Circuit Court for Montgomery County
Case No. 363481V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 177

September Term, 2023

DAVID T. BUCKINGHAM

v.

VIRGINIA COMMERCE BANK N.A., et al.

Reed,
Beachley, **
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 14, 2026

*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).

**Beachley, J., now retired, participated in the hearing and conference of this case while an active member of the Court. He participated in the adoption of this opinion after being recalled pursuant to Maryland Constitution, Article IV, Section 3A.

Appellant David T. Buckingham is one of five children of the late John Buckingham.[1] John died intestate leaving behind a collection of life insurance policies and trusts. As we shall discuss, David created the Blue Heron trust, which is the named beneficiary of the two life insurance policies relevant to this appeal. The funds resulting from the life insurance policies were held for years in the Montgomery County Circuit's registry as litigation surrounding this case unfolded. The Circuit Court for Montgomery County ordered the funds to be disbursed to Blue Heron, resulting in the case being dismissed.

David appeals the dismissal. He wants the case to remain open so he can sue appellee Virginia Commerce Bank ("VCB") for attorney's fees. In this appeal, David presents one question for our review:

1. Did the trial court properly dismiss the case if Appellant claimed there were unresolved claims for attorney's fees and other litigation costs?

David's brothers, Thomas and Daniel, have filed cross-appeals, challenging the circuit court's denial of their motions to intervene in this case. Thomas and Daniel present an additional question for our review, which we recast as:

2. Did the trial court properly deny Thomas and Daniel's motions to intervene?

For the reasons discussed in this opinion, we hold the trial judge did not abuse her discretion in denying David's request to hold the case open for him to pursue attorney's

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[1] Because the parties share the same last name, we will refer to them by their first names to avoid confusion. We mean no disrespect in doing so.

fees. We further hold that the court erred in denying Thomas and Daniel's motions to intervene and remand for further proceedings consistent with this opinion.

BACKGROUND

This appeal is the latest installment in an intra-family conflict which has lasted well over a decade. In its basic form the controversy is this: Several siblings have fought against each other and against financial institutions to determine how to distribute the proceeds from their late father's life insurance policies. During the pendency of the litigation, the proceeds from certain life insurance policies were maintained in the trial court's registry.

This conflict has already generated two opinions from this Court, an opinion from the Supreme Court of Maryland, and three federal court opinions. Therefore, our review has the benefit of past judicial attempts to summarize the facts and procedure of this complicated case.

The Disagreements over Life Insurance Proceeds

The United States District Court for the District of Maryland summarized the basic facts of the case to assist the Supreme Court of Maryland to answer certified questions pursuant to Section 12-603 of the Courts and Judicial Proceedings Article:

> The crux of the dispute before this Court concerns whether diversion of the proceeds from several life insurance policies, which were among the sole remaining assets of John Buckingham and the family company, Sun Control Systems ("SCS"), was done to defraud the [United] Bank [("the Bank")] and other creditors. Although the background of this case has been repeated and reframed time and again, the Court summarizes the matter here to aid the Maryland Court of Appeals.
>
> John Buckingham founded SCS in 1979 and acted as President and as a Director on its board until 2009. John was married to Elizabeth "Betty"

Buckingham, and together they had five children: David, Susan, Thomas, Daniel, and Richard Buckingham.

In 2008, John was diagnosed with dementia and, in 2009, this diagnosis was confirmed to be both progressive and terminal. Around this time, Thomas Buckingham was designated to succeed John as President of SCS, although John stayed on as a Director and was never removed from the Board.

By January 2010, John's condition had worsened. He was sometimes found wandering his neighborhood or in his neighbors' homes eating from their refrigerators. In August 2010, Betty Buckingham filed a petition for guardianship in the Circuit Court for Montgomery County. Betty was appointed guardian of John's person, and David was appointed both temporary co-guardian of John's person and sole guardian of John's property. In December 2010, the guardianship order was amended to make David solely the guardian of the property and Betty the temporary guardian of John's person. In January 2011, the Circuit Court issued a final guardianship order that announced David and Betty as the co-guardians of John's person and maintained David's status as sole guardian of the property. This order governing the guardianship of the property states that the guardian shall have "all powers and duties set forth in Md. Code Ann., Est. & Trusts § 13-214 and § 15-102."

