Circuit Court for Montgomery County
Case No.: 412696V

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 460

September Term, 2023

MADHABI SHETH

v.

SALEMA HORN

Graeff,
Friedman,
Eyler, Deborah, S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: April 16, 2024

*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).

This is the sixth appeal to this Court in the same underlying litigation in the Circuit Court for Montgomery County between former business partners Madhabi Sheth, the appellant, and Salema Horn, the appellee.[1] The case has been going on for almost nine years.

Mrs. Sheth challenges a second award of attorneys' fees to Mrs. Horn. She raises four questions, which we have combined and rephrased as two:

> I. Did the circuit court err by not dismissing Mrs. Horn's motion for attorneys' fees as untimely?
>
> II. Did the circuit court err or abuse its discretion in its conduct of the hearing or in its award of fees?

For the following reasons, we answer both questions in the negative and shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

PROCEEDINGS COVERED BY THE FIRST FEE AWARD

(DECEMBER 4, 2015 THROUGH FEBRUARY 7, 2019)

At one time, Mrs. Sheth, Mr. Sheth, and Mrs. Horn jointly owned and operated five daycare centers, four of which we shall refer to collectively as "the MSL Centers" and one of which we shall call "Hope Grows." Legal disputes arose among them that were resolved by a comprehensive settlement reached on May 6, 2015, which, as

[1] *See Sheth v. Horn*, Nos. 480 & 759, Sept. Term 2017 (filed June 18, 2018) ("the Merits Appeal"); *Sheth v. Horn*, No. 93, Sept. Term 2019 (filed May 18, 2020) ("the First Fee Appeal"); and *Horn v. Sheth*, Nos. 135 & 791, Sept. Term 2021 (filed Apr. 18. 2022) ("the Judgment Appeal" and "the Bond Appeal").

relevant, was implemented by a settlement agreement and an acquisition agreement. Each agreement included a non-disparagement/confidentiality clause. The settlement agreement also included a prevailing party fee-shifting provision[2] and the acquisition agreement included an indemnification clause.

Seven months later, on December 4, 2015, Mrs. Sheth and the four MSL Centers sued Mrs. Horn and Hope Grows for breach of contract, defamation, and other torts. Among other allegations, they asserted that Mrs. Horn breached the non-disparagement clause in the settlement agreement. They sought $6 million in compensatory and punitive damages. They also stopped paying promissory notes that were part of the settlement agreement. For that reason, Mrs. Horn filed a separate confessed judgment action against Mr. and Mrs. Sheth. Eventually the two cases were consolidated by the circuit court. Mrs. Horn filed a counterclaim against Mrs. Sheth, alleging that she had breached the confidentiality clause of the settlement agreement by reciting in her complaint the full text of certain portions of the settlement agreement and attaching a copy, which was not

[2] The fee-shifting provision reads:

> Attorneys' Fees. If any Party commences any action or proceedings to enforce the provisions of this Agreement, or if any Party asserts in any action or proceeding any claim or other matter of any kind released by this Agreement, the prevailing Party shall be entitled to an award of its costs, expenses, expert witness fees and attorneys' fees reasonably incurred in connection with such action or proceeding, including any appeals thereof, in addition to any other claims or damages incurred by the prevailing Party. The obligations of the Parties to pay costs, expenses and attorneys' fees under this Agreement shall not be deemed merged into, but shall survive, any judgment.

filed under seal. Mrs. Horn sought damages, attorneys' fees, and costs against Mrs. Sheth.

The circuit court entered a confessed judgment against Mr. and Mrs. Sheth for $30,000. Then, from May 23 through May 25, 2017, a jury trial was held on all the claims by Mrs. Sheth and the MSL Centers and on what was by then the one remaining count of the counterclaim ("Merits Trial"). Mrs. Horn fully prevailed on the claims against her and on her counterclaim, for which the jury awarded her $5,000 in damages. Judgments were entered and thereafter Mrs. Sheth and her husband, who was not a party to the case, noted an appeal ("the Merits Appeal"). Mrs. Sheth and her husband also appealed the entry of the confessed judgment.

While the Merits Appeal was pending, Mrs. Horn and Hope Grows filed in the circuit court a verified petition for attorneys' fees and costs pursuant to the prevailing party fee-shifting provision in the settlement agreement and the indemnification clause in the acquisition agreement ("First Fee Petition"). Mrs. Horn asked the court to order Mrs. Sheth, Mr. Sheth, and the MSL Centers to pay over $100,000 in fees and costs incurred in defending against Mrs. Sheth's and the MSL Centers' complaint and prosecuting the counterclaim. Mrs. Sheth and the MSL Centers opposed the motion, contesting the reasonableness of the fees requested.

