

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2559

September Term, 2015

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G. PHILIP NOWAK, ET. UX.

v.

JOHN L. WEBB, SR., ET AL.

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Krauser, C.J.,  
Nazarian,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: April 6, 2017

\*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.

In 2009, G. Philip Nowak and Barbara O. Nowak, appellants, hired a contractor to erect a fence, enclosing a .26 acre tract, near the eastern boundary line of their property and to remove from that site a stand of trees. Their neighbors, John L. Webb and Ruth G. Webb, appellees, owned property adjacent to appellants' property, and a survey of their property, in 2000, indicated they were the rightful owners of the .26 acre tract claimed by appellants. Consequently, appellees filed suit in the Circuit Court for Washington County against appellants, alleging trespass and destruction of merchantable timber. Appellants responded, by filing a counter-complaint to quiet title, claiming that they owned the disputed property. On November 9, 2010, the circuit court entered judgment in favor of appellants and dismissed appellees' trespass and unlawful timbering claims. This Court affirmed that judgment and then, so did the Court of Appeals. *Webb v. Nowak*, No. 2315, Sept. Term 2010 (filed July 25, 2012); *Webb v. Nowak*, 433 Md. 666 (2013).

Appellants subsequently filed a Rule 1-341 motion to recover, from appellees, costs and reasonable expenses, including attorneys' fees, asserting that appellees had pursued their claims for trespass and unlawful timbering, without substantial justification, because they had sustained no damages. The circuit court denied appellants' motion and, upon appeal, this Court affirmed the decision. *Nowak v. Webb*, No. 2403, Sept. Term 2013 (filed May 6, 2015). Appellants then petitioned the Court of Appeals for certiorari. That petition was denied.

On September 23, 2015, appellees filed a Rule 1-341 motion for sanctions, asserting that appellants had appealed the denial of their own request for sanctions in bad

faith and without substantial justification. On December 22, 2015, the circuit court, after a hearing, entered an order granting appellees’ motion and awarded them attorneys’ fees in the amount of \$13,987. Appellants then noted this appeal, contending that the circuit court erred in granting appellees’ motion for sanctions.

Appellants claim that the circuit court finding that they lacked substantial justification to appeal the denial of their request for attorneys’ fees is not supported by the record. They also contend that the circuit court did not make the required finding that their appeal lacked substantial justification, and therefore, the award of attorneys’ fees was an abuse of discretion. And, finally, they maintain that appellees’ motion for sanctions was unjustified and frivolous, and untimely filed. For the reasons to be discussed, we affirm.

To begin with, appellants’ contention that appellees’ motion for sanctions was untimely filed is without merit, because it is clear that a party’s entitlement to attorneys’ fees is collateral to the merits of the action, and, furthermore, “attorney’s fees may be sought after a final judgment has been entered.” *Litty v. Becker*, 104 Md. App. 370, 373 (1995). Thus, the circuit court did not err in considering appellees’ motion.

In *Inlet Associates v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267 (1991), the Court of Appeals held that a court must make a finding as to bad faith and/or lack of substantial justification when considering a motion for sanctions. On review, this finding will be affirmed unless it is clearly erroneous. *Id.* The test for determining lack of substantial justification is whether a party had a reasonable basis for believing that the claims would generate an issue of fact for the fact finder. *Id.* at 268. After finding bad faith and/or lack

of substantial justification, a court must then determine whether an award of costs and/or attorneys’ fees is merited, which will be affirmed on review unless the finding was an abuse of discretion. *Id.* at 267-268.

In the instant case, appellants appear to assert that their own motion for sanctions and subsequent appeal of its denial were incorrectly decided and, therefore, there is no evidence on the record which would support a finding that they had commenced and maintained their appeal in bad faith or without substantial justification. We disagree.

The circuit court found that appellees had filed claims for trespassing and destruction of merchantable timber based on a survey that placed the disputed .26 acre tract within the western boundary of their property. Moreover, the court described the arguments appellees had advanced at trial as to their ownership of the property as “persuasive.” The record also reflects that the appellees’ forestry expert ascribed a merchantable value to the trees removed from the disputed property. In light of appellees’ good faith, albeit mistaken, claim to title upon which the trespass and unlawful timbering proceedings were maintained, the circuit court did not find “any basis in law” upon which appellants could appeal the denial of their motion for sanctions. Although the circuit court stopped short of finding that appellants’ motives were “spiteful” in maintaining their appeal, the court did find a lack of substantial justification on their part.

We hold there was no abuse of discretion in awarding attorneys’ fees where the court found appellants’ appeal was meritless.

**JUDGMENT OF THE CIRCUIT COURT  
FOR WASHINGTON COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**