Orphans' Court for Prince George's County
Estate Nos. 111211 & 112642

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 398 & 399

September Term, 2020

IN RE: THE ESTATE OF MYRTLE ROLLINS

IN RE: THE ESTATE OF LEROY ROLLINS, SR.

Kehoe,
Arthur,
Shaw,

JJ.

Opinion by Arthur, J.

Filed: July 6, 2022

This appeal principally concerns the efforts taken by an attorney to collect a money judgment after the judgment debtor died. Through garnishment proceedings, the attorney obtained information about bank accounts in the name of the decedent and her family members. In the Orphans' Court for Prince George's County, the attorney moved to reopen the decedent's estate, to require the payment of the judgment debt owed by the decedent, and to remove the personal representative. The orphans' court denied all relief.

The personal representative moved for sanctions under Md. Rule 6-141, contending that the attorney had pursued the motion in bad faith and without substantial justification. The orphans' court required the attorney to pay attorney's fees and other expenses that the personal representative incurred in connection with the orphans' court proceedings. The attorney appealed.

For the reasons stated in this opinion, we conclude that the record does not support the court's findings that the attorney's conduct was in bad faith and without substantial justification. Consequently, we reverse the order imposing sanctions under Md. Rule 6-141. Otherwise, we reject the attorney's other challenges to the orders of the orphans' court.

FACTUAL AND PROCEDURAL BACKGROUND

A. Debt Owed by Myrtle Rollins

In 2005, attorney Michael Wein represented the prevailing party in an appeal from the Circuit Court for Prince George's County to the Court of Special Appeals. This Court ordered the opposing party, Myrtle Rollins, to pay the costs associated with the appeal.

After the entry of the mandate, the prevailing party moved for a judgment in the amount of the costs due. On May 3, 2006, the circuit court entered a money judgment against Myrtle Rollins in the amount of $4,340.85.

Myrtle Rollins did not pay the amount owed under the judgment. Interest accrued on the judgment at the rate of 10 percent per annum. In April 2018, within 12 years after entry of the judgment, the judgment holder filed a notice of renewal, and the clerk of the circuit court entered the judgment renewed.

In June 2018, the judgment holder assigned the judgment to Mr. Wein, as compensation for his past services as an attorney. Consequently, Mr. Wein became the judgment creditor.

On June 20, 2018, Mr. Wein filed a request for a writ of garnishment of property other than wages in the circuit court. The request stated that the total amount due under the judgment, including post-judgment interest and court costs, was $9,580.87. The clerk issued a writ of garnishment directed at the garnishee, Capital One Bank.

Mr. Wein served the writ of garnishment on August 21, 2018. One week later, Capital One Bank answered by filing a confession of assets. Capital One Bank reported that, as of the time of service of the writ of garnishment, it was holding $9,580.87 of funds from a checking account under the names of "Myrtle Rollins or Carlos Cole." According to the parties, Carlos Cole is one of Myrtle Rollins's grandchildren.

B. Death of Myrtle Rollins and the Initial Estate Proceedings

Myrtle Rollins died on August 25, 2018. She was survived by her husband, Leroy

Rollins, Sr., four of her children, and several grandchildren.

On August 31, 2018, Kim Rollins, a daughter of Myrtle and Leroy Rollins, filed a petition for the administration of a small estate (i.e., an estate with value of $50,000 or less) with the Register of Wills for Prince George's County. The petition stated that Myrtle Rollins had died without a will. On the petition form, Ms. Rollins stated that she was not aware of any "[o]ther proceedings . . . regarding the decedent or the estate."

As required for the estate petition, Ms. Rollins submitted sworn statements concerning the assets and liabilities of Myrtle Rollins at the time of her death. Ms. Rollins affirmed that she had "made a diligent search to discover all property and debts of the decedent[.]" On a list of "all real and personal property owned by the decedent, individually or as a tenant in common," she identified only one item of property, a "CarMax Refund Check" with a value of $1,500.[1] Ms. Rollins listed "Maryland Cremation Services" as the only known creditor of Myrtle Rollins.

An information report accompanying the petition asked: "At the time of death did the decedent have any interest as a joint owner . . . in . . . any personal property, including accounts in a credit union, bank, or other financial institution?" Ms. Rollins answered "No" to that question.

The register of wills issued an order for a small estate, designating Ms. Rollins as the personal representative. The register of wills determined that no publication of notice

[1] The refund check from CarMax was payable to Myrtle Rollins and one of her grandchildren in the amount of $3,000.

was required for the estate proceedings. On October 2, 2018, about one month after the opening of the estate, the register of wills marked the estate of Myrtle Rollins as "Closed" on its electronic case-management system.

C. Further Developments in the Garnishment Proceedings

Meanwhile, Carlos Cole had moved to intervene in the garnishment proceedings that Mr. Wein had commenced in the circuit court. Mr. Cole objected to the release of $9,580.87 from the Capital One Bank checking account under the names of "Myrtle Rollins or Carlos Cole." As a result of Mr. Cole's intervention, Mr. Wein learned of Myrtle Rollins's death.

Mr. Wein obtained a copy of an account summary statement from Capital One Bank for a period ending on August 10, 2018. The statement was addressed to "LEROY S ROLLINS SR[,] MYRTLE C ROLLINS OR KIM K ROLLINS." Although the statement did not use the name "Carlos Cole," it listed a checking account with a balance of $10,678.37, which had the same account number as the account that Capital One Bank had described as being under the names of "Myrtle Rollins or Carlos Cole."

The account summary statement provided the balances for three other deposit accounts: a checking account with a balance of $41,314.68; a certificate of deposit account with a balance of $5,500.62; and a savings account with a balance of $4,202.17. In addition, the statement disclosed a separate investment account, described as a "Joint Ownership" account, with a balance of $255,321.85.

In November 2018, Capital One Bank filed an amended confession of assets in the

garnishment proceedings. Capital One Bank stated that, as of the date of service of the writ of garnishment, it was holding a total of $21,247.43 in funds from six different accounts. That total included $9,530.21 from the checking account under the name "Myrtle Rollins/Carlos Cole." The remainder of the funds consisted of: $5,503.89 from a certificate of deposit account under the name "Myrtle & Lewis Rollins"; $3,572.12 from a savings account under the name "Myrtle Rollins/Brook Green"; $1,319.54 from a checking account under the name "Myrtle Rollins/Brook Green"; $1,319.54 from a savings account under the name "Myrtle Rollins/Brittoney Green"; and $0.13 from a savings account under the name "Myrtle Rollins/Carlos Cole." Three accounts listed on the amended confession of assets form had account numbers different from the numbers listed on the account summary statement.

C. Claim Against the Estate and Motion to Reopen the Estate

On October 12, 2018, Mr. Wein sent a letter addressed to Ms. Rollins as the personal representative of the estate of Myrtle Rollins. His letter used the heading "Confidential and For Settlement Purposes."

In the letter, Mr. Wein claimed that, as of early October 2018, Myrtle Rollins owed a total of $9,761.74 under the money judgment against her. He stated that, unless he received a check in that amount within 10 days, Ms. Rollins should "expect additional filings" in the orphans' court and the circuit court. Mr. Wein asserted that, if Ms. Rollins failed to pay the judgment debt owed by Myrtle Rollins, the orphans' court might remove her from the office of personal representative and appoint Mr. Wein to administer her

mother's estate. He claimed that, based on information he had obtained in prior litigation against Myrtle Rollins, he had "concerns" that the estate had "not been accurately administered[.]" He added: "I therefore reserve the right in both the Circuit Court case under Maryland Rule 1-341 and Orphan's [sic] Court case, under Maryland Rule 6-141, to be properly reimbursed and receive attorney's fees, at my normal $400 hourly rate."

On October 29, 2018, Mr. Wein filed a timely claim against the estate of Myrtle Rollins with the register of wills. *See* Md. Code (1974, 2022 Repl. Vol.), § 8-103(a) of the Estates and Trusts Article (requiring creditors to present claims against an estate of a decedent within six months after the decedent's death or within two months after issuance of notice, whichever is earlier). In his claim, Mr. Wein affirmed that Myrtle Rollins owed the sum of $9,761.74. In support of his claim, Mr. Wein produced copies of the money judgment entered against Myrtle Rollins in the circuit court, the assignment of judgment from Mr. Wein's former client, and the order granting the renewal of the judgment.