In the meantime, on June 18, 2018, this Court filed our opinion affirming the judgments in the Merits Appeal, on the claims against Mrs. Horn and her counterclaim, and on the confessed judgment entered against Mr. and Mrs. Sheth. Our mandate issued

on July 19, 2018. That same day, Mrs. Sheth filed a petition for writ of certiorari, which was denied on September 28, 2018. *Sheth v. Horn*, 461 Md. 470 (2018). The circuit court entered our mandate on the docket nearly six months later, on March 18, 2019.

Thereafter, Mrs. Horn supplemented her First Fee Petition to include the fees she had incurred defending the Merits Appeal. The circuit court held an evidentiary hearing and, on February 19, 2019, issued an opinion and order disallowing a small subset of the fees requested but otherwise granting the motion ("the First Fee Award"). The court ordered "Plaintiffs" to "pay the amount of $136,445.09 directly to Defendants within 90 days of the date of entry of this Order" and, if not paid, that "judgment shall be entered against Plaintiffs and in favor of Defendant."[3]

PROCEEDINGS COVERED BY THE SECOND FEE AWARD

(FEBRUARY 7, 2019 THROUGH AUGUST 31, 2022)

On March 14, 2019, Mrs. Sheth and the MSL Centers noted an appeal from the First Fee Award ("the First Fee Appeal") and moved to stay enforcement. Their motion was granted subject to their filing a supersedeas bond in the entire amount of the award. On June 24, 2019, they submitted to the Clerk of the Court a check for $136,445.09 drawn on the account of one of the MSL Centers.

[3] As mentioned, the fee petition was filed by Mrs. Horn and Hope Grows and the court used the plural "Defendants" throughout the opinion, except for the final line quoted here. As we shall explain, only Mrs. Horn was entitled to make a claim for fees.

A little over a year later, on May 18, 2020, this Court filed our opinion in the First Fee Appeal. We affirmed the entire First Fee Award against Mrs. Sheth. We reversed the award as to Mr. Sheth, because he was not a party to the case, and as to the MSL Centers, because Mrs. Horn's claim for attorneys' fees was made in a count in her counterclaim stated only against Mrs. Sheth. Our mandate in the First Fee Appeal issued on June 18, 2020 and was entered on the circuit court docket on August 25, 2020.

In the meantime, on June 17, 2020, Mr. Sheth and the four MSL Centers filed a motion in the circuit court seeking return of five-sixths of the supersedeas bond, claiming that the First Fee Award was reversed as to them. The motion was docketed in the breach of contract case *and* the confessed judgment case. Because Mrs. Horn's opposition only was docketed in the breach of contract case, however, on September 4, 2020, the court registry issued a check to Mr. Sheth and the four MSL Centers in the amount sought. Thereafter, Mrs. Horn learned of what had happened and filed a motion to alter or amend, explaining that this Court had affirmed the entire First Fee Award as to her. The court voided the check on September 22, 2020. On October 5, 2020, after a hearing on October 1, 2020, the court entered an order denying the motion to alter or amend. On October 13, 2020, the court registry issued a check for five-sixths of the bond amount to Mr. Sheth and the four MSL Centers. Mrs. Horn noted an appeal ("the Bond Appeal") that same day. She also filed a motion, which was unopposed, for release of the remaining one-sixth of the bond amount. The Clerk of the Court issued a check to her attorney in that amount.

Mrs. Horn then filed a motion asking the circuit court to convert the First Fee Award to a judgment in her favor against Mrs. Sheth. Mrs. Sheth opposed, arguing that this Court "annulled" the First Fee Award by our partial reversal in the First Fee Appeal and that the appropriate remedy would be the entry of a revised judgment against Mrs. Sheth for her "*pro rata* share of the February 19, 2019 Order." Just as before, Mrs. Horn replied that this Court's opinion in the First Fee Appeal affirmed the First Fee Award in full against Mrs. Sheth and, consequently, the reversal as to the others did not reduce Mrs. Sheth's liability for the entire amount of the First Fee Award.

After a hearing, the court granted Mrs. Horn's motion. It entered judgment against Mrs. Sheth for the total amount of the First Fee Award minus the sum already released to Mrs. Horn's attorney from the court registry. Mrs. Sheth noted an appeal from that judgment ("the Judgment Appeal"). She posted a supersedeas bond and this Court stayed enforcement of the judgment pending appeal.

