

Circuit Court for Prince George's County
Case No. CAL1928140

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 480

September Term, 2022

TAMMY J. WILLIAMS, *ET AL.*

v.

BOARD OF EDUCATION FOR PRINCE
GEORGE'S COUNTY

Nazarian,
Arthur,
Tang,

JJ.

Opinion by Nazarian, J.

Filed: May 16, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

** This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Dr. Tammy Williams and Dr. Larry McRae, both principals in the Prince George’s County school system,¹ brought claims for breach of contract and violation of the Maryland Wage Payment and Collection Law (“MWPCL”) against the Board of Education of Prince George’s County (“the Board”) after they learned that they were being paid less than four other similarly situated principals (“the Comparators”). Specifically, the Principals learned that they were receiving a Grade 5 salary while their colleagues were being paid a Grade 6 salary. The Principals complained to the Board and the Board agreed that the Comparators were being paid at a higher level than what their job classification required, which warranted only a Grade 5 salary. To remediate this error, the Board entered into a Settlement Agreement with the Principals in which the Board agreed to pay them a lump sum that represented the additional salary paid to the Comparators. Additionally, because the salaries of the Comparators were “red-circled,” or fixed, at a Grade 6 salary for a period of three years, the Board also agreed to pay the Comparators and the Principals a Grade 6 salary until the Comparators’ red-circle status expired and the Board could return them all to the proper salary classification.

After all six principals returned to their correct salary classification of Grade 5, the Board created a new position for one of the Comparators, Mr. William Kitchings, with a salary at the Grade 6 level. The Principals then brought suit in the Circuit Court for Prince George’s County against the Board, alleging that the Board breached the Settlement Agreement by paying Mr. Kitchings at a Grade 6 salary after the Principals were returned

¹ When discussing them together, we’ll refer to them collectively as “the Principals.”

to Grade 5. At trial, the Board moved for judgment as a matter of law, and the court granted the motion as to all counts. After the court entered judgment, the Board moved to reopen the case and to recover attorneys'² fees and costs under the terms of the Settlement Agreement. The court denied the Board's motion without explanation. The Principals now challenge the court's decision to grant the Board's motion for judgment on all counts while the Board cross-appeals the court's denial of its motion to reopen the case and for attorneys' fees. We affirm the circuit court's decision to grant the Board's motion for judgment, vacate its order denying the motion to reopen and for attorneys' fees and costs, and remand for further proceedings consistent with this opinion.

I. BACKGROUND

At all times relevant to this appeal, the Principals were employed by the Board as alternative high school principals. In October 2015, after learning that other principals of alternative schools in Prince George's County were being paid a higher salary, the Principals filed a Section 4-205 Appeal³ and argued that they should be paid at the Grade 6 salary scale rather than the Grade 5 level. Specifically, the Principals alleged that four other alternative high school principals, Agnes Brown-Jones, William Henderson, Gordon

² In adopting the 2-700 Rules for "Claims for Attorneys' Fees and Related Expenses," the Supreme Court of Maryland (at the time named the Court of Appeals of Maryland) confirmed its official position in the debate over the proper placement of the apostrophe in "attorneys' fees." *See also* Md. Rule 1-341 (providing for award of "reasonable attorneys' fees" for certain conduct during litigation). We will follow the Court's lead.

³ This shorthand refers to Maryland Code (1978, 2022 Repl. Vol.), § 4-205 of the Education Article ("ED"), the statute that authorized the administrative appeal.

Libby, and Mr. Kitchings, the Comparators, were being paid at the Grade 6 level while the Principals were only being paid at Grade 5.

In response, the Board entered into a Settlement Agreement with the Principals and agreed to pay them backpay from April 2014 to March 2016, the time period when the Comparators were paid a Grade 6 salary. At the time the Agreement was executed, the Comparators had been “red-circled” at a Grade 6 salary, meaning their salaries were fixed at their current amount for a period of three years.⁴ So in addition to backpay, the Board agreed to pay the Principals a Grade 6 salary until either September 8, 2018 or when the “red-circle” status of the Comparators ended:

The Board agrees to pay McRae compensation at the Grade 6, Step 12 rate (\$153,346.00/annum) beginning on March 21, 2016 and continuing until the later of (1) September 8, 2018 or (2) the date the other four Prince George’s County Public Schools alternative high school principals (or those of this group who are still employed) are no longer red-circled at Grade 6, Step 12.

Both Dr. McRae and Dr. Williams signed identical Settlement Agreements. All six alternative school principals, including Mr. Kitchings, received letters on September 15, 2015, notifying them that the proper classification for their positions is Grade 5 Step 11 or Step 12 and that their salaries would be red-circled until September 15, 2018. After that

⁴ At trial, the chief of human resources for Prince George’s County Public Schools testified that pursuant to a collective bargaining agreement, principals of Prince George’s County schools who are red-circled at a certain pay grade are entitled to receive a salary at that pay grade for a period of three years. Once the three years expire, the individual is no longer red-circled and will receive the salary corresponding with their job classification.

date, the Board stated that it would return the Principals and the Comparators to the proper pay grade for their job classification.

