

Circuit Court for Montgomery County
Civil No. 425847

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1057

September Term, 2021

OXANA PARIKH, ET AL.

v.

LYNN C. BOYNTON, PERSONAL
REPRESENTATIVE FOR THE ESTATE OF
DINESH O. PARIKH

Kehoe,
Nazarian,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: April 20, 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.

Oxana Parikh and Namish Parikh appeal from a judgment of the Circuit Court for Montgomery County, the Honorable Ronald B. Rubin, presiding, that granted the motion of Lynn C. Boynton, the Personal Representative of the estate of Dr. Dinesh O. Parikh, for sanctions and an award of attorneys’ fees. The circuit court found that appellants had filed multiple motions in the estate litigation in bad faith and without substantial justification and awarded Ms. Boynton the attorneys’ fees and costs that she had incurred in successfully opposing those motions in the circuit court and on appeal.

We affirm the circuit court’s judgment.

BACKGROUND

This Court has issued multiple opinions relating to the administration of the estate of Dr. Parikh: *In re Estate of Parikh*, No. 1226, September Term, 2017, (filed Jan. 16, 2019), *cert. denied sub nom. Matter of Estate of Parikh*, 464 Md. 597 (2019) (“*Parikh I*”); *Matter of Estate of Parikh*, No. 1480, September Term, 2017, (filed March 23, 2020), *cert. denied*, 469 Md. 665 (2020) (“*Parikh II*”); and *Parikh et al. v. Boynton*, No. 2366, September Term, 2019, (filed April 7, 2021) (“*Parikh III*”); and *Matter of Estate of Parikh*, No. 941, September Term, 2020, (filed Sept. 28, 2021) *cert. denied*, 477 Md. 158 (2022) (“*Parikh IV*”). The circuit court’s decision on remand following *Parikh III* is the subject of this appeal.

Many of the individuals in this case have the same last name. We refer to them by their first names only for purposes of brevity and clarity. We mean no disrespect.

This litigation began when Oxana, the former spouse of Dr. Parikh’s son, Namish, filed a petition for administration of a small estate and submitted what purported to be Dr. Parikh’s will for probate. The will made no provision for Dr. Parikh’s children, Namish and Tina, nor for his spouse, Neela.

Tina filed a petition to caveat the will, claiming fraud, and also petitioned for the removal of Oxana as personal representative. Oxana opposed both petitions, and, after a hearing, the orphans’ court appointed Ms. Boynton as the special administrator of Dr. Parikh’s estate.

Ms. Boynton initiated litigation in the circuit court against Oxana and Namish, seeking the return of approximately \$1.14 million in Dr. Parikh’s assets allegedly transferred to Namish by Oxana prior to Dr. Parikh’s death. Following mediation, the parties entered into a settlement agreement providing for the division of estate assets as follows: 57% to Namish, 43% to Tina and Neela in accordance with an agreement between them, and reimbursement to Oxana for certain expenditures. Appellants repudiated the settlement agreement, prompting Tina to file an emergency motion to enforce the agreement. The orphans’ court granted the motion to enforce the settlement agreement.

In *Parikh I*, we affirmed the orphans’ court’s approval of the settlement agreement. In *Parikh II*, we addressed issues pertaining to the administration of the estate and re-affirmed the enforceability of the settlement agreement. In *Parikh III*, we affirmed the circuit court’s orders denying appellants’ motions to set aside the final judgment, to remove Judge Rubin from the case, and to transfer the matter to the Orphans’ Court for Baltimore

City. We also granted Ms. Boynton’s motion for attorneys’ fees incurred in defending that appeal, explaining that sanctions were warranted under Rule 1-341 because “appellants’ use of the appeals process to pursue their vexatious litigation and meritless arguments warrants a finding of both bad faith and lack of substantial justification.” *Parikh III*, slip. op. at 19.

We remanded the case to the circuit court for a determination of the amount of attorneys’ fees incurred by Ms. Boynton in defense of the appeal as well as the resolution of Ms. Boynton’s outstanding request for sanctions and attorneys’ fees incurred in responding to those motions in the circuit court. *Parikh III*, slip. op. at 4.

On remand, Ms. Boynton filed a supplemental motion for attorneys’ fees “incurred in defense of bad faith [or] unjustified proceedings.” The estate’s attorney was James J. Debelius, Esquire. Appellants filed an opposition to the motion. On August 13, 2021, the circuit court conducted a remote hearing via Zoom on Ms. Boynton’s motion. Appellants did not participate in the hearing. The court made an express finding that appellants had received notice of the hearing and had elected not to attend the hearing. At the conclusion of the hearing, the court issued an oral ruling, granting Ms. Boynton’s motion for attorneys’ fees. The court found:

[T]here is no question in my mind that the particular motion that is at issue before me both was filed in bad faith and without substantial justification. That is true from the papers themselves, and that is further exemplified by the opposing papers that were filed [by appellants], because we have the continued recycling of arguments that have been subject to a final judgment - - the party opposing the motion [does] not seem, respectfully, to understand that, they do not seem to understand the law of the case doctrine[.]

* * *

There's a total absence of a reasonable basis to believe that their claims or litigations would generate a factual question for the fact finder beyond the realm of legitimate advocacy. So with respect to the personal representative's motion, it is granted.

I've also reviewed the actual petition itself. The hourly rate, I find, is reasonable, and when I say well in line with, it's frankly below the rates regularly charged by similarly situated and experienced practitioners in this court. The estate is getting a discount. The Court appreciates that, but it's - - this is easily within the realm, and that amount is \$5,250 at - - 14 hours at [\$]375 an hour.

