

Circuit Court for Howard County
Case No. C-13-FM-18-001384

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0006

September Term, 2023

ELISABETH BROOKE WAKEMAN

v.

MARK DAVID DEMPSEY

Reed,
Beachley,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: August 25, 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).

On October 14, 2021, Mark Dempsey, the Appellee, filed a Complaint for Sale in Lieu of Partition of Real Property in the Circuit Court for Howard County. The Complaint argued that the marital home occupied by his ex-wife, Elisabeth Wakeman, the Appellant, should be sold by a trustee. Litigation proceeded for a year and the Appellant filed two motions in October of 2021 to stay the distribution and conform distribution for the sale of the former family home. The Appellee filed oppositions to both motions and requested reasonable counsel fees. On November 18, 2022, the circuit court granted the Appellee's motions to strike the Appellant's motions. The circuit court also awarded reasonable counsel fees to the Appellee for having to defend against the motions. On February 1, 2023, the circuit court ordered the Appellant to pay \$2,926.50 in counsel fees to the Appellee. The Appellant filed an appeal of this order on March 1, 2023.

In bringing her appeal, Appellant presented seven questions for appellate review.¹ In an order denying Appellant's Motion to Consolidate Appeal of Four Lower Court Orders

¹ The Appellant's questions, as originally presented, were:

- I. Whether the trial court erred in entering four "post-judgment" Orders dated February 1, 2023, February 27, 2023, June 23, 2023, and June 23, 2023, without affording the Appellant her procedural due process rights to notice, an opportunity to be heard, and an impartial tribunal.
- II. Whether the "post judgment" Order dated February 1, 2023 (awarding attorney fees to the Appellee which had already been denied at the January 5, 2023 "final" hearing), violates the principle of *res judicata* and should, therefore, be reversed.
- III. Whether, assuming *arguendo*, that the "post-judgment" Order dated February 1, 2023 is not *res judicata*,[] the Order should be reversed because the trial court failed to consider the criteria for making an award

Dated February 1, 2023, February 27, 2023, June 23, 2023, and June 23, 2023, this Court limited the scope of review to this current appeal to the February 1, 2023 Order only. Based on this order, we will only be addressing the Appellant’s first three questions, which we rephrase as:

- I. Whether the February 1, 2023 Order violated the Appellant’s procedural due process rights?
- II. Whether the February 1, 2023 Order violates the principle of *res judicata*?
- III. Whether the trial court failed to consider the criteria for making an award of attorney fees in a family law case?

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- IV. Whether the trial court erred in entering the “post-judgment” Order dated February 27, 2023 (denying Appellant’s Petition for Contempt, etc.) on the bases [sic] that the case was “closed” and the issue of contempt was “moot.”
 - V. Whether the “post judgment” Order dated February 27, 2023 (denying Appellant’s Petition for contempt, etc.) should be reversed and remanded to the trial court for a two day, evidentiary hearing before a specially assigned trial court judge after the Appellant has had an opportunity to file a Supplemental Petition for contempt, etc., propound discovery, and process the information needed to calculate the arrears.
 - VI. Whether the trial court erred in entering the two “post-judgment” Orders dated June 23, 2023 when the first of the two Orders was based on Motion that had been superceded [sic] by another Motion and was based on the erroneous premise that the trial court could, *sua sponte*, exercise its revisory power seven (7) months after the “final” hearing.
 - VII. Whether the trial court erred in entering the two “post-judgment” Orders dated June 23, 2023 when the second of the two Orders scheduled a Show Cause hearing on the Appellant’s Petition for Contempt, etc. for one-half hour in a complex matter that could not be properly heard in less than a two (2) day hearing.

This Court will not address questions four through seven.

For the following reasons, we vacate and remand. Although we hold that the February 1, 2023 Order did not violate the Appellant’s due process rights and that *res judicata* does not apply to the facts of this case, we hold also that the lower court was not clear as to which Rule or statutory provision it relied on when it granted attorney’s fees, i.e. Md. Rule 1-341, Md. Code, Fam. Law § 8-214(b), or Md. Code, Fam. Law § 8-214(d), we remand this matter to the circuit court for clarification.