On the same date, Mr. Wein filed a motion titled: "Motion to 'Reopen' Estate as Regular Estate, Payment of Judgment Due Creditor from Court Case, Challenge and Remove Personal Representative and for Appointment of 3rd Party Successor."

In his motion to reopen the estate, Mr. Wein claimed to have standing as an "active [c]reditor" of Myrtle Rollins. He observed that, in the estate petition, Ms. Rollins had reported that Myrtle Rollins owned assets with a value of $1,500 at the time of her death. Mr. Wein asserted that, "[i]n reality," Myrtle Rollins had "hundreds of thousands

of dollars" of assets at the time of her death, including "over $300,000 in liquid assets in various accounts at Capital One Bank." Attached to the motion, Mr. Wein included a copy of the account summary statement from Capital One Bank.

Mr. Wein argued that the orphans' court should reopen the estate of Myrtle Rollins as a regular estate (i.e., an estate with a value of greater than $50,000) and that the personal representative should provide an accounting of all assets, whether owned solely by Myrtle Rollins or jointly with others. He also argued that the orphans' court should remove Ms. Rollins from the office of personal representative on the grounds that she "failed to do a proper accounting" of estate assets, failed to disclose the pending garnishment proceedings, and failed to respond to his letter demanding payment for the judgment debt.

Mr. Wein's motion sought multiple forms of relief. He asked the court to order the personal representative to pay the amount of $9,761.74, plus court costs. He asked the court to award him attorney's fees under Md. Rule 6-141 "if th[e] [c]ourt concludes that [the personal representative's] actions[] were the result of bad faith or without substantial justification."[2] Finally, he asked the orphans' court to remove Ms. Rollins from the office of personal representative and to "appoint a neutral third[ ]party" as a

[2] Mr. Wein's request notwithstanding, this Court has held that attorneys who represent themselves are not entitled to reimbursement for attorney's fees under Md. Rule 1-341. *See Frison v. Mathis*, 188 Md. App. 97, 102-03 (2009). The rule authorizes reimbursement of expenses only when expenses are "incurred" by the movant. *Id.* at 103. A self-represented party "has not 'incurred' any actual expenses in the nature of attorney's fees." *Id.*

successor personal representative.

The orphans' court scheduled a hearing on Mr. Wein's motion and sent notice of the hearing to Ms. Rollins. Ms. Rollins retained counsel. Through counsel, Ms. Rollins filed an answer, in which she generally "denie[d] the allegations" made by Mr. Wein and "demand[ed] strict proof" of those allegations.

Leroy Rollins, the father of Ms. Rollins and the surviving spouse of Myrtle Rollins, died on January 20, 2019, while Mr. Wein's motion was pending. On a petition by Ms. Rollins, the register of wills opened a separate estate for Leroy Rollins as a regular estate.

D. Orphans' Court Hearing on Motion to Reopen the Estate

On January 30, 2019, the orphans' court held a hearing regarding Mr. Wein's motion to reopen the estate. During the hearing, Mr. Wein submitted copies of the confession of assets and amended confession of assets that Capital One Bank had filed in the garnishment proceedings. He asked the court to consider the account summary statement that he had submitted with his motion.

Pointing to the information he had received from Capital One Bank, Mr. Wein claimed that Myrtle Rollins owned several "joint bank accounts." He added, however, that, by using the term "joint," he did not "necessarily" mean "legally joint." Some of those accounts, he said, "could be convenience accounts" or "joint accounts that are titled without a survivorship interest." He asserted that, if any of the accounts were convenience accounts, then the funds "might have to go through the estate." He also

asserted that, even after Capital One Bank became aware of Myrtle Rollins's death, the bank "acknowledge[d]" that several accounts, with a total of about $30,000 of funds, were subject to garnishment. Mr. Wein told the court that he did not have access to information about how those accounts were titled. He noted that he could request that information "in discovery" in the orphans' court proceedings and that the personal representative "should be able to provide that information."

Counsel for Ms. Rollins argued that the court should "dismiss" Mr. Wein's motion because he had failed to present evidence that Myrtle Rollins owned any bank accounts titled solely in her name. In rebuttal, Mr. Wein argued that any determination of whether a particular account is "joint property" requires "information in terms of how [the account is] titled." He asserted that, "right now, all that information is with Ms. Rollins." He asked the court to "permit[] an opportunity" for him to obtain that information.

The orphans' court concluded that Mr. Wein's "allegations . . . that the personal representative may or may not have provided all information with respect to accounts that may or may not be properly part of the estate" did not amount to grounds to "remove the personal representative" or to "convert th[e] estate from a small estate to a regular estate." The court announced that it would deny Mr. Wein's motion without prejudice, noting that the estate might be reopened "if it does come about that there are assets that should be put into the estate[.]"

Counsel for Ms. Rollins asked the court to "dismiss th[e] motion with prejudice." He asserted that "every single one of the accounts" disclosed by Capital One Bank was "a

joint account." According to counsel, "[w]hether it was an accommodation account, whether it was a pay on death account, whatever the account," a transfer of ownership upon the death of Myrtle Rollins was "not testamentary." The orphans' court granted the "request to dismiss [the] motion with prejudice because of the specific reasons as stated" by counsel for Ms. Rollins.

E. De Novo Appeal in the Circuit Court

Within 30 days after the orphans' court denied the motion to reopen the estate, Mr. Wein filed a notice of appeal to the Circuit Court for Prince George's County.

In April 2019, Mr. Wein prevailed in the garnishment proceedings in the separate circuit court case involving Myrtle Rollins. The court entered judgment in favor of Mr. Wein in the amount of $9,580.87 with respect to one certificate of deposit, one checking account, and two savings accounts. The court quashed the writ of garnishment with respect to the checking account under the name of Carlos Cole, finding that Mr. Cole had established by clear and convincing evidence that Myrtle Rollins did not own the funds in that account.[3] The court ordered Capital One Bank to pay the amount of $9,580.87 to Mr. Wein. After receiving payment from Capital One Bank, Mr. Wein filed a notice of satisfaction of the money judgment entered against Myrtle Rollins.

[3] Generally, "a joint account owned by multiple individuals *other than spouses* is subject to garnishment by a judgment debtor of one owner, unless the presumption of joint ownership is rebutted by clear and convincing evidence." *Morgan Stanley & Co., Inc. v. Andrews*, 225 Md. App. 181, 193 n.10 (2015) (emphasis in original). "[A] co-owner of a joint account can rebut the presumption of ownership by proving, by clear and convincing evidence, which portion of the account belongs to each co-owner." *Id.* at 193.

At a hearing on October 24, 2019, the circuit court considered Mr. Wein's de novo appeal of the order denying his motion to reopen the estate. In a de novo appeal, the circuit court is required to treat the matter "as if it were a new proceeding and as if there had never been a prior hearing or judgment by the orphans' court." Md. Code (1974, 2020 Repl. Vol.), § 12-502(a)(1)(iii) of the Courts and Judicial Proceedings Article. Accordingly, the circuit court directed Mr. Wein to offer any arguments as to why it should grant any of the relief requested in his motion, namely his requests to reopen the estate, to remove the personal representative, to require payment of the money judgment, and to require Ms. Rollins to pay attorney's fees.

After making a lengthy opening statement about the history of the proceedings, Mr. Wein began to testify on his own behalf. During his testimony, the circuit court asked Mr. Wein how much money he was seeking as a creditor of Myrtle Rollins. In response, Mr. Wein admitted that he had already "received payment from Capital One about two or three months" earlier. The court asked Mr. Wein to explain why he was seeking to reopen an estate, purportedly based on his standing as a creditor of the decedent, if he was no longer a creditor. Mr. Wein refused to concede that he was not a creditor. He nonetheless acknowledged that he was no longer claiming that the estate of Myrtle Rollins owed him any money.

