Circuit Court for Montgomery County
Case No. 139152FL

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 929

September Term, 2021

THERESA A. JORDAN

v.

PAUL NICHOLS ROMANI

Leahy,
Shaw,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: January 26, 2023

This marks the second appeal in a protracted dispute between appellant, Theresa Jordan, and appellee, Paul Nichols Romani, arising out of the parties' divorce settlement agreement. After the Circuit Court for Montgomery County attended to an unrelenting barrage of motions both preceding and following the parties' first appeal, Ms. Jordan returns to this Court to challenge an award of attorneys' fees entered on remand by the circuit court in favor of her former spouse, Mr. Romani.

In May 2017, the circuit court entered a judgment granting Ms. Jordan's petition for absolute divorce from Mr. Romani which incorporated, but did not merge, settlement terms that the parties reached on February 14, 2017. Several months later, Ms. Jordan filed a "Motion to Order Transfer of Interest of [Thrift Savings Plan ("TSP")] Funds" alleging that Mr. Romani and his attorneys had violated the settlement agreement by intentionally delaying the execution of a Qualified Domestic Relations Order ("QDRO").[1] Ms. Jordan

[1] As we noted in the parties' first appeal:

> QDROs or Qualified Domestic Relations Orders are orders of a domestic relations court that come under an exception to the spendthrift provisions of ERISA (Employee Retirement Income Security Act, 29 U.S.C. §§ 1001–1461). The ERISA provisions generally prevent the assignment or distribution of the proceeds of an ERISA qualified plan to third parties. A domestic relations order meeting certain qualifications (hence the QDRO moniker) for support or distribution of property may, however, require the allocation of all or part of a plan participant's benefits to an alternate payee. Use of this ERISA exception allows state trial courts effectively to alter title to otherwise untouchable pension plans without violating federal law.

Jordan v. Romani ("*Jordan I*"), No. 1655, Sept. Term 2019, slip op. at 4 n.3 (filed Jan. 29, 2021) (quoting *Fischbach v. Fischbach*, 187 Md. App. 61, 94-95 (2009)).

reiterated this argument in a plethora of filings in the ensuing months until, on February 9, 2018, a fully executed QDRO, signed by the court, was entered on the court docket.

In July 2019, Ms. Jordan filed an "Amended Motion to Recover TSP Earnings from [Mr. Romani] Due to His Unjust Enrichment," in which she argued, among other things, that she was entitled to all interest that Mr. Romani had earned on her alleged share of his TSP funds from the date of the divorce through the date of transfer of the principal amount. Mr. Romani filed an answer and motion for summary judgment in which he asked that the court deny Ms. Jordan's motion and award him attorneys' fees incurred in defending against her unjust enrichment claims. After a hearing on all open motions, the circuit court granted Mr. Romani's motion for summary judgment. The judge reasoned that Mr. Romani followed the settlement agreement, which did not address what would "happen to the [TSP] account values between the day of divorce and the filing of QDROs," and awarded him $6,350.00 in attorneys fees, finding that Ms. Jordan had no legal basis for her claims. The court denied all other motions.

Ms. Jordan appealed, and this Court affirmed the circuit court's grant of summary judgment on January 29, 2021. The Court reasoned that because the parties had executed an express agreement, Ms. Jordan's quasi-contractual claim in unjust enrichment was not cognizable. *Jordan v. Romani* ("*Jordan I*"), No. 1655, Sept. Term 2019, slip op. (filed Jan. 29, 2021). We also held that the circuit court did not err in granting Mr. Romani attorneys' fees, but vacated the court's award and ordered a limited remand for the court to review a revised statement of Mr. Romani's attorneys' fees and to determine whether the submitted

amount was reasonable. *Jordan I*, slip op. at 14. On remand, the court once again awarded $6,350.00 in attorneys' fees related to the "unjust enrichment" filings, but failed to account for Mr. Romani's corrected fee statement which removed several improperly billed entries that were previously included in his initial request for $6,350.00 in fees.

Ms. Jordan noted an appeal on August 25, 2021, and presents nine questions[2] for our review, which we consolidate, reorder, and recast as follows:

[2] The questions stated in Ms. Jordan's brief are as follows:

1. Did the Court err by awarding Appellee attorneys' fees without proof or justifiable evidence to meet the test of reasonable attorneys' fees under Maryland Rule 1-341?

2. Did the Court err in failing to find Appellee in contempt of the Judgment of Absolute Divorce for his failure to pay alimony as prescribed under Rules 15-206 and 15-207 and having never purged himself of the contempt?

3. Did the Court err in denying Appellant an award of attorneys' fees under Rule 1-341 for Appellant's counsel's representation at the two contempt hearings for Appellee's unjustified contempt defense?

4. Did the Court demonstrate bias in favor of Appellee and fail in its obligation to adjudicate justly and according to law in these matters before it, violating Rules 18-101.1, 18-101.2, 18-102.2(a), 18-102.3(a), 18-102.5, 18-102.6, and 18-102.7?

5. Did the Court err in failing to vacate Appellee's award of attorneys' fees and remove the Judgment from the Index pursuant to the Court of Special Appeals Mandate pursuant to Rule 8-604?

6. Did the Court err in failing to release the $6,350.00 in the Court Registry to Appellant when the COSA Mandate vacated the Judgment pursuant to Rule 8-604?

I. Did the circuit court err or abuse its discretion in awarding attorneys' fees to Mr. Romani in the amount of $6,350.00 under Maryland Rule 1-341?

II. Did the circuit court err or abuse its discretion in denying Ms. Jordan's petition to hold Mr. Romani in contempt for withholding a portion of alimony payments and denying her request for an award of attorneys' fees under Maryland Rule 1-341?

