

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1161

September Term, 2015

NATALIE L. MIDDLETON

v.

AMERICAN PRIDE PROPERTIES, LLC.

Eyler, Deborah S.,
Graeff,
White, Pamela J.
(Specially Assigned),

JJ.

Opinion by White, J.

Filed: August 5, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

After a tax sale of real property in Montgomery County, Appellee American Pride Properties, LLC incurred considerable costs in proceedings to foreclose the former owners' right of redemption, especially in attempting to serve notice on the property owners. On Appellee's motion, the Circuit Court for Montgomery County found that this case presented exceptional circumstances justifying the allowance of supplemental attorney's fees above the statutory sum. After Appellee filed its Complaint, Appellant Natalie L. Middleton requested disclosure of the amount necessary to redeem the property and reimbursed the Appellee for a sum of legal expenses approved by the court. When Middleton failed to pay the taxes due on the property in order to complete the redemption process, Appellee filed a second Motion for Approval of Additional Fees, seeking supplemental attorney's fees on the basis of "exceptional circumstances." The court granted that motion and entered its Amended Order Setting Amount Necessary to Redeem. Middleton filed a timely appeal of that order. The parties identified the issues on appeal,¹ which we restate as follows:

¹ Appellant's questions:

1. Did the Circuit Court abuse its discretion under the applicable tax sale foreclosure statute by including over \$33,500 for Appellee's attorney's fees and costs in its Orders setting the amount necessary for Ms. Middleton to redeem the property?
2. Even if the amount paid by Ms. Middleton pursuant to the first Order Setting Redemption Amount was justified, did the Circuit Court abuse its discretion by requiring her to pay additional legal expenses under a second Order where those expenses were not incurred due to any extraordinary circumstances?

Appellee's questions:

1. Does this appeal cover both the Orders entered by the Circuit Court for Montgomery County awarding supplemental attorney's fees on the basis of exceptional circumstances or does it only cover the second Order granting supplemental attorney's fees? (continued...)

1. Did the circuit court abuse its discretion to find exceptional circumstances warranted reimbursement of attorney's fees in excess of the statutory sum of \$1300?
2. Did the circuit court abuse its discretion to approve reasonable attorney's fees upon granting a second motion for supplemental attorney's fees?

Appellant urges that the trial court abused its discretion in finding the circumstances were "exceptional" within the meaning of § 14-843(a)(4)(iii) of the Tax Property Article. Further, even if a supplemental award of attorney's fees was justified on the facts, the sum allowed is unreasonable. Seeing no abuse of discretion, we affirm the circuit court's finding of exceptional circumstances; however, the court's decision on the record is insufficiently developed to determine whether reasonable attorney's fees were approved. We will vacate the order of the circuit court and remand for further proceedings consistent with this opinion.

Factual and Procedural History

On October 26, 2009, Appellant Natalie L. Middleton and Dr. Ime S. Umanah acquired the property located at 9808 Bencross Drive in Potomac, Maryland as joint tenants. Middleton, a resident of Prince George's County, signed the paperwork for both owners; Umanah, a Nigerian national, granted Middleton power of attorney to act on his behalf. The property is large and of considerable value: Middleton and Umanah paid a total of \$5,300,000.00 to purchase the property; by January of 2014, the property had appreciated to an assessed value of more than \$6,000,000.

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2. Did the Circuit Court abuse its discretion in granting supplemental attorney's fees on the grounds of exceptional circumstances in this case?

On June 11, 2012, the Collector of Taxes for the State of Maryland and the County of Montgomery sold the tax sale invoice to MD TL, LLC RAI Custodian (“MD TL”). The Certificate of Tax Sale followed on June 10, 2013, reporting the sale of legal interest in the property to MD TL for \$2,573,446.59. On September 8, 2014, MD TL filed its Complaint to Foreclose the Equity of Redemption on Property Sold for Nonpayment of Taxes, naming and offering proof of required Notices as to Middleton and Umanah, among others.² An Order of Publication directed those having an interest in the property to appear in court and redeem the property or answer the complaint by October 9, 2014 or there would be entry of a final judgment foreclosing all rights of redemption of the property. The Certificate of Publication was filed on October 14, 2015.