Despite protests from Mr. Wein, the court ruled that, in light of his admission that he was no longer asserting any rights as a creditor, his requests to reopen the estate and to remove the personal representative were "moot." Counsel for Ms. Rollins asked the

court to dismiss the de novo appeal. When Mr. Wein persisted in attempting to offer additional evidence, the court reiterated its ruling that, because he had already been paid in full for his claim against Myrtle Rollins, all matters in the de novo appeal were moot.

After the hearing, the circuit court issued an order denying all relief requested in Mr. Wein's motion to reopen the estate. Mr. Wein made a timely motion to alter or amend the judgment, which the court later denied. Mr. Wein did not pursue any further appeal of the circuit court's judgment in the de novo appeal.

F. Hearing on Motion to Consolidate and Motion for Sanctions

While the de novo appeal was pending, Ms. Rollins had filed a motion for sanctions in the orphans' court under Md. Rule 6-141. Ms. Rollins asked for an order requiring Mr. Wein to reimburse her for attorney's fees and expenses that she incurred in responding to Mr. Wein's motion to reopen the estate.

Ms. Rollins alleged that Mr. Wein's motion to reopen the estate "was in bad faith and without any lawful justification." She alleged that Mr. Wein "knew that the Decedent's accounts were all joint accounts." She also alleged that Mr. Wein knew or should have known that "joint property passes on death to the surviving joint tenant" and that this type of transfer is "not considered testamentary." Counsel for Ms. Rollins filed an affidavit affirming that Ms. Rollins had incurred attorney's fees of $2,670 as of the date of the hearing on the motion to reopen the estate.

Even though Mr. Wein had already received payment from Capital One Bank satisfying the money judgment against Myrtle Rollins, Mr. Wein filed motions asking the

orphans' court to consolidate the estate of Myrtle Rollins with the estate of Leroy Rollins.[4] In his motions to consolidate, Mr. Wein described himself as a "[c]reditor" of Myrtle Rollins. Among other things, Mr. Wein alleged that Ms. Rollins had failed to disclose, in either of the two estates, assets that may have been jointly owned by Myrtle Rollins and Leroy Rollins around the time of the death of Myrtle Rollins.

On March 4, 2020, the orphans' court held a hearing on the two pending motions: Mr. Wein's motion for consolidation and Ms. Rollins's motion for sanctions.

During the hearing, Mr. Wein again admitted that he had already received payment satisfying the money judgment against Myrtle Rollins. He nevertheless asked the orphans' court to consolidate the estate of Myrtle Rollins with the estate of Leroy Rollins, on the theory that the two estates involved overlapping issues. After considering arguments from counsel, the court granted Ms. Rollins's request to "dismiss" the motion to consolidate. The court concluded that Mr. Wein had failed to demonstrate any grounds for consolidation. "[I]n addition," the court concluded that Mr. Wein "lack[ed] standing to even make such a request" to consolidate the two estates or "to even point out that there may be some sort of issue with the report of the assets in either estate."

The orphans' court proceeded to consider Ms. Rollins's motion for sanctions under Md. Rule 6-141. The court heard testimony from two witnesses: Mr. Wein and Ms. Rollins. The court received copies of the letter that Mr. Wein sent to Ms. Rollins in

[4] Mr. Wein filed two identical motions for consolidation: one in the estate of Myrtle Rollins and one in the estate of Leroy Rollins.

October 2018, the amended confession of assets that Mr. Wein had received from Capital One Bank in the garnishment proceedings, and a transcript of the orphans' court hearing on January 30, 2019.

Counsel for Ms. Rollins argued that, when Mr. Wein made his motion to reopen the estate, his motion "was in bad faith and it was without justification." Counsel argued that Mr. Wein revealed his bad faith by sending Ms. Rollins a "so called settlement letter," which was "nothing more than a threat to an unrepresented person." Counsel argued that, when Mr. Wein claimed that Myrtle Rollins owned various accounts at Capital One Bank, "he knew that the accounts . . . were joint accounts" and that "joint accounts are not in an estate." According to counsel, Mr. Wein did not "offer[] a single shred of evidence to support what he has claimed" and made no discovery requests seeking to obtain evidence that might support his claims. "There was," counsel argued, "no basis for what [Mr. Wein] did and it cost [Ms. Rollins] a lot of money that she paid out of her pocket because she didn't have a choice."

On his behalf, Mr. Wein asserted that, when he filed his motion to reopen the estate, the estate of Myrtle Rollins had already been closed by the register of wills. Mr. Wein said that he did not make discovery requests because he thought that "step 1 was to get [the estate] reopened." Mr. Wein noted that, at the hearing on the motion to reopen the estate, he "repeatedly said" that he did not have access to information about how the Capital One Bank accounts were titled. Mr. Wein argued that, because Capital One Bank had provided information about accounts with "two names" but had treated the accounts

as "garnishable accounts," he had reason to believe that "these accounts were not regular joint accounts." He stated that the accounts that Capital One Bank treated as subject to garnishment after the death of Myrtle Rollins "could have been convenience accounts, very easily."[5]

After considering arguments, the orphans' court announced that it would grant Ms. Rollins's motion for sanctions under Md. Rule 6-141. The court gave the following explanation for its ruling:

> THE COURT: Hearing on this matter occurred . . . on January 30th, 2019. Mr. Wein provided the court with a transcript from the January 30th hearing and contained several times in the hearing are statements from Mr. Wein admitting that he knows that the accounts that were held by the decedent were joint accounts. Hundreds of thousands of dollars in the estate either owned jointly with the husband or with children and grandchildren.
>
> Mr. Wein states that he received information and sought counsel from estate attorneys and [a] retired Orphans' Court judge. That being the case, Mr. Wein knew or should have known as an attorney that accounts -- that joint accounts would not be a part of a probate estate. Mr. Wein knew or should have know[n] that childhood accounts would not -- or not set up as convenience accounts. Convenience accounts.
>
> Mr. Wein knew or should have known that accounts with a value at or over $50,000 would not be determined in the Orphans' Court. Would not be determined as to whether they were joint accounts payable to the joint account holder at death or indeed convenience accounts. He knew or should have known that that matter would be determined in the Circuit Court. There was a hearing before this Court on January 30th, 2019. Mr.

[5] As explained in greater detail below, under Md. Code (1980, 2020 Repl. Vol.), § 1-204(i) of the Financial Institutions Article, a person designated as a "convenience person" has the limited authority to withdraw funds on behalf of an account owner. Upon the death of an account owner, "[n]o funds in an account shall belong to any convenience person by reason of that capacity." *Id.* § 1-204(d)(6), (i)(2).

> Wein presented no witnesses, no documents, no proof to substantiate any allegations contained in his motion and in his argument.
>
> It was what this Court viewed as a fishing expedition without any backing, without any proof, without any witnesses, without any documentation. According to Maryland Rule 6-141, bad faith unjustified proceeding, if the Court finds that the conduct of any person in maintaining or defending any proceeding was in bad faith or without substantial justification, the Court may require the offending person or the attorney advising the conduct or both of them to pay to any other person when appropriate to the estate, the cost of the proceeding and the reasonable expenses. Including reasonable attorney's fees incurred by the person or estate in opposing it.
>
> In this matter, the personal representative filed a motion for sanctions pursuant to Maryland Rule 6-141 and in the hearing today, Counsel for the personal representative . . . stated everything that this Court does not have to restate with respect to a finding of bad faith indefinitely in unjustified proceeding.
>
> Therefore, this Court will award sanctions to Ms. Rollins, not with respect to anything that was incurred during the Circuit Court matter but with respect to preparation for and attending the hearing on January 30th, 2019 and will consider additional fees that were incurred in preparing for and attending today's proceedings as well. So ruled.

The orphans' court instructed counsel for Ms. Rollins to file a "supplemental statement" regarding the attorney's fees that she incurred in preparing for and attending the hearing on March 4, 2020. Shortly before the hearing, her counsel had filed an affidavit affirming that she had incurred $6,373 in attorney's fees and expenses. In a supplemental affidavit submitted after the hearing, counsel for Ms. Rollins affirmed that she had incurred additional attorney's fees and expenses totaling $2,274 since the earlier affidavit. In total, Ms. Rollins claimed to have incurred $8,647 of attorney's fees and expenses in connection with the orphans' court proceedings.