III. Did the circuit court demonstrate bias in favor of Mr. Romani?

For the reasons explained below, we vacate the award of attorneys' fees in the amount of $6,350.00 and remand to the circuit court for further proceedings consistent with this opinion. In all other respects, we affirm the judgment.

BACKGROUND

Marriage, Divorce, and Motions to Compel

The parties were married in April 1981 and Ms. Jordan filed a complaint for absolute divorce in 2016. The Circuit Court for Montgomery County entered a judgment of absolute divorce in May 2017 which "incorporated" but did not merge, the terms of a Settlement Agreement that the parties entered into on February 14, 2017. Under that judgment, the court reserved jurisdiction "for the receipt, entry, alteration, and/or amendment . . . of any

7. Did the Court violate Rule 18-102.6 by failing to hear Appellant's further arguments when she requested hearing?

8. Did the Court err in awarding Appellee $6,350.00, the precise amount COSA determined was ineligible, failing under Rule 1-341?

9. Did the Court err in awarding Appellee the $6,350.00 held in the Court Registry that was obtained with his unclean hands, and having failed to purge himself of the contempt under Rules 15-206 and 15-207, with restitution having never occurred for Appellee's contempt in withholding alimony?

appropriate order(s) pertaining to retirement benefits so as to effectuate the intent of the parties as expressed in their agreement[.]" The Settlement Agreement provided, among other things, that Mr. Romani was to pay Ms. Jordan "a non-modifiable alimony for a period of 10 years." The amount of alimony owed was subject to change only if Mr. Romani "suffer[ed] a loss or change of employment, through no fault of his own or such a change of employment is medically recommended[.]"

The Settlement Agreement further provided that the parties agreed to "equalize their TSP accounts, valued on the date of divorce." As we summarized in *Jordan I*, the parties' retirement assets were addressed under the agreement as follows:

- The parties agree to equalize their TSP accounts, valued on the date of divorce.
- [Ms. Jordan] will receive 50% of [Mr. Romani's] FERS pension, and [Mr. Romani] will select the full survivor benefit annuity the cost of which the parties will share equally.
- [Mr. Romani] waives his right to [Ms. Jordan's] FERS pension.
- [Ms. Jordan] waives any right to [Mr. Romani's] IRA

Jordan I, slip op. at 3.

Ms. Jordan, in July 2017, filed a "Motion to Compel [Mr. Romani] to Sign QDRO and for Sanctions." She argued that Mr. Romani and his attorneys were maliciously delaying the QDRO process and asked, among other things, that the court order Mr. Romani to sign the QDROs. In his opposition, Mr. Romani argued that the motion was moot, as he had submitted fully executed QDROs to the court. On October 19, 2017, Ms.

Jordan dismissed her motion to compel and for sanctions. Nevertheless, in February 2018, she filed a second "Motion to Compel [Mr. Romani] to Provide Court with Original Fully Signed QDROS and For Sanctions." Building on the arguments contained in her prior motion, she argued that "[t]here is no reason for [Mr. Romani] to refuse to provide the signed QDROs other than the fact that he is a malignant [narcissist] with a pathological need to control[.]" Mr. Romani opposed the motion, asserting that it was moot as the court had "signed and entered the QDROs that were provided to the [c]ourt by [Mr. Romani] on or about October 3, 2017." The circuit court denied Ms. Jordan's motion as moot on March 26, 2018.

On July 2, 2018, Ms. Jordan filed a "Motion to Order Transfer of Interest on TSP Funds" in which she alleged, among other things, that Mr. Romani had "unduly delayed the QDRO process for the purpose of unjust enrichment." She argued that she was entitled to "all interest that [Mr. Romani] has earned on [her] share of [Mr. Romani's] TSP funds from the date of the divorce through the date of transfer of the principal amount." Ms. Jordan submitted an amended motion with minor changes on November 20, 2018. Mr. Romani answered, asking that the court deny Ms. Jordan's motion and asserting that he was entitled to attorneys' fees as Ms. Jordan's claim was "made in bad faith and without substantial justification" under Maryland Rule 1-341.

Ms. Jordan then filed a "Motion to Compel [Mr. Romani's] Discovery Responses, Motion for Sanctions, and Motion for Default Judgment, or Alternatively, Motion for Summary Judgment" on May 31, 2019. Once again, she argued that she was entitled to

summary judgment under a theory of unjust enrichment. Specifically, she asserted that Mr. Romani "was enriched by the earnings" that accrued on her portion of his TSP account.

The court, on July 1, 2019, set Ms. Jordan's motion for summary judgment for a hearing and denied all of her other outstanding motions. At the hearing, Ms. Jordan explained that:

> the settlement agreement provided for an equal division in TSP account funds as of the date of the divorce, but Mr. Romani's account had increased in value by the time that she received her share of those funds, and therefore, she was entitled to a pro rata share of the amount of the increase. She conceded that the settlement agreement was a contract, and it did not address the issue of interest. She explained she had not expected such a delay in the transfer of funds, and that the issue of interest "never came up."

Jordan I, No. 1655, Sept. Term 2019, slip op., at 6. The circuit court denied Ms. Jordan's motion for summary judgment on July 25, 2019.

Ms. Jordan also filed an "Amended Motion to Recover TSP Earnings from [Mr. Romani] Due to His Unjust Enrichment" in July 2019. In this motion, Ms. Jordan, again under a theory of unjust enrichment, sought to recover "the earnings on [Mr. Romani's] principal TSP amount . . . from May 23, 2017 through August 2, 2018." Mr. Romani answered and filed a motion for summary judgment in which he asserted that "[t]here is no legal basis for the relief requested by [Ms. Jordan] in her [m]otion." He requested that the court, among other things, grant his motion for summary judgment and "[o]rder [Ms. Jordan] to reimburse [him] for the attorney's fees incurred by him in defending this action."