FACTUAL & PROCEDURAL BACKGROUND

The parties were married in New Mexico in October of 2010, before moving back to Maryland in 2012. The parties had two children together: one born in 2008, the other in 2010. On August 22, 2018, the parties entered into a marital settlement agreement (the “Agreement”). The parties divorced on February 22, 2019, and the Agreement was incorporated, not merged, into the Judgment of Absolute Divorce.

The Agreement set out that the Appellee would pay monthly child support to the Appellant. The Appellant was given the exclusive right to reside in the former marital home until it was no longer her primary residence. While occupying the home the Appellant would pay a portion of the monthly mortgage and the Appellee would pay the remaining balance. However, after the divorce was finalized, the parties did not follow the Agreement. The Appellant continued to live in the marital home with the two children until approximately August 2022. Rather than the Appellant paying a portion of the monthly

mortgage, the Appellee paid the full mortgage amount (approximately \$2,700) in lieu of paying child support to Appellant.²

According to Appellant, the parties met with a realtor in the Spring of 2021 to discuss the marital home. The Appellant asserts that she wanted to buy out the Appellee's interest but the plans had to be put on hold while the Appellant tried to get approved for a mortgage loan. The home was then appraised in June 2021. On July 14, 2021, both parties signed a letter of agreement which stated that the Appellee understood that he would be receiving payment from an inheritance the Appellant received and not the settlement of the home. The letter of agreement said that it superseded the divorce agreement and that payment was due by September 1, 2021.

The Appellant then experienced problems obtaining a mortgage in her name because she needed six months of consecutive employment and six months where the child support was part of her income history. During this period, Appellant alleges that the parties were still working together with the goal that Appellant would obtain a mortgage and buy out Appellee's interest. In September 2021, Appellee began transferring child support payments directly to Appellant who would then transfer them to the mortgage company to create a history of payments. However, before Appellant could begin the mortgage process,

² Appellant claims that following their divorce, the parties had a phone conversation in which Appellee told her that he would pay child support in the form of mortgage payments, reasoning that it would be roughly the equivalent. The parties carried on this way until the Summer of 2021. Appellant said neither party realized that paying child support through indirect mortgage payments was wrong. She further stated that she didn't realize that Appellee was underpaying her by at least \$700 a month through their arrangement.

the parties' understanding began to falter. According to Appellant, Appellee started sending emails in August 2021 threatening that if she did not complete the buyout or sell option within thirty days, he would petition the court to force the sale of the property.

On October 14, 2021, Appellee filed a Complaint for Sale in Lieu of Partition of Real Property in the Circuit Court for Howard County. In the complaint, the Appellee argued that two years had passed since the Appellant's exclusive right to occupy the home had terminated, and the home remained unsold. The Appellee requested that the court appoint a trustee to sell the property, and that the Appellant should be responsible for all costs incurred by the Trustee.

Litigation proceeded for a year, with the Appellant initially representing herself *pro se*. The Appellee's petition for sale was granted on March 17, 2022, and the court appointed a trustee to complete the sale. The court also ordered that the Appellee was entitled to one-half of the mortgage payments made from July 1, 2019, through the sale. The case was then closed on July 8, 2022, after the Appellant's motions for reconsideration and emergency motions were denied.

The report of sale for the former marital home was filed on September 7, 2022. On September 23, 2022, the Appellant filed an objection to the disbursement of the trustee's fees. The Appellant argued that disbursement should be delayed until any issues with the accounting of the sale are resolved by the circuit court.

On October 6, 2022, Appellant filed a Motion for Temporary Stay of the Distribution of the Net Proceeds of the Sale of the Former Family Home by the Court-Appointed Trustee. The motion argued that the Appellee's allegations about the Appellant

trying to block the sale of the family home were false and the Court needed to hear evidence before making decisions about the sale of the former family home. The next day, Appellant filed a Motion to Conform Distribution of the Net Proceeds of the Former Family Home. The Appellant further argued that the Appellee was not entitled to one-half of the mortgage payments and for direct disbursement of the Appellee's proceeds.