G. Orders of the Orphans' Court and Notices of Appeal

On March 4, 2020, the orphans' court entered orders in the estate of Myrtle Rollins and in the estate of Leroy Rollins, denying the motions to consolidate the two estates.

Twelve days later, on March 16, 2020, Mr. Wein moved for reconsideration in both estate cases. In those motions, he asked the court to reconsider its rulings denying his motions to consolidate the estates and granting Ms. Rollins's motion for sanctions. On March 30, 2020, Mr. Wein filed a second motion for reconsideration, asking the court to reconsider its ruling on the motion for sanctions.

On May 20, 2020, the orphans' court entered an order in the estate proceedings for Myrtle Rollins, granting Ms. Rollins's motion for sanctions under Md. Rule 6-141. The court ordered "that Michael Wein . . . is sanctioned and ordered to reimburse Kim Rollins in the amount of $4,500.00." The order further stated "that judgment is hereby entered against Mr. Wein and in favor of Kim Rollins in the amount of $4,500.00."

On the same date, the orphans' court entered orders in both estate cases, denying Mr. Wein's first motion for reconsideration of its rulings. One week later, the orphans' court entered an order denying Mr. Wein's second motion for reconsideration.

Within 30 days after the orphans' court entered its order awarding attorney's fees, Ms. Rollins filed her own motion for reconsideration. She asserted that the affidavits from her counsel established that she had incurred attorney's fees and expenses in the total amount of $8,647 in the orphans' court proceedings. She observed that the orphans'

court gave no explanation for why it ordered Mr. Wein to pay the amount of $4,500. She argued that the decision to award less than the full amount of fees incurred "g[ave] the appearance of arbitrariness" to that aspect of the order. She asked the court to order Mr. Wein to reimburse her in the amount of $8,647 and to provide a statement of reasons.

On June 19, 2020, Mr. Wein filed notices of appeal in the orphans' court in the estate of Myrtle Rollins and in the estate of Leroy Rollins. He filed the notices of appeal exactly 30 days after the orphans' court entered the orders denying his motion for reconsideration of the denial of the motions to consolidate and the order requiring him to pay attorney's fees in the amount of $4,500.

Several months later, the orphans' court granted Ms. Rollins's motion for reconsideration. The orphans' court increased the amount of fees from $4,500 to $8,647, but the court did not provide any additional explanation for its ruling. Mr. Wein moved to strike the order increasing the amount of fees, arguing that the orphans' court erred in revising its sanctions order because he had already noted an appeal from that order. The orphans' court granted his motion to strike the revised order, thereby reinstating the original sanctions order, which requires Mr. Wein to pay $4,500 to Ms. Rollins.

DISCUSSION

In this appeal, Mr. Wein primarily challenges the order requiring him to reimburse Ms. Rollins for $4,500 of the attorney's fees and expenses that she incurred in connection with the orphans' court proceedings. Mr. Wein asks this Court to reverse the order requiring him to pay attorney's fees or, in the alternative, to vacate that order and remand

the matter to the orphans' court for further proceedings. In addition, Mr. Wein contends that the orphans' court abused its discretion by refusing to consolidate the estate of Myrtle Rollins with the estate of Leroy Rollins. Alleging numerous other "errors and other irregularities" throughout the proceedings, Mr. Wein asks this Court to direct the orphans' court to "[r]eopen" the estate of Myrtle Rollins.[6]

As a preliminary matter, it is important to clarify exactly which orders are properly before this Court. By statute, "[a] party may appeal to the Court of Special Appeals from a final judgment of an orphans' court." Md. Code (1974, 2020 Repl. Vol.), § 12-501(a) of the Courts and Judicial Proceedings Article. In this context, the definition of a "final judgment" of the orphans' court is more expansive than the definition of a final judgment of the circuit court in an ordinary civil case. *See Banashak v. Wittstadt*, 167 Md. App. 627, 658 (2006). Even under the more stringent definition of a final judgment in an ordinary civil case, the order requiring Mr. Wein to pay attorney's fees and reducing that order to a judgment qualifies as an appealable order. *See Blake v. Blake*, 341 Md. 326, 335 (1996) (citing *Newman v. Reilly*, 314 Md. 364 (1988)). Mr. Wein filed a timely notice of appeal within 30 days after the entry of that order. *See* Md. Rule 8-202(a).

Mr. Wein also purports to challenge the orders denying his motions for consolidation of two estates. This appeal is, strictly speaking, not a direct appeal from those orders. The record shows that the orphans' court entered the orders denying his

[6] Mr. Wein's brief begins with a list of lengthy and argumentative questions presented, which is reproduced in the appendix to this opinion.

motions for consolidation on March 4, 2020. At that point, the orphans' court had not yet resolved the motion for attorney's fees because it had not determined the amount of fees to be paid by Mr. Wein. The pendency of the collateral motion for attorney's fees did not extend the deadline for taking an appeal in the underlying case from the order denying the motion for consolidation. *See Johnson v. Wright*, 92 Md. App. 179, 182 (1992).

Mr. Wein did not file any notice of appeal within 30 days after the entry of the orders denying his motion for consolidation. Rather, on March 16, 2020, he filed motions asking the orphans' court to reconsider the denial of his motion for consolidation. Because he filed motions for reconsideration more than 10 days after the entry of the order denying the motion for consolidation, these motions did not extend the deadline for noting an appeal. *See Estate of Vess*, 234 Md. App. 173, 195 (2017).[7]

The orphans' court entered orders denying his motions for reconsideration on May 20, 2020. Mr. Wein filed his notices of appeal exactly 30 days later, on June 19, 2020. Accordingly, his appeal is timely as to the order denying his motion for reconsideration. An order denying a motion for reconsideration of an otherwise final judgment of the orphans' court is an appealable order. *See Grimberg v. Marth*, 338 Md. 546, 553 (1995). In such an appeal, however, the scope of review is "limited to whether the [orphans' court] abused [its] discretion in declining to reconsider the judgment." *Id.* Our review of

[7] By contrast, when a party files a timely motion to alter or amend a judgment of the orphans' court within 10 days after the entry of judgment, "the deadline for noting an appeal to this Court from the orphans' court's judgment is 30 days from the notice of withdrawal of the motion or 30 days from the ruling on the motion[.]" *Edery v. Edery*, 213 Md. App. 369, 383-84 (2013).

that order is considerably more deferential than it would be in a direct challenge to the order denying the motion to consolidate. *See Estate of Vess*, 234 Md. App. at 205.

This opinion first will address Mr. Wein's challenge to the orders denying his motions for reconsideration of the denial of his motions for consolidation. Second, this opinion will address his challenge to the order requiring him to pay attorney's fees under Md. Rule 6-141.

I. Request for Consolidation of Two Estates

Mr. Wein contends that the orphans' court abused its discretion when it declined to consolidate the estate of Myrtle Rollins with the estate of Leroy Rollins. He argues that the orphans' court should have consolidated the two estates because, in his view, the two estates "involved" common issues. He cites Md. Rule 2-503, which authorizes the circuit court to consolidate civil actions "involv[ing] a common question of law or fact or a common subject matter[.]"[8]

There is no merit to the contention that the orphans' court was required to consolidate the two estates. When the orphans' court ruled on the motion for consolidation, the estate of Myrtle Rollins was closed. Mr. Wein had tried and failed to persuade the orphans' court and the circuit court to reopen the estate of Myrtle Rollins. Mr. Wein had brought a claim against the estate as a creditor, but his claim had already

[8] Title 6 of the Maryland Rules, which governs matters in the orphans' courts and before the register of wills, includes no Rule authorizing the consolidation of estates. Title 2 of the Maryland Rules does not apply to estate proceedings, "except as otherwise specifically provided or necessarily implied." Md. Rule 1-101(b).

been satisfied in a separate action. By the time of the ruling on the motion to consolidate, the matter of the estate of Myrtle Rollins had terminated and no longer involved any questions or subject matter to be adjudicated or administered. As counsel for Ms. Rollins observed at the hearing, the orphans' court "ha[d] nothing to consolidate." The orphans' court could not possibly have abused its discretion by declining to consolidate the closed estate of Myrtle Rollins with another estate.