As John's mental health declined, so did SCS's financial health. SCS's revenues fell from $15.4 million in 2006 to $8.5 million in 2009. As of mid-2009, SCS had defaulted on loans it had secured with Virginia Commerce Bank ("VCB"), the Bank's predecessor, and owed over $5 million to VCB. John and Betty were also personally indebted to VCB as they had on occasion guaranteed loans to SCS and had also taken out loans in their personal capacity through a home equity line of credit.

In May of 2009, SCS entered into a forbearance agreement with VCB. In the forbearance agreement, VCB agreed to refrain from collection and to increase SCS's line of credit by $750,000 in exchange for SCS's commitment to meet a specified schedule of payments. SCS's financial situation did not improve, however, and by 2010, SCS had defaulted on the forbearance agreement as well. VCB, now fearful that it would lose millions of dollars through its loans to SCS, began looking to SCS's remaining assets, among them the death benefits on eight life insurance policies in John's name that are the subject of this litigation.

United Bank v. Buckingham, 449 F. Supp. 3d 521, 523-24 (D. Md. 2020) (Citations omitted).

In our case, only two of these life insurance policies in John's name are relevant, although we shall refer to a third policy (the "Family Trust Policy"). We summarized the relevant life insurance policies when we heard our second appeal of this case in 2018:

> In 1988, Northwestern Mutual Life Insurance Company ("Northwestern") issued Policy No. 10737530, a whole life policy insuring John's life with a face value of $1,000,000. The policy beneficiary was the trustee of a trust created in John's will. On July 31, 2000, Northwestern issued Policy No. 15419985, a second whole life policy insuring John's life with a face value of $750,000. The policy beneficiary was designated as John's estate. We shall refer to these two policies as the "JDB Policies."
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> On May 15, 1991, in the interim between the issuance of the JDB Policies, John and his wife, Elizabeth, established the Family Trust, an irrevocable life insurance trust, and named their five children as trustees and beneficiaries. The trust documents were executed by John, Elizabeth, Thomas, and Daniel. On November 26, 1991, Northwestern issued Policy No. 11848616 to the trustees of the Family Trust ("the Family Trust Policy"). The Family Trust Policy was a "Joint Life Protection" policy insuring the lives of John and Elizabeth, payable on the "second death." It had a face value of $1,000,000."

United Bank v. Buckingham, No. 364, Sept. term, 2017, 2018 WL 2175806 at p. 2-3 (Md. Ct. Spec. App. May 10, 2018) (citations omitted).

The original problem before the federal trial court in this case was whether John's declining capacity voided an assignment of his insurance policies to VCB:

> In June 2010, as John's health declined, VCB entered into a second forbearance agreement in which VCB obtained a secured interest in death benefits payable under the JDB and split dollar policies. The effect of this agreement was to give VCB a superior position to any SCS funds, including the life insurance benefits, upon John's death.

> Prior to executing the second forbearance agreement, VCB had learned of John's dementia. Outside counsel advised VCB that before entering into the second forbearance agreement, John should undergo a competency evaluation. VCB did not heed this advice. Instead, VCB entered into a fully executed second forbearance agreement. It eventually came to light that some of John's signatures on this agreement were forged. VCB, for its part, denies having any knowledge about the forgeries.
>
> David contends he first learned of the second forbearance agreement in February 2011 when, after much back and forth, VCB provided to David the underlying documentation. David realized that the second forbearance agreement was executed when John was suffering acutely from dementia. David also recognized certain of the signatures as forgeries.

Buckingham, 449 F. Supp. 3d at 524 (citations omitted).