On August 22, 2018, Mr. Kitchings received a letter notifying him that his salary would be reduced to Grade 5 Step 11 as of September 15, 2018. Shortly thereafter, Mr. Kitchings accepted a new position in the Prince George’s County school system, resulting in a salary increase to Grade 6 Step 11. So because Mr. Kitchings was paid at the Grade 6 level after the Principals and Comparators had been returned to their Grade 5 salaries, the Principals claim that Mr. Kitchings remained “effectively red-circled” at Grade 6 and, under the Settlement Agreement, the Principals were entitled to continue receiving a Grade 6 salary as well.

On August 26, 2019, the Principals filed a breach of contract claim and a claim under the MWPCCL against the Board, and on April 18, 2022, the trial began. After the Principals’ case-in-chief,⁵ the Board made a motion for judgment on all counts and renewed its motion after it rested its case. The Board argued that the Principals couldn’t prove breach of contract because the Board had satisfied the requirements of the Settlement Agreement when it lifted the red-circle status from the Comparators on September 15, 2018.⁶ The Board argued that Mr. Kitchings’s salary increase and promotion after the red-

⁵ Although the Principals were represented together while the proceedings were in the trial court, they are now represented separately and filed separate briefs in our Court.

⁶ The letters received by the Comparators on September 15, 2015 indicate that their salaries “will be ‘frozen’ or ‘red-circled’” until September 15, 2018. The letter also

Continued . . .

circle status was lifted was “an upgrade” due to “the tremendous work” he was doing for the county. Additionally, because Mr. Kitchings’s salary increased to Grade 6 Step 11, the Board contended that he couldn’t be (and wasn’t) red-circled at Grade 6 Step 12, the grade to which the Settlement Agreement referred. And because the Principals couldn’t establish that the Board breached the contract, the Board argued that it was entitled to judgment as a matter of law.

In response, the Principals argued that they had presented sufficient evidence from which a jury could conclude that Mr. Kitchings’s promotion was fraudulent and merely a pretext for paying him a Grade 6 salary for Grade 5 work. The Principals stressed that a jury could find that Mr. Kitchings’s red-circle status did not end on September 15, 2018 and that, under the Settlement Agreement, the Board breached the contract by downgrading the Principals’ salaries when they were entitled to continue receiving a Grade 6 salary.

The court granted the Board’s motion orally on all counts and entered judgment on April 26, 2022. Dr. Williams noted her appeal on May 17, 2022, and Dr. McRae noted his on May 19, 2022. On May 4, 2022, the Board filed a motion to reopen the case and for attorneys’ fees and costs pursuant to a fee-shifting provision in the Settlement Agreement that granted attorneys’ fees to the “prevailing party”:

If either party takes legal action of any kind to enforce the terms of this Agreement, the prevailing party to any such legal

states: “Your ‘frozen’ status will end on September 16, 2018.” For the sake of consistency, we will adopt the same position as the parties on appeal and assume the Board intended to notify the Comparators that their red-circle status would be lifted on September 15, 2018.

action will be awarded reasonable attorneys' fees and costs incurred in connection with such action.

The Board argued that it was entitled to collect attorneys' fees pursuant to the Settlement Agreement and Maryland Rule 2-705 and sought \$46,646.34 in attorneys' fees and costs. The Board appended documentation of its attorneys' costs to the motion. The Principals responded that any award of attorneys' fees was required to be included in the final judgment under Rule 2-705, and that because the Board took no action to ensure that attorneys' fees were addressed before judgment was entered, the court should deny their motion to reopen the case. The Principals maintain that the responsibility to ensure compliance with Rule 2-705 remained with the Board as the party seeking attorneys' fees, and that the judgment shouldn't be reopened simply because the Board neglected to bring to the court's attention that the fee award must be included in the judgment. Finally, the Principals argued that they suffered prejudice from the lack of compliance with Rule 2-705 and weren't on notice that the Board intended to pursue attorneys' fees pursuant to the Settlement Agreement's fee-shifting provision. The Principals requested a hearing.

The Board responded that it had included a claim for fees in its Answer, and that it was the court's obligation to hold a scheduling conference to schedule the Board's fee submissions. The Board also contended that the Principals weren't prejudiced by the lack of a scheduling conference because the Principals were on notice of the Board's intention to seek attorneys' fees. The court denied the Board's motion to reopen and for attorneys' fees on July 11, 2021 without explanation.

The Board filed a timely cross-appeal of the order denying their motion to reopen and for attorneys' fees. All appeals have been consolidated. Additional facts are discussed below as necessary.

II. DISCUSSION

We have two issues before us:⁷ *first*, whether the court erred in granting the Board's

⁷ Dr. McRae phrased his Questions Presented as follows:

- I. DID THE CIRCUIT COURT ERR AS A MATTER OF LAW WHEN IT GRANTED APPELLEE'S MOTION FOR JUDGMENT ON APPELLANT'S BREACH OF CONTRACT CLAIM AFTER HE PRESENTED HIS CASE-IN[-]CHIEF?
- II. DID THE CIRCUIT COURT ERR AS A MATTER OF LAW WHEN IT GRANTED APPELLEE'S MOTION FOR JUDGMENT ON APPELLANT'S MARYLAND WAGE PAYMENT AND COLLECTION LAW CLAIM AFTER HE PRESENTED HIS CASE-IN[-]CHIEF?

