

Circuit Court for Baltimore County  
Case No. 03-C-06-000367

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1243

September Term, 2016

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STACY LEBOW SIEGAL, et al.,

v.

CURRAN W. HARVEY, III

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Berger,  
Reed,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Reed, J.

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Filed: September 28, 2018

\*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.

This appeal comes to us after the Circuit Court for Baltimore County found that Stacy LeBow Siegel and Stacy LeBow Siegel, LLC (hereinafter “Appellants”) were liable to Curran W. Harvey, III (hereinafter “Appellee”) for attorneys’ fees and expenses. Specifically, the circuit court found that Appellants filed a third Petition for Contempt against Appellee in bad faith and without substantial justification. Appellants timely filed this appeal challenging the court’s award of attorneys’ fees and presents the following three questions for our review, which we rephrased:<sup>1</sup>

1. Did the circuit court err in finding that the Appellants’ third Petition for Contempt was filed in bad faith and without substantial justification?
2. Did the circuit court’s ruling contain specificity to establish a nexus between the facts found and conclusions as to bad faith and lack of substantial justification?
3. Did the circuit court fail to do an analysis of the reasonableness of Appellee’s fee claims?

Finding neither error nor an abuse of discretion, we answer these questions in the negative and affirm the judgment of the Circuit Court for Baltimore County.

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<sup>1</sup> Appellee raises the following arguments:

1. The trial court was not clearly erroneous in finding that appellants maintained the 2015 Petition for Contempt in bad faith and without substantial justification.
2. The trial court’s ruling contained specificity and established a nexus between the specific facts found and the ultimate conclusions reached as to bad faith and lack of substantial justification.
3. The trial court did not abuse its discretion in awarding counsel fees in the amount to of \$27, 999.75 to appellee, as sufficient evidence was presented and judicial analysis was conducted as to the fairness, reasonableness, and necessity of appellee’s claimed fees.

**FACTUAL AND PROCEDURAL BACKGROUND**

**First Petition for Contempt (2010) and Modification Agreement of 2011**

Appellee and Carol Davis Harvey (hereinafter “Plaintiff”), were divorced by judgment of the Circuit Court for Baltimore County on June 13, 2008. The judgment imposed a modifiable alimony obligation on Appellee. In 2010, Appellee failed to make a payment of alimony. Plaintiff filed a Petition for Contempt against Appellee for non-payment and Appellee<sup>2</sup> asked the court to modify his alimony obligation. On August 25, 2011, the parties agreed to modify the alimony agreement and the court approved “the 2011 Modification Agreement.”

The 2011 Modification Agreement<sup>3</sup> provided that Appellee would pay a monthly base amount of \$2,000 free of taxes to Plaintiff. The agreement stated that Plaintiff’s tax projections were to be calculated to ensure she would not be “shorted” the proper amount owed. Specifically, a monthly tax reimbursement would be paid to Plaintiff to compensate her for any taxes deducted from the alimony payments that she received. The 2011 Modification Agreement also provided that if Appellee’s quarterly net income exceeded the \$2,000, Appellee was to pay Plaintiff the difference between Appellee’s 20% net business income<sup>4</sup> and his base alimony payments, plus tax consequences (“true-ups”).

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<sup>2</sup> Appellee was represented by Steven Fedder, Esq. at this time.

<sup>3</sup> The court did not issue an order, nor was the agreement committed to writing. However, transcripts from the proceeding were provided.

<sup>4</sup> Appellee is a real estate agent. The provision of the agreement considered the fluctuations of the housing market.

Lastly, the agreement provided that Appellee was required to provide documentation of his business income and expenses.

**Second Petition for Contempt (2012) and the October 2012 Agreement<sup>5</sup>**

Plaintiff filed a second petition for contempt against Appellee, for missed alimony payments in September of 2012. A hearing for the petition was scheduled on October 25, 2012, before Judge John J. Nagle, III. At trial, Appellee admitted that he missed alimony payments and that the court should hold him in contempt. As a result, Plaintiff asked the court to defer issuing any sanctions if the Appellee would agree: (1) that by November 1, 2012, Appellee would deliver to the office of Plaintiff's counsel, Appellants, \$50,000 to be credited to Appellee for future payments owed until the parties' next hearing on January 16, 2013; and (2) that Appellee would also keep six months' worth of base alimony payments (\$15, \$546 or \$2,591 per month) in Appellants' escrow account to allow Appellants to distribute monthly payments to Plaintiff. The court held that Appellee was in contempt by clear and convincing evidence. Moreover, the court ordered Appellee to make all payments in accordance with the terms of Plaintiff's proposal, "the 2012 Modification Agreement." In November, Appellants received two checks from Appellee pursuant to the 2012 Modification Agreement.<sup>6</sup>

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<sup>5</sup> Again, the court did not issue an order, nor was the agreement committed to writing. However, transcripts from the proceeding were provided as part of record.