On April 18, 2022, we filed our opinion in the Judgment Appeal. We held that our mandate in the First Fee Appeal clearly and unambiguously affirmed the First Fee Award in its entirety against Mrs. Sheth. Accordingly, the circuit court did not err by entering judgment against Mrs. Sheth for the full amount of the First Fee Award less the sum paid to Mrs. Horn's attorney from the supersedeas bond. Because the disposition of the Judgment Appeal in favor of Mrs. Horn rendered her Bond Appeal moot, we dismissed that appeal. On May 12, 2022, Mrs. Sheth filed a petition for writ of *certiorari* in the Judgment Appeal, which was denied on July 22, 2022. *Sheth v. Horn*, 479 Md. 471

(2022). Our mandate, which was issued on May 19, 2022, was entered on the circuit court docket on August 22, 2022.

On August 31, 2022, Mrs. Horn filed a motion for release of the supersedeas bond funds from the court registry. That motion was not opposed. On October 4, 2022, the circuit court granted the motion.

PROCEEDINGS ON SECOND FEE PETITION

On October 6, 2022, Mrs. Horn filed her Second Motion for Award of Attorneys' Fees and Costs ("Second Fee Petition"). She sought $100,928.03 in attorneys' fees and costs incurred over the three-and-a-half-year period beginning with the hearing on the First Fee Petition (February 7, 2019) and ending with the filing of the motion to release supersedeas bond funds (August 31, 2022). She attached the settlement agreement, the circuit court memorandum opinion granting the First Fee Petition, and a "Verified Statement of Costs, Expenses, and Attorneys' Fees in Support of Second Motion for Award of Attorneys' Fees and Costs" ("Verified Statement"), with attached detailed billing statements.

Mrs. Sheth opposed the motion on several grounds. She argued that the Second Fee Petition was not timely filed, as it was filed more than 30 days after the mandates were entered in the First Fee Appeal and the Judgment/Bond Appeals, and therefore did not comply with Rule 2-706. She further argued that the Second Fee Petition failed to comply with Rule 2-705 because Mrs. Horn did not provide her with proper notice of her fees. After noting that contractual fee cases are subject to the Maryland Attorneys' Rules

of Professional Conduct 19-301.5 ("MARPC 1.5"), she argued that a total fee award of $235,373.12 for achieving a $5,000 judgment was unreasonable.[4] She also argued that because Mr. Sheth and the MSL Centers prevailed in the First Fee Appeal, they, not Mrs. Horn, were prevailing parties in that appeal; and that Mrs. Horn's Verified Statement was "rife with unreviewable entries, fe[es] for frivolous motions, . . . time spent interfering in . . . [Mrs.] Sheth's immigration status and other grossly improper charges[.]" She identified five categories of entries that she challenged.[5] Finally, Mrs. Sheth argued that litigation to secure payment of the First Fee Award was not sufficiently linked to the underlying case to make it recoverable under the fee-shifting provision in the settlement agreement.

Mrs. Horn filed a reply, countering most of the arguments raised by Mrs. Sheth but agreeing to waive certain challenged fees totaling $805.

[4] This number included the First Fee Award, which as noted was affirmed on appeal.

[5] These categories were 1) Incomplete and unreviewable entries (October 23, 2019 entry billing three hours for TN to review documents); 2) Conversations between counsel at the same firm (October 31, 2019, November 4, 2019, November 11, 2019, September 4, 2020, September 11, 2020, September 30, 2020, October 26, 2020); 3) Time spent "interfering in [Mrs.] Sheth's immigration status" (April 20, 2020); 4) Time spent on settlement negotiations (February 11-12, 2019); 5) Time spent on frivolous motions or tasks (June 1, 2022, June 22, 2022).

On March 20, 2023, the circuit court held a hearing on the Second Fee Petition.[6] Through counsel, Mrs. Sheth argued that the "dispositive issue" was the late-filing of the fee petition under Rule 2-706. On the merits, counsel argued that the fee request was unreasonable given the small sum Mrs. Horn had recovered in damages in the underlying litigation.

When Mrs. Sheth's counsel began challenging specific time entries in the Verified Statement, the court interjected to ask if he intended to go through the statement entry by entry. Counsel responded that he had been prepared to do so. Mrs. Horn's counsel objected, noting that in her opposition Mrs. Sheth only had challenged a handful of entries and that he only had prepared to respond to those challenges.