John's family, in response to his declining health, began reorganizing John's life insurance policies to prepare for his death:

> The next month, in March 2011, David, in his capacity as guardian of the property, changed beneficiaries on the eight life insurance policies to the newly-created John D. Buckingham Life Insurance Trust ("JDB Trust") with David, Susan, and Richard as Co-Trustees. David contends that he created the JDB Trust to fund the care necessary for Betty once John died. David also made Betty the primary beneficiary and the Buckingham children contingent beneficiaries of the JDB Trust.
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> * * *
>
> On December 7, 2011, Betty passed away unexpectedly. The JDB Trust—which again was the beneficiary of all eight life insurance policies—was now at least partially obsolete as the vehicle to provide for Betty's care upon John's death. Thus, David, in his role as John's guardian of the property, changed the beneficiary of the insurance policies, again naming another newly created trust, the Blue Heron Trust.

Id. at 524-25 (citations omitted).

John died on October 17, 2012. After his death, disputes about the assignments of the life insurance policies continued:

> Shortly after, in May 2012, David sued VCB in Montgomery County Circuit Court seeking to invalidate the assignment of the JDB and split dollar policies on the grounds that VCB entered into the second forbearance agreement knowing that John was incompetent.
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> After a five-day bench trial in [November] 2013, the Honorable Michael Dugan invalidated the assignments, finding that John lacked the capacity to enter into the second forbearance agreement and VCB, acting contrary to counsel's advice, knew it.

Id. at 525 (citations omitted).

The State Declaratory Judgment Action

At the time of the declaratory judgment which invalidated the assignments, the principal amount maintained in the court registry was $1,531,300.98. The circuit court ordered that the $477,153.35 in proceeds from the Family Trust Policies be released to the trustees of the Family Trust. VCB was to be reimbursed $25,000 for premiums they had paid on the Family Trust policy.

With respect to the two JDB policies, the circuit court ordered that the proceeds from those policies remain in the court registry. VCB had filed a complaint in the United States District Court for Maryland which, among other claims, challenged the legitimacy of the Blue Heron trust, which was the named beneficiary of the JDB policies. As a result, the circuit court would not release the proceeds of the JDB policies until the federal case was resolved. In its ruling, the circuit court opined, "I believe there is a genuine issue as to whether the Blue Heron trust was created properly."

The first time the declaratory judgment was appealed, this Court determined there was no appealable final order. *Virginia Commerce Bank v. Buckingham*, No. 2216, Sept.

Term, 2013 (Md. Ct. Spec. App. April 13, 2015). We later affirmed the declaratory judgment. *United Bank v. Buckingham*, No. 364, Sept. Term, 2017, 2018 WL 2175806 (Md. Ct. Spec. App. May 10, 2018).

The Federal Case

The Bank filed a complaint in the United States District Court for the District of Maryland, alleging (among other claims) that David engaged in self-dealing in the creation of Blue Heron, and subsequently using his authority as John's guardian to name Blue Heron beneficiary of John's life insurance policies. Originally, the federal district court granted summary judgment in favor of the Buckinghams and against the Bank. *United Bank v. Buckingham*, 301 F. Supp. 3d 561 (D. Md. 2018).

However, summary judgment was overturned by the United States Court of Appeals for the Fourth Circuit on February 21, 2019. *United Bank v. Buckingham*, 761 F. App'x 185 (4th Cir. 2019). Upon remand, the federal district court did not rule on the merits, but instead certified two questions of law to the Supreme Court of Maryland under Maryland Code, Cts. & Jud. Proc. § 12-603. *United Bank v. Buckingham*, 449 F. Supp. 3d 521 (D. Md. 2020). The Supreme Court of Maryland answered these questions in *United Bank v. Buckingham*, 472 Md. 407 (2021), which we shall discuss in further detail below.

David and the Bank Settle the Federal Case

David filed a motion to release the funds held in the court registry on March 15, 2018. The Bank opposed the release of funds. A hearing was scheduled on this motion, but it was eventually postponed until after resolution of the federal case.