<sup>6</sup> One check was received in the amount of \$50,000. The second check was for \$19,571 to cover the six months' worth of alimony plus medical payments Appellee owed Plaintiff.

A hearing on Plaintiff's second petition for contempt was held on January 24 and 25, 2013, before Judge Sherrie R. Bailey. At the hearing the parties disagreed on whether Appellee produced all documents regarding the 2011 and 2012 "true-ups." Appellee contended that he produced all documentation on November 26, 2012. Appellee's production of the relevant documents was necessary because Appellee's net income controlled the amount Plaintiff received in alimony payments. Moreover, the parties disagreed on whether Appellee would be able to claim business expenses towards his income from 2011 to 2013. If the court allowed Appellee to claim business expenses, then his \$50,000 payment would be more than enough to cover whatever payments in arrears were outstanding.<sup>7</sup> Ultimately, Judge Bailey determined that Appellee could claim business expenses for which he could provide documentation.

Judge Bailey issued an order on March 7, 2013, finding that (i) Appellee was in constructive civil contempt by clear and convincing evidence; (ii) Appellee failed to produce documentation pertaining to his business expenses in accordance with a court order; (iii) Appellee was in arrears totaling \$5,773 for unpaid alimony; (iv) Appellee failed to pay a 2006 IRS tax obligation causing Plaintiff significant financial harm; (v) Appellee failed to prove that he made reasonable efforts to pay Plaintiff; and (vi) that Appellee had the present ability to make payments but failed to do so. Additionally, Judge Bailey ordered the following: (1) the previous court orders from August 25, 2011, and October 25, 2012,

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<sup>7</sup> At the time of trial, Appellee had paid at least \$50,000 towards payments in arrears but the parties had not decided on where to apply the funds because the amount owed was unknown. The \$50,000 payment was not a payment of alimony, but a reserve fund in the event that funds from Appellee were deficient.

remain in effect; (2) that Appellee shall provide Plaintiff with the required documentation related to his business expenses within 30 days at the end of each quarter or forego receiving credit for those expenses; (3) that Appellee make monthly alimony payments of \$2,591, which included taxes; (4) that beginning in 2013 Appellee start paying Plaintiff the difference, if any, between monthly alimony payments and 20% of Appellee's net business income; (5) that Appellee keep the escrow account replenished in the amount of \$15,546; and (6) that Appellee be held liable for all reasonable counsel fees incurred as a result of his contemptuous actions, including \$3,500 to Appellants for the cost of litigating the second petition. Appellee was also ordered to pay Plaintiff \$5,773 in arrearages and \$6,248.87 in damages.

### **Third Petition for Contempt (2015)**

On May 12, 2015, Plaintiff filed her third petition for contempt against Appellee.<sup>8</sup> The petition alleged that (1) Appellee failed to maintain the balance of \$15,546 in the escrow account; (2) Appellee had not paid the amount due from the “true-up” payments for the first, third, and fourth quarters of 2014; (3) Appellee's payments of \$2,000 were deficient because they did not include taxes; (4) and Appellee's payments were untimely. Plaintiff also requested that Appellee be incarcerated. On May 13, 2015, Appellee paid Plaintiff the total amount due from the first and third quarters.<sup>9</sup>

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<sup>8</sup> Plaintiff filed the petition after a letter from Appellee's counsel dated April 8, 2015, stating that Appellee's counsel would send Appellants a check totaling \$20,000 within ten days, and subsequently send the remaining balance. Appellants did not receive payments until May 13, 2015.

<sup>9</sup> The total amount due was \$32,371.95.

At trial, Appellee<sup>10</sup> informed the court that Appellants had not responded to his subpoena for an accounting of the alimony escrow account.<sup>11</sup> Appellee then issued a second subpoena to Appellants, seeking the entire record of funds paid by Appellee pursuant to the October 2012 Agreement. Appellants filed a motion to quash the subpoena and it was denied. A record of Appellee's \$50,000 payment indicated that the account had a balance of \$85.39 remaining. On August 14, 2015, Appellants voluntarily dismissed their third petition for contempt with prejudice.