The court agreed with Mrs. Horn, opining that if Mrs. Sheth had

> specific things [she challenged] they should have been in [her opposition], or there should have been an affidavit attached, indicating that these are the things that you disagree with. I don't think there's any way this can be done in an hour, nor do I think it should be done as part of the hearing, at least not without an expert or somebody that's going to explain to me what's wrong.

Turning to the issue of timeliness, the court noted that Rule 2-706 permits a party to file a motion for fees incurred in appellate proceedings ***either*** within 30 days of the entry of the "last mandate[] or order disposing of the appeal" ***or*** within 30 days "after the entry of a final order disposing of all claims." The court reasoned that because the

[6] The hearing also addressed a motion for fees filed by the MSL Centers on November 22, 2022. The court ruled that the MSL Centers were not prevailing parties under the agreement. That ruling is not challenged in this appeal.

Judgment and Bond Appeals concerned Mrs. Horn's entitlement to the funds in the court registry, she waited until her motion for release of those funds was granted before filing her Second Fee Petition. Accordingly, the October 4, 2022 order granting Mrs. Horn's motion for the supersedeas bond funds in the court registry was the final order disposing of all claims, and her Second Fee Petition, filed two days later, was timely.

The court permitted counsel for Mrs. Sheth to briefly argue about several entries on the Verified Statement that he believed were misbilled or excessive, which Mrs. Horn disputed. The court questioned whether Mrs. Sheth had designated an expert to explain why the entries she challenged were improper. Her counsel replied that she had not. The court took the matter under advisement.

On May 1, 2023, the court issued an order ruling that the Second Fee Petition was timely because it was filed within 30 days of the final order disposing of the Judgment Appeal, *i.e.*, the October 4, 2022 order. The court granted the Second Fee Petition in its entirety with the exception of those fees waived by Mrs. Horn in her reply memorandum. It ordered Mrs. Sheth to pay Mrs. Horn $100,123.03, comprising all the fees requested less the $805 waived in her reply.

This timely appeal followed. Mrs. Sheth posted a supersedeas bond to stay enforcement of the Second Fee Award.

STANDARD OF REVIEW

We review for abuse of discretion a circuit court's decision to award attorneys' fees to the prevailing party under a fee-shifting provision in a contract. *Monmouth*

Meadows Homeowners Ass'n, Inc. v. Hamilton, 416 Md. 325, 332-33 (2010) (citing *Myers v. Kayhoe*, 391 Md. 188, 207 (2006)). A circuit court "abuse[s] its discretion when awarding attorneys' fees if it adopts a position that no reasonable person would accept[,]" and the "court's determination of the reasonableness of [the] attorney's fees is a factual determination within the sound discretion of the court, and will not be overturned unless clearly erroneous." *Est. of Castruccio v. Castruccio*, 247 Md. App. 1, 42 (2020) (cleaned up).

DISCUSSION

I.

TIMELINESS OF SECOND FEE PETITION

Mrs. Sheth contends the circuit court erred by not dismissing or denying the Second Fee Petition as untimely under Rule 2-706. Because her argument concerns the construction of that rule, a legal issue, we review the circuit court's ruling *de novo*.

Rule 2-706, entitled "Fees for appellate litigation," states:

> A party who seeks an award of attorneys' fees incurred in connection with an appeal, application for leave to appeal, or petition for certiorari shall file a motion for such fees in the circuit court that entered the judgment or order that is the subject of the appellate litigation. **The motion shall be filed: (a) within 30 days after entry of the last mandate or order disposing of the appeal, application, or petition; or (b) if an appellate court remands for further proceedings, within 30 days after the entry of a final order disposing of all claims.** Proceedings on the motion shall be in the circuit court and shall be consistent with the standards and procedures set forth in Rule 2-703 or Rule 2-705, as applicable.

(Emphasis added.) The date of "entry" of a mandate issued by this Court is the date it is entered on the circuit court's docket by the clerk of the circuit court. *See* Md. Rule 8-606(d)(1), (e).

Mrs. Sheth maintains that the deadline in Rule 2-706(b) did not apply because neither this Court's mandate in the First Fee Appeal nor our mandate in the Judgment/Bond Appeals remanded for further proceedings. In her view, the Rule 2-706(a) deadline applied, meaning that Mrs. Horn had to file a motion for fees incurred defending the First Fee Appeal by September 25, 2020, and had to file a motion for fees incurred defending the Judgment/Bond Appeals by September 22, 2022. Mrs. Sheth maintains that because Mrs. Horn's Second Fee Petition was not filed until October 6, 2022, it was late for both purposes.

