeal.

FACTS AND PROCEEDINGS

Mr. Alston is a paralegal who, acting *pro se*, has filed on his own behalf, and has assisted family members and friends in filing, many cases against Trans Union, LLC

[1] GHB was incorrectly sued as Gohn, Hankey, Stichel, and Berlage, LLC.

("Trans Union") and others in the United States District Court for the District of Maryland, alleging violations of the Fair Credit Reporting Act ("FCRA").[2] S&A and the S&A Lawyers represented Trans Union in those cases. In one such case, *Yvonne R. Alston v. Branch Banking Trust Company, et al*., No. 8:15-CV-03100-GJH ("Yvonne Alston Case"), GH&B served as local counsel for Trans Union.

On March 10, 2017, in *Letren v. Trans Union, LLC*, Case No. 8:15-CV-03361-PX ("Letren Case"), Trans Union, through S&A and the S&A Lawyers, filed a motion for sanctions under Rule 11, stating, among other things:

> Moreover, Plaintiff [Mr. Letren] admitted during his deposition that he was a close personal friend of paralegal – and serial pro se litigant – Thomas Alston, who Plaintiff said often reviews his pleadings for him. See [Doc. No. 78-8] at 15-16. Judge [Peter] Messitte recently noted that there has been a proliferation of frivolous FCRA cases in the District of Maryland authored by Thomas Alston but "ostensibly filed by pro se plaintiffs seeking monetary compensation for trivial harms," which have been "filed essentially for the purpose of winning statutory damages, or what is more likely, extracting settlements from defendants." See Alston v. Experian Info. Sols., Inc., No. PJM 15-3558, 2016 U.S. Dist. LEXIS 117939, at **20-21, n.5 (D. Md. Aug. 31, 2016). Further, Chief Judge [Deborah] Chasanow has found that the Alston family is "engaged in an enterprise of Fair Credit Reporting Act litigation." See Alston v. Creditors Interchange Receivables Mgmt., 2012 U.S. Dist. LEXIS 185736, at *6 (D. Md. Sept. 21, 2012).

On June 27, 2017, PMI published an article in Law360 ("the Article"), written by Ms. Posses, entitled "Consumer Fights Sanction Bid in Trans Union FCRA Suit." The Article made one mention of Mr. Alston: "Letren also admitted during his deposition that he is a close personal friend of serial pro se litigant Thomas Alston[.]"

[2] Mr. Alston represented himself below and is representing himself in this appeal.

In his complaint in this case, Mr. Alston set forth a single claim for defamation. He alleged that the Article was based on the motion for sanctions filed by S&A and the S&A Lawyers on behalf of Trans Union in the Letren Case, and that he had been defamed by the Article and by the motion for sanctions in that case.[3] In addition, he alleged that, in other Maryland federal district court cases, he had been defamed in filings on behalf of Trans Union that quoted Judge Messitte's opinion just as it had been quoted in the Letren Case.

Mr. Alston further alleged that S&A and the S&A Lawyers had known that there was no factual basis for their filings in the various court proceedings; that PMI and Ms. Posses had known they were receiving false information about him from Trans Union's filings but publicized the information anyway, and had known the false and defamatory information about him was "not published pursuant to or under the protection of some form of privilege"; and that "the litigation privilege is not available because [Mr. Alston] was not a party to the lawsuit in which [the S&A Lawyers] made the defamatory statements." Mr. Alston also claimed, in paragraph 36 of his complaint, that GB&H and Mr. Stichel had defamed him in a motion for sanctions they had filed on Trans Union's behalf in the Yvonne Alston Case.

[3] On September 15, 2017, Judge Paula Xinis granted Trans Union's motion for sanctions in the Letren Case. In her Memorandum Opinion, Judge Xinis stated that the factual inquiry made by Letren's counsel had been conducted with "minimal due diligence," including their having elicited "inappropriate legal advice from Thomas Alston . . . a non-attorney with a history of filing frivolous litigation in this Court."

Finally, of consequence to this appeal, in paragraph 19 of his complaint, Mr. Alston alleged:

> Upon information and belief, Defendants Trans Union,[4] S&A, Carlton and Schuckit have defamed Mr. Alston to other individuals and entities in addition to PMI, Trader and Posses. Similarly, Defendants PMI, Trader and Posses have made defamatory statements regarding the Plaintiff to family members, friends, associates and legal professionals.