Moreover, in his appellate brief, Mr. Wein fails to acknowledge that the orphans' court denied his motion to consolidate on two, independent grounds. The orphans' court ruled: "With respect to the motion to consolidate, aside from this Court not hearing any reason why the two matters should be consolidated, in addition, the movant lacks standing to even make such a request[.]" Because Mr. Wein has failed to challenge the conclusion that he lacked standing to request consolidation of the two estates, he has effectively waived any claim of error in the orphans' court's decision on that issue. *See Bailiff v. Woolman*, 169 Md. App. 646, 654 (2006).

In any event, the orphans' court was correct in concluding that, because Mr. Wein had received payment satisfying his claim against the estate of Myrtle Rollins, he lacked standing to request consolidation or to raise any other objections to the administration of her estate. Generally, a person without any pecuniary interest that may be affected by the administration of a decedent's estate lacks standing to interfere with the administration of the estate. *See McIntyre v. Smith*, 159 Md. App. 19, 33 (2004). The Estates and Trusts Article of the Maryland Code and Title 6 of the Maryland Rules set forth the rights of

"interested persons," such as heirs and legatees of the decedent, as well as the rights of creditors. When Mr. Wein made his motion to consolidate, he purported to rely on his status as a creditor of Myrtle Rollins. Yet, as he later admitted at the hearing on his motion to consolidate, he had already received payment from Capital One Bank satisfying the money judgment owed by Myrtle Rollins. Thus, at the time of the hearing, Mr. Wein was no longer a creditor of Myrtle Rollins and had no interest in the administration of her estate. Moreover, he never was, nor did he ever claim to be, a creditor of Leroy Rollins.

Mr. Wein's reply brief includes a belated attempt to address his lack of standing. Because he failed to include this argument in his initial brief, this argument is not properly presented for appellate review. *See, e.g.*, *Dep't of Hous. & Cmty. Dev. v. Mullen*, 165 Md. App. 624, 661 n.14 (2005) (quoting *Oak Crest Vill. v. Murphy*, 379 Md. 229, 241-42 (2004)). Yet even in his reply brief, Mr. Wein does not dispute the court's conclusion that he lacked standing. He merely asserts that the orphans' court had inherent power to consolidate the two estates on its own initiative. That assertion, even if true, is no basis to reverse the decision to decline to consolidate the two estates. As explained above, the orphans' court was entirely correct when it perceived no "reason why the two matters should be consolidated."

Accordingly, we affirm the orders denying Mr. Wein's motions for reconsideration of the order denying his motions for consolidation. Furthermore, because Mr. Wein no longer has any interest at stake in the estate of Myrtle Rollins, he lacks

standing to request that the estate be reopened for further proceedings.

Mr. Wein does have standing to challenge the order requiring him to pay $4,500 of attorney's fees to Ms. Rollins. His remaining allegations of errors in the estate proceedings are immaterial, except as they might pertain to the issue of whether the orphans' court erred or abused its discretion when it ordered him to pay attorney's fees under Md. Rule 6-141.

II. Order Requiring Reimbursement for Attorney's Fees

In full, Maryland Rule 6-141 provides:

> If the court finds that the conduct of any person in maintaining or defending any proceeding was in bad faith or without substantial justification, the court may require the offending person or the attorney advising the conduct or both of them to pay to any other person and, when appropriate, to the estate the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the person or estate in opposing it.

This Rule, which applies to matters in the orphans' courts and before the register of wills, is the counterpart to Maryland Rule 1-341, which applies to all matters in courts of this State other than the orphans' court.

Maryland Rule 1-341 "'represents a limited exception to the general rule that attorney's fees are not recoverable by one party from an opposing party[.]'" *Thomas v. Capital Med. Mgmt. Assocs., LLC*, 189 Md. App. 439, 473 (2009) (quoting *Legal Aid Bureau, Inc. v. Bishop's Garth Assocs. Ltd. P'ship*, 75 Md. App. 214, 223 (1988)). Although an order under this rule is frequently described as a sanction, its function is not to punish the offending party but to restore the opposing party to "the same position as if

the wrongful party's offending conduct had not occurred." *Seney v. Seney*, 97 Md. App. 544, 552 (1993).

To grant a motion under Rule 1-341, the court "must make an explicit finding that a party conducted litigation either in bad faith or without substantial justification." *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 72 (2017). If it makes that finding, the court may require the offending party to reimburse the opposing party for reasonable attorney's fees actually incurred in opposing the unjustified or bad-faith conduct. *Id.* On appeal, the appellate court reviews a finding of bad faith or lack of substantial justification to assess whether "it is clearly erroneous or involves an erroneous application of law." *Id.* The appellate court uses the abuse of discretion standard to review the court's conclusion that the conduct warrants reimbursement of attorney's fees. *Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. 1, 21 (2018).

Maryland Rule 1-341 "is not intended to simply shift litigation expenses based on relative fault." *Zdravkovich v. Bell Atlantic-Tricon Leasing, Corp.*, 323 Md. 200, 212 (1991). Rather, it serves "to deter litigation that clearly lacks merit." *Id.* This Rule is targeted "'at those who proceed in the courts without any colorable right to do so.'" *Parler & Wobber v. Miles & Stockbridge, P.C.*, 359 Md. 671, 706 (2000) (quoting *Legal Aid Bureau, Inc. v. Bishop's Garth Assocs. Ltd. P'ship*, 75 Md. App. at 224). This Court has explained that "'Rule 1-341 should be used sparingly because granting an award of attorney's fees under it is an extraordinary remedy.'" *Toliver v. Waicker*, 210 Md. App. 52, 71 (2013) (quoting *RTKL Assocs. Inc. v. Baltimore County*,

147 Md. App. 647, 658 (2002)). Motions under this Rule should be granted only in "rare and exceptional" cases where "there is a clear, serious abuse of judicial process." *Black v. Fox Hills North Cmty. Ass'n, Inc.*, 90 Md. App. 75, 83-84 (1992).

The "bad faith" prong of Rule 1-341 addresses instances of "intentional misconduct." *Talley v. Talley*, 317 Md. 428, 438 (1989). "As frustrating as it may be to courts and litigants at all levels to become involved in extra effort because an attorney or a party misreads a rule, or overlooks a requirement, or is otherwise negligent, careless, or perhaps inept, the bad faith component of Rule 1-341 does not permit the award of attorney's fees as a sanction for such conduct." *Id.* A party acts in "bad faith" within the meaning of this Rule when the party "acts 'vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons.'" *RTKL Assocs. Inc. v. Baltimore County*, 147 Md. App. at 658 (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991)). Bad-faith actions may also include actions taken "'wantonly or for oppressive reasons.'" *Needle v. White, Mindel, Clarke & Hill*, 81 Md. App. 463, 473 (1990) (quoting *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980)). An order sanctioning a party for bad-faith conduct "requires clear evidence that the action is . . . taken for other improper purposes amounting to bad faith." *Needle v. White, Mindel, Clarke & Hill*, 81 Md. App. at 474. Typically, "only egregious behavior" will support a finding of conduct in bad faith. *Id.*

Within the meaning of Rule 1-341, "a claim or litigation position is 'without substantial justification' if it is not fairly debatable, not colorable, or not within the realm

of legitimate advocacy." *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. at 72 (footnotes omitted). "[F]rivolous claims, or claims that 'indisputably ha[ve] no merit[,]' lack substantial justification." *Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. at 23 (quoting *Blanton v. Equitable Bank, Nat'l Ass'n*, 61 Md. App. 158, 165-66 (1985)). Nevertheless, "'[t]he fact that a court rejects the proposition advanced by [a party] and finds it to be without merit does not mean the proposition was advanced without substantial justification[.]'" *State v. Braverman*, 228 Md. App. 239, 260 (2016) (quoting *Legal Aid Bureau, Inc. v. Farmer*, 74 Md. App. 707, 713 (1988)). "[A]s a matter of law, a reasonable basis for believing that a case will generate a factual issue for the fact-finder at trial provides substantial justification for initiating or defending an action." *Needle v. White, Mindel, Clarke & Hill*, 81 Md. App. at 476.