**Motion for Attorneys' Fees –Md. Rule 1-341**

On October 6, 2015, Appellee filed a Motion for Attorneys' Fees against Appellants and Plaintiff. Appellee alleged that Appellants and Plaintiff filed and maintained the 2015 petition for contempt in bad faith and without substantial justification. Appellee asserted in his motion that Appellants failed to comply with Appellee's former and current counsels' requests for an accounting of the alimony escrow accounts. Specifically, Appellee alleged that Appellants deducted \$11,000 from Appellee's \$50,000 alimony payment to cover attorneys' fees without Appellee's knowledge. Appellee further alleged that Appellants disbursed the remaining balance of \$39,000 to Plaintiff and Appellants failed to deposit Appellee's payments into the escrow account as ordered. Lastly, Appellee asserted that Appellants' unauthorized dealings with funds entrusted to them, failure to maintain the

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<sup>10</sup> As of June 24, 2015, Appellee's counsel, Mr. Fedder, notified Appellants and the court that he would no longer be representing Appellee. Appellee was then represented by Martha K. White, Esq. Plaintiff also had additional counsel, Steven Caplan, Esq.

<sup>11</sup> Appellants provided these documents by the end of hearing on July 15, 2015.

escrow account, and inability to properly distribute the payments constituted bad faith without substantial justification.

A hearing on the motion was held before Judge Bailey on March 10, April 28, and June 1, 2016. Appellee issued a third trial subpoena seeking a production of accounting documents. Appellants and Plaintiff filed a motion to quash Appellee's subpoena and asserted that Appellants were not ordered to keep the \$50,000 in escrow. Specifically, Appellants asserted that only Appellee's second payment of \$19,000<sup>12</sup> was to be placed in an escrow account. Additionally, Appellants argued that Appellee was informed that Plaintiff authorized an \$11,000 payment to be made to Appellants for attorney's fees and that the remaining balance be paid to Plaintiff. The circuit court denied Appellee's motion against Plaintiff for attorney's fees and granted Appellee's motion against Appellants. Specifically, the court found that Appellants' third contempt petition was filed and maintained in bad faith and without substantial justification. Appellee was awarded \$27,999.75 for attorneys' fees and costs. This appeal followed.

## **DISCUSSION**

### ***I. Bad Faith and/or Lack of Substantial Justification***

#### **A. Parties' Contentions**

Appellants argue that the record before the court did not contain any evidence of bad faith and instead "reveals abundant justification for the filing and prosecution of the

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<sup>12</sup> Throughout the proceedings this number has fluctuated to represent the court ordered six month alimony escrow account payment, plus medical payments owed to Mrs. Harvey.



third petition.” Specifically, Appellants contend that Appellee conceded that as of the date of the filing of the third contempt petition, he was in default of his alimony payments. Appellants asserts that within three days of trial Appellee brought in additional counsel and, as a result, Appellants determined that the best solution was to offset the alimony account by using the balance of the alimony escrow funds and waive the funds in arrears to be able to dispose of the third contempt petition. Appellants emphasize that their decision to dispose of the petition did not erase Appellee’s “contemptuous conduct.”

Appellants assert that bad faith exist when “the judicial process is clearly and wrongfully abused to achieve collateral goals (or delay or harass) unrelated to the redress of the claims actually filed and maintained” and therefore, Maryland Rule 1–341 sanctions are warranted.<sup>13</sup> Specifically, Appellants contend that because of Appellee’s history of failing to pay monthly alimony payments, Appellants filing the petition of contempt was not in bad faith and the court lacked any evidence suggesting a bad faith motive on Appellants’ part.

Appellants further contend that the circuit court’s ruling lacked the specific fact-finding required to grant Appellee’s Maryland Rule 1-341 motion and impose sanctions. Appellants argue that the rule requires analysis of the facts presented to demonstrate the validity of the court’s conclusions. Appellants assert that the circuit court failed to conduct a specific fact finding analysis and consider the separate claims of the third petition for

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<sup>13</sup> *Inlet Associates v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991) defines bad faith as "vexatiously, for the purposes of harassment or unreasonable delay, or for other improper reasons."

contempt. Appellants argue that the circuit court “was clearly annoyed at [Appellant Siegel’s] handling of the case, i.e. at what she perceived to have ultimately proven to be a waste of the court’s time.”

Appellee responds that the circuit court came to the correct conclusion when it granted Appellee’s motion. Specifically, Appellee asserts that the court made preliminary findings of fact, reviewed case law, and analyzed the evidence and testimony presented. Appellee argues that it was the Appellants’ repeated failure to provide the requested financial information to allow Appellee to make the required alimony payments. Additionally, Appellee asserts that Appellants depleted the alimony escrow account by improperly disbursing the \$50,000 that they were ordered to maintain in an escrow account in the event of Appellee’s late alimony payment. As such, the circuit court found that the alimony escrow account that was maintained by Appellants was not disbursed to Plaintiff in a regular manner or in the agreed upon manner; and thus, Appellee maintains that the Appellants were the proximate cause of Appellants’ own harm.