Dr. Williams phrased her Questions Presented as follows:

1. Was there *any* evidence, no matter how slight, to generate a jury question as to whether Appellee breached its contract with Appellant?
2. Was there *any* evidence, no matter how slight, to generate a jury question as to whether Appellee violated the Maryland Wage Payment and Collection Law in this matter?

The Board phrased its Questions Presented as follows:

1. Whether the Circuit Court was correct in granting judgment in favor of Appellee as to Appellant[s'] breach-of-

Continued . . .

motion for judgment as a matter of law on all counts, and *second*, whether the court erred in denying the Board’s motion to reopen the case and for attorneys’ fees and costs.

Before we discuss the merits, though, we start by addressing whether the Principals noted their appeals properly.

A. The Principals’ Notices Of Appeal Were Timely.

As a preliminary matter, we consider whether the Principals’ notices of appeal, filed after judgment was entered but before the Board’s motion to reopen was resolved, were timely. Because the Board filed its motion to reopen the case and for attorneys’ fees (to which, on appeal, the Board refers confusingly as a “Motion for Attorneys’ Fees and Costs”) eight days after judgment was entered, we consider their motion under Maryland Rule 2-534. *See White v. Prince George’s County*, 163 Md. App. 129, 140 (2005) (“[A] motion to revise a court’s judgment, however labeled, filed within ten days after the entry of judgment will be treated as a Rule 2-534 motion.”) (cleaned up).

Although the Principals noted their appeals of the judgment after the Board filed its motion to reopen, “a notice of appeal filed prior to the withdrawal or disposition of a timely filed motion under Rule . . . 2-534, is effective. Processing of that appeal is delayed until

employment-contract claims?

2. Whether the Circuit Court was correct in granting judgment in favor of Appellee as to Appellant[s’] MWPCl claims?
3. Whether the Circuit Court erred when it denied Appellee’s Mot[i]on for Attorneys’ Fees and Costs pursuant to contract and Maryland Rule 2-705?

the withdrawal or disposition of the motion.” *Edsall v. Anne Arundel County*, 332 Md. 502, 508 (1993). That is exactly what happened here, and the Principals’ notices of appeal were timely.

B. The Court Didn’t Err In Granting The Board’s Motion For Judgment As A Matter Of Law.

Dr. McRae contends that the court erred in entering judgment in favor of the Board because the Principals produced evidence at trial that the Board violated the Settlement Agreement and the MWPCCL. Dr. Williams—incorporating all of Dr. McRae’s arguments—argues further that the court erred in finding the Settlement Agreement unambiguous and failing to consider its context, purpose, and intent in concluding that Mr. Kitchings’s new post-settlement position was not a pretextual end-run around the Agreement’s termination provision. Accordingly, Dr. Williams argues, the court erred in granting judgment as a matter of law in the Board’s favor rather than submitting the issue to the jury.⁸ We disagree.

⁸ Dr. Williams also argues that the Board violated the implied covenant of good faith and fair dealing by, in bad faith, creating a position for Mr. Kitchings in order to pay him a Grade 6 salary. This argument was never raised in the trial court. Although it’s true that there is no independent cause of action for breaching the implied covenant of good faith and fair dealing in Maryland that Dr. Williams could have included in her complaint, *Mount Vernon Props., LLC v. Branch Banking & Trust Co.*, 170 Md. App. 457, 472 (2006), Dr. Williams nevertheless had the opportunity to argue that the Board violated the implied covenant of good faith and fair dealing during the trial or in her response to the Board’s motion for judgment, and she failed to do so. Dr. Williams can’t raise this issue for the first time on appeal, and we decline to review it. Md. Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . .”).

After hearing the parties’ arguments, the court explained that the ultimate question in this case was whether or not Mr. Kitchings remained “red-circled” at Grade 6, Step 12 after the Principals were downgraded from a Grade 6 salary to Grade 5 Step 12. The court concluded that “reasonable minds cannot differ” on the plain meaning of the contract and in finding that the Board didn’t breach the Settlement Agreement. Because the breach of contract claim was the underlying basis for the Principals’ MWPCl claim, the court granted judgment in the Board’s favor on both the breach of contract claims and the MWPCl claims.

When reviewing a trial court’s decision to grant or deny a motion for judgment in a civil case, we give no deference and must “undertake the same analysis as the trial court.” *Veysman v. N.Y. Palace, Inc.*, 170 Md. App. 104, 112 (2006); *see also Sugarman v. Liles*, 460 Md. 396, 413 (2018). “If there is any evidence, no matter how slight, legally sufficient to generate a jury question, the motion must be denied.” *Tate v. Bd. of Educ.*, 155 Md. App. 536, 545 (2004) (*quoting James v. Gen. Motors Corp.*, 74 Md. App. 479, 484 (1988)). We consider all credible evidence on an issue as true and all “fairly deducible inferences” from the evidence in the light most favorable to the non-moving party. *Orwick v. Moldawer*, 150 Md. App. 528, 531 (2003). We are concerned only with whether, in the light most favorable to them, the Principals adduced enough evidence on each element of their causes of action.