This case presents an unusual situation. Our opinion in the First Fee Appeal held that Mrs. Horn was entitled to the entire First Fee Award against Mrs. Sheth pursuant to the prevailing party fee-shifting provision of the Settlement Agreement. Our determination that neither Mr. Sheth nor the four MSL Centers had responsibility for paying the First Fee Award did not mean that Mrs. Sheth was responsible for any less than the entire Fee Award. Thus, only Mrs. Horn was entitled to the supersedeas bond posted in the circuit court, and she was entitled to all of the bond. Neither our opinion, issued on May 18, 2020, nor the mandate, entered by the circuit court on August 25, 2020, called for further proceedings. That should have been the end of the case.

Yet, over two months before this Court's mandate was entered by the circuit court, Mr. Sheth and the MSL Centers, having been alerted by our opinion that they had no right to the supersedeas bond, ***commenced*** further proceedings in the circuit court to obtain almost all of the bond. Their actions directly resulted in the Bond Appeal; in Mrs. Horn's having to file a motion to reduce the First Fee Award to judgment (because she could not obtain the entire bond); and in the Judgment Appeal. That additional circuit court and appellate litigation lasted for more than two years. Mrs. Horn fully prevailed.

The timing of the deadline in Rule 2-706(a) anticipates that there will be no further proceedings in the circuit court, and therefore no more fees incurred (except as to the fee petition), putting the circuit court in a position to render a final decision on the matter of fees. This case did not occupy that posture when the mandate was entered by the circuit court in the First Fee Appeal, however, because Mrs. Sheth had initiated further proceedings herself, all of which she ultimately lost. Mrs. Sheth's commencement of further proceedings in this case in the circuit court before our mandate was entered in the First Fee Appeal put the case in the same posture it would have been in had this Court remanded for further proceedings. Accordingly, we agree with Mrs. Horn that the appropriate deadline for filing a fee petition was that in Rule 2-706(b), *i.e.*, 30 days after "the entry of a final order disposing of all claims." The final order disposing of all claims was the order granting Mrs. Horn's motion for release of the supersedeas bond funds from the court registry. That order was entered on October 4, 2022. As Mrs. Horn filed

her Second Motion for Award of Attorneys' Fees and Costs on October 6, 2022, it was timely.

II.

SECOND FEE AWARD

Rule 2-705 governs awards of attorneys' fees to prevailing parties pursuant to contract, which is the situation in this case. That Rule provides that "[i]f the party seeking attorneys' fees prevailed with respect to a claim for which fee-shifting is permissible, the court shall consider" the factors in Rule 2-703(f)(3) "and the principal amount in dispute in the litigation" and "may" consider the agreement between the party seeking fees and that party's attorneys and "any other factor reasonably related to the fairness of an award." Md. Rule 2-705(f)(1). The factors in Rule 2-703(f)(3), which pertains to fee awards allowed by law, such as statutory fee shifting, are almost identical to those in Rule 19-301.5, which are to be considered in determining the reasonableness of an attorneys' fee. As set forth in Rule 19-301.5(a), they are:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the attorney;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the attorney or attorneys performing the services; and
> (8) whether the fee is fixed or contingent.

As has been done traditionally, we shall refer to this Rule as "Rule 1.5," as it is derived from Rule 1.5 of the American Bar Association's Model Rules of Professional Conduct. *See Castruccio*, 247 Md. App. at 43.

Mrs. Sheth advances two contentions. First, the trial court abused its discretion by failing to conduct an evidentiary hearing and, as a consequence, incorrectly found that Mrs. Horn proved her entitlement to attorneys' fees and costs by a preponderance of the evidence. Second, the trial court abused its discretion by awarding an unreasonable amount of attorneys' fees.

a.