"'[A] party possessing a colorable claim must be allowed to assert it without fear of suffering a penalty more severe than that typically imposed on defeated parties.'" *Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. at 20 (quoting *Needle v. White, Mindel, Clarke & Hill*, 81 Md. App. at 471-72). A party's conduct does not lack substantial justification merely because the party "fail[s] to state a cause of action" (*Black v. Fox Hill Cmty. Ass'n, Inc.*, 90 Md. App. at 84), "misconceives a legal basis for recovery" (*Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 680 (2000)), presents "an innovative or tenuous legal theory" (*Legal Aid Bureau, Inc. v. Bishop's Garth Assocs. Ltd. P'ship*, 75 Md. App. at 222), or "advances an arguable interpretation of an ambiguous statute" that the court ultimately rejects (*URS Corp. v. Fort Myer*

Constr. Corp., 452 Md. at 73). The party's action must be evaluated based on the circumstances "at the time it was taken[.]" *Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. at 676. "It is legal error for a court 'to determine a lack of substantial justification from the vantage point of judicial hindsight[.]'" *Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. at 22 (quoting *Legal Aid Bureau, Inc. v. Bishop Garth's Assocs. Ltd. P'ship*, 75 Md. App. at 222).

In this appeal, Mr. Wein contends that the orphans' court erred when it found that he moved to reopen the estate of Myrtle Rollins in bad faith and without substantial justification. Among other things, Mr. Wein takes issue with the adequacy of the findings announced by the orphans' court at the hearing. He asserts that the orphans' court made "zero findings," but simply recited the text of Rule 6-141 and adopted the arguments made by opposing counsel.

Mr. Wein's description of the ruling is inaccurate. It is true that, at one point, the orphans' court remarked that it "d[id] not have to restate" the arguments made by counsel for Ms. Rollins. But that remark must be understood within the context of the entire ruling, which extends across three pages of the hearing transcript. As a whole, the statement of reasons provided by the orphans' court is sufficient for this Court to review the court's findings that Mr. Wein proceeded in bad faith and without substantial justification.

The orphans' court's findings of bad faith and lack of substantial justification were both based on a common premise. The court found that, at the time that Mr. Wein made

his motion to reopen the estate, he "kn[ew]" that all accounts under the name of Myrtle Rollins at Capital One Bank were "joint accounts" that she "owned jointly with [her] husband or with children and grandchildren." The court found that Mr. Wein "knew or should have know[n]" that those accounts were "not set up as convenience accounts." The court concluded that Mr. Wein, "as an attorney," either "knew or should have known . . . that joint accounts would not be part of" the estate. In the court's assessment, Mr. Wein's motion to reopen the estate was simply "a fishing expedition without any backing[.]"

On appeal, Mr. Wein disputes the foundational premise of the orphans' court's ruling: namely, that he had actual knowledge that all Capital One Bank accounts under the name of Myrtle Rollins were joint accounts. He asserts that, even though he had received information about accounts that had multiple names associated with them, he did not have access to account agreements establishing the rights of the various persons in those accounts. He argues that, if one or more of those accounts were "convenience" accounts, then the funds in those accounts would belong in the estate of Myrtle Rollins upon her death. He also argues that, as a creditor of Myrtle Rollins, he was entitled to seek information about how the accounts were titled.

In his argument, Mr. Wein cites Md. Code (1980, 2020 Repl. Vol.), § 1-204 of the Financial Institutions Article ("FI"), which governs transfers upon the death of a party to a multiple-party account. The statute authorizes depositary institutions to establish "multiple-party accounts" (*id.* § 1-204(c)(1)), including "[j]oint account[s]" in the name

of two or more parties. *Id.* § 1-204(b)(8). Upon the death of a party to a multiple-party account, the funds belong to the surviving parties to the account unless the account agreement expressly establishes the right to the funds in the account. *Id.* § 1-204(d)(1)-(2). Transfers on death under this section "are not to be considered testamentary." *Id.* § 1-204(a); *see also* Md. Code (1974, 2022 Repl. Vol.), § 1-401 of the Estates and Trusts Article.

The statute also authorizes account owners to designate a "convenience person," as an agent who is authorized to withdraw funds from the account for convenience of the account owner. FI § 1-204(b)(5), (f), (i)(1). The statute specifies that "[n]o funds in an account shall belong to any convenience person by reason of that capacity." *Id.* § 1-204(d)(6), (i)(2). Thus, unlike a joint owner, a convenience person has no right to a transfer of ownership of the account on the death of a party.

In its oral ruling, the orphans' court pointed to the transcript of the hearing on the motion to reopen the estate as evidence that Mr. Wein knew that all Capital One Bank accounts in the name of Myrtle Rollins were joint accounts. The orphans' court found that Mr. Wein "admit[ted]" "several times" that he "kn[ew]" that all of those accounts were joint accounts.

The hearing transcript shows that, when Mr. Wein described the Capital One Bank accounts as "joint bank accounts," he immediately clarified that, by using the term "joint," he "d[id not] necessarily mean legally joint." He stated, in other words, that he

did not know whether those accounts met the legal definition of joint accounts.[9] He specifically mentioned, more than once, his belief that the accounts in question "could be convenience accounts." He stated that, because Capital One Bank had responded to the writ of garnishment by placing a hold on several accounts both before and after the death of Myrtle Rollins, he "d[id] not necessarily believe they [were] joint accounts." He contended that he did not have enough information to determine whether the accounts were joint accounts and could not obtain that information without disclosures from the personal representative.

The orphans' court's finding that Mr. Wein "admitt[ed]" that he knew that the Capital One Bank accounts were joint accounts is clearly erroneous. Aside from the purported "admi[ssions]" by Mr. Wein, the only other evidence on which the orphans' court could have concluded that Mr. Wein "kn[ew]" that the accounts were joint accounts was the series of documents that he received from Capital One Bank in connection with the garnishment proceedings. None of these documents conclusively demonstrated that those accounts were joint accounts.

The Capital One Bank account summary statement from August 2018 was addressed to three persons at one mailing address: "LEROY S ROLLINS SR[,] MYRTLE C ROLLINS OR KIM K ROLLINS." The statement provided balances for four deposit accounts, with balances ranging from $4,202.17 to $41,314.68, as well as

[9] The term "'[m]ultiple-party account' does not include any . . . [a]ccount that would not be a multiple-party account except for the fact that one or more convenience persons are authorized to draw upon funds in the account." FI § 1-204(b)(8)(ii)(6).

one investment account, with a balance of $255,321.85. Only the investment account was expressly designated as a "Joint Ownership" account. The statement included no additional information about how those accounts may have been titled among the three persons to whom the statement was addressed.

The first confession of assets, dated August 21, 2018, disclosed that Capital One Bank was holding $9,580.87 in a checking account with the name "Myrtle Rollins or Carlos Cole." The amended confession of assets, dated November 9, 2018, disclosed that Capital One Bank was holding a total of $21,247.43 in six different accounts: one checking account and one savings account with the name "Myrtle Rollins/Carlos Cole," one savings account with the name "Myrtle Rollins/Brittoney Green," one checking account and one savings account with the name "Myrtle Rollins/Brook Green," and a certificate of deposit account with the name "Myrtle & Lewis Rollins." In each instance, the "Name" associated with the account was simply written on the confession of assets form by an agent of Capital One Bank. No additional information was provided about the nature of the interests of the named persons. None of the accounts was expressly designated as a "joint" account.