1. *The court found correctly that the Principals did not present sufficient evidence to support a finding that the Board breached the Settlement Agreement.*

The Principals argue that they produced legally sufficient evidence that the Board breached the Settlement Agreement by “effectively red-circl[ing]” Mr. Kitchings at a Grade 6 salary after reducing the Principals’ salary to Grade 5 Step 12. The Principals also urge us to find that, at the very least, there was a factual dispute about whether Mr. Kitchings’s new job position was “mere pretext” for continuing to pay him at a higher level than other similarly situated principals, a dispute that needed to be resolved by the jury. Dr. Williams maintains that after Mr. Kitchings’s promotion, he was performing the same job responsibilities as the other principals, and that “allowing one comparator to continue to be paid at a higher rate . . . would clearly be a breach of the terms of the Agreement.”

The Board responds that based on the undisputed evidence, the court granted its motion for judgment properly. The Board agrees with the Principals that the Settlement Agreement was intended to provide equal pay for equal work, but because Mr. Kitchings had more responsibilities in his new position, the Board argues that he was entitled to receive a higher salary than the Principals going forward. The Board contends as well that Mr. Kitchings couldn’t have been “effectively red-circled” at Grade 6 Step 12 in his new role because his new salary was at Grade 6 Step 11. We agree that the court granted the Board’s motion for judgment on the breach of contract claim properly because the Principals didn’t provide sufficient evidence that could support a finding that the Board breached the Settlement Agreement.

To prove that the Board breached the Settlement Agreement, the Principals needed to establish “that the defendant owed the plaintiff a contractual obligation and that the defendant breached that obligation.” *Taylor v. NationsBank, N.A.*, 365 Md. 166, 175 (2001). Under the Settlement Agreement, the Board owed the Principals a contractual obligation to pay them a Grade 6 Step 12 salary until the Comparators’ red-circle status expired. And after the Comparators’ red-circle status ended, all six principals were returned to a Grade 5 salary, the correct paygrade for their job classification. The Principals couldn’t produce legally sufficient evidence to support a finding that the Board breached their obligation by agreeing to pay Mr. Kitchings a Grade 6 Step 11 salary in his new position. It’s undisputed that Mr. Kitchings received notice that on September 15, 2018, his salary would be lowered to Grade 5 Step 11, which the record demonstrates, and that Mr. Kitchings in fact received a Grade 5 salary before he was given a new job title with additional responsibilities. It’s also undisputed that after receiving a promotion from the Board, Mr. Kitchings was paid at a Grade 6 salary.

The Principals argue that the promotion was “mere pretext” to pay Mr. Kitchings more for doing the same work as the other principals. But there was no evidence of that. The record reflected that after his promotion, Mr. Kitchings was responsible for two campuses rather than one. He oversaw 5,000 students rather than the 670 students he supervised previously and managed a significantly larger budget in his new role. All of these facts were undisputed at trial. Even when Mr. Kitchings was only supervising 670 students and receiving a Grade 5 salary like the Principals, the other Principals never

oversaw more than 100 students. So although Mr. Kitchings’s Grade 6 Step 11 salary was paid retroactively from the date he was moved to a Grade 5 salary, the record contained no evidence on which a jury could find that the Board’s decision to pay him at this level was arbitrary or fraudulent. We agree with the circuit court that the Principals were unable to produce sufficient evidence to support a *prima facie* case of breach of contract and find that the court granted the Board’s motion for judgment properly.

2. *The court decided correctly the breach of contract claim as a matter of law because the meaning of the Settlement Agreement was unambiguous.*

Dr. Williams contends *next* that the court erred in failing to consider the “context, purpose, and intent of the Agreement” before ruling in favor of the Board. Because the court didn’t consider these factors, Dr. Williams argues, the court erred in determining that reasonable minds couldn’t differ on how the Settlement Agreement was interpreted and that the breach of contract claim should have been decided by the jury. Moreover, Dr. Williams argues that the terms “grade,” “step,” and “red-circled” aren’t defined in the Settlement Agreement, rendering these terms and the Settlement Agreement ambiguous. Again, we disagree.

Because Maryland courts apply the objective theory of contract interpretation, we begin “by considering the plain language of the disputed provisions in context, which includes not only the text of the entire contract but also the contract’s character, purpose, and ‘the facts and circumstances of the parties at the time of execution.’” *Ocean Petroleum, Co. v. Yanek*, 416 Md. 74, 88 (2010) (quoting *Pac. Indem. Co. v. Interstate Fire & Cas.*

Co., 302 Md. 383, 388 (1985)). “[W]hen the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed.” *Calomiris v. Woods*, 353 Md. 425, 436 (1999) (quoting *Gen. Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985)). Whether the Settlement Agreement is ambiguous depends on how a reasonable person in the position of the parties would have interpreted it. *Id.* (citing *Daniels*, 303 Md. at 261). “Whether a contract is ambiguous is a question of law.” *Davis v. Magee*, 140 Md. App. 635, 649 (2001) (citation omitted).