There are no other facts alleged in the complaint pertaining to the allegations in paragraph 19.

The appellees filed motions to dismiss the complaint based on privilege. S&A and the S&A Lawyers argued that they were protected fully by the absolute litigation privilege, both for the statements they had made in their filings in federal court and for the lone statement about Mr. Alston in the Law360 Article. GH&B likewise argued that the statement they had made in their filing in the Yvonne Alston Case was protected by the absolute litigation privilege. PMI and its reporters, in turn, argued that their statement about Mr. Alston in the Article was protected by the fair reporting privilege. Mr. Alston did not file an opposition to any of the motions to dismiss.

On October 24, 2018, the court held a hearing at which Mr. Alston and counsel for the appellees appeared and argued. The argument focused exclusively on the absolute litigation privilege. Mr. Alston pointed out that he had alleged in paragraph 19 that defamatory statements had been made outside of litigation. The judge commented that paragraph 19 was "just a conclusory statement, doesn't list any particular individuals, no

[4] Trans Union was not named as a defendant in the complaint.

particular family members, no particular friends[.]" The judge stated that she was going to grant the motions to dismiss the complaint. Mr. Alston did not request leave to amend the complaint.

Although motions for sanctions under Rule 1-341 had not been filed, the judge also found that Mr. Alston's case had been filed in bad faith and without substantial justification, within the meaning of that rule, and requested that defense counsel provide the court information about the number of hours they had spent defending the litigation, as well as the fees and costs that had been incurred.

On November 8, 2018, S&A, Mr. Schuckit, and the S&A Lawyers filed a line regarding costs and expenses in accordance with Rule 1-341, attached to which was an affidavit by their counsel attesting to the hourly rates of their attorneys and the time that those attorneys had spent drafting the motion to dismiss and preparing for and attending the hearing on that motion. The total fees and costs came to $3,673. The affiant averred that the rates charged and the number of hours expended were fair and reasonable. On November 15, 2018, the court issued an Opinion and Order, finding that Mr. Alston brought this claim in bad faith and without substantial justification, and ordering that he pay $3,673 to counsel for S&A and the S&A Lawyers.

Meanwhile, on October 29, 2018, Mr. Alston filed a motion to alter or amend the judgment (even though judgment had not yet been entered). In that motion, he argued for the first time that the complaint should not be dismissed with prejudice because he should be allowed to amend it to cure the pleading deficiency in paragraph 19 "by providing

names or more details of the person that received the defamatory statements." Notably, Mr. Alston did not take the opportunity in his motion to provide any of the details lacking in paragraph 19. In their opposition to the motion to alter or amend, S&A and the S&A Lawyers pointed out the dearth of detail in Mr. Alston's motion and asserted that the court's ruling with respect to the litigation privilege was supported by law. In an order entered on December 12, 2018, the court denied Mr. Alston's motion to alter or amend.

Once judgments had been entered, Mr. Alston noted this appeal, posing two questions for review, which we have reworded slightly:

I. Did the circuit court err in dismissing the case with prejudice?

II. Did the circuit court err in finding that the complaint was filed in bad faith?

For the reasons discussed herein, we find no error in the court's dismissal of Mr. Alston's case. We shall, however, vacate the imposition of sanctions, given that the factual findings underlying the court's ruling were clearly erroneous.

DISCUSSION

I.

Dismissal With Prejudice

Mr. Alston does *not* contend that the circuit court erred in granting the appellees' motions to dismiss. He only contends that the court erred by granting the motions to dismiss *with prejudice* and by denying his motion to alter and amend, in which he sought leave to amend his complaint to cure its deficiencies. Moreover, his argument only concerns paragraph 19 of the complaint, in which, as noted above, he alleged:

> Upon information and belief, Defendants Trans Union, S&A, Carlton and Schuckit have defamed Mr. Alston to other individuals and entities in addition to PMI, Trader and Posses. Similarly, Defendants PMI, Trader, and Posses have made defamatory statements regarding the Plaintiff to family members, friends, associates and legal professionals.

He maintains, as he did in his motion to alter or amend, that he should have been allowed to amend the complaint to allege additional facts and thereby cure the factual deficiency in this paragraph.

We note at the outset that neither GH&B, nor any of the individuals in its past or current employ are among the individuals and entities named in paragraph 19. Therefore, this appellate contention is not relevant to the judgment in their favor.