In these circumstances, a reasonable person or reasonable attorney in Mr. Wein's position could not determine with certainty whether the various accounts were joint accounts or mere convenience accounts. The information available to him revealed that at least one account, the investment account with a value of $255,321.85, was jointly owned. For each of the other accounts, however, the nature of the ownership interests

was not specified. Capital One Bank might have placed a hold on the funds in six of the accounts even though the accounts were joint accounts,[10] or it might have done so because the other person named in connection with the account was not a joint owner. The information that Mr. Wein received from Capital One Bank did not foreclose the possibility that the other persons associated with the accounts were convenience persons. Thus, the orphans' court erred in finding that "Mr. Wein knew or should have known" that the accounts were "not set up as convenience accounts."[11]

In addition to concluding that Mr. Wein acted with knowledge that the Capital One Bank accounts were joint accounts, the orphans' court faulted Mr. Wein for failing to come forward with "proof" or "documentation" to support his allegations. Similarly, in her brief, Ms. Rollins argues that Mr. Wein failed to produce evidence that assets had been "wrongfully excluded" from the estate of Myrtle Rollins. These criticisms reflect a

[10] When property is held in the name of two or more persons at a bank, a garnishee bank "may answer a writ of garnishment by stating: (i) [t]hat the property is held in an account at the garnishee in the name of 2 or more persons, 1 or more of whom but fewer than all of whom, are judgment debtors; and (ii) [t]he amount held in the account at the time the writ of garnishment was served on the garnishee." Md. Code (1974, 2020 Repl. Vol.), § 11-603(c)(1) of the Courts and Judicial Proceedings Article.

[11] The orphans' court also concluded that "Mr. Wein knew or should have known" that the orphans' court could not determine ownership of "accounts with a value at over $50,000[.]" By statute, the orphans' court "may determine questions of title to personal property not exceeding $50,000 in value for the purpose of determining what personal property is properly includable in an estate[.]" Md. Code (1974, 2022 Repl. Vol.), § 1-301(b) of the Estates and Trusts Article. Only one of the various accounts disclosed by Capital One Bank, the "[j]oint [o]wnership" investment account, showed a balance exceeding $50,000. Consequently, the orphans' court would have had authority to determine questions of title to each of the other Capital One Bank accounts.

more accurate assessment of Mr. Wein's conduct than the charge that he proceeded with actual knowledge that all accounts were joint accounts. Yet the proper test for substantial justification is whether a party "has a 'reasonable basis for believing that [its] claims [will] generate an issue of fact for the fact finder.'" *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. at 73 (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. at 268). "'The filing of an action or defense . . . is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery.'" *Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. at 23 (quoting *Bishop's Garth Assocs. Ltd. P'ship*, 75 Md. App. at 221-22); *see also* Md. Rule 19-303.1, cmt. 2.

In his motion, Mr. Wein argued that the orphans' court should reopen the estate and direct the personal representative to report "all assets" of Myrtle Rollins, whether "sole" or "joint." At the hearing on his motion, Mr. Wein stated that he did not have information at that time about how the Capital One Bank accounts were titled. He stated that he might obtain that information "in discovery" in the orphans' court and that Ms. Rollins, as the personal representative "should be able to provide that information." Under the circumstances, Mr. Wein had at least "a colorable argument" (*URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. at 75) in favor of reopening the estate, so that he, as a creditor of the decedent (as he still was at the time), would have an opportunity for

discovery about whether the various Capital One Bank accounts were, in fact, accounts that should pass outside the decedent's estate.[12]

The orphans' court addressed whether Mr. Wein had justification only with respect to his allegations that certain accounts belonged in the estate of Myrtle Rollins. The orphans' court did not discuss other aspects of his motion, such as his allegations regarding other personal property of Myrtle Rollins, his request to remove Ms. Rollins from the office of personal representative on various grounds, or his request for payment of attorney's fees. Because the orphans' court made no explicit finding of bad faith or lack of substantial justification in those aspects of his motion, our review is limited to the findings that the court actually made. *See Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. at 22 n.7. Otherwise, "we would merely be speculating as to the basis of the trial court's findings." *Id.* We cannot uphold the court's ruling on the basis of findings that the court did not expressly make, even if those findings might otherwise have justified the court's conclusions.

In sum, the record does not support the orphans' court's finding that Mr. Wein acted in bad faith and without substantial justification in making his motion to reopen the estate. The central finding that Mr. Wein knew the Capital One Bank accounts of Myrtle

[12] Ms. Rollins provided no information about any of the Capital One Bank accounts in the estate proceedings. On an information report, where Ms. Rollins was asked to disclose any joint accounts that Myrtle Rollins owned at the time of her death, Ms. Rollins wrote: "N/A." In her response to Mr. Wein's motion, Ms. Rollins denied all of Mr. Wein's allegations.

Rollins were joint accounts is clearly erroneous. The orphans' court, therefore, abused its discretion when it ordered Mr. Wein to pay attorney's fees under Md. Rule 1-641.[13]

ALLOCATION OF COSTS

Maryland Rule 8-607 governs the assessment of costs in appeals to this Court. Generally, "[u]nless the Court orders otherwise, the prevailing party is entitled to costs." Md. Rule 8-607(a). Nevertheless, "[t]he Court, by order, may allocate costs among the parties[.]" *Id.* Thus, in appropriate cases, this Court may order a party to pay costs even when that party prevails in an appeal. *E.g. Jackson v. State*, 120 Md. App. 113, 140 n.4 (1998), *rev'd on other grounds*, 358 Md. 259 (2000).

In addition, "[w]hen unnecessary material has been included in a record extract or appendix, the Court may order that the costs of reproduction be withheld, apportioned, or assessed against the attorney or unrepresented party who caused the unnecessary material to be included." Md. Rule 8-607(b). If the Court grants a party's request to correct or supplement the record and "and the Court later determines that the correction or supplementation was unnecessary, the costs of the correction or supplementation shall be imposed on the moving party." Md. Rule 8-607(c).

Here, Mr. Wein has noted two appeals: one in the estate of Myrtle Rollins and one in the estate of Leroy Rollins. The only decision that Mr. Wein challenged in the estate of Leroy Rollins is the denial of his motion to consolidate the two estates. As explained

[13] Because the record does not support the grant of sanctions under Md. Rule 6-141, it is unnecessary to consider whether the orphans' court provided an adequate explanation for its determination of the amount of fees.

in this opinion, the orphans' court correctly denied the motions for consolidation and the motions for reconsideration of that decision. Thus, Ms. Rollins is the prevailing party in *In re: The Estate of Leroy Rollins, Sr.*, No. 399, Sept. Term 2020. Ms. Rollins is also a prevailing party in *In re: The Estate of Myrtle Rollins*, No. 398, Sept. Term 2020, to the extent that Mr. Wein has challenged the refusal to consolidate the two estates.

On the premise that the two estates involved "complicated" and "overlap[ping]" issues, Mr. Wein moved to consolidate his two appeals and to increase the word limits for his appellate briefs. He asserted that increasing the word limit was "reasonably necessary" so as not to "unduly prejudice" his efforts in seeking consolidation of the two estates. Granting his motion, this Court increased the applicable word limits: from 9,100 words to 13,000 words for each party's main brief; and from 2,600 words to 6,500 for Mr. Wein's reply brief. Mr. Wein nearly reached those increased word limits: his opening brief contains 12,997 words, and his reply brief contains 6,390 words.

After this Court received the record from the orphans' court, Mr. Wein filed a series of motions to correct the record under Md. Rule 8-414. Mr. Wein asked this Court to order the orphans' court to "transfer the actual 'paper file' and all materials therein" to this Court. He asserted that many papers in the record maintained by the orphans' court included significant alterations or corrections made with "white-out" corrective fluid. According to Mr. Wein, it is the orphans' court's practice to transmit copies of its record to the appellate court and to retain the original papers in the orphans' court pending an appeal. He claimed that any scanned copies would not reveal the use of "white-out" on

these documents. Over Ms. Rollins's opposition, this Court ordered the orphans' court to transmit the original versions of the records for both estates.

This Court also granted three motions by Mr. Wein to extend the time for filing his appellate brief and record extract. Ms. Rollins opposed the second and third motions for extension of time, which were largely based on Mr. Wein's assertions that his discovery of the use of white-out in the paper case file had complicated his efforts to prepare his brief and the record extract.

Mr. Wein eventually submitted a five-volume record extract, spanning 1,075 pages, in addition to tables of contents. Generally, a record extract should contain "parts of the record that are reasonably necessary for the determination of the questions presented by the appeal[.]" Md. Rule 8-501(c). The record extract includes a substantial amount of duplicative materials, such as multiple copies of documents that were submitted multiple times as exhibits in support of motions. The record extract includes copies of many documents from the proceedings for the estate of Leroy Rollins that have no apparent relationship to any issues raised in the appeal. The final volume of the record extract includes full-color copies of images of various papers from the record, for the apparent purpose of revealing any use of white-out.