Here, the court found properly, as a matter of law, that the Settlement Agreement was unambiguous and gave effect to the plain meaning of the contract. The meanings of “grade,” “step,” and “red-circle,” terms that Dr. Williams is concerned about, aren’t ambiguous. The trial record reveals that “grade” and “step” signify the level of pay an individual is paid under the salary scale produced by the Association of Supervisor and Administrative School Personnel in Prince George’s County Public Schools and admitted into evidence as Exhibit 14. Although counsel for the Principals maintained in the circuit court that an individual could be “red-circled” only at a specific grade and that the “step” was irrelevant, the record suggests otherwise. The letters received by the Comparators in 2015, which also were admitted into evidence, state that the Comparators’ salaries—at their current grade *and* step—would be “‘frozen’ or ‘red-circled’ for a period of three years.” And because the record demonstrates that the red-circle status was intended to apply both

to grade and step, we won't construe the term to reflect a different meaning. There was no ambiguity about any of these terms.

All parties agree that the Settlement Agreement was meant to ensure that all of them—the Principals and the Comparators—received equal pay for equal work over the time period that the Settlement Agreement covered. The Agreement was never meant to require that all six principals be paid the same salary in perpetuity. And the record demonstrated that the Board compensated its employees in proportion to the work they performed. After Mr. Kitchings's red-circle status was lifted on September 15, 2018, the Board promoted him, assigned him additional job responsibilities, and paid him a higher salary. Importantly, the Principals never challenged the testimony demonstrating Mr. Kitchings's additional job responsibilities. At trial and during her appellate oral argument, Dr. Williams offered conclusory allegations that she and Mr. Kitchings had the same job responsibilities, but she provided no support for these claims in the record, and we haven't found any ourselves. The circuit court indicated that it “considered the testimony[and] listened to argument of Counsel,” including argument about the purpose of the Settlement Agreement, in finding that “reasonable minds cannot differ” on the meaning of the “plain language of the contract,” and we don't discern any error in that ruling.

Although the Principals may not agree with the Board's decision to pay Mr. Kitchings a Grade 6 salary for his new position, they couldn't prove that the Board breached the Settlement Agreement, and the court granted the Board's motion for judgment on its breach of contract claim properly.

3. *The court found correctly that the Principals did not present sufficient evidence to sustain their claims under the MWPCCL.*

The Principals also brought a claim against the Board under the MWPCCL, which sets the standards for the payment of wages and deductions from wages and defines notice requirements for employers. Md. Code (1991, 2016 Repl. Vol.), §§ 3-501 to -509 of the Labor and Employment Article (“LE”). In cases where an employer has withheld an employee’s wages, the MWPCCL provides employees with a cause of action that permits a court to “award the employee an amount not exceeding 3 times the wage, and reasonable counsel fees and other costs.” LE § 3-507(b)(1).

For the Principals to maintain a viable claim under the MWPCCL, they needed to produce evidence that they were underpaid under the Settlement Agreement and entitled to backpay. Because the Principals produced insufficient evidence for a reasonable juror to find that the Board breached the Settlement Agreement and withheld any pay, their claim under MWPCCL fails necessarily, and the court granted judgment in favor of the Board on the MWPCCL claim properly.

C. The Court Erred In Denying The Board’s Motion To Reopen The Case And For Attorneys’ Fees And Costs.

The Board filed a motion to reopen the case and for attorneys’ fees and costs⁹ eight days after judgment was entered. The Board argued that it was entitled to recover fees as the prevailing party in the litigation. The Principals responded that under Maryland Rule

⁹ For simplicity, rather than referring to “attorneys’ fees and costs” throughout the remainder of this opinion, “attorneys’ fees” will encompass costs unless we specify otherwise.

2-705, attorneys’ fees must be awarded before judgment is entered and that the motion should be denied due to the Board’s failure to comply with Rule 2-705. The Principals contended as well that allowing the Board to collect attorneys’ fees would be “grossly unfair” since they weren’t given any notice that the Board would be pursuing attorneys’ fees under the Settlement Agreement, and that the Principals made litigation decisions based on that understanding. The court denied the Board’s motion to reopen and for attorneys’ fees without explanation.

On appeal, the Board maintains that the Settlement Agreement entitled the prevailing party to recover attorneys’ fees, and although the court can determine the amount of the attorneys’ fee award, the court didn’t have the discretion to deny the Board’s request for attorneys’ fees altogether.¹⁰ We agree.

We review a court’s denial of a motion to alter or amend a judgment for abuse of discretion. *See Williams v. Housing Auth.*, 361 Md. 143, 153 (2000). A circuit court abuses its discretion when “no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding rules or principles.” *North v. North*, 102 Md. App. 1, 13 (1994) (cleaned up). We also have found that a court abuses its discretion where “we are unable to discern from the record that there was an analysis of the relevant facts and circumstances that resulted in the *exercise* of discretion.” *Maddox v.*

¹⁰ Dr. Williams failed to address the merits of the Board’s argument in her reply brief and stated simply that the Board was not entitled to attorneys’ fees because the court erred in granting judgment in the Board’s favor.

Stone, 174 Md. App. 489, 502 (2007). Accordingly, when the court has discretion to grant or deny a motion to amend a judgment by reopening the case, it “must use it and the record must show that [it] used it.” *Nelson v. State*, 315 Md. 62, 70 (1989).