On October 21, 2022, the Appellee filed his Opposition to the Appellant's Motion to Conform Distribution of the Net Proceeds. The same day, the Appellee filed a Motion to Strike the same motion. The Appellee argued that the Motion to Conform violated the Maryland Rules by not containing authority in support of the grounds and containing facts not in the record or supported by an affidavit. In the Opposition, the Appellee asked the circuit court to deny the Appellant's motion and requested reasonable counsel fees. The Appellee also filed an Opposition to the Motion for Temporary Stay, asking for a denial of the motion and the award of reasonable counsel fees. Appellee argued that the Motion for Temporary Stay was void of authorities in support of each ground and was based on facts not contained in the record.

On November 18, 2022, the circuit court granted the Appellee's motion to strike the Appellant's Motion to Conform Distribution of the Net Proceeds of the Former Family Home and also ordered that the Appellee would be awarded reasonable counsel fees incurred in having to defend against the motion. Another order from the same day ordered that the Appellant's Motion for Temporary Stay of the Distribution of the Net Proceeds of the Sale of the Former Family Home by the Court-Appointed Trustee was denied, and the Appellee was to be awarded reasonable counsel fees incurred in having to defend against

the motion.³ On December 2, 2022, Appellee filed a line with affidavits in support of the counsel fee awards. Appellee also filed a chart of his counsel's fees from March 2022 through November 2022, which totaled to \$38,663.00. In the affidavit, Appellee's counsel stated she incurred \$2,926.50 to defend the two motions.

On January 5, 2023, there was a hearing on trustee's fees before the Circuit Court. According to the hearing sheet, the trustee's petition for trustee's fees was granted, the Appellee's motion to dismiss was denied, the Appellee's motion for reimbursement and further relief was granted, and the Appellee's request for counsel fees was denied. On January 12, 2023, the case was closed again.

³ The November 18, 2022 Order states:

UPON CONSIDERATION of the Defendant's Motion for Temporary Stay of the Distribution of the Net Proceeds of the Sale of the Former Family Home by the Court-Appointed Trustee and Plaintiff's Opposition thereto, it is thereupon this 11/18/2022, by the Circuit Court for Howard County, Maryland:

ORDERED, that the Defendant's Motion for Temporary Stay of the Distribution of the Net Proceeds of the Sale of the Former Family Home by the Court-Appointed Trustee, shall be and is hereby DENIED; and it is further

ORDERED, that the *Plaintiff shall be and is hereby awarded his reasonable counsel fees* incurred in having to defend against the Defendant's Motion for Temporary Stay of the Distribution of the Net Proceeds of the Sale of the Former Family Home by the Court-Appointed Trustee, with the amount of reasonable counsel fees owed by the Defendant to the Plaintiff to be determined upon the submission of a fee affidavit, which shall be submitted to this Court within fifteen (15) days.

(emphasis added).

On February 1, 2023,⁴ the circuit court ordered the Appellant to pay the Appellee's counsel \$2,926.50 in attorney's fees "in connection with having to defend against [Appellant's] Motion for Temporary Stay of the Distribution of the Net Proceeds of the Sale of the Former Family Home by the Court-Appointed Trustee and having to defend against [Appellant's] Motion to Conform Distribution of the Net Proceeds of the Former Family Home." Appellant filed this appeal on March 1, 2023, appealing the February 1 Order.

On March 27, 2023,⁵ Appellant filed an additional appeal against a February 27, 2023 Order from the circuit court denying the Appellant's Petition for Contempt of Judgment of Absolute Divorce. The Appellant requested that the appeals be consolidated. On July 18, 2023, Appellant filed a motion to consolidate the appeal with two additional orders on June 23, 2023 which reversed the February 27, 2023 Order and scheduled a Show Cause hearing for contempt. On August 2, 2023, this Court ordered that the motion to consolidate was denied and the challenge to the February 27, 2023 Order was moot because the order was vacated. Appellant moved to reconsider the order, which this Court denied.

This appeal is limited to the February 1, 2023 Order which awarded the Appellee nearly \$3,000 in attorney's fees for defending the motions which Appellant filed between October and November 2022. The Appellee did not file any opposition motions or briefs

⁴ February 1 is the date that the order was signed, but the order was entered on February 2, 2023. For consistency with the Appellant's arguments we will also refer to this order by the date of its signing.