Appellee also argues that Appellants’ voluntary dismissal of their petition was a result of their wrongful actions. Appellee further asserts that Maryland law provides that a finding of bad faith can be made when the actor’s conduct leading up to the lawsuit was in bad faith; thus Appellants’ attempt to hold Appellee responsible for their improper actions leading up to the third petition for contempt is sufficient to constitute bad faith. *See Watson v. Watson*, 73 Md. App. 483, 496 (1986). Appellee contends that Appellants failed “to complete any type of accounting” detailing the amount Appellee owed and failed “to

conduct any type of analysis with respect to the financial issues they raised in their petition for contempt.” We agree.

### **B. Standard of Review**

A court must make an evidentiary finding of “bad faith” or “lack of substantial justification” before it imposes Maryland Rule 1-341 sanctions. *Johnson v. Baker*, 84 Md. App. 521, 528, 581 A.2d 48, 52 (1990) (internal citations omitted). The existence of bad faith or lack of substantial justification is a question of fact subject to a “clearly erroneous” standard of review. *Id.* Upon a finding of bad faith or lack of substantial justification, the court must decide whether to award attorney fees and costs. *Id.* at 529. On appeal, the appellate court reviews the propriety of the sanction imposed under an abuse of discretion standard and will not disturb the sanction unless the trial court abused its discretion. *Id.*

### **C. Analysis**

#### **i. Maryland Rule 1-341 Sanctions**

Appellants assert that the circuit court erred when it found that Appellants filed a third Petition for Contempt against Appellee in bad faith and/or without substantial justification. Maryland Rule 1-341 provides:

In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys’ fees, incurred by the adverse party in opposing it.

In *Major v. First Virginia Bank-Central Maryland*,<sup>14</sup> the Maryland Court of Appeals stated that before imposing Maryland Rule 1-341 sanctions “the trial judge must make explicit findings of fact that a proceeding was maintained or defended in bad faith and/or without substantial justification.” Based on those findings of fact, the court may order the “offending party to reimburse the aggrieved party for attorneys’ fees incurred as a result of the opprobrious behavior.” *First Virginia Bank-Central Maryland*, 97 Md. App. at 132. Moreover, the Court of Appeals has stated that “the purpose of the rule is to put the wronged party in the same position as if the offending conduct had not occurred” because “[Maryland] Rule 1-341 sanctions are judicially guided missiles pointed at those who proceed in the courts without any colorable right to do so.” *Id.* (citing *Legal Aid Bureau Inc. v. Bishop’s Garth Associates Limited Partnership*, 75 Md. App. 214, 224 (1988)). In *Inlet Associates v. Harrison Inn Inlet, Inc.*,<sup>15</sup> the Court of Appeals defined “in bad faith” as “vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons.” Additionally, the Court of Appeals has stated that the test for determining if a party lacked substantial justification in maintaining a suit is “whether [the party] had a reasonable basis for believing that the claims would generate an issue for the fact finder.” *Harrison Inn Inlet, Inc.*, 354 Md. at 268. A court’s imposition of sanctions based on Maryland Rule 1-341 must be supported by the record, the trial judge must make the requisite findings of bad faith and/or lack of substantial justification, and the court must

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<sup>14</sup> 97 Md. App. 520 (1993).

<sup>15</sup> 324 Md. 254, 268 (1991).

state the basis for those findings. *Zdravkovich v. Bell Atlantic-Tricon Leasing Corp.*, 323 Md. 200, 210 (1991).

In this case, before imposing Maryland Rule 1-341 sanctions the circuit court made specific findings of fact that determined that Appellants filed the third Petition for Contempt in bad faith and/or lacked substantial justification for filing the petition. Specifically, Judge Bailey, on July 22, 2016, issued an “Amended Order” where the circuit court found by a preponderance of the evidence the following specific factual findings: (1) Appellants filed a Petition for Contempt and then maintained the petition in bad faith and/or without substantial justification until the petition was voluntarily dismissed; (2) the bad faith and/or lack of substantial justification in maintaining the Petition for Contempt by Appellants merits the extraordinary remedy of the assessment of costs and attorneys’ fees; and (3) that the fees incurred by Appellee’s counsel were reasonable in defending the Petition for Contempt, through and until it was voluntarily dismissed. Moreover, the record also shows that Appellants actions were “in bad faith” because Appellants were repeatedly asked for an accounting of the escrow account, Appellants delayed responding to Appellee’s multiple requests until finally voluntarily dismissing the petition. The record also indicates that Appellants improperly disbursed \$50,000 within a few days of the Appellee’s 2012 deposit without Appellee’s knowledge which was contrary to the 2012 Modification Agreement.

As noted above, the test for determining if a party lacked substantial justification in maintaining a suit is “whether [the party] had a reasonable basis for believing that the claims would generate an issue for the fact finder.” Here, the circuit court found that

Appellants actions were unusual. Specifically, Judge Bailey stated that for Appellants to initially request to incarcerate