Under Maryland Rule 2-534, the court has discretion to open, supplement, or amend a judgment:

In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

And because the Board moved to reopen the judgment to include an attorneys’ fee award eight days after judgment was entered, the court had discretion to reopen the case to include an award of contractual attorneys’ fees.

Ordinarily, parties are not entitled to recover costs and expenses of litigation because Maryland follows the “American Rule.” *Wheeling v. Selene Fin. LP*, 473 Md. 356, 400 (2021). However, there are exceptions to this rule, most notably “where the parties to a contract have an agreement regarding attorney’s fees.” *Eastern Shore Title Comp. v. Ochse*, 453 Md. 303, 330 (2017).

Before the Supreme Court of Maryland (at the time called the Court of Appeals of Maryland)¹¹ enacted Title 2 Chapter 700 of the Maryland Rules in 2014, this Court treated post-judgment motions for attorneys’ fees differently depending on whether the prevailing party in the litigation had brought an affirmative claim for relief. In *Monarc Constr., Inc. v. Aris Corp.*, we found that where the plaintiff is the prevailing party on a breach of contract action, the plaintiff wasn’t entitled to collect attorneys’ fees under a provision of that contract after judgment was entered. 188 Md. App. 377, 392 (2009). Because the attorneys’ fee award was “an inherent part of a breach of contract claim,” *id.* at 393, we reasoned that under the merger doctrine,¹² the agreement merged into the judgment and

¹¹ At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) (“From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . .”).

¹² The doctrine of merger dictates a plaintiff’s ability to maintain an action on the underlying claim after judgment is entered in their favor:

When a valid and final personal judgment is rendered in favor of the plaintiff:

- (1) The plaintiff cannot thereafter maintain an action on the original claim or any part thereof, although he may be able to maintain an action upon the judgment; and
- (2) In an action upon the judgment, the defendant cannot avail himself of defenses he might have interposed, or did interpose, in the first action.

Restatement (Second) of Judgments § 18 (1982).

terminated the parties' ability to enforce the agreement's provisions. *Id.* at 394–99. Ultimately, we held that the plaintiff was not entitled to seek attorneys' fees after judgment was entered because their claim for attorneys' fees under the contract merged into the trial court's judgment on the underlying action. *Id.* at 399; *see also Accubid Excavation, Inc. v. Kennedy Contractors, Inc.*, 188 Md. App. 214, 238–39 (2009) (defendant who asserted a counterclaim for breach of contract and was granted judgment in their favor was not entitled to attorneys' fees post-judgment because the contract merged into the judgment and extinguished the parties' ability to enforce the attorneys' fee provision in the contract).

The next year, we decided *Grove v. George*, in which we considered whether a trial court had jurisdiction over a post-judgment motion for attorneys' fees brought by a defendant who hadn't asserted a counterclaim in the underlying action but was the prevailing party in a contract dispute. 192 Md. App. 428, 430 (2010). We explained that the award of attorneys' fees depended solely on the outcome of the litigation and was independent from the merits of the underlying action. *Id.* at 433–34 (*citing White v. N.H. Dep't of Emp. Sec.*, 455 U.S. 445, 450–52 (1982)). We concluded that the defendant's post-judgment motion for fees was “collateral to the main cause of action” and, therefore, could be decided by the court after judgment was entered and without revising the judgment. *Id.* at 436 (*quoting White*, 455 U.S. at 451).

In an effort to provide courts with guidance on resolving requests for attorneys' fees, the Standing Committee on Rules of Practice and Procedure (the “Rules Committee”) sought to create a set of rules governing whether an award of attorneys' fees must be

included in the final judgment and when parties should present evidence to support an attorneys' fees claim. *See* Md. Rules Committee, Minutes of Rules Meeting, at 144 (Jan. 6, 2012), <https://mdcourts.gov/sites/default/files/minutes-rules/01-06-12.pdf> (last visited May 10, 2023), *archived at* <https://perma.cc/5LGJ-4BJJ>. In 2014, at the recommendation of the Rules Committee, the Supreme Court enacted Chapter 700 of Title 2 of the Maryland Rules, which generally “apply to actions in which, by law or contract, a party is entitled to claim attorneys’ fees from another party.” Md. Rule 2-702(a).

Rule 2-705 “applies to a claim for an award of attorneys’ fees attributable to litigation in a circuit court pursuant to a contractual provision permitting an award of attorneys’ fees to the prevailing party in litigation arising out of the contract.” This rule provides the procedural framework for parties seeking attorneys’ fees under a fee-shifting provision and requires the judgment to include any award of fees:

(a) **Scope of Rule.** — This Rule applies to a claim for an award of attorneys’ fees attributable to litigation in a circuit court pursuant to a contractual provision permitting an award of attorneys’ fees to the prevailing party in litigation arising out of the contract. It does not apply to a claim for attorneys’ fees allowed by contract as an element of damages for breach of the contract or to a claim for attorneys’ fees authorized by statute or other law.

* * *

(b) **Pleading.** — A party who seeks attorneys’ fees from another party pursuant to this Rule shall include a claim for such fees in the party’s initial pleading or, if the grounds for such a claim arise after the initial pleading is filed, in an amended pleading filed promptly after the grounds for the claim arise.