⁵ The appeal was initially filed on March 27, 2023, but the filing was deficient, so it was refiled on April 17, 2023.

before this Court, so we are limited to reviewing the Appellant’s brief and filings from both parties in the circuit court.

DISCUSSION

Violation of Due Process Rights

A. Party’s Contentions

Appellant argues that the Order violated her procedural due process rights, including the right to notice, an opportunity to be heard, and the right to be heard by an impartial tribunal. Appellant argues the trial court entered the orders *sua sponte* and that the orders were contradicting or reversing prior orders. Appellant claims that in the absence of an evidentiary hearing, the orders were given in error.

B. Standard of Review

When a constitutional challenge is raised, appellate courts review using a *de novo* standard because “[t]he proper scope of a constitutional right, and its application to a particular set of facts, are issues of law.” *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 339 (2020). “[A] denial of due process claim is tested by analyzing the totality of the facts in the given case.” *Id.* (citing *Wagner v. Wagner*, 109 Md. App. 1, 24–25 (1996)).

C. Analysis

The general principle is that “each party to a case is responsible for the fees of its own attorneys, regardless of the outcome.” *Royal Inv. Group, LLC v. Wang*, 183 Md. App. 406, 456 (2008). There are exceptions to that rule. A circuit court in a civil action may award one party the costs of reasonable attorney’s fees “if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without

substantial justification.” Md. Rule 1-341. This rule can be an effective deterrent against “unnecessary or abusive litigation.” *Zdravkovich v. Bell Atl.-Tricon Leasing, Corp.*, 323 Md. 200, 209 (1991); *see also Worsham v. Greenfield*, 435 Md. 349, 369 (2013) (“It is clear from the history of the Rule, and the case law interpreting it, that Rule 1–341 was intended to function primarily as a deterrent.”). The rule “should not be construed as a punishment but merely as a mechanism to place ‘the wronged party in the same position as if the offending conduct had not occurred.’” *Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. 1, 19 (2018) (quoting *Major v. First Virginia Bank–Central Md.*, 97 Md. App. 520, 530 (1993), *cert. denied*, 334 Md. 18 (1994)).

This case concerns a more specific application of the rule awarding costs in the family law context. As this litigation arose out of the parties selling the marital home, Section 8-214 of the Family Law statute also provides two means for a party to recover attorney’s fees, discussed in more detail in the third issue.⁶

⁶ The statute reads in full:

“Reasonable and necessary expense” defined

- (a) In this section, “reasonable and necessary expense” includes:
- (1) suit money;
 - (2) counsel fees; and
 - (3) costs.

Order to pay

- (b) At any point in a proceeding under this subtitle, the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding.

Required considerations

- (c) Before ordering the payment, the court shall consider:

Due process is a “flexible concept that calls for such procedural protection as a particular situation might demand.” *Est. of Brown v. Ward*, 261 Md. App. 385, 456 (2024) (quoting *Knapp v. Smethurt*, 139 Md. App. 676, 704 (2001)) (internal quotations omitted). At the core of due process is “the right to notice and a meaningful opportunity to be heard.” *Id.* (quoting *Knapp*, 139 Md. App. at 704). “[D]ue process merely assures *reasonable* procedural protections, appropriate to the fair determination of the particular issues presented in a given case.” *Id.* at 456–57 (quoting *Wagner v. Wagner*, 109 Md. App. 1, 24 (1996)) (emphasis in original).

Procedural due process applies “to the assessment of attorney’s fees for litigation misconduct.” *Talley v. Talley*, 317 Md. 428, 434 (1989). “[A]ttorney’s fees certainly should not be assessed lightly or without fair notice and an opportunity for a hearing on the record.” *Id.* at 434–35 (quoting *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 767 (1980)).

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- (1) the financial resources and financial needs of both parties;
and
 - (2) whether there was substantial justification for prosecuting or
defending the proceeding.

Party to pay

(d) Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party the reasonable and necessary expense of prosecuting or defending the proceeding.

Reimbursement

(e) The court may award reimbursement for any reasonable and necessary expense that has previously been paid.

“[D]ue process requires ‘at a minimum, that before sanctions are imposed pursuant to Rule 1-341, there must be notice and an opportunity to respond.’” *Fowler v. Printers II, Inc.*, 89 Md. App. 448, 482 (1991) (quoting *Zdravkovich*, 323 Md. at 209).