During a hearing on all open motions on August 30, 2019, Mr. Romani pressed that neither the settlement agreement nor the QDRO contained a provision entitling Ms. Jordan

to any interest earned on Mr. Romani's TSP account that accrued between the divorce and the transfer of funds on August 2, 2018. Ms. Jordan agreed "the contract did not expressly address this issue[,]" but argued, instead, that she was entitled to her claim under a theory of unjust enrichment because, among other things, Mr. Romani "delayed the processing of the QDRO in bad faith." *Jordan I*, No. 1655, Sept. Term 2019, slip op., at 7. The Court granted Mr. Romani's motion for summary judgment, stating, in part, that:

> "the agreement was followed. . .[T]here was no anticipation or consideration of what were to happen to the account values between the day of divorce and the filing of the QDROs, the parties didn't include that in their marital property settlement. They probably could have, if they thought about it or had they anticipated it, but that wasn't done. So, this [c]ourt can't go back now and change that or alter it, given the fact that it was a mediated agreement and it was incorporated, but not merged into the final order of divorce.

Id. at 7-8.

The court also granted Mr. Romani's request for attorneys' fees in the amount of $6,350.00 based on his submission, at the hearing, of a detailed accounting of his attorneys' fees from December 2018 through August 2019. The court then entered an order on September 16, 2019, granting Mr. Romani's motion for summary judgment and ordering that Ms. Jordan pay $6,350.00 in attorneys' fees to Mr. Romani. Ms. Jordan timely noted an appeal from that order.

Post-Judgment Motions

On September 13, 2019, Ms. Jordan filed a motion captioned "Plaintiff's Response and Objection to Attorneys' Fees Awarded to Defendant and Request for Reversal/Amendment of Judgment Due to Inappropriate Charges, Fraud, and Failure to

Comply with Rule 1-341[.]"[3] In that filing, Ms. Jordan pointed out that Mr. Romani's counsel included four time entries in the supporting fee statements which were listed as "no charge" to the client. Thus, Ms. Jordan observed that the total amount of fees requested by Mr. Romani was inflated by at least $652.50 due to these improper charges which were never actually billed to Mr. Romani. In his opposition to that motion, Mr. Romani conceded that these charges were inadvertently included, but nonetheless requested additional fees incurred in preparing for and attending the August 30 hearing, as well as in responding to Ms. Jordan's post-judgment motion.

A month after the court granted summary judgment, Ms. Jordan filed a "Motion to Stay Judgment Pending Appeal." She argued, among other things, that the circuit court erred in "refusing to hear [her] case for unjust enrichment" which would have barred the court's award of attorneys' fees under Maryland Rule 1-341. The court denied this motion on November 27, 2019, and on January 21, 2020, entered judgment in favor of Mr. Romani in the amount of $6,350.00.

In February 2020, Mr. Romani's counsel sent Ms. Jordan a letter stating his intention to garnish 25% of Ms. Jordan's monthly alimony payments (approximately

[3] Ms. Jordan's motion was filed after the court's ruling from the bench granting Mr. Romani's request for $6,350.00 in attorneys' fees at the culmination of the August 30 hearing, but before the court's corresponding written order on September 16, 2019. In effect, then, Ms. Jordan's motion functioned as a motion to alter or amend the September 16 order because, under Maryland Rule 2-534 "[a] motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket." Md. Rule 2-534.

$443.75 per month) to cover the attorneys' fee judgment. Ms. Jordan responded with a "Request for Order to Show Cause" to require that Mr. Romani demonstrate "why he should not be given jail time for defying this court's order regarding payment of spousal support[.]" Mr. Romani subsequently filed a motion to dismiss the petition, which the court denied. Ms. Jordan also filed a "Motion for Fees" on December 15, 2020, arguing that she was entitled to any fees incurred as a result of her efforts to receive her entire alimony payment.

The circuit court held a hearing on Ms. Jordan's Show Cause petition on January 7, 2021. The court, recognizing that the underlying judgment was currently on appeal to this Court, suggested that Mr. Romani place the withheld alimony in the court's registry pending resolution of Ms. Jordan's appeal. Both parties concurred and Mr. Romani agreed to place $6,350.00 in the court's registry within 15 days of the hearing. The court also noted that, following the resolution of Ms. Jordan's appeal, it would consider attorneys' fees incurred as a result of Ms. Jordan's show cause/contempt petition. The court signed an accompanying order the same day.

Jordan I

Several weeks later, on January 29, 2021, this Court, in an unreported opinion, affirmed the circuit court's grant of summary judgment and award of attorneys' fees but ordered a limited remand for the court to reconsider the amount of fees owed. *See Jordan I*, No. 1655, Sept. Term 2019, slip op. at 14 (filed Jan. 29, 2021). We held that the circuit court did not err in granting Mr. Romani's motion for summary judgment as the parties'

Settlement Agreement constituted an express contract and a claim of unjust enrichment cannot lie where "the subject matter of the claim is covered by an express contract between the parties." *Id.* at 9 (quoting *AAC HP Realty, LLC v. Bubba Gump Shrimp Co. Rests., Inc.*, 243 Md. App. 62, 70 (2019)). We also determined that this claim did not fall within the narrow "fraud or bad faith exception" to the general rule, as Ms. Jordan asserted that Mr. Romani exhibited bad faith or fraud in the execution of the contract as opposed to its formation. *Id.* at 10.