Mrs. Sheth waived her first contention. In her opposition to Mrs. Horn's Second Fee Petition, Mrs. Sheth did not request the opportunity to present evidence. During the March 20, 2023 hearing, her counsel presented legal argument regarding the impropriety of entries in the Verified Statement and did not seek to present evidence.[7] When the court asked counsel if he intended to go through each entry, he replied that that was what he "was prepared to do[.]" He did not seek to call an expert witness to dispute the reasonableness of the fees or to question Mrs. Horn's counsel about the fees. Indeed, he did not seek to introduce any evidence. Rather, he sought to ***argue*** that the fees were

[7] For example, Mrs. Sheth's counsel argued that Mrs. Horn's attorney was not permitted to bill for "administrative tasks," citing a case in which the Supreme Court of Maryland held that an attorney charged unreasonable fees when he billed for routine administrative tasks – such as opening mail and printing documents – at his attorney billing rate. *See Att'y Grievance Comm'n v. Robbins*, 463 Md. 411 (2019).

unreasonable.[8] Because Mrs. Sheth did not ask to present evidence either before or during the hearing, her argument that she was denied an opportunity to do so is not properly before us.[9]

Even if not waived, we would perceive no error by the circuit court in determining not to allow Mrs. Sheth to challenge the reasonableness of the attorneys' fees on grounds not raised in her opposition to the Second Fee Petition.

When a request for attorneys' fees is computed primarily according to the time spent by the attorney, the billings supporting the award should be "as detailed as reasonably possible, so that the client, and any other person who might be called upon to pay the bill, will know with some precision what services have been performed." *Diamond Point Plaza Ltd. P'ship v. Wells Fargo Bank, N.A.*, 400 Md. 718, 760 (2007). Mrs. Sheth maintains that because the court did not hear any testimony or admit any evidence at the hearing, Mrs. Horn failed to prove by a preponderance of the evidence that she had incurred the attorneys' fees she was seeking.

[8] Counsel ***did*** ask the court to permit him to call counsel for the MSL Centers as a witness relative to the motion for attorneys' fees filed by those entities. The court denied that request. As noted, however, the propriety of the denial of that motion is not before us.

[9] We note that Mrs. Sheth filed a post-hearing "objection" to the "court's order of March 20, 2023[,]" arguing that it erred as a matter of law by not dismissing the Second Fee Petition as untimely under Rule 2-706. She likewise did not raise the denial of her entitlement to an evidentiary hearing in this filing.

We disagree. In support of her Second Petition for Fees, Mrs. Horn submitted a Verified Statement with attached detailed billing statements covering the entire time period for which she was seeking fees. *See id*. at 761 (explaining that when a fee request is "based primarily on time spent . . . the best evidence ordinarily would be a clear delineation in the attorneys' billings of the time spent and expenses incurred with respect to the particular claims upon which the fee request is based"). In the Verified Statement, Mrs. Horn's counsel affirmed under oath that the attached billing statements were true and accurate and averred that the rates charged were reasonable considering customary rates charged by the law firm, based upon experience, and based upon customary fees in Maryland and in the locality of Montgomery County. As we shall discuss below, counsel also affirmed under oath that the rates charged were reasonable by reference to the factors set out in Rule 2-703(f)(3). The evidence before the court was legally sufficient to support a finding, by the preponderance of the evidence, that the fees being claimed were incurred by Mrs. Horn in the proceedings in this case during the relevant time.

b.

The onus is on the party seeking attorneys' fees to present sufficient evidence of the reasonableness of the fees. *See Maxima Corp. v. 6933 Arlington Dev. Ltd. P'ship*, 100 Md. App. 441, 453-54 (1994). Mrs. Sheth argues that the amount of the Second Fee Award was unreasonable under *Monmouth Meadows Homeowners Ass'n.*, 416 Md. 325, for three intertwined reasons: the fees awarded far exceeded the sum Mrs. Horn recovered in her counterclaim, Mrs. Horn was not the prevailing party in the First Fee

Appeal because she only was "partially successful," and the fees incurred to collect the First Fee Award were fees to recover fees, and therefore should not be recoverable. Mrs. Horn contests all those arguments.

Mrs. Sheth focuses on language in *Monmouth* that, in deciding a request for fees under a prevailing party contract, a court "should consider the amount of the fee award in relation to the principal amount in litigation," which may "result in a downward adjustment[,]" and that even though "fee awards may approach or even exceed the amount at issue, the relative size of the award is something to be evaluated." *Id*. at 337. Mrs. Sheth argues that because Mrs. Horn's total damages recovered in the merits trial was $5,000, the Second Fee Award is out of proportion to her "nominal success" and therefore is unreasonable. In contrast, Mrs. Horn takes the position that the amount at issue was not the $5,000 she was awarded on her counterclaim, but the $6 million Mrs. Sheth was seeking. Therefore, she asserts, the First and Second Fee Awards, which together total over $200,000, cannot be considered excessive in relation to the principal amount sought by Mrs. Sheth in this lawsuit.