We first disagree with the Appellant that the February 1, 2023 Order was issued *sua sponte*. The February 1 Order was in response to orders on November 18 which awarded the Appellee attorney’s fees for having to defend against two of the Appellant’s motions which the circuit court denied. The circuit court then requested an affidavit of fees from the Appellee, which was filed on December 2, 2023. The court then awarded the amount of fees that were requested in the affidavit. The Appellant was on notice that these filings were made.⁷ The parties were served on November 18, all parties were served online with the Order striking Appellant’s Motion to Conform Distribution and awarding Appellee attorney fees upon submission of the fee affidavit within fifteen days. Likewise, on February 2, all counsel of record were served with the circuit court’s order and Appellant was aware of this because she filed a motion for reconsideration the following day. The order was not *sua sponte* and the Appellant was on notice of the filings that led to these orders, so there was no due process violation from the order itself.

Next, we turn to whether a hearing was required in this case. The Appellant had requested a hearing in the Motion to Confirm Distribution filed on October 7, 2022. The

⁷ The Appellant does not allege that there was error in online service of any of the documents or that there was a failure of service. “On the effective date of filing, the MDEC system shall electronically serve on registered users entitled to service all other submissions filed electronically.” Md. Rule 20-205(d)(1). The Appellant was on notice of these filings and had the ability to respond in any manner permitted by the rules.

Maryland Rules provide that “[e]xcept when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.” Md. Rule 2-311. In *Fowler v. Printers II, Inc.*, this Court held that a request for sanctions under Rule 1-341 was not a “a ‘claim’ or ‘defense’ involving a cause of action,” but instead “one involving an argument on matters collateral to that cause of action.” 89 Md. App. 448, 486 (1991). As a result, the trial court was permitted to deny a motion for sanctions without holding a hearing. *Id.*

Here, we similarly find that the February 1 Order was on a matter collateral to the cause of action. After the home was sold, the remaining issue was on the distribution of the proceeds from the sale. The Appellant filed additional motions on that issue, which the Appellee argued to the court should be dismissed because the motions: (1) contained facts not in the record and not supported by an affidavit; (2) did not state with particularity the authorities in support of each ground; and (3) was completely void of authorities. The Appellee explained that because the Appellant’s motions were filed without substantial justification the Appellee should be awarded reasonable counsel fees incurred for defending against the motions.

While a hearing may have been helpful or appropriate to fully flesh out the issues, the court was not necessarily required to hold an evidentiary hearing to satisfy due process. *See Wagner*, 109 Md. App. at 24 (stating “[w]ith respect to legal issues, due process does not even necessarily require that parties be given an opportunity to present argument”); *see also Drolsum v. Horne*, 114 Md. App. 704, 713 (1997) (stating that due process is met

when “there is at some stage an opportunity to be heard suitable to the occasion”) (citations omitted). The circuit court had sufficient information to evaluate the motion in the absence of a hearing since the issues the Appellee raised could be evaluated from the motions themselves. We hold there was no due process violation from the circuit court’s decision to rule on the issue of attorney’s fees in the absence of a hearing.

There was no due process violation in the manner that the trial court handled the award of attorney’s fees that arose out of the Appellant’s deficient motions.

Violation of Res Judicata

Appellant argues that the order also violated the principle of *res judicata* by awarding attorney’s fees when they were previously denied at the January 5, 2023 hearing. Appellant argues that the January 5 hearing was a final hearing and the attorney’s fees were denied in a written order.

Res judicata bars relitigating claims when there was a prior final judgment in which “the parties, subject matter[,] and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation.” *Anand v. O’Sullivan*, 233 Md. App. 677, 696 (2017) (quoting *Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. 93, 106–07 (2005)). The elements of *res judicata* are: “(1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and, (3) that there has been a final judgment on the merits.” *Id.* at 696 (quoting *Norville*, 390 Md. at 107).