We also decided that the circuit court did not err in granting Mr. Romani's request for attorneys' fees. *Id.* at 11. Specifically, we perceived "no error in the court's finding that Ms. Jordan lacked substantial justification for bringing an action for unjust enrichment." *Id.* at 13. Indeed, because "Ms. Jordan entered into an express contract with Mr. Romani which covered the subject of the division of retirement assets," we reasoned that "there was no legal basis for filing a claim of unjust enrichment, and there was no factual basis which would have warranted application of one of the rare exceptions to the general rule of law that barred her claim." *Id.* at 13-14. We did, however, vacate the circuit court's award of attorneys' fees and order a limited remand, because, Mr. Romani "concede[ed] that the amount of the award should be reduced" as "there was an error in the statement of attorney's fees submitted to the court," and because the circuit court "did not state a finding on the record regarding the reasonableness of the fees." *Jordan I*, No. 1655, slip op. at 14

The Limited Remand

After this Court's opinion was filed, Ms. Jordan filed motions requesting that the circuit court void the previous judgment and that the court set a hearing on her motion for attorneys' fees arising out of Mr. Romani's alleged contempt. Mr. Romani, for his part, filed a motion "For Entry of An Order Granting Attorney's Fee Award on Remand from Court of Special Appeals[.]" He represented that he had incurred $7,515.00 in attorneys' fees defending against Ms. Jordan's unjust enrichment claims, as he had to make additional filings in the circuit court "between December, 2018 and September, 2019" and requested that the court order Ms. Jordan to reimburse him for the full amount. In support of this request, he attached a statement regarding costs and attorneys' fees, in which he explained that he had incurred fees responding to the following filings:

> 1) Motion to Order Transfer of Interest on TSP Funds to [Ms. Jordan]; 2) Discovery Requests; 3) Motion to Compel [Mr. Romani's] Discovery Requests, Motion for Sanctions, and Motion for Default Judgment or Alternatively, Motion for Summary Judgment; and 4) Amended Motion to Recover TSP Earnings. [Mr. Romani] also filed his own Motion for Summary Judgment and appeared in this [court] for hearings on July 10, 2019 and August 30, 2019.

Mr. Romani averred that he was charged $300.00 per hour for work completed by Jeffery Evans, Esq., and $225.00 per hour for work completed by Elizabeth Reinecke, Esq., which he asserted were "customary fee[s] for similar legal services in the community and in Montgomery County."

In support of his motion, Mr. Romani attached a time entry sheet, which detailed the expenses that he had incurred defending the matter. Several entries on the time entry

sheet were crossed out, including the four "no-charge" entries totaling $652.50, as well as two other charges, totaling $57.50, which had been included in his initial request for $6,350.00 in attorneys' fees. These modifications demonstrated that the crossed-out entries were not included in the total award of attorneys' fees sought by Mr. Romani. However, due to new entries, Mr. Romani sought a total award of $7,515,00. Specifically, Mr. Romani requested additional fees for the time counsel spent in preparing for, and attending, the August 30, 2019 summary judgment hearing and in related tasks flowing from that hearing. These additional fees totaled $1,875.00 and were not included in Mr. Romani's original fee statement supporting the initial award of $6,350.00.

Thereafter, Mr. Romani filed a "Motion for Entry of An Order Granting Attorney's Fee Award for Fees Incurred By Defendant In Appeal No. 1655, September 2019 Term[,]" seeking recovery of fees incurred in the parties' first appeal to this Court. He attached a statement which represented that he incurred $8,325.00 in fees between January and July 2020 in litigating Ms. Jordan's appeal. He also attached a time entry sheet, detailing how the fees were incurred.

Ms. Jordan, in turn, filed a motion captioned "Request for Hearing; Request for Attorneys' Fees Under MD Rule 1-341; Response to Motion for Entry of An Order Granting Attorney's Fee Award on Remand from Court of Special Appeals." In her motion, Ms. Jordan requested a more specific accounting of the fees that Mr. Romani had incurred, noting that because of his "nefarious behaviors" Mr. Romani and his attorneys have submitted five different calculations of attorneys' fees. In her view, while it would

have been unjust for the court to award any fees, it would be a "miscarriage of justice" if the court were to accept one of the figures submitted by Mr. Romani, "based solely on his word that these fees are reasonable." She also contended that the court violated the Maryland Rules of Professional Conduct by not sanctioning Mr. Romani and his counsel. She asserted that the court "turned a blind eye" to Mr. Romani and his attorneys' nefarious activities, punishing her "for attempting to recover that which rightfully belonged to her." Ms. Jordan also filed a motion arguing that she was entitled to the $6,350.00 in the court's registry because this Court had "overturned the [c]ourt's judgment."

The circuit court held a hearing on all pending motions on August 4, 2021. Although she was unrepresented at the hearing, Ms. Jordan argued that she was entitled to the attorneys' fees that she incurred litigating Mr. Romani's earlier motion to dismiss her contempt petition. By withholding a portion of her monthly alimony award, Ms. Jordan posited that Mr. Romani was in contempt of the parties' Settlement Agreement. She explained that she hired an attorney to recoup her withheld funds, and the court admitted an affidavit of attorneys' fees and several time entry invoices, which documented $3,250.00 in fees.

Mr. Romani argued that after the circuit court entered a judgment of attorneys' fees in his favor, he was entitled to utilize "self-help" remedies to recoup the judgment. He argued that "it is a fundamental principal of credit that [sic], creditors have a right to set off and may apply monies owed to debts due." Turning his attention to this Court's decision in *Jordan I,* Mr. Romani argued that the case was remanded for only two reasons:

(1) "there was a calculation error because some of the items that were supposed to be not charged actually were included in the in the amount" and (2) "there wasn't a finding made by this court on the record that the amount charged in that underlying case was reasonable." Because the "substance of the . . . ruling was affirmed[,]" he asserted that he was also entitled to any fees incurred as a result of Ms. Jordan's appeal.