Monmouth needs to be considered in context. It was a combined appeal of three District Court cases by homeowners associations ("HOAs") against residents who were delinquent in paying their assessments. All three cases were essentially uncontested, and resulted in the HOAs obtaining judgments for the delinquencies. In all three, the controlling HOA agreement contained a prevailing party attorneys' fees clause. The lawyers for the HOAs moved the District Courts for fees, asking that they be calculated

by the "lodestar" method, *i.e.*, the number of hours multiplied by a reasonable hourly rate. This could result in the fee awards exceeding the amount of the delinquent assessments recovered. The District Courts rejected the invitation, instead granting fees using various approaches. The HOAs filed appeals in two circuit courts. Those courts adjusted the fee awards, but also took differing approaches to doing so.

The Supreme Court granted petitions for writ of *certiorari* to address the proper method for deciding the reasonableness of attorneys' fees requested pursuant to a prevailing party clause in a contract. It held that the lodestar method, which applies to statutory fee-shifting provisions, does not apply. Rather, in awarding "fees based on a contract entered by the parties authorizing an award of fees[,]" a court should "use the factors set forth in Rule 1.5 as the foundation for analysis of what constitutes a reasonable fee[.]" *Id*. at 336-37. The court "may consider, in its discretion, any other factor reasonably related to a fair award of attorneys' fees" and "should consider the amount of the fee award in relation to the principal amount in litigation[.]" *Id*. at 337-38. The Court observed that a trial court assessing fees need not "explicitly comment on or make findings with respect to each factor" in Rule 1.5. *Id*. at 337 n.11. Indeed, the trial court need not "mention Rule 1.5 so long as it utilizes the rule as its guiding principle in determining reasonableness." *Id*. at 340 n.13.

With the adoption of Rule 2-705 effective January 1, 2014, the principles espoused in *Monmouth* came to apply generally to claims for attorneys' fees attributable to litigation in the circuit court under prevailing party contract provisions. Nevertheless, for

purposes of assessing whether the circuit court in the case at bar abused its discretion in making its fee award, we note that the underlying cases and circumstances in *Monmouth* differed significantly from this case. The *Monmouth* cases were small, straightforward, and essentially uncontested District Court matters. The fees sought were incurred by the lawyers who initiated and successfully pursued the HOAs' claims against the delinquent residents. Here, by contrast, Mrs. Horn did not initiate any lawsuit; instead, she was sued by Mrs. Sheth in the circuit court on a multi-count complaint, in which Mrs. Sheth was seeking $6 million in damages. To be sure, the *ad damnum* amount was not determined or limited by statute or rule, nor was it for a discrete, identifiable loss, and therefore, to some extent, it was arbitrarily set. It was Mrs. Sheth who set the amount, however. By selecting the $6 million amount, she sent a clear message that her purpose was to recover a substantial sum of money in damages.

Unlike the summary proceedings in *Monmouth*, the complaint in this case resulted in a three-day jury trial, on which Mrs. Horn fully prevailed. Even if Mrs. Horn had not filed a counterclaim, she would have been entitled to recover reasonable attorneys' fees for successfully defending Mrs. Sheth's claims against her. She prevailed on her counterclaim as well, and was awarded $5,000. Mrs. Sheth appealed, and lost the Merits Appeals both as to her claims and the counterclaim. The First Fee Award granted Mrs. Horn, as the prevailing party, $136,445.09 in fees incurred in defending the case brought against her, in pursuing her counterclaim, and in defending Mrs. Sheth's unsuccessful appeal in the Merits Appeal.

The Second Fee Award, which is challenged in this appeal, covers not only the attorneys' fees Mrs. Horn incurred in successfully defending Mrs. Sheth's appellate challenge to the First Fee Award but also the circuit court and appellate proceedings that followed it. The appeal from the First Fee Award was noted on March 14, 2019, our opinion affirming the award of fees in favor of Mrs. Horn was issued on May 18, 2020, and the mandate was entered on August 25, 2020. As discussed, this case should have ended then. Instead, it continued for another two plus years because, before our mandate even was entered, Mrs. Sheth attempted, without basis, to recover most of the supersedeas bond. That directly resulted in additional circuit court proceedings, the Judgment Appeal, and the Bond Appeal, all of which Mrs. Horn prevailed in.

When considered in light of the factors in Rule 1.5, the Second Fee Award was reasonable. It encompassed the labor and time necessary to defend two appeals and prosecute a third; to defend a motion to recover most of the supersedeas bond and, when that was unsuccessful, to obtain a judgment in the amount of the First Fee Award, which this Court already had affirmed. All these legal proceedings required skill and substantial time to perform. None of them were routine. They spanned a period of over three years, during which counsel continuously represented Mrs. Horn (as counsel had since the inception of this litigation in 2015). Clearly, handling this matter for Mrs. Horn was a lengthy and time-consuming endeavor for counsel.