Around this time, this Court heard an appeal of the declaratory judgment entered by the circuit court, which we affirmed. The Bank's request for a writ of certiorari to appeal our decision was denied.

The federal case was ultimately settled. The Bank and David then filed a joint motion in this case to release $250,000 of the funds held in the court registry to the Bank pursuant to the terms of their agreement. The circuit court ultimately granted this motion.

Thomas and Daniel Want Back In

While David and the Bank were settling the federal case, Thomas and Daniel sought to become involved again in the circuit court case. Thomas and Daniel had not been parties to this litigation since they were voluntarily dismissed as defendants in late 2013.[2] As a result, Thomas and Daniel filed a motion to intervene in this case. The circuit court denied their request to intervene.

Despite not being parties in the case and failing to intervene, Thomas and Daniel moved to release funds to themselves.[3] They followed this up with a renewed motion to intervene. The trial court denied the motions to release funds, and the renewed motion to intervene.

[2] From the May 23, 2017 Order, it appears that Daniel may have had a counterclaim against David as guardian of their father and as a director of Sun Control Systems, Inc.

[3] Thomas and Daniel requested a direct distribution from the court registry because they alleged that it was "clear that the trustees of the Family Trust" would not voluntarily distribute any funds to them.

Thomas and Daniel renewed their motion to intervene for a third time. The circuit court denied the third renewed motion to intervene. In addition, Thomas and Daniel renewed their motion to release to them the funds held in the court registry.

The Hearing and Resultant Order

The circuit court held a hearing to resolve the competing claims to funds in the court registry, as well as Thomas and Daniel's motions to intervene. The circuit court filed an order on the day of the hearing, and issued a minor amendment to the order the next day.

The orders denied both Thomas and Daniel's motion to release funds, and Thomas and Daniel's motion to intervene. The court ordered that approximately $340,000 dollars be released to the attorneys who represented David and Blue Heron throughout much of the litigation. The court ordered that the remaining balance of the funds be released to David in his capacity as trustee of Blue Heron. The trial court also granted the Bank's motion for dismissal over David's opposition.

VCB Wants Out

On February 10, 2023, VCB filed a motion for dismissal, arguing that all claims against VCB had been fully and finally resolved following the settlement in the federal case. VCB claimed no interest in the funds which remained held in the court registry. This motion was heard on the same day as Thomas and Daniel's motions to intervene.

David opposed the motion to dismiss, arguing that VCB's conduct over years of litigation entitled him to seek "attorney's fees, trustee's fees, and guardian fees." In short, David argued that VCB's conduct was "unconscionable," so he was entitled to attorney's

fees under Maryland Rule 1-341, which allows litigants to request attorney's fees if a proceeding was unjustified or in bad faith.

This was David's first claim for attorney's fees, so the trial judge required him to orally move to amend his complaint on the record. The trial court denied the motion to amend, citing the settlement David had reached with VCB. The court ordered the disbursement of remaining funds and dismissed the case.

The Current Appeal and Cross-Appeal

In this appeal, David, in his capacity as trustee of Blue Heron, is appealing the circuit court's denial of his oral motion to amend the complaint and the dismissal of the case.

Thomas and Daniel are cross-appellants, arguing that the circuit court improperly denied their motions to intervene, and argue that at least a portion of the money in the court registry should have been released to them.

VCB responded to the initial appeal, arguing that the case was properly dismissed. VCB takes no position on the cross-appeal.

DISCUSSION

I. David's Direct Appeal

Parties' Positions

David asks us to reverse the dismissal of the case, arguing it should have remained open for him to pursue attorneys' fees against VCB under Maryland Rule 1-341. His argument before the circuit court and this Court focuses on his belief that VCB litigated against him in bad faith. David further argues that because attorney's fees are a collateral

issue to the merits of the case, he was not required to amend his complaint to make a claim under Rule 1-341.