We need not discuss this issue in greater depth because, as previously discussed, the

February 1 Order did not relitigate or redecide anything related to the January 5 Order⁸ but rather resolved the attorney’s fees payment ordered in the earlier November 18 Order. There was no previous litigation at issue but instead the parties and the court continued to respond to orders made during the current action. Therefore, *res judicata* does not apply to the facts at hand nor does it bar the February 1 Order.

Violation of Statute Governing Attorney’s Fees

A. Party’s Contentions

Appellant also claims that the award of attorney’s fees was made without applying the required statutory criteria to grant the award. Of course, this argument depends on the whether the trial judge relied on Md. Code, Family Law § 8-214 in granting the attorney’s fees award. Beyond not specifically discussing the factors, Appellant argues that the fee award number did not properly determine the specific amount to award, but adopted the Appellee’s proposed number.

B. Standard of Review

An award of attorney’s fees is subject to the trial court’s discretion. *David A. v. Karen S.*, 242 Md. App. 1, 23 (2019) (citing *Petrini v. Petrini*, 336 Md. 453, 468 (1994)). “Ordinarily, an appellate court will affirm a finding of bad faith or substantial justification

⁸ We note that no transcript for the January 5, 2023 proceeding was provided to the Court. The Appellant’s brief asserts that the denial was for the Appellee’s request for the attorney’s fees for the entire case. While the hearing sheet for that day states that attorney’s fees were denied, this Court has no information on whether the denial for the attorney’s fees impacted the November 18, 2022 Order. Given that lack of definite information we will proceed under the assumption that the January 5, 2023 hearing did not contain relevant information to this case.

unless “it is clearly erroneous or involves an erroneous application of law.” *State v. Braverman*, 228 Md. App. 239, 260 (2016) (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267 (1991)); *see also Frankel v. Frankel*, 165 Md. App. 553, 590 (2005) (citing *Gravenstine v. Gravenstine*, 58 Md. App. 158, 182 (1984)) (“An award of attorney’s fees in a divorce action should not be modified by the appellate court unless the award was arbitrary or clearly wrong.”).

C. Analysis

The attorney’s fees at issue here stem out of a lawsuit for the disposition of the parties’ family home. Section 8-214 of the Family Law statute provides a court two avenues for awarding attorney’s fees in cases involving property disposition in a divorce.⁹ First, under Family Law § 8-214(b), the statute states that “[a]t any point in a proceeding under this subtitle, the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding,” with “reasonable and necessary expense[s]” including attorney’s fees. Md. Code, Fam. Law § 8-214(a)–(b). Before a court orders that payment, the court “shall consider” two enumerated factors: “(1) the financial resources and financial needs of both parties; and (2)

⁹ In her brief, Appellant refers to Family Law Section 12-103, however, we find Section 8-214 more authoritative over attorney fees in this matter since this appeal does not involve child custody or child support but instead the property disposition of her family home. There are “four statutes in the Family Law Article that relates to dissolution of a marriage and authorizes an award of attorney’s fees. *See* § 7–107 (divorce proceedings); § 8–214 (property disposition); § 11–110 (alimony); and § 12–103 (child custody, support and visitation).” *Henriquez v. Henriquez*, 185 Md. App. 465, 481 (2009), *aff’d*, 413 Md. 287 (2010). The legislative history of the various statutes does not indicate an intent to apply different standards before awarding attorney’s fees under any one of them. *Id.*

whether there was substantial justification for prosecuting or defending the proceeding.” *Id.* at § 8-214(c). Alternatively, under Family Law § 8-214(d), if the court finds there was an absence of substantial justification and the court does not find “good cause to the contrary, the court shall award to the other party the reasonable and necessary expense of prosecuting or defending the proceeding.” *Id.* at § 8-214(d).

“The proper exercise of such discretion is determined by evaluating the judge’s application of the statutory criteria set forth above as well as the consideration of the facts of the particular case. *Consideration of the statutory criteria is mandatory* in making the award and failure to do so constitutes legal error.” *Petrini v. Petrini*, 336 Md. 453, 468 (1994) (emphasis added) (citations omitted); *see also Huntley v. Huntley*, 229 Md. App. 484, 489 (2016) (quoting *Ledvinka v. Ledvinka*, 154 Md. App. 420, 432 (2003)) (stating the same). The court “does not have to recite any ‘magical’ words so long as its opinion, however phrased, does that which the statute requires.” *Collins v. Collins*, 144 Md. App. 395, 447 (2002) (referring to Family Law § 12-103(b)) (citation omitted). “When a court has abused its discretion in imposing attorney’s fees, the appropriate remedy is to vacate the award and remand for further proceedings to develop the factual basis for how the court chooses to exercise its discretion.” *Christian*, 459 Md. at 33.