Mr. Romani submitted separate fee calculations for the unjust enrichment cause of action in which, as described above, he admitted that the original attorneys' fee award was incorrectly calculated. Nevertheless, Mr. Romani asserted that he was now seeking additional attorneys' fees for the hearing on the motion for summary judgment, for a total of $7,515.00. To support this assertion, Mr. Romani offered into evidence a statement regarding his costs and attorneys' fees and a time entry invoice for the incurred fees. He also asserted that he was entitled to attorneys' fees for his response to Ms. Jordan's first appeal, as "[a]bout 90 percent of the briefing . . . deal[t] with the substantive issues" which were affirmed by the Appellate Court of Maryland.[4] Mr. Romani submitted, and the court accepted, a statement regarding costs and attorneys' fees and time entry invoices relating just to the appeal, which documented $8,325.00 in fees.

After a brief rebuttal from Ms. Jordan, the court ruled:

> So, I don't find that her appeal was made without substantial justification, and I don't have any evidence of her ability to pay, since she's the one who is the recipient of alimony. But I'm not making any findings based on a lack

[4] In 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.

> of ability to pay, I just don't have anything to access her ability. And so, I decline to award the defendant fees incurred for the appeal.
>
> Regarding the bad faith fees, and if you don't know what I'm talking about let me know, but [] the trial court determined that there was bad faith. The [Appellate Court of Maryland] affirmed and remanded it to correct the calculation, a clarified calculation regarding fees. The new calculation submitted includes additional fees that were not submitted [previously], I'm not going to include those fees. I'm not going to grant those additional fees.
>
> I do not agree that the defendant is entitled to a set off from alimony that he owes the plaintiff. It was money that he owed for support. Absolutely not entitled to do that. And so, he was wrong to do that. But if he was in contempt, I believe that he's purged himself of that contempt, so I don't find at this time that those monies are owed.
>
> The money that was included in the court registry is the fees, is the amount and [sic] the only amount that will be granted for fees, and that's based on the lower court's finding of bad faith and [the Appellate Court of Maryland's] affirmation of that finding. And I'm going to deny all other requests for relief.
>
> So, the monies in the registry will be released.

On August 9, 2021, Ms. Jordan filed a "Motion for a New Trial; Rule 2-534 Motion to Alter or Amend a Judgment – Court Decision; And Request for Reconsideration under Maryland Rule 1-341(c)." In her view, the court erred as it failed to "address all pending matters at the August 4, 2021 hearing[.]" She also asserted that she was not given adequate time to present her arguments, as the hearing was scheduled for two hours but lasted less than 60 minutes. And, finally, Ms. Jordan contended that the court erred in admitting Mr. Romani's fee award exhibits and in awarding Mr. Romani the $6,350.00 in withheld alimony as attorneys' fees.

Specifically, Ms. Jordan averred that Mr. Romani's time entry invoices were "unacceptable as evidence" as they are "not proof of billing" and are "only . . . an attorney's statement regarding fees[.]" Further, in her view, many of the time entries reflected impermissible *ex parte* communications with the court and could not be recovered as fees. With respect to the amount actually awarded to Mr. Romani, Ms. Jordan posited that the court "appropriately determined that the manner in which [Mr. Romani] withheld the $6,350.00 from [her] alimony was not permissible[.]" She argued, however, that the court erred when it awarded Mr. Romani "that $6,350.00 anyway."

The circuit court entered a written order granting Mr. Romani the $6,350.00 from the court's registry on August 18, 2021. Ms. Jordan noted an appeal on August 25, 2021. On July 26, 2022, this Court, on its own initiative, stayed the appeal and ordered a limited remand because Ms. Jordan's "Motion for a New Trial; Rule 2-534 Motion to Alter or Amend a Judgment – Court Decision; And Request for Reconsideration under Maryland Rule 1-341(c)" was still pending before the circuit court. On August 16, 2022, the circuit court denied Ms. Jordan's motion and this Court, in an order entered on August 25, 2022, lifted the stay.

DISCUSSION

I.

Challenges to Award of Attorneys' Fees to Romani

A. Parties Contentions'

Ms. Jordan presents multiple challenges to the award of attorneys' fees to Mr. Romani under Rule 1-341. In Ms. Jordan's view, the court erred or abused its discretion because the evidence was insufficient to establish reasonableness (Question 1), especially because the $6,350.00 award is "the precise amount" this Court in *Jordan I* "determined was ineligible" (Question 8) and "was obtained with [Romani's] unclean hands" after he "failed to purge himself of the contempt" arising from his unilateral withholding of alimony to satisfy the judgment (Question 9). Ms. Jordan insists that Mr. Romani's counsel committed numerous ethical violations, attempted to "defraud" the circuit court, and submitted perjured fee statements with inconsistent and improperly vague entries.

Mr. Romani responds that Ms. Jordan failed to preserve her contention that the amount of the fees was unreasonable because at the post-remand hearing on his claim for attorneys' fees, Ms. Jordan did not object to the admission of his evidence regarding fees or offer any countervailing evidence. On the merits, Mr. Romani contends that the court exercised its discretion, rather than merely rubber-stamping his request, because it did not award him the full amount he requested, which included additional fees for work performed in the circuit court and in the first appeal. He therefore argues that the court did not abuse its discretion in awarding him the amount he paid into the court registry, because "the tasks

performed by counsel for Appellee, the time spent on those tasks, the charges for those tasks and the total incurred by Appellee in the underlying litigation are well-supported by the time entries included within the statement of attorney's fees admitted into evidence without any objection[.]"