VCB argues "the only appealable decision of the trial court is its decision to deny [David's] verbal motion for leave to amend" his complaint to include the Rule 1-341 claim. VCB argues that because the circuit court denied the motion to amend, there is no reviewable final judgment, relating to David's wish to recover attorneys' fees under Rule 1-341.

Standard of Review

A trial judge's decision to deny leave to amend a complaint will only be overturned "upon a showing of a clear abuse of discretion." *Schmerling v. Injured Worker's Ins. Fund*, 368 Md. 434, 443-44 (2002). A circuit court's ruling on a motion for attorneys' fees under Rule 1-341 "will not be disturbed unless it is so far off the mark as to amount to an abuse of discretion." *Matter of Jacobson*, 256 Md. App. 369, 413 (2022).

Analysis

David's Oral Motion to Amend his Complaint.

Because David had not moved for attorneys' fees under Rule 1-341 before the hearing, he had to orally move to modify his complaint while in court. Maryland Rule 2-341 requires leave of the court for a party to amend a complaint within 30 days of a trial date. "The decision to grant leave to amend pleadings is committed to the sound discretion of the circuit court." *Jacobson*, 256 Md. App. at 407.

Ordinarily, amendments should be permitted "so long as the operative factual pattern remains essentially the same, and no new cause of action is stated invoking different legal principles." *Hartford Acc. & Indem. Co. v. Scarlett Harbor Assocs. Ltd. P'ship*, 109 Md. App. 217, 248 (1996).

Nonetheless, an amendment "should not be allowed if it would result in prejudice to the opposing party or undue delay, such as where amendment would be futile because the claim is flawed irreparably." *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 672 (2010). Prejudice is especially likely to result when a party attempts to add claims late in the litigation. *Jacobson*, 256 Md. App. at 409.

Our review of the record reveals that David's claim under Rule 1-341 was irreparably flawed, so the amendment would be futile. We first note that "an award of attorneys' fees under Rule 1-341 is considered an extraordinary remedy which should be exercised only in rare and exceptional cases." *Jacobson,* 256 Md. App. at 412 (internal quotations omitted). Bad faith is found when "a party litigates with the purpose of intentional harassment or unreasonable delay." *Seney v. Seney*, 97 Md. App. 544, 554 (1993). The record is clear that VCB was not litigating to harass the Buckinghams, but rather to mitigate financial losses which followed loans to John's failing business.

Furthermore, David's Rule 1-341 was procedurally flawed. David failed to include a statement regarding costs and expenses, as required by Rule 1-341(b). His claim therefore lacked the supporting evidence that the statute requires, namely:

> (i) a detailed description of the work performed, broken down by hours or fractions thereof expended on each task;

> (ii) the amount or rate charged or agreed to in writing by the requesting party and the attorney;
> (iii) the attorney's customary fee for similar legal services;
> (iv) the customary fee prevailing in the attorney's legal community for similar legal services;
> (v) the fee customarily charged for similar legal services in the county where the action is pending; and
> (vi) any additional relevant factors that the requesting party wishes to bring to the court's attention.

Maryland Rule 1-341(b)(3)(A).

David likely would have needed additional time to satisfactorily make a claim under Rule 1-341, which at the very least would have required a continuance of the hearing. This would have caused unnecessary delay. Rule 1-341(c) gives the offending party 15 days to file a response, which would have caused further delay. The Rule 1-341 claim came only at the end of years of litigation. David has been litigating against VCB and its predecessors for over a decade but waited until the final disbursement hearing to raise his Rule 1-341 claim. We conclude that a delay would have been highly prejudicial.

We hold that the trial judge did not abuse her discretion in denying David's motion to amend his complaint. After the motion to amend was denied, all claims had been extinguished and the court had disbursed all remaining funds from the court registry. As a result, the trial judge correctly dismissed the case.