This Court in *Flanagan v. Flanagan*, 181 Md. App. 492 (2008), provided an illustration of what is not acceptable in awarding attorney fees under Family Law § 8-214(b). In *Flanagan*, the appellant appealed, among other things, the court’s awarding of attorney fees to his ex-wife (appellee) on the basis that his financial resources and needs were not considered in accordance with § 8-214(c). *Id.* at 545–46. Specifically, the

appellant argued that the court “failed to consider the financial circumstances of the parties in full and accurate detail,” including that Appellee earned more money than Appellant. *Id.* at 544. This Court found that the trial court made no express findings as to the reasonableness of the fees, nor which actions, if any, were substantially justified [or not], nor any findings on the parties’ ability to pay. *Id.* at 546. As a result, the case was vacated and remanded to the circuit court. *Id.*; see also *Carroll Cnty. Dep’t of Soc. Servs. v. Edelmann*, 320 Md. 150, 577 A.2d 14 (1990) (describing how an order assessing attorney’s fees was entered “without the benefit of a hearing and without any evidence as to [father]’s financial status” and remanding the case for further proceedings).

Turning to this case, the Appellant argues the circuit court never made findings of fact about the economic status of each party. In her briefs, the Appellant points out that the Appellee makes three times as much as her. She argues the November 18 Order (that resulted in the February 1 Order on appeal here) made no findings of fact but simply granted Appellee’s Motion to Strike Appellant’s motions and awarded him attorney’s fees. The November 18 Order does state that attorney fees were awarded for Appellant “having to defend against Defendant’s Motion for Temporary Stay of the Distribution of the Net Proceeds of the Sale of the Former Family Home by the Court-Appointed Trustee.” However, as in *Flanagan*, the court made no express findings on the financial status and needs of the parties, nor on whether Appellant had substantial justification in pursuing her motions. As consideration of the statutory criteria is mandatory, if the circuit court was proceeding under § 8-214(b), the failure by the trial court to do so on the record would constitute legal error. *Petrini*, 336 Md. at 468.

The basis of the court’s award is unclear whether it was granting an award under Family Law § 8-214(b) or perhaps under Family Law § 8-214(d), which requires a finding of an absence of substantial justification for prosecuting or defending the proceeding, or under Maryland Rule 1-341, which also requires a finding that the party’s conduct was in bad faith or without substantial justification. Regardless, the trial court made no findings on the record about an absence of substantial justification or bad faith that would justify an award under the other statutes or rules. Without a rationale about the award of attorney’s fees on the record this Court “has no means to review a court’s exercise of discretion to award attorney’s fees” and no means to determine on which statute or rule the circuit court’s opinion was based. *Christian*, 459 Md. at 34. Given that these different bases have differing requirements for the findings needed to make an award of attorney’s fees or if those findings need to be on the record (and in the court’s order there were no findings made to justify the award of attorney’s fees), we must vacate the February 1, 2023 Order and remand the case to allow the circuit court to elucidate further as to the basis for its ruling.

On remand, the lower court should make clear under which regulatory or statutory authority it was acting in granting an award of attorney’s fees to Appellee and, where required, make any express findings as necessary.

CONCLUSION

Accordingly, we vacate the February 1, 2023 Order granting \$2,926.50 in attorney’s fees to the Appellee and remand the judgment of the Circuit Court for Howard County for further proceedings not inconsistent with this opinion.

**ORDER OF FEBRUARY 1, 2023, BY THE
CIRCUIT COURT FOR HOWARD
COUNTY GRANTING ATTORNEY'S
FEES OF \$2,926.50 TO APPELLEE,
VACATED; CASE REMANDED FOR
FURTHER PROCEEDINGS NOT
INCONSISTENT WITH THIS OPINION;
COSTS TO BE PAID BY APPELLEE.**