B. Preservation Challenge

As an initial matter, we are not persuaded that Ms. Jordan failed to preserve her objection to the reasonableness of the fee award. The lone case Mr. Romani cites in support of that contention is factually and legally inapposite because it involved an opponent's failure to object to both the admission of evidence and to a jury instruction regarding attorneys' fees. In *Standiford v. Standiford*, 89 Md. App. 326, 333 (1991), the primary dispute was whether a husband's recording of his wife in the marital home violated Maryland's Wiretapping and Electronic Surveillance Act. The wife's claim, including her request for attorneys' fees authorized under the statute, was submitted without objection to the jury, which returned a verdict and an award of attorneys' fees in her favor. *Id.* at 338. Accordingly, we held that the husband's failure to "object to the trial court's jury instruction which advised the jury that if it found for [wife] it could assess reasonable attorney's fees" resulted in the jury's consideration of that issue being unpreserved for our review. *Id.*

Here, by contrast, although Ms. Jordan did not object to admission of the evidence submitted by Mr. Romani, the record is replete with Ms. Jordan's objections to the reasonableness of the fees requested. As just one example, in her post-judgment motion to

alter or amend, Ms. Jordan attached an exhibit detailing each time entry which she claimed to be "disallowed under MD Rule 1-341 and/or case law" and the reason for her objection. Likewise, in the August 4 hearing, she explained that "both defendant and his counsel were on notice that the $6,350 amount was not correct" because of the improperly billed no-charge entries.

For an issue to be preserved for our review, it need only be "raised in or decided by the trial court" pursuant to Maryland Rule 8-131(a). While it is true that a party must object to the admission of evidence at the time the evidence is offered by its proponent, *see* Md. Rule 2-517, we do not consider the substance of Ms. Jordan's challenge to be limited to whether the fee statements offered by Mr. Romani were properly admitted. Certainly, that objection is waived due the lack of a contemporaneous objection. Even so, Ms. Jordan's broader argument that the amount of fees supported by those statements, and ultimately awarded by the trial court, were unreasonable was most certainly raised in the proceedings below. Accordingly, we will address Ms. Jordan's contentions on this point.

C. Award of Fees Under Maryland Rule 1-341

To enter an award of fees under Maryland Rule 1-341, the circuit court must follow a two-step process. First, the circuit court must make a factual finding as to the existence of "bad faith" or "lack of substantial justification" in bringing the disputed claim. *Christian v. Maternal-Fetal Med. Assocs.*, 459 Md. 1, 20-21 (2018). We review that factual finding for clear error. *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267-68 (1991). Second, once the circuit court makes a finding as to bad faith or lack of substantial

justification, the court may, in its discretion, award reasonable attorneys' fees or choose not to award fees at all. *Century I Condo. Ass'n, Inc. v. Plaza Condo. Joint Venture*, 64 Md. App. 107, 120 (1985). We review the award of attorneys' fees for an abuse of discretion and we will not disturb the circuit court's judgment unless it is "so far off the mark as to amount to an abuse of discretion." *Id.*

As we explained in *Jordan I*, this Court affirmed the circuit court's finding that Ms. Jordan's unjust enrichment claim was brought without substantial justification. Accordingly, we are now solely concerned with whether the circuit court, on remand, appropriately exercised its discretion in awarding reasonable attorneys' fees to Mr. Romani after we vacated the initial award. To do so, the circuit court was required to "make a finding that the fees requested by the aggrieved party are reasonable." *Christian*, 459 Md. at 31. To be reasonable, the fees requested must have been "actual expenses incurred," because the requirement that the client must have actually "incurred" the requested fees "act[s] as a ceiling on what is recoverable by a party under Rule 1-341." *Id.* at 31 (citing *Seney v. Seney*, 97 Md. App. 544, 552 (1993)). The burden of proving reasonableness falls, at all times, on the party requesting fees, who must provide the court with a "verified statement" including the following information:

> (i) a detailed description of the work performed, broken down by hours or fractions thereof expended on each task;
>
> (ii) the amount or rate charged or agreed to in writing by the requesting party and the attorney;
>
> (iii) the attorney's customary fee for similar legal services;
>
> (iv) the customary fee prevailing in the attorney's legal community for similar legal services;

> (v) the fee customarily charged for similar legal services in the county where the action is pending; and
>
> (vi) any additional relevant factors that the requesting party wishes to bring to the court's attention.

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

Turning specifically to the arguments presented by Ms. Jordan, we reject two of her contentions out of hand. First, we do not agree that the fee statements submitted by Mr. Romani did not constitute "contemporary documentary evidence" of the fees he incurred. In considering the reasonableness of the fees requested, the trial court may consider a wide range of evidence including "*evidence submitted by counsel showing time spent* defending an unjustified or bad faith claim or defense, the judge's knowledge of the case and the legal expertise required, the attorney's experience and reputation, customary fees, and *affidavits submitted by counsel*." *Major v. First Va. Bank-Central Md.*, 97 Md. App. 520, 540 (1993) (citing *Deleon v. Enters., Inc. v. Zaino*, 92 Md. App. 399, 419-20)) (emphasis added). Here, the fee statements submitted by Mr. Romani's counsel, as an exhibit to his affidavit, were extremely thorough and broken down by task in six-minute increments with the relevant attorney for each task identified. They were more than sufficient to prove the work performed as required under Maryland Rule 1-341(b)(3)(A)(i) and we discern no abuse of discretion on the part of the circuit court in relying on those exhibits in evaluating the reasonableness of Mr. Romani's fee request.

Second, Ms. Jordan's arguments also fall wide of the mark to the extent they are predicated on her mistaken belief that Mr. Romani was held in contempt for unilaterally withholding portions of his court-ordered alimony payments. Ms. Jordan argues, for

example, that Mr. Romani was not entitled to a fee award under Rule 1-341 because he "failed to purge" himself of contempt, leaving him with "unclean hands." Ms. Jordan overlooks the simple fact that Mr. Romani *was never held in contempt*. Accordingly, we find no merit in Ms. Jordan's contentions on this point.