II. Daniel and Thomas' Cross Appeal

Standard of Review

"[T]he denial of a motion to intervene as a matter of right, premised on any ground other than untimeliness, is reviewed de novo." *Env't Integrity Project v. Mirant Ash Mgmt.,*

LLC, 197 Md. App. 179, 185 (2010).

Analysis

Intervention

Intervention is governed by Maryland Rule 2-214(a), which provides:

> Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.

Daniel and Thomas maintain they have an interest in the litigation and should have been allowed to intervene. In essence, they argue that because John died intestate, they have an interest in the JDB policies as his heirs. We were advised at oral argument that the proceeds held in the court registry are the benefits paid under the two Northwestern life insurance policies referred to in *United Bank v. Buckingham*, 472 Md. 407, 414 (2021) as the "JDB policies."

On March 9, 2021, the Supreme Court of Maryland, answering certified questions arising from the federal litigation between some of the same parties, issued its opinion in *United Bank*, *supra*. The Court held as a matter of Maryland guardianship law that "a guardian of property does not have the authority to change the beneficiary on a life insurance policy of the ward." *United Bank*, 472 Md. at 412, 441. The holding is grounded in the longstanding English common law purpose of guardianship—preservation of the ward's estate—and the absence of any legislative grant conferring the specific power to

change a beneficiary designation. *Id.* at 433-41. It is binding precedent of general applicability, not limited to the creditor-protection context in which the certified questions arose.

Under *United Bank*, David's changes of the JDB policy beneficiary designations—first to the JDB Trust and then to Blue Heron—exceeded his authority as guardian of John's property. Neither change was authorized by a court order under ET § 13-203(c)(1), which is the only proper mechanism for such action. Those changes were therefore legally ineffective as a matter of Maryland guardianship law.

Approximately six months after our Supreme Court issued *United Bank*, the federal litigation was resolved by an agreement between the Bank and some of the Buckingham parties. Thomas and Daniel allege that they were not parties to the settlement agreement. As noted, the settlement agreement authorized the release of a portion of the funds held in the court registry to United Bank.

On August 24, 2022, Thomas and Daniel filed a "Renewed Motion to Intervene" and on January 16, 2023, they filed a "Second Renewed Motion to Intervene" in which they cited to the Supreme Court's decision in *United Bank*.[4] On February 28, 2023, the circuit court issued its "Final Order," denying Thomas and Daniel's motion to intervene as well as any claim they had to the funds in the court registry. The court further ordered a disbursement of $340,411.79 to the Paley, Rothman law firm with the balance of the court

[4] These were characterized as "renewed" motions to intervene because Thomas and Daniel initially moved to intervene on May 20, 2019.

registry's funds to be disbursed to "David T. Buckingham, as Trustee of the Blue Heron Trust."[5]

The Supreme Court made it clear in *United Bank* that David did not have the legal authority to change the beneficiaries of the JDB policies purchased by his father. David's actions to first change the beneficiary of these policies to the JDB Trust and later to the Blue Heron Trust are legally invalid under the holding of *United Bank*. Thus, the circuit court's order releasing the remaining funds in the court's registry to the Blue Heron Trust contravenes the holding in *United Bank*. Because David was not authorized to change the beneficiaries of the JDB policies, John's estate ostensibly has a legal interest in the proceeds of those policies. And because Thomas and Daniel allege that they are beneficiaries of the JDB policies as heirs of their father's estate, they had a right to intervene pursuant to Rule 2-214(a). The court therefore erred in denying Thomas and Daniel's multiple motions to intervene. Accordingly, we shall remand this case to the circuit court with instructions to grant Thomas and Daniel's motion to intervene and permit them the opportunity to present any claims they may have to the proceeds of the JDB policies held in the court registry. We express no opinion as to the validity of these claims or the availability of defenses that may be raised against them.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND REVERSED IN PART. CASE REMANDED TO CIRCUIT COURT FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.

[5] The court issued a minor amendment to the Final Order on March 1, 2023.