"The determination to allow amendments to pleadings or to grant leave to amend pleadings is within the sound discretion of the trial judge." *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443-44 (2002). For that reason, we review a trial court's denial of a motion to alter and amend for abuse of discretion. *Benson v. State*, 389 Md. 615, 653 (2005). The court's discretion in denying such a motion "is more than broad; it is virtually without limit." *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). Accordingly, we only will reverse the circuit court's denial of Mr. Alston's motion to alter or amend if its decision was "far removed from any center mark imagined." *Central Truck Ctr., Inc. v. Central GMC, Inc.*, 194 Md. App. 375, 398 (2010) (quotation marks and citation omitted).

In reviewing a court's dismissal of a complaint for failure to state a claim, "we ask whether the facts alleged in the well-pleaded complaint, if taken as true, support a cause

of action for which relief may be granted." *Oliveira v. Sugarman*, 451 Md. 208, 219 (2017) (citation omitted). "The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 644 (2010) (citations omitted). In *Piscatelli v. Van Smith*, 424 Md. 294, 306 (2012), the Court of Appeals enumerated the pleading requirements for a claim of defamation, providing:

> In order to plead properly a defamation claim under Maryland law, *a plaintiff must allege specific facts* establishing four elements to the satisfaction of the fact-finder: (1) that the defendant made a defamatory statement to a third person, (2) that the statement was false, (3) that the defendant was legally at fault in making the statement, and (4) that the plaintiff thereby suffered harm.

(Emphasis added; internal quotation marks and citation omitted).

In this case, Mr. Alston failed to allege any facts in paragraph 19 that, if taken as true, would have supported his claim for defamation. Given Mr. Alston's failure to proffer the content of the alleged defamatory statements, the context in which they were purportedly uttered, and the individuals to whom they were supposedly made, he clearly failed to satisfy any of the above-delineated pleading requirements.

At no point during the proceedings did Mr. Alston attempt to cure these deficiencies. As noted above, he neither opposed the appellees' motions to dismiss nor sought leave to amend his complaint. During the hearing on the appellees' motions to dismiss, he did not allege any specific facts which, if taken as true, would have supported his claim for defamation under paragraph 19 of the complaint. Although, in his motion to

alter or amend, Mr. Alston requested permission to amend his complaint, he failed to proffer any information as to what that amendment might include. When it denied Mr. Alston's motion, the court had no more facts and information before it than it had had when it granted the appellees' motions to dismiss.

Mr. Alston had ample opportunity to amend his complaint with sufficiently specific allegations regarding the purported defamatory statements referenced in paragraph 19. He filed the complaint on April 19, 2018. The appellees' motions to dismiss were filed on May 29, May 31, and June 18, 2018. In those motions, the appellees each challenged the adequacy of Mr. Alston's pleadings. The hearing on those motions was not held until October 19, 2018. Mr. Alston had six months to amend his complaint with sufficient factual allegations to support his cause of action but failed to do so. Absent any new information, the court had no reason to think that granting leave to amend would produce a legally viable complaint. Accordingly, the court did not abuse its discretion in denying Mr. Alston's motion and dismissing his case with prejudice.

Sanctions Under Rule 1-341

Mr. Alston contends the circuit court erred in finding that he violated Rule 1-341 by filing the complaint because the factual findings underpinning the court's decision were clearly erroneous. S&A and the S&A Lawyers counter that the court's finding that the complaint was filed without substantial justification was not clearly erroneous because Mr. Alston acknowledged in the complaint that he knew of the existence of the

litigation privilege and, during the hearing on the motions to dismiss, admitted that he "was thinking about dismissing the action."[5]

Rule 1-341 authorizes a court to award attorneys' fees as a sanction in a civil proceeding where a party has maintained or defended a case "in bad faith or without substantial justification." That rule provides, in pertinent part:

> **(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.

A party litigates in "bad faith" when he or she does so "vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons." *Christian v. Maternal-Fetal Medicine Associates of Maryland*, LLC, 459 Md. 1, 21-22 (2018) (quoting *Inlet Assocs. v. Harrison Inn Inlet*, Inc., 324 Md. 254, 268 (1991)). A party lacks a substantial basis for filing a claim when there is no "'reasonable basis for believing that [the] case [would] generate a factual issue for the fact-finder at trial,'" *Inlet Assocs.*, 324 Md. at 268 (citation omitted), and where such claim was not "'fairly debatable, [] colorable,' or otherwise 'within the realm of legitimate advocacy[.]'" *Christian*, 459 Md. at 27 (citation omitted).