(c) **Scheduling Conference and Order.** — If a claim for attorneys’ fees is made pursuant to this Rule, unless the court

orders otherwise, the court shall conduct a scheduling conference in conformance with Rule 2-703 (c).

(d) Enhanced Procedures and Requirements for Certain Cases. — Upon a determination by the court that the case is one that likely will result in a substantial claim for attorneys’ fees covering a significant period of time, the court may enter orders in conformance with Rule 2-703 (d).

(e) Determination of Award by Court. — Upon a jury verdict or, in an action tried by the court, a finding by the court in favor of a party entitled to attorneys’ fees as a “prevailing party,” the court shall determine the amount of an award in accordance with section (f) of this Rule.

(f) Factors to Be Considered. —

(1) If the party seeking attorneys’ fees prevailed with respect to a claim for which fee-shifting is permissible, the court shall consider the factors set forth in Rule 2-703 (f)(3) and the principal amount in dispute in the litigation, and may consider the agreement between party seeking the award and that party’s attorneys and any other factor reasonably related to the fairness of an award.

(2) If the claim for an award of attorneys’ fees does not exceed the lesser of 15% of the principal amount found to be due or \$4,500, the court need not require evidence on all of the factors set forth in Rule 2-703 (f)(3) if the party claiming the award produces evidence otherwise sufficient to demonstrate that the amount claimed is reasonable and does not exceed the amount that the claiming party has agreed to pay that party’s attorney. The evidence shall include at a minimum:

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

(B) the amount or rate charged or agreed to in writing by the requesting party and the attorney; and

(C) the attorney’s customary fee for similar legal services.

* * *

(g) **Part of Judgment.** — An award of attorneys’ fees shall be included in the judgment on the underlying cause of action but shall be separately stated. The court shall state on the record or in a memorandum filed in the record the basis for its findings and conclusions regarding the denial or issuance of an award.

The cross-referenced portions of Rule 2-703 explain the procedure that courts must follow when conducting scheduling conferences and when attorneys’ fees may be substantial:

(c) **Scheduling Conference and Order.** — Unless the court orders otherwise, if a claim for attorneys’ fees is made pursuant to this Rule, the court shall conduct a scheduling conference and, as part of a scheduling order entered pursuant to Rule 2-504 shall:

(1) determine whether to require enhanced documentation, quarterly statements, or other procedures permitted by section (d) of this Rule;

(2) determine whether evidence regarding the party’s entitlement to attorneys’ fees or the amount thereof may practicably be submitted during the parties’ cases-in-chief with respect to the underlying cause of action or should await a verdict by the jury or finding by the court with respect to that underlying cause of action; and

(3) in light of the determination made under subsection (c)(2), determine whether, pursuant to section (f) of this Rule, any award of attorneys’ fees will be included in the judgment entered on the underlying cause of action or as a separate judgment.

Committee note. — If the court intends to delay the presentation of evidence on the claim for attorneys’ fees until after a determination of the underlying cause of action, but desires to enter one judgment that would include the denial or grant of an award of attorneys’ fees, the jury’s verdict or court findings on the underlying cause of action should be docketed, but the court must assure that no judgment is entered on the verdict or findings until the claim for attorneys’ fees is resolved.

(d) **Enhanced Procedures and Requirements for Certain Cases.** — Upon a determination by the court that the case is

likely to result in a substantial claim for attorneys' fees for services over a significant period of time, the court may:

(1) require parties seeking an award (A) to keep time records in a specific manner, and (B) to provide to parties against whom an award is sought quarterly statements showing the total amount of time all attorneys, paralegals, and other professionals have spent on the case during the quarter and the total value of that time;

(2) determine whether, and to what extent, the Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses contained in an Appendix to this Chapter shall be applied; and

(3) establish procedures and time schedules for the presentation of evidence and argument on issues relating to a party's entitlement to an award and the amount thereof.

Rule 2-705 wasn't followed in this case, and the procedures prescribed by the Rule likely would have avoided the confusion at the end of the case about whether and when the fee award should have been considered. And in any event, the court erred in denying the Board's motion to reopen and for attorneys' fees. In relevant part, we'll discuss the parties' and the court's compliance with parts (b), (c), (e), and (g) of Rule 2-705.

1. Compliance with Rule 2-705.

The Board was required to include a claim for attorneys' fees in its initial pleading if it intended to request fees pursuant to Rule 2-705(b). And it did. In its Answer, its initial pleading in this case, the Board requested "that judgment be entered in favor of [the Board], [and] that costs, including attorneys' fees, be awarded to [the Board]." The Answer didn't

mention that the Board was requesting fees under Rule 2-705 or reference the Settlement Agreement’s fee-shifting provision specifically, but the claim was raised.