Nonetheless, we are persuaded that, based on our holding in *Jordan I*, the circuit court abused its discretion in reinstating a judgment of $6,350.00 in attorneys' fees against Ms. Jordan. As Ms. Jordan points out, our decision in *Jordan I* identified two deficiencies in the original fee award, which was vacated in the first appeal: (1) the parties agreed that the $6,350.00 figure was inaccurate because Mr. Romani had included several non-billable entries in the overall calculation and (2) the circuit court did not make any finding of reasonableness on the record. *See Jordan I*, No. 1655, Sept. Term 2019, slip op. at 14 (filed Jan. 29, 2021). On remand, however, it appears neither deficiency was corrected. To start, we observe that the court failed to make *any* finding on the record that the requested fees were reasonable. We have carefully reviewed the transcript of the proceedings from the August 4 hearing, but can locate only the court's conclusion that an award of $6,350.00 in attorneys' fees was warranted "based on the lower court's finding of bad faith and the [Appellate Court of Maryland's] affirmation of that finding."

It also appears that our decision in *Jordan I* was misunderstood because, in fact, we *vacated* the award of $6,350.00 in fees because Mr. Romani conceded that there were inaccuracies in his fee statements and agreed that "the amount of the award *should be reduced*." *Jordan I*, No. 1655, slip op. at 14 (emphasis added). As we have noted, in the

leadup to the first appeal, the parties discovered that the fee statements submitted by Mr. Romani included four entries which were listed as "no charge," meaning that the total amount of fees awarded was inflated by at least $652.50 due to these improper charges which were never actually billed to Mr. Romani. Notably, Mr. Romani remedied that error on remand by submitting corrected fee statements which crossed out the impermissible "no charge" entries to clarify they were not included in the overall post-remand calculation. Further, Mr. Romani struck two other charges, totaling $57.50, which had been included in his initial request for $6,350 in attorneys' fees. Still, the circuit court simply re-instated that inflated figure without explanation.

We readily acknowledge that the circuit court *could* have, in the exercise of its discretion, applied a portion of the additional fees requested by Mr. Romani, totaling $1,875.00, which were not included in his original fee statement, toward the $6,350.00 fee award. But it did not. Rather, the circuit court explicitly noted that the "new calculation submitted includes additional fees that were not submitted [previously], I'm not going to include those fees. I'm not going to grant those additional fees." Accordingly, since no other "additional fees" featured in the case, the possibility that the court reached the final figure of $6,350.00 while accounting for the improperly billed entries is entirely foreclosed. At most, without awarding some portion of the additional fees, the upper bound of what could have been awarded was $5,640.00—*i.e.*, $6,350.00 less $652.50 (the no-charge entries) less $57.50 (the two other struck charges).

For the foregoing reasons, we are constrained to hold that the circuit court's calculation amounted to an abuse of discretion, *Century I Condo.*, 64 Md. App. at 120; therefore, "the appropriate remedy is to vacate the award and remand for further proceedings to develop the factual basis for how the court chooses to exercise its discretion," *Christian*, 459 Md. at 33 (citing *Talley v. Talley*, 317 Md. 428, 438 (1989)). Accordingly, we vacate the award of fees and remand the case to the circuit court for further proceedings consistent with this opinion. In those proceedings, to avoid yet another chapter in this litigation, we reiterate that the court must (1) account for the $652.50 in improperly billed fees and (2) state a finding of reasonableness on the record for whatever figure it ultimately awards.

II.

Challenges to Denial of Contempt Petition and Request for Fees

A. Parties' Contentions

In alternative assignments of error, Ms. Jordan contends the circuit court violated multiple rules by "failing to find [Mr. Romani] in contempt of the Judgment of Absolute Divorce for his failure to pay alimony as prescribed under Rules 15-206 and 15-207 and having never purged himself of the contempt" (Question 2) and by "denying [her] an award of attorney's fees under Rule 1-341 for . . . the two contempt hearings" at which Mr. Romani asserted an "unjustified contempt defense[.]" (Question 3). She stresses that Mr. Romani "withheld alimony twice a month for nine months, from February 2020 to November 2020, accumulating $6,350.00 with 18 acts of contempt of the Court Order."

Mr. Romani counters that Ms. Jordan "has no right to appeal the denial of her constructive civil contempt petition[.]" He points out that the Maryland Supreme Court[5] has held that "the right to appeal in contempt cases [is limited] to persons adjudicated in contempt and not to the lower court's denial of a petition for constructive civil contempt." Finally, he asserts that "without any finding that [he] is in contempt, there is no basis to assess attorney's fees against him."

B. Ms. Jordan Has No Right to Appeal the Circuit Court's Contempt Order

We agree with Mr. Romani that Ms. Jordan cannot take an appeal from the circuit court's order denying her petition for contempt. Although our appellate jurisdiction is broad, it is axiomatic that "appellate jurisdiction, except as constitutionally created, is statutorily granted." *Rosales v. State*, 463 Md. 552, 563 (2019) (quoting *Schuele v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555, 565 (2010)). Maryland Code (2020 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), section 12-301 establishes a right of appeal to this Court from final judgments and certain interlocutory orders, with express exceptions. One such exception is that the right of appeal "does not apply to appeals in contempt cases[.]" CJP § 12-302(b).

[5] In 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 . . . .").

Instead, appeals from contempt rulings are governed by section 12-304, which provides that "[a]ny person may appeal from any order or judgment passed to preserve the power or vindicate the dignity of the court and adjudging him in contempt of court, including an interlocutory order, remedial in nature, adjudging any person in contempt, whether or not a party to the action." CJP § 12-304(a).[6] As the Maryland Supreme Court held in *Pack Shack, Inc. v. Howard County*, 371 Md. 243, 254 (2002), "[CJP] § 12-304 clearly and unambiguously limits the right to appeal in contempt cases to persons adjudged in contempt" and does not "provide the statutory basis for an appeal from a trial court's denial of a petition for constructive civil contempt." *See also Becker v. Becker*, 29 Md. App. 339, 345 (1975) ("[O]nly those adjudged in contempt have the right to appellate review. The right of appeal in contempt cases is not available to the party who unsuccessfully sought to have another's conduct adjudged to be contemptuous.") (citing *Tyler v. Balt. Cnty.*, 256 Md. 64, 71 (1975)).