For reasons already discussed, we see no merit in Mrs. Sheth's argument that she in fact was the prevailing party in the First Fee Appeal. That appeal resulted in the full amount of the First Fee Award being affirmed in Mrs. Horn's favor.

Nor do we see merit in the argument that Mrs. Horn should not be permitted to recover the Second Fee Award because it consisted of fees she incurred defending her recovery of the First Fee Award. Mrs. Sheth cites *Monmouth* (with no page citation) for the proposition that fees incurred in attempting to recover fees are unreasonable. In *Monmouth*, the principal amount sought in one case was $1,281, and the fees sought were $2,000. The circuit court noted that although in civil cases there may be circumstances where the fees incurred can exceed the principal amount sought, there still must be a reasonable relationship between the two. In reducing the recoverable fees to $300, the circuit court observed that more than half of the fees that were being sought were incurred in pursuing additional fees "in a case where there has been little or no opposition" and the case constituted "ordinary litigation." *Id*. at 341 (cleaned up).

The Supreme Court affirmed, agreeing with the circuit court that in that very straightforward, essentially unopposed case, there was not a reasonable relationship between the amount of damages sought and the amount of fees sought. It did not base that conclusion on the fact that some of the fees sought had been incurred for the recovery of fees awarded. It cited, in its discussion, *Reisterstown Plaza Associates v. General Nutrition Center, Inc.*, 89 Md. App. 232, 246 (1991), in which the Appellate Court applied Rule 1.5 in concluding that the attorneys' fees sought by the prevailing

party in that case bore a reasonable relationship to the amount in controversy. Unlike *Monmouth*, the *Reisterstown Plaza* case bears a similarity to the case at bar.

In *Reisterstown Plaza*, a shopping mall suffered a rodent infestation that originated in a common area under the landlord's control, near the tenant's store. When the landlord failed to resolve the infestation, the tenant, whose foodstuff and vitamins were being ravaged, vacated the premises. The landlord sued for six and a half years of lost rent, seeking $225,000, and the tenant counterclaimed for breach of contract, negligence, and other claims. Each party sought attorneys' fees based on a fee-shifting clause in the lease. At trial, the tenant prevailed on the landlord's claims against it and on its own counterclaim, obtaining a judgment for roughly $80,000 in damages for lost inventory, fixtures, and improvements. The circuit court awarded the tenant almost $142,000 in attorneys' fees. On appeal, this Court held that the amount of fees awarded was reasonable, given the tenant's need to defend itself against a substantial claim for breach of lease and its own loss of almost $80,000. We agreed that the fees awarded were reasonably related to the liability involved.

The Court in *Monmouth* did not hold that attorneys' fees incurred in defending an award of attorneys' fees already made cannot be reasonably related to the potential liability the party faced at the outset or that it recovered. Rather, it emphasized that there must be a reasonable relationship between the liability being prosecuted or defended against and the attorneys' fees awarded, using *Reisterstown Plaza* as an example that met that standard. In the case at bar, the Second Fee Award satisfied the reasonableness

standard. The First Fee Award reasonably compensated Mrs. Horn for the fees she incurred successfully defending against Mrs. Sheth's suit against her for substantial damages and successfully prosecuting her counterclaim against Mrs. Sheth. Mrs. Sheth's recalcitrance against paying the First Fee Award to Mrs. Horn resulted in years of additional proceedings that Mrs. Horn had no choice but to participate in if she ever were to receive the First Fee Award properly awarded to her. The Second Fee Award was reasonably related to the litigation exposure Mrs. Sheth opened Mrs. Horn to. Accordingly, we cannot say that the circuit court abused its discretion in granting Mrs. Horn the Second Fee Award.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.[10]

[10] In this Court, Mrs. Horn moved for sanctions against Mrs. Sheth for failure to comply with Rule 8-501 governing her record extract either by dismissing the appeal or by ordering her to pay Mrs. Horn's costs for reproducing her appendix. By Order dated October 20, 2023, we denied the motion to dismiss and otherwise reserved on the motion. Because we affirm the judgment and order Mrs. Sheth to pay costs, which include the cost to reproduce "any necessary appendices to briefs[,]" Md. Rule 8-608, the motion for sanctions is denied as moot.