Rule 2-705(c) requires a scheduling conference to be conducted “[i]f a claim for attorneys’ fees is made pursuant to this Rule.” That never happened in this case. On one hand, the Rule requires the court to conduct the scheduling conference. But under these circumstances, we can’t fairly pin the blame on the court; although the Board, on its face, complied with the Rule by including a generic claim for attorneys’ fees in its Answer, there was no obvious way for the court to understand from that pleading alone that the Board was requesting attorneys’ fees under the Settlement Agreement, and that Rule 2-705 and the scheduling conference requirement were being triggered. The Board could and should have specified in its Answer that it was requesting attorneys’ fees pursuant to a contractual fee-shifting provision so the court was aware that the procedural requirements of Rule 2-705 applied. That way, the court would have been on notice that a scheduling conference was required. *See Paul V. Niemeyer, et al., Maryland Rules Commentary* 971 (LexisNexis 5th ed. 2019) (“The purpose [of Rule 2-705(b)] is to provide early notice of the claim so all parties are aware that the procedures of this rule apply, including the potential need for enhanced documentation.”). Moreover, the Board never asked the court for a scheduling conference or mentioned to the court that it was required to conduct a scheduling conference on their attorneys’ fee request. So although a scheduling conference should have been scheduled, and the dates and deadlines relating to the fee request established, the court’s failure to follow Rule 2-705(c) was understandable under these circumstances.

Similarly, the court didn't determine under Rule 2-705(e) whether the Board was entitled to attorneys' fees or the amount of attorneys' fees to which the Board was entitled, if any, as the prevailing party in the litigation. And because no attorneys' fee award was determined, the court also didn't include any fee award in the judgment before entering judgment, as subsection (g) requires. Again, these procedural failures flowed from the imprecision of the Board's request for attorneys' fees in its Answer and the Board's failure to pursue the fee award before the end of the case.

Nevertheless, the Principals weren't prejudiced by the noncompliance with Rule 2-705. Under the parties' joint disclosure on attorneys' fees recoverable under the MWPCCL pursuant to Rule 2-703, the Principals already were tracking the hours they spent on the case and submitting documentation to the Board every month. More to the point, the Board's Answer put the Principals on notice that the Board was seeking attorneys' fees if judgment was entered in the Board's favor, regardless of whether the Board cited Rule 2-705. The Settlement Agreement lay at the heart of this case—it literally was the contract that the Principals sought to enforce here. Although it would have been better for the Board to cite the Agreement's fee-shifting provision expressly, and it definitely would have been better for the Board to invoke Rule 2-705 directly, there can be no serious dispute that the Principals knew, or at least should have known, that the Board was seeking attorneys' fees under the terms of the Settlement Agreement. The missteps here were purely procedural, not substantive, and the Board couldn't have waived a claim that it raised at the outset and then sought to pursue promptly after its right to fees as a prevailing party ripened.

2. *Denial of Board's Motion to Reopen and for Attorneys' Fees.*

Because the Board's initial request for attorneys' fees was only procedurally deficient, the circuit court erred in denying the Board's motion to reopen for attorneys' fees. The Board raised attorneys' fees as an issue in its Answer, and when the issue hadn't been resolved before the court entered judgment, it moved to reopen the case so that the court could rule on its attorneys' fee request. Again, it would've been better for the Board to notify the court that it was entitled to attorneys' fees under the Settlement Agreement before the court entered judgment. But in any case, the Board took the proper steps to remediate its procedural mistake. The Board filed its motion to reopen and for attorneys' fees eight days after the court entered judgment, and thus made a timely motion under Rule 2-534 to alter or amend the judgment. In accordance with Rule 2-311(c)–(d), the Board attached to its motion documentation of the work it performed, and the Board included information about the attorneys' background to aid the court in formulating an attorneys' fee award. Because Rule 2-705(g) mandates that any award of attorneys' fees must be included in the judgment, the Board correctly moved to reopen the case and amend the judgment to include an award for attorneys' fees.

Perhaps more importantly, the Principals and the Board agreed explicitly that the prevailing party in any litigation disputes involving the Agreement “*will* be awarded reasonable attorneys' fees and costs incurred in connection with such action.” (Emphasis

added.)¹³ It's not within the court's discretion "'to interfere with the natural right of parties to contract.'" *Lloyd v. Niceta*, 255 Md. App. 663, 682 (2022) (quoting *Vogelhut v. Kandel*, 308 Md. 183, 191 (1986) (citation omitted)), *cert. granted*, 482 Md. 733 (2023). Although the court has discretion to determine the amount of attorneys' fees to award, where there is a fee-shifting provision granting the prevailing party attorneys' fees, the court doesn't "have discretion to refuse to award fees altogether." *Myers v. Kayhoe*, 391 Md. 188, 207–08 (2006).

We agree that the Board committed mistakes early in the litigation process, but Rule 2-534 allows parties to correct these mistakes expeditiously. And under the circumstances, it would be a waste of resources to require the Board to bring a separate claim for attorneys' fees under the Settlement Agreement when the court could have amended the judgment soon after it was entered. We hold that the court erred in denying the Board's motion to reopen and for attorneys' fees, vacate the portion of the judgment denying those motions, and remand to the circuit court for further proceedings consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED IN PART, VACATED IN
PART, AND REMANDED FOR
PROCEEDINGS CONSISTENT WITH
THIS OPINION. APPELLANTS TO SHARE
COSTS EQUALLY.**

¹³ The Settlement Agreement didn't merge into the judgment here and remains in existence because the plaintiffs didn't prevail on their breach of contract claim. *Grove*, 192 Md. App. at 437; *see also supra* note 12 (doctrine of merger applies only where the plaintiff is the prevailing party).