Thus, it is clear that Ms. Jordan has no right to appeal from the circuit court's order denying her petition for civil contempt against Mr. Romani due to his withholding of alimony to satisfy the judgment. To be sure, Ms. Jordan is correct that the circuit court found that "I do not agree that [Mr. Romani] is entitled to a set off from alimony that he owes [Ms. Jordan]." We do not, however, construe that finding as a finding of contempt.

[6] The right of appeal delineated under CJP § 12-304(a), however, does not apply to "an adjudication of contempt for violation of an interlocutory order for the payment of alimony." CJP § 12-304(b). We do not consider this provision to be applicable to the current situation considering that Mr. Romani was never held in contempt.

Indeed, the court also found that "if he was in contempt, I believe that he's purged himself of that contempt" and therefore denied the petition. That being the case, no matter how strenuously she objects to the circuit court's decision, Ms. Jordan lacks a right of appeal from the court's final order denying her petition for contempt. Accordingly, because we lack appellate jurisdiction over this issue, we do not reach Ms. Jordan's arguments on the merits.

C. The Circuit Court Did Not Abuse Its Discretion in Declining to Award Fees

Ms. Jordan also contends that the circuit court erred in denying her request for attorneys' fees under Maryland Rule 1-341 due to Mr. Romani's alleged bad faith defense against her contempt petition. At the August 4 hearing, Ms. Jordan explained that she requested fees because she needed to hire an attorney to recoup the withheld alimony as part of her contempt petition. To support her motion, Ms. Jordan offered, and the court admitted, an affidavit and several time-entry invoices which documented $3,250.00 in fees for opposing Mr. Romani's motion to dismiss the contempt petition. The circuit court denied her motion for attorneys' fees in a written order entered August 18, 2021.

We discern no error or abuse of discretion in the circuit court's decision to deny Ms. Jordan's motion for fees incurred in prosecuting her contempt petition. Even if the circuit court had found that Mr. Romani had defended against Ms. Jordan's contempt petition in bad faith—which, as Mr. Romani points out, it apparently did not, considering he was never held in contempt—the court could have still denied an award of fees in the exercise of its discretion. As we have explained, even if the circuit court finds a lack of substantial

justification or bad faith, the court may, in its discretion, award reasonable attorneys' fees or *choose not to award fees at all*. *Century I Condo. Ass'n, Inc. v. Plaza Condo. Joint Venture*, 64 Md. App. 107, 120 (1985). Given the circuit court's broad discretion on this point, we cannot say that the court's judgment call was "so far off the mark as to amount to an abuse of discretion." *Id.* at 120. Accordingly, we affirm the circuit court's denial of Ms. Jordan's motion for attorneys' fees.

III.

Judicial Bias

In the second portion of her opening brief, Ms. Jordan vehemently protests the actions of the circuit court, accusing it of—among other things—bias, incompetence, and collusion with Mr. Romani and his counsel to perpetrate theft against her. Specifically, Ms. Jordan contends that the court abused its discretion by "demonstrat[ing] bias in favor of" Mr. Romani (Question 4), refusing to hear her arguments (Question 7), refusing to vacate the judgment, releasing to Mr. Romani the funds in the court registry after this Court remanded (Question 5), and refusing to release those funds to her instead (Question 6).

Mr. Romani responds that these issues were not preserved for our review because they were never raised in the proceedings below. He stresses that Ms. Jordan "did not request that Judge Berry recuse herself as a result of any purported bias[.]" Regardless, Mr. Romani asserts that Ms. Jordan's contentions lack any merit because the circuit court did not demonstrate any bias against her.

As an initial matter, we must disagree with Mr. Romani's assertion that this issue was not raised in the proceedings below. While it is true that Ms. Jordan never filed any formal request for recusal, she raised similar allegations of bias in several of her post-remand filings before the circuit court. For example, in one such motion she contended that the court violated the Maryland Rules of Professional Conduct by not sanctioning Mr. Romani and his counsel. The court, Ms. Jordan asserted, "turned a blind eye" to Mr. Romani and his attorney's nefarious activities, punishing her "for attempting to recover that which rightfully belonged to her." We are therefore satisfied that that the issue of the circuit court's purported bias against Ms. Jordan was sufficiently raised in the proceedings below to preserve that issue for our review under Maryland Rule 8-131(a).

Regardless, Ms. Jordan's contentions are utterly devoid of merit. It is well established that "when bias, prejudice, or partiality is alleged, a judge's decision regarding recusal will not be overturned absent a showing of abuse of discretion." *Reed v. Balt. Life Ins. Co.*, 127 Md. App. 536, 553 (1999) (citing S*urratt v. Prince George's Cnty.*, 320 Md. 439, 465 (1990)). At all times, "a judge is presumed to be impartial" and the standard is "whether a reasonable member of the public knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned." *Id.* (quotations omitted). We have pored through the record and discern not even the faintest hint of bias on the part of the circuit court. Ms. Jordan produces precisely *zero* evidence of a single act which would cause a reasonable member of the public to question the impartiality of Judge Berry and the other distinguished jurists involved in this case. At

most, she produces a laundry list of rulings with which she disagrees. That is not even close to sufficient to establish any bias on the part of the circuit court. Accordingly, we do not find that the circuit court's judgment was infected by any bias and dismiss Ms. Jordan's contentions to the contrary.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND VACATED IN PART. JUDGMENT AS TO CONTEMPT PETITION, DENIAL OF APPELLANT'S REQUEST FOR ATTORNEYS' FEES, AND CLAIMS OF JUDICIAL BIAS AFFIRMED. JUDGMENT AS TO AWARD OF ATTORNEYS' FEES TO APPELLEE VACATED. CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.