[5] Given that S&A and the S&A Lawyers were the only defendants to which the court awarded sanctions, this issue is solely relevant to them.

Before sanctioning a party under Rule 1-341, a court must *explicitly* find that that party litigated in bad faith or without substantial justification. *URS Corporation v. Fort Myer Construction Corp.*, 452 Md. 48, 72 (2017) (citing *Zdravkovich v. Bell Atlantic–Tricon Leasing, Corp.*, 323 Md. 200, 210 (1991)). That finding should "be supported by a 'brief exposition of the facts upon which [it] is based.'" *Id.* (Quoting *Talley v. Talley*, 317 Md. 428, 436 (1989)). We shall affirm a court's finding unless it was either "clearly erroneous or involve[d] an erroneous application of law." *Id.* (Citing *Inlet Associates*, 324 Md. at 267). "[T]o be clearly erroneous is to have reached a decision on the basis of facts that are not legally sufficient to support the decision." *Danz v. Schafer*, 47 Md. App. 51, 63 n.2 (1980). *See also Christian*, 459 Md. at 21 ("So long as 'there is any competent material evidence to support the factual findings of the [] court, those findings cannot be held to be clearly erroneous.'" (Citation omitted)).

The court's finding that Mr. Alston had maintained his case without a substantial basis and had done so in bad faith was based upon its apparent belief that in two prior cases Mr. Alston had filed suit against the appellees alleging the same cause of action as alleged in this case.[6] In its oral ruling, the court explained, as follows, the basis for its decision to impose Rule 1-341 sanctions: "This case was filed after proceedings had occurred in . . . the federal court and, for whatever reason, one side was not happy with

[6] Had that been so, the court's imposition of Rule 1-341 sanctions would have been proper. *See, e.g., Century I Condominium Ass'n, Inc. v. Plaza Condominium Joint Venture*, 64 Md. App. 107, 120-22 (1985).

the end result and so now we have this litigation." In its written opinion, the court provided a more comprehensive explanation of its ruling:

> This same issue and parties were before the Court in prior complaints filed by Thomas Alston ["Plaintiff"] in *Letren v. Experian Information Solutions Inc., et al.*, Case No. 8:14-CV-01180-TDC, and *Alston v. Experian Information Solutions Inc., et al*, 2016 U.S. Dist. LEXIS 117939. In both cases, the Court dismissed the complaints, as Plaintiff's claims were beyond the statute of limitations. While the Court denied the request for attorneys' fees in *Alston*, Plaintiff was advised that he may be subjected to attorneys' fees and costs should the Court find a subsequent complaint involving the same parties and issues was filed in bad faith or without substantial justification. Additionally, the Court advised Plaintiff to seek the services of counsel should he intend to pursue the matter.
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> * * *
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> In this instance, Plaintiff has brought the same claim against the same Defendants on three (3) separate occasions. After the first dismissal the Court alerted Plaintiff of the potential to have fees and costs . . . issued against him. Accordingly, the Court finds that Plaintiff's Complaint in the underlying case was filed without substantial justification and in bad faith.

The record in this case makes clear that neither Mr. Alston nor any of the appellees were among the parties in either case to which the court was referring.[7] In those cases, moreover, the plaintiffs alleged violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681, not defamation.

[7] Troy Alston was the plaintiff in *Alston v. Experian Information Solutions Inc., et al*, 2016 U.S. Dist. LEXIS 117939; Thomas Alston (the appellant here) was not.

Given that the court's imposition of sanctions under Rule 1-341 was predicated on a clearly erroneous factual finding, we shall reverse the judgment for sanctions under that rule.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FOR ATTORNEYS' FEES TO SCHUCKIT & ASSOCIATES, P.C. REVERSED; JUDGMENTS OTHERWISE AFFIRMED. 50% OF COSTS TO BE PAID BY THE APPELLANT; THE REMAINING 50% OF COSTS TO BE PAID BY SCHUCKIT & ASSOCIATES, P.C. AND THE SCHUCKIT & ASSOCIATES ATTORNEYS IDENTIFIED HEREIN.