

Circuit Court for Kent County
Case No. 14-C-13-009588

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 179

September Term, 2018

PAMELA A. QUARSTEIN

v.

STILL POND TIC INTERESTS BUYERS,
LLC, ET AL.

Arthur,
Friedman,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: November 12, 2019

*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.

This is the second appeal to this Court by Pamela Quarstein and her lawyer, Gene Foehl, from the imposition of sanctions against them arising out of their conduct in the immediate aftermath of a lawsuit compelling sale in lieu of partition of farm property in Kent County. In our prior opinion, we described the relevant facts:

Two weeks after the circuit court issued its Memorandum Opinion and Judgment, Quarstein sent Foehl a document, captioned “Resignation of Trustee and Assignment of Successor Trustee of the John L. Kronau (Family) Trust.” Foehl, in turn, sent this “Resignation of Trustee” document to Martha Quarstein, John Moran Quarstein, and Still Pond. Foehl’s cover letter explained that the “Resignation of Trustee” had been “discovered by [his] client, Pamela Quarstein, while going through documents in light of the [circuit court’s] Memorandum Opinion [and Judgment].” The Resignation of Trustee document purported to report the resignation of Mildred A. Kronau as a trustee of the Kronau Family Trust and the appointment of Vernon Alfred Quarstein as a substitute trustee. The receipt of this document induced Martha Quarstein and John Moran Quarstein to file jointly a Motion to Revise Judgment, arguing that the “Resignation of Trustee” document was newly discovered evidence that they believed would provide the grounds to change the circuit court’s decision. By contrast, Still Pond opposed Martha Quarstein and John Moran Quarstein’s Motion to Revise, arguing that the “Resignation of Trustee” document was a forgery.

Quarstein v. Still Pond TIC Interests Buyers, LLC, Case No. 2083, Sept. Term 2015, slip op. at 4-5 (unreported opinion) (filed Aug. 3, 2017) (“*Quarstein I*”).

The trial court found that the “Resignation of Trustee” document was a forgery and that Quarstein and Foehl both acted in “bad faith or lacked substantial justification” in circulating the document. *Quarstein I*, slip op. at 5. As a result, the trial court awarded attorneys’ fees to Still Pond. *Quarstein I*, slip op. at 5. We affirmed in part but remanded in part to permit the trial court to make factual findings in support of its decision. *Quarstein*

I, slip op. at 24. Specifically, we directed the trial court (1) to identify facts in support of its finding that Foehl (separate and apart from his client, Pamela Quarstein) had acted in “bad faith or that his actions lacked substantial justification,” *Quarstein I*, slip op. at 15; (2) to evaluate Still Pond’s lawyers’ bills to determine whether the fees and expenses were reasonable under the standards set forth in Maryland Rule 1-341(b)(3), *id.* at 23; and (3) to determine whether the overall award to Still Pond was reasonable, *id.*

The trial court fulfilled its charge and, after a hearing, found and identified facts to support (1) the prior determination that Foehl acted in “bad faith or without substantial justification”; (2) the reasonableness of Still Pond’s lawyers’ bills under the standards set forth in Maryland Rule 1-341(b)(3); and (3) the fair sanction against Foehl and Quarstein, jointly and severally, in the amount of \$84,000 to be paid to Still Pond. Foehl and Quarstein have challenged each of these findings.¹

¹ In our prior opinion in this case, we noted that Foehl should consider the possibility that his continued representation of Pamela Quarstein might present a conflict of interest. *Quarstein I*, slip op. at 1 n.1. The conflict of interest, in our eyes, has only become worse. *First*, on remand the trial court found both Quarstein and Foehl had acted in bad faith and, most critical in our view, found them jointly and severally liable to Still Pond for \$84,000 in legal fees. *Second*, the first issue that Foehl argues in this appeal is that there is insufficient evidence to show that he acted in bad faith or without substantial justification, which, if successful, might reduce only his liability to Still Pond. The result of any such reduction for Foehl would, because of joint and several liability, likely result in an increase in Quarstein’s liability. Thus, it appears, the interest of the lawyer and client in contesting the first issue of this appeal are adverse in a manner that implicates Rule 19-301.7(a)(2) of the Maryland Attorneys’ Rules of Professional Conduct (“Except as provided in section (b) of this Rule, an attorney shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if ... there is a significant risk that the representation of one or more clients will be materially limited by the ... personal interest of the attorney.”). When questioned about this at oral argument, Foehl claimed to have received informed consent in writing from Quarstein pursuant to Rule 19-301.7(b) of the Maryland Attorneys’ Rules of Professional Conduct. We note that this alleged waiver is

DISCUSSION

Our discussion in this case is framed by the standard of review for sanctions authorized under Maryland Rule 1-341, which is two-fold. *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267-268 (1991); *see also* MD. RULE 1-341. *First*, the trial court’s finding that a party acted in bad faith or without substantial justification is reviewed for clear error. *Sydnor v. Hathaway*, 228 Md. App. 691, 725 (2016). *Second*, the trial court’s decree of sanctions and corresponding award to the prevailing party is reviewed for abuse of discretion. *Id.*

I.