Mr. Wein's appellate brief presents, by his count, six questions presented, many of which include multiple sub-issues. As explained above, Mr. Wein is the prevailing party only with respect to one issue: whether the orphans' court erred in its finding of bad faith and lack of substantial justification. The vast majority of the arguments made in Mr.

Wein's brief do nothing to advance his contentions that the orphans' court erred or abused its discretion in ordering him to pay attorney's fees.

As just one of many possible examples, Mr. Wein devotes significant attention to his discovery of the orphans' court's use of white-out on various papers in the record. Mr. Wein expresses his concern that the orphans' court or register of wills made material "alterations" to documents "without attribution" or explanation. Contrary to Mr. Wein's insistence that this use of white-out amounts to "legal error" and is "not harmless error," the various "alterations" that he identifies have no apparent relevance to the issues of whether his conduct was in bad faith or without substantial justification or whether the court should have consolidated two estates.[14]

As another example, Mr. Wein deems it significant that, after he filed his motion alleging the existence of hundreds of thousands of dollars of estate assets, the register of wills wrote a memorandum to the orphans' court recommending a particular bond amount for the personal representative. Contrary to Mr. Wein's assertion, this memorandum does not "confirm[]" his allegations in any way. Instead, it merely reflects the amount of the estate assets that Mr. Wein alleged to exist.[15]

[14] For example, the written order requiring Mr. Wein to pay attorney's fees included an additional line requiring Mr. Wein to pay an unstated amount directly to her counsel. The amount was left blank. It appears that the orphans' court, rather than using a handwritten notation to strike that line from the order, used white-out to cover that entire line of the document.

[15] The memorandum recommends a bond amount of $591,000. In his motion, Mr. had alleged that Ms. Rollins owned "over $300,000" in Capital One Bank accounts, plus additional funds "totaling $290,500.00."

Mr. Wein tells us that, three months after he filed his motion to reopen the estate, counsel for Ms. Rollins sent him a notice of disallowance of his claim against the estate (but did not actually file that notice in the estate proceedings). Mr. Wein fails to recognize that a notice that he received from opposing counsel several months after he filed his motion cannot establish his justification for filing that motion in the first place.

According to Mr. Wein, when the orphans' court granted Ms. Rollins's motion for sanctions, the orphans' court had not yet received the entire record from the circuit court after his de novo appeal. Citing inapposite cases, Mr. Wein claims that this "error" is "structural" and "presumptively prejudicial." Mr. Wein fails to identify any parts of the record that the orphans' court should have considered in addition to the evidence submitted at the hearing on the motion for sanctions.

In our assessment, the undue length of Mr. Wein's appellate brief and the record extract are not any direct product of an appellate challenge to the orders from which he appealed. These voluminous materials are the result of Mr. Wein's decision to raise every conceivable grievance about the estate proceedings. Although he is the prevailing party in one part of one of his two appeals, his decisions have multiplied the costs of this appeal. Ms. Rollins should not be required to pay those costs.

In light of the above considerations, we exercise our discretion under Md. Rule 8-607(a) to allocate all costs of these appeals to Mr. Wein.

ORDERS OF THE ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY DENYING MOTIONS FOR RECONSIDERATION (DOCKET ENTRIES

#63 AND #65 IN ESTATE NO. 111211; DOCKET ENTRY #40 IN ESTATE NO. 112642) AFFIRMED.

ORDER OF THE ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY REQUIRING PAYMENT OF ATTORNEY'S FEES (DOCKET ENTRY #64 IN ESTATE NO. 111211) REVERSED.

ALL COSTS TO BE PAID BY APPELLANT.

APPENDIX

In his appellate brief, Mr. Wein presented the following questions:

1. In addition to the Appellee conceding the judge had an "appearance of arbitrariness" in the operative final judgment, was it legal error justifying reversal and remand, when in violation of Md. Rule 6-141 (and its comparably worded Md. Rule 1-341, judicially interpreted by *Needle v. White et al.*, 81 Md. App. 463 (1990) and *Zdravkovich v. Bell Atlantic-Tricon Leasing Corp.*, 323 Md. 200 (1991)) , the judge without hearing, opportunity for examination, proper explanation for the reasonableness of amount of award, or any specific rationales given on the prerequisite finding of bad faith or without substantial justification, awarded $4500 in attorney's fees allegedly reasonably "incurred" for Appellee's Counsel?

2. Whether the high standard in *Needle* of "clear evidence that the action was entirely without color and taken for other improper purposes" was met to properly sustain any attorney's fee award under the comparable Estate Rule to Md. Rule 1-341, when *inter alia*:

   (A) Appellant timely and appropriately sought to "reopen" an Estate case improperly "closed" a month after opening by the Register of Wills, without proper public notice and opportunity for discovery; and
   (B) Appellant's arguments were consistent with this Court's precedent of *Stanley v. Stanley*, 175 Md. App. 246 (2007); and
   (C) the Register Clerk's Memorandum prior to the hearing to "reopen" said "Publication was Required" and recommended a $591,000 bond to cover the reasonable value of Estate; and
   (D) both before and after Decedent's death, in the pending garnishment proceeding, 3rd party bank account documents acknowledged there were garnishable assets over the about $10,000 Estate claim due Appellant creditor; and
   (E) Personal Representative (PR) acknowledged she was aware of the pending garnishment claims at time of death, yet failed to disclose them in the claimed $1500 Small Estate, did not provide any timely response to the Creditor's requests seeking information, and didn't even participate in the contemporaneous garnishment proceedings for over a year; and
   (F) As a result of multiple hearings and filings, the Circuit Court judge ultimately ruled in Appellant's favor on the unusually-timed garnishment case, a fact the Orphan's Court ignored.

3. Whether in the high standard of review favoring Appellant to possibly sustain an attorney's fee award, the trial court erred when Appellant was affirmatively

mislead by Appellee they were making a "Disallowance" argument under Md. Rule 6-413 (d) and (e), after receiving the Disallowance Notice in the mail from Appellee's counsel, only to discover during later hearings it was never filed, with the false certification given under Md. Rule 1-311 *it was filed*, and 15 months later, Appellee PR disclosed and testified Appellee's counsel had forged her signature, she knew nothing about the "disallowance" procedure, and she had never seen either the "Claim Against Decedent's Estate" or "Disallowance" documents before.

4. Whether the lower courts erred, when (1) in violation of Maryland Rule 7-507, Dismissal of Appeal [from Orphan's Court after "moot" finding], the appeal record including all exhibits, was supposed to be returned to the Orphan's Court, and (2) Appellant reasonably confirmed multiple times with the trial judge in the March 2020 hearing, the Circuit Court record was in front of her, yet both the Register of Wills and Circuit Court clerks' office, have now certified the Record was not actually transferred for another five months until August 2020, constituting presumptively prejudicial and reversible error.

5. Whether the trial court abused its discretion in denying Consolidation, when in the two estates of the parents who died a few months apart, there was a significant question of what assets might be joint, Appellant provided bank documentation of hundreds of thousands of dollars of assets disclosed in *neither* estate by the PR, and thus on top of significant "judicial *estoppel*" concerns also relevant to the pending sanctions motion, consolidation was logically consistent and properly ethical.

6. Whether the recently discovered extensive use by the Register of Wills and/or Orphan's Court of "White-out" in numerous documents for over two years, including Court Orders, Memoranda with judicial signatures, facts and figures, "docket entries" and stamped filing dates, prior to uploading the near-invisible alterations to the black and white scanned "Public Terminal," and the difficulties attendant in even making copies of these altered versions of the original paper copy later transmitted this Court, was legal error in the nature of *Wise-Jones v. Jones*, 117 Md. App. 489, 502–03 (1997), and in consideration of Criminal Law § 8-606; if so, what remedy should be afforded Appellant?

The correction notice(s) for this opinion(s) can be found here:

http://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0398s20cn.pdf