With respect to the appeal, the Court of Special Appeals has made the 1-341 findings. My work is solely to consider the reasonableness of the attorney's fees. I have done that. I find that the fact that only 21 and a quarter hours were spent on the appeal to be miraculous and extremely conservative and clearly with an eye toward doing only what one need[s] to do and not a word more[.]

The hours were reasonable. The work was reasonable. I looked at the affidavits. The rate is about half, to be blunt, what is ordinarily charged for complex appeals, and this was complex, in part because [appellants] made it so[.]

On August 16, 2021, the court issued a written order entering judgment in favor of Ms. Boynton against appellants, jointly and severally, in the amount of \$13,218.75 for attorneys' fees incurred by Ms. Boynton's counsel in response to "unjustified bad faith proceedings" by appellants. On September 13, 2021, appellants noted an appeal. On September 28, 2021, we issued our opinion in *Parikh IV*. We determined that *Parikh IV* was a frivolous appeal and granted Ms. Boynton's request for an award of attorneys' fees incurred by her in that appeal. *Parikh IV*, slip. op. at 12-13.

ANALYSIS

For the most part, appellants’ brief is a rehash of various meritless arguments presented in their prior appeals. They present baseless allegations of error by the circuit court and this Court as well as equally baseless assertions of misconduct by Ms. Boynton and Mr. Debelius as grounds for challenging the circuit court’s conclusions. Because these contentions have been addressed and rejected in our previous opinions, there is no need for us to revisit them.¹ Appellants present two arguments in their brief that warrant discussion.

1. The meaning of “incurred” for purposes of in Md. Rule 1-341

Md. Rule 1-341 provides that, in any civil action, a court may, on motion, require any party that “maintains or defends any proceeding in bad faith or without substantial justification” to “pay to the adverse party the costs of the proceeding and the reasonable

¹ For example, we addressed appellants’ arguments that Ms. Boynton is a “fictional character” and “non-existent” person without legal standing to file suit in *Parikh III* and *Parikh IV*. In *Parikh III*, appellants argued that Ms. Boynton did not have standing because she was “not a real-party-in-interest under Rule 2-201.” *Parikh III*, slip. op. at 19. We explained that

Appellants devised bad faith claims of fraud, based on personal attacks and vitriolic diatribes against opposing parties and counsel. Appellants’ allegations of perjury and fraudulent ex parte communications on the part of Attorney Debelius were unsupported by any credible evidence. The pursuit of the recusal of Judge Rubin and transfer of the case to Baltimore City was completely without merit and undertaken primarily to harass appellees and delay the finality of the case.

Parikh III, slip. op. at 20.

In *Parikh IV*, we noted that “[a]ppellants continue to attack the validity of the settlement agreement, despite our repeated affirmation of the settled law governing this case.” *Parikh IV*, slip. op. at 12-13.

expenses, including reasonable attorneys’ fees, incurred by the adverse party in opposing it.”

Appellants contend that there was “no Rule 1-341 violation” because there was no proof that any fees were “actually paid” or “incurred” within the meaning of the rule. Appellants assert that the circuit court “completely missed” the holding of *Worsham v. Greenfield*, 435 Md. 349, 369 (2013), which, they assert, held that Rule 1-341 requires that “costs must be ‘paid’ by either the party or a third person ‘on the party’s behalf.’” Appellants are wrong.

In *Worsham*, the circuit court awarded one of the prevailing parties the costs associated with her defense of the litigation, even though she had acknowledged that all of her attorney’s fees, expenses and other costs had been paid by an insurance company. 435 Md. at 353. The circuit court determined that she had “‘incurred’ the costs of her defense within the meaning of Rule 1-341.” *Id.* The Court of Appeals agreed:

Our review of the language of Rule 1-341, considered in [its] ordinary usage and definitions, and our relevant precedents, convinces us that ‘incurred,’ as used in that Rule, refers simply to the necessity that the party against whom frivolous litigation has been initiated and/or maintained was required to take on the expenses that arose as a result of that litigation. . . . *The Rule does not address the discharge of the obligation through the payment of those costs.*

Id. at 362 (emphasis added).

Returning to the case before us, the circuit court concluded that Ms. Boynton had incurred attorneys’ fees and costs within the meaning of Rule 1-341, even though those

fees and costs had not yet been paid by the estate. The court’s ruling was correct and completely consistent with the analysis of the Court of Appeals in *Worsham*.

2. The waiver of attorneys’ fees in the settlement agreement

Appellants’ second contention is that the circuit court erred in awarding attorney’s fees under Rule 1-341 because “[a]ny Rules based request for fees was specifically and expressly waived” under the parties’ settlement agreement. Again, appellants are incorrect.

The settlement agreement, which provided that each party was to “pay its own fees,” *see Parikh I*, slip. op. at 58, governed only the fees associated with litigation of the settlement agreement itself. An award of attorneys’ fees under Rule 1-341 is a sanction, which is a remedy that is separate from, and collateral to, the underlying claim. *See Mullaney v. Aude*, 126 Md. App. 639, 652-53 (1999) (holding that an award of attorney’s fees for a discovery sanction under Rule 2-433 was “clearly collateral to the merits of the tort action”); *see also Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396 (1990) (“Like the imposition of costs, attorney’s fees, and contempt sanctions, the imposition of a . . . sanction is not a judgment of the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate.”) In other words, the scope of the circuit court’s authority to impose sanctions upon appellants for their litigation misconduct was not affected by the parties’ agreement between themselves to waive claims for fees as part of the settlement agreement.

The circuit court’s analysis was legally correct, its factual findings were not erroneous, and its resolution of the issues was both well-reasoned and fair. We affirm the court’s judgment.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY COUNTY
IS AFFIRMED. COSTS TO BE PAID BY
APPELLANTS.**

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

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1057s21cn.pdf>