Shortly after MD TL began foreclosure proceedings, Middleton made an abortive effort at redeeming the property. At Middleton’s request, MD TL provided her a partial redemption statement on November 19, 2014, detailing the sum due to redeem the property. On November 25, MD TL filed its First Motion for Approval of Supplemental Attorney’s Fees Due to Exceptional Circumstances. Middleton did not oppose that motion. The circuit court granted that motion, entering an order setting the total redemption amount to “include \$8248 in attorney’s fees in excess above the statutory amount [of \$1300] pursuant to MD Code, Tax Property Article § 14-843(a)(4)(iii).”

² Maryland law provides the owner of property sold at a tax sale a statutory right of redemption. Md. Code Ann. Tax-Prop. § 14-827. By paying the balance of taxes due on the property and reimbursing the tax sale purchaser for its legal costs, a property owner may redeem and reclaim their property. *Id.* § 14-828. This right continues until such time as it has been foreclosed by court order. *See id.* § 14-827.

Middleton reimbursed MD TL for the fees and expenses (\$13,825.21), without objection. However, she failed to pay the taxes due on the property. MD TL reissued summons for both Middleton and Umanah and filed a Motion for Alternative Service regarding both defendants on February 5, 2015. This motion was granted on February 12, 2015. Both joint tenants had proven difficult to serve: Middleton repeatedly evaded process servers, while Umanah had found himself under arrest on suspicion of terrorism charges in his native Nigeria. At some date uncertain, Umanah had moved back to Nigeria where he resided until his sudden death on May 25, 2015.

MD TL filed its Second Motion for Approval of Supplemental Attorney's Fees Due to Exceptional Circumstances, with Affidavit of counsel seeking those additional attorney's fees, and calculating the total amount of \$104,758.45 for taxes, interest, service of process fees, as well as attorney's fees. On March 12, 2015, Middleton filed her Opposition to the motion, challenging the attorney's fee amount of \$17,800 as excessive in light of the fees already paid. Appellee American Pride³ filed its Response to Middleton's Opposition on March 24, 2015. The circuit court heard arguments on the motion on May 27, 2015 and entered its Amended Order Setting Amount Necessary to Redeem, on June 25, 2015, without further elaboration of the fees approved. Middleton then redeemed the property.

Middleton filed her Notice of Appeal on July 23, 2015, challenging the court's approval of supplemental attorney's fees, appealing only "from the Amended Order Setting

³ MD TL assigned the certificate of tax sale to American Pride, also substituting American Pride as party plaintiff by Notice dated March 10, 2015.

Amount Necessary To Redeem entered on June 23, 2015.” An earlier order approving supplemental fees (to which Middleton had not objected before paying those fees) is not the subject of the Notice of Appeal.

Legal Standard

Whether exceptional circumstances exist warranting an award of supplemental attorney’s fees under § 14-843(a)(4)(iii) of the Tax-Property Article is a question entrusted to the sound discretion of the trial court. *See Deinlein v. Johnson*, 201 Md. App. 373, 389 (2011) (discussing identical language in former § 14-843(a)(4)(ii)). *See also, Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 415 (2016); *Monmouth Meadows v. Hamilton*, 416 Md. 325, 322 (2010). An award of attorney’s fees “will not be disturbed unless the [trial] court ‘exercised [its] discretion arbitrarily or [its] judgment was clearly wrong.’” *Ochse v. Henry*, 216 Md. App. 449, 455 (2014) (quoting *Danziger v. Danziger*, 208 Md. 469, 475 (1955)); *see also, e.g., Lockett*, 446 Md. at 415 (award of attorneys’ fees reviewed for abuse of discretion); *Jenkins v. State*, 375 Md. 284, 295 (2003) (“Abuse [of discretion] occurs when a trial judge exercises discretion in an arbitrary and capricious manner or when he or she acts beyond the letter or reason of the law.”).