The trial court found that the “Resignation of Trustee” document was a forgery and that Quarstein knew it was a forgery. That finding is not challenged. Foehl instead challenges the trial court’s finding that Foehl knew (or at least should have known) that it was a forgery and, as a result, that his conduct was “in bad faith or without substantial justification” in violation of Rule 1-341.² We highlight the trial court’s findings below:

not part of the record and we have not reviewed it. Moreover, we are not certain that the conflict of interest here—Foehl defending against a finding of his own misconduct while still representing Quarstein—is capable of being waived under Rule 19-301.7(b). We refer the matter to the Attorney Grievance Commission of Maryland for it to resolve both issues.

² We also reject Foehl’s contention that there is a “double standard” imposed when evaluating his actions and the actions of the other lawyers in this case. Their conduct is not comparable because, while other lawyers may have relied on the Resignation of Trustee document, Foehl is the only lawyer found to have had knowledge that the document was a forgery. Additionally, if Foehl or Quarstein believed that the other lawyers in the case acted in bad faith or without substantial justification, they too could have filed a motion for sanctions. But they didn’t.

- The trial court found that the “Resignation of Trustee” document was an obvious forgery—containing different font sizes and irregular section alignment throughout the document—which even a non-expert, like Foehl, should have spotted.
- As reported above, Foehl sent the “Resignation of Trustee” document to other counsel with a cover letter which reported that the document had been recently “discovered.” The trial court found the use of the term “discovered” to be inaccurate and inconsistent with Pamela Quarstein’s subsequent testimony that she knew of and had previously used the document.
- The trial court found it was significant that, when challenged, Foehl never denied that the “Resignation of Trustee” document was a forgery, nor did he attempt to prove its validity.
- The trial court found that the fact that Foehl knew the significance of the “Resignation of Trustee” document to the litigation was critical because it was likely Foehl used it to induce Still Pond or another party to file a motion for reconsideration.
- The trial court found that, despite his knowledge that the document was forged, Foehl was an active participant in prolonging the litigation.

We hold that these findings are not clearly erroneous and constitute “competent material evidence,” *see Major v. First Virginia Bank-Central Maryland*, 97 Md. App. 520, 531 (1993), to support the trial court’s determination that Foehl acted in bad faith or without substantial justification. We, therefore, affirm.³

³ Because Foehl’s actions in circulating a document known to be a forgery may implicate his duty to litigate in good faith pursuant to Rule 19-303.1 and his duty of candor to the tribunal pursuant to Rule 19.303.3, we are obligated to refer this matter to the

II.

In *Quarstein I*, we discussed the lack of specificity in the legal bills produced by Still Pond’s lawyers, Sutherland, Asbill & Brennan. *Quarstein I*, slip op. at 22. On remand, Sutherland produced an affidavit from H. Edward Hales, Jr., a principal partner of the firm, explaining the bill, including: the time that was spent reviewing the “Resignation of Trustee” document; meetings with local counsel (the Saunders Law Firm); obtaining a forensic document examiner to evaluate the document, prepare a report, and testify that the document was a forgery; and to prepare affidavits. The trial court found \$41,521 to be a “necessary, fair, and reasonable” account of Sutherland’s representation under Rule 1-341(b)(3) and nothing that Foehl has argued persuades us that the trial court abused its discretion in approving these fees.

III.

Finally, we instructed the trial court to reconsider the award and amount of sanctions because in every case, the sanctions imposed must directly correspond to the offending party’s conduct. *Christian v. Maternal-Fetal Med. Assocs. of Maryland*, 459 Md. 1, 31-34 (2018). We hold that the trial court did not abuse its discretion in awarding Still Pond \$84,000 in attorneys’ fees and costs to be paid, jointly and severally, by Quarstein and Foehl. We note that circulating, and thus causing other parties to litigate about, a forged

Attorney Grievance Commission of Maryland. *See* MD. RULE 19-308.3(a) (requiring an attorney with personal knowledge about another attorney’s violation of the Maryland Attorneys’ Rules of Professional Conduct, which “raises a substantial question” as to the offending attorney’s “honesty, trustworthiness, or fitness” as an attorney, to notify the governing professional authority).

document is a significant impropriety and, consistent with the policy of deterrence of misconduct underlying Rule 1-341, it is appropriate that the non-offending party be reimbursed. *Worsham v. Greenfield*, 435 Md. 349, 365-366 (2013). Moreover, the sanction amount imposed by the court represents a significant reduction over what Still Pond's lawyers' might have charged their client. Overall, we believe that the trial court imposed a fair and reasonable sanction and, in any event, did not abuse its discretion.

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