When a court determines that an award of attorney’s fees is appropriate, reasonableness of a given award “is generally a factual determination . . . [that] will not be overturned unless clearly erroneous.” *E.g., Atlantic Contracting & Material Co. v. Ulico Cas. Co.*, 380 Md. 285, 316 (2004); *Myers v. Kayhoe*, 391 Md. 188, 207 (2006). In calculating this sum, the court “may consider, in its discretion, any . . . factor reasonably

related to a fair award of attorneys' fees." *Congressional Hotel Corp. v. Mervis Diamond Corp.*, 200 Md. App. 500 (2011).

Analysis

In an action to foreclose the right of redemption in which an affidavit of compliance has not been filed, the plaintiff is entitled by statute to reimbursement for attorney's fees in the amount of \$1,300. *See* Md. Code Ann. Tax-Prop. § 14-843(a)(4)(i)(1). Additional fees may be approved for reimbursement if, after a specific request by the plaintiff, the court determines that "exceptional circumstances" exist that warrant such approval. *See id.* § 14-843(a)(4)(iii). The reimbursement amount must be reasonable under the circumstances, to be determined "on a case by case basis."⁴

The circuit court order that is the subject of appeal in this case determined that exceptional circumstances existed, warranting approval of "other reasonable attorney's fees incurred and specifically requested by the plaintiff." *Id.* We hold that, in light of the

⁴ [§ 14-843] (a)(4) If an action to foreclose the right of redemption has been filed, the plaintiff or holder of a certificate of sale may be reimbursed for:

(i) attorney's fees in the amount of:

1. \$1,300 if an affidavit of compliance has not been filed, which amount shall be deemed reasonable for both the preparation and filing of the action to foreclose the right of redemption; or
2. \$1,500 if an affidavit of compliance has been filed, which amount shall be deemed reasonable for both the preparation and filing of the action to foreclose the right of redemption;

* * *

(iii) in exceptional circumstances, other reasonable attorney's fees incurred and specifically requested by the plaintiff or holder of a certificate of sale and approved by the court, on a case by case basis....

Appellant's evasion of service and her former joint tenant's intercontinental relocation, the circuit court did not abuse its discretion in finding exceptional circumstances. However, the record is insufficient to facilitate our review of the reasonableness of the fees approved. We will therefore vacate the judgment of the trial court and remand the matter for further proceedings.

Exceptional circumstances

We first determine whether the trial court abused its discretion in finding that exceptional circumstances existed, justifying approval of supplemental attorney's fees for reimbursement "for both the preparation and filing of the action." Md. Code Ann. Tax-Prop. § 14-843(a)(4)(i). A court may not award fees in excess of the statutory sum unless it first finds that exceptional circumstances exist that warrant a supplementary award. *See id.* § 14-843(a)(4)(iii).

In its Second Motion for Approval of Supplemental Attorneys' fees, Appellee American Pride identified the following as proof of exceptional circumstances: "(1) [t]he property; (2) the value of the property; (3) the owner's equity in the property; (4) the location of Defendant, Umanah, for service of process; and (5) certain attempts by Defendant Middleton to evade service of process." An affidavit from counsel specifying these factors, and copies of invoices for both attorney labor and service of process on Umanah, were appended to the motion.

At the circuit court's May 27, 2015 hearing on the motion, Appellee reiterated these points in oral argument. Middleton's arguments likewise tracked the contents of her filings

with the court. At the close of the hearing, the trial court granted American Pride's motion, stating on the record that:

[B]ased upon what I've seen in the pleadings and heard from counsel here, I think it's appropriate to award additional fees and expenses, in connection with this. So I'm going to simply take it under advisement, and just look at the affidavit that were submitted to narrow down the exact amount. But I think it's appropriate, under the circumstances, that have been outlined in your pleadings.

So I'll grant the award. I'll find that extraordinary circumstances exist, and I'll grant an award of additional fees and expenses, to be determined.

Neither this Court nor the Court of Appeals have defined the sort of circumstances that are 'exceptional' within the meaning of § 14-843(a)(4)(iii). This Court has considered the provision in *Deinlein v. Johnson*, 201 Md. App. 373 (2011), where we declined to give the then-recently enacted language retroactive effect. *See id.* at 388 (construing identical language in former § 14-843(a)(4)(ii)). Accordingly, this Court declined to "determine whether the events [at bar] truly constitute[d] 'extraordinary circumstances.'" *Id.*

The phrase "exceptional circumstances" is not a novelty in Maryland law, albeit, without reference to attorney's fees. The standard is familiar in the family law context, where its use as the standard in third-party child "custody dispute[s] ha[s] been well developed through case law." *See Aumiller v. Aumiller*, 183 Md. App. 71, 80 (2008). "[T]he exceptional circumstances test is an inherently fact-specific analysis that defies a generic definition." *Aumiller*, 183 Md. App. at 81. The standard requiring analysis of all factors bearing on fundamental parental rights concerning child custody may seem less urgent,

less compelling where a statutory allowance of fee reimbursement is at stake in foreclosure cases.

Litigators know “exceptional circumstances” as an essential element of an evidentiary hearsay exception. Md. R. 5-803(b)(24); *State v. Walker*, 345 Md. 293, 318, 325 (1997) (enumerating elements required to apply the exception). Only “new and presently unanticipated situations” rise to the level of “exceptional circumstances” justifying a hearsay exception. *Id.* at 325 (quoting Md. R. 5-803 advisory cmte. note). This evidentiary standard appears more apt for the statutory allowance of supplemental attorney’s fees under § 14-843(a)(4)(iii).

Actions brought to foreclose a right of redemption are comparatively predictable. These actions run on such familiar rails that the General Assembly has already calculated the reimbursement sums that can “be deemed reasonable” in the mill-run suit. *See* Md. Code Ann. Tax-Prop. § 14-843(a)(4)(i). Having provided a uniform award it deemed appropriate in the typical case and set out in § 14-843(a)(4), the General Assembly did not intend to render the statutorily-provided sums superfluous. Instead, borrowing the evidentiary Rule 5-803(b)(24) standard, we analogize that § 14-843(a)(4)(iii) permits a supplemental award of attorney’s fees ‘for both the preparation and the filing of the action’ when it finds that exceptional circumstances exist, presenting a “new and . . . unanticipated situation.” *See Walker*, 345 Md. at 325.

We conclude that the circuit court did not abuse its discretion in finding that exceptional circumstances existed warranting a supplemental award of attorney’s fees. In

order to foreclose the right of redemption, Appellee was required to serve both Appellant and Umanah as joint tenants. Because Appellant actively evaded service of process and Umanah had relocated to Nigeria, Appellee incurred considerable and abnormally large costs in providing them adequate notice of the proceedings. Appellee aptly described extended, good faith efforts to serve both Umanah and Middleton. On this basis alone,⁵ the Circuit Court reasonably could have concluded that this case presented novel and unanticipated circumstances required by § 14-843(a)(4)(iii). Accordingly, we find that the court did not abuse its discretion in finding that exceptional circumstances existed warranting approval of supplemental attorney's fees.

Reasonable attorneys' fees

We next consider whether the supplemental attorney's fees ordered by the circuit court were reasonable within the meaning of § 14-843(a)(4)(iii). Appellant challenges the reasonableness of the fees on the grounds that the Amended Order Setting Amount Necessary to Redeem does not include any findings of reasonableness regarding the attorney's fees claimed and allowed for reimbursement for Appellee. Middleton asserts that "certain charges were double-billed" and/or were "clearly excessive and unreasonable by any measure." Appellee had argued, with counsel's Affidavit, that its fees incurred were

⁵ In its brief, the Appellee alleges that "the extraordinary [sic] high value of the Property, and the equity in the property" provide additional support for a finding of extraordinary circumstances. *See* Appellee's Brief at 21. We are unpersuaded. The purpose of § 14-843(a)(4)(iii) is to permit plaintiffs to recover attorneys' fees above the statutory baseline when unusual circumstances result in abnormally high costs. The fact that the property is valuable and the owners have considerable equity in said property does not increase the foreclosing party's costs.

“fair and reasonable for necessary services rendered in this case, particularly in light of the exceptional circumstances presented in this case.” Appellee now contends that the trial court did not err in approving the attorney’s fees as reasonable, because the court had “rejected [Appellant’s arguments] and found in favor of Appellee based on the full record developed which included the detailed invoices which showed by date the work done, the hours spent and the billing rate.”

Appellate authorities have addressed the necessary articulation of reasonableness of attorney’s fees in certain statutory⁶ and contractual⁷ contexts. In *Sczudlo v. Berry*, 129 Md.App. 529, 553 (1999), this Court determined that the trial court had “erred in making an award of attorney’s fees ... absent consideration and sufficient proof of the reasonableness of the fees,” consistent with statutory criteria in the Family Law Article⁸ where there is no determination of any prevailing party. In *Sczudlo*, there was “nothing in the record that reflects any consideration by the court as to the reasonableness of appellee’s attorney’s fees.” *Id.* at 550.

In *Collins v. Collins*, 144 Md.App. 395 (2002), the trial court had applied the statutory factors for an award of attorney’s fees but did not address reasonableness upon stating only the amount of the award and that a judgment would be entered. This Court cited *Rauch v. McCall*, 134 Md.App. 624, 639 (2000), *cert. denied*, 362 Md. 625 (2001), to instruct, on remand, an express discussion of reasonableness based on factors such as “labor, skill,

⁶ Over 100 Maryland statutes permit an award of attorney’s fees for violation of the statute.

⁷ *Monmouth Meadows Homeowners Ass’n v. Hamilton*, 416 Md. 325, 333-34 (2010).

⁸ Family Law Article Section 12-103(a), (b).

time, and benefit received.” *Id.* at 449. *See also Flanagan v. Flanagan*, 181 Md.App.492 (2008) (remanded for discussion of reasonableness of fees awarded). Perhaps most importantly, the criteria listed in the Maryland Lawyers’ Rules of Professional Conduct for billing fees, MLRPC 1.5(a), must be considered in assessing reasonableness of attorney’s fees. *Rauch*, 134 Md.App. at 640-41.⁹

More recently, Maryland Rule 2-703, effective January 1, 2014, governs virtually all “claims for attorneys’ fees allowable by law to a party in an action in a circuit court.” Md. R. 2-703(a); *see also* Md. R. 2-702 (enumerating applicable scope of Title 2, Chapter 700 Rules).¹⁰ Rules 2-702 and 2-703 “apply to actions in which, by law or contract, a party is entitled to claim attorneys fees from another party.” Rule 2-702(a). While Rule 2-703 affords trial judges broad discretion in “develop[ing] the appropriate procedure for

⁹ The factors include:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer;
3. The fee customarily charged in the locality for similar legal services;
4. The amount involved and the results obtained;
5. The time limitations imposed by the client or by the circumstances;
6. The nature and length of the professional relationship with the client;
7. The experience, reputation, and ability of the lawyer or lawyers performing the services; and
8. Whether the fee is fixed or contingent.

¹⁰ Maryland Rule 2-702(a) is subject to certain exclusions, including actions brought “to foreclose a lien under Title 14 of the Maryland Rules.” Md. R. 2-702(b). While this case is governed by Title 14, it is *not* an action to foreclose a lien. Lien foreclosures are governed by Title 14, Chapter 200, *see* Md. R. 14-201(a); the instant action to foreclose a property owner’s right of redemption, on the other hand, is governed by Chapter 500, *see* Md. R. 14-501. By its plain terms, Rule 2-702(b) excludes only lien foreclosures and not actions to foreclose rights of redemption. Accordingly, the circuit court’s calculation of reasonable attorney’s fees should address the factors set forth in Rule 2-703.

[calculating a fees award in a] particular case,” Md. R. 2-703 advisory committee’s note at ¶ 1, it provides clear evidentiary standards a court must utilize in making that determination, Md. R. 2-703(f). Specifically, a court’s calculation of fees allowable by statute generally ought to embrace the following factors:

- (A) the time and labor required;
- (B) the novelty and difficulty of the questions;
- (C) the skill required to perform the legal service properly;
- (D) whether acceptance of the case precluded other employment by the attorney;
- (E) the customary fee for similar legal services;
- (F) whether the fee is fixed or contingent;
- (G) any time limitations imposed by the client or the circumstances;
- (H) the amount involved and the results obtained;
- (I) the experience, reputation, and ability of the attorneys;
- (J) the undesirability of the case;
- (K) the nature and length of the professional relationship with the client;
- and
- (L) awards in similar cases.

Md. R. 2-703(f)(3).

Certain substantive statutes may set out their own jurisdictional and procedural criteria, but Rules 2-702 and 2-703 inform as to evidentiary requirements and standards in actions where an award of attorney’s fees is allowed by law. As explained by the Rules Committee upon the Court of Appeals approval of Rule 2-703 (e) and (f):

[The Rules] provide evidentiary standards for determining the reasonableness of any fee, which are in accord with the Court’s holdings in *Monmouth Meadows v. Hamilton*, 416 Md. 325, 333-334 (2010). Consistent with the Court’s rulings in *Admiral Mortgage v. Cooper*, 357 Md. 533, 550-553 (2000) and *Friolo v. Frankel*, 403 Md. 443, 457 n.12 (2008), the rule also specifies that the reasonableness of a fee in these statutory claims must be determined by the judge. Section (g) permits the denial or grant of an

award to be included either in the judgment entered on the underlying claim or in a separate judgment, but does require the court, in either event, to state the basis for its findings. (emphasis added).

The record below is insufficiently detailed to determine which factors, if any, the trial court considered in calculating and approving “reasonable” fees for reimbursement. The Affidavit offered by Appellee may have provided pertinent detail, however the court did not explain that to be the case. Upon granting the Appellee’s Second Motion for Approval of Attorney’s Fees at the May 27, 2015 hearing, the trial judge summarily concluded:

So, I’ll grant the award. I’ll find that extraordinary circumstances exist, and I’ll grant an award of additional fees and expenses, to be determined. And then I’ll include that in the order, setting the amount for redemption. You’ve submitted an order. If it varies from the \$17,800, I’ll make an amendment to that order.

The court did not elaborate on how it determined the reasonableness of that sum. Nor did it do so in its subsequent order granting Appellee’s motion. While a trial court may properly determine that a fee amount is “reasonable”, it also is obliged to state, on the record, its basis for that determination. *See* Md. R. 2-703(g), *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 428 (2015) (pursuant to Maryland Rule 2-703, “[a]fter considering any such evidence and related argument [regarding approval of attorney’s fees], the court should state the basis for the exercise of its discretion to grant or to deny an award.”). When the record contains insufficient information, any award must be vacated and the matter remanded to the trial court for further findings. *See Friolo v. Frankel*, 373 Md. 501, 529-30 (2003).

Upon vacating the order of the circuit court and remanding for the court to calculate reasonable fees approved, the trial court must provide sufficient information on the record “to enable a reviewing court to follow [its] reasoning.” *Bd. of Trustees, Comm’y Coll. of Balt. Co. v. Patient First Corp.*, 444 Md. 452, 486 (2015) (citing *Monmouth Meadows Homeowners Ass’n, Inc. v. Hamilton*, 416 Md. 325, 340 n.13 (2010)); *Friolo*, 373 Md. at 529. On remand, the circuit court may assess the criteria enumerated in Rule 2-703(f)(3) to determine reasonableness of the allowance of fees incurred in the exceptional circumstances already determined.

In vacating the judgment of the circuit court, we also make clear that we have neither found that the trial judge abused his discretion nor held his findings clearly erroneous; on remand, the attorney’s fees approved may well prove entirely appropriate. On the current record, however, we are simply unable to accurately assess the reasonableness of the circuit court’s approval of fees for reimbursement. Accordingly, the trial court’s statement of reasons, on the record or by memorandum opinion, necessarily will address the adequacy of information provided, the substance and mechanism for calculating fees, all for the court to make a reasoned and well-supported analysis of reasonable attorney’s fees allowed for reimbursement.

**AMENDED ORDER SETTING AMOUNT
NECESSARY TO REDEEM OF THE CIRCUIT
COURT FOR MONTGOMERY COUNTY
VACATED IN PART AND CASE REMANDED TO
THAT COURT FOR FURTHER PROCEEDINGS
NOT INCONSISTENT WITH THIS OPINION.
COSTS TO BE DIVIDED EVENLY BETWEEN
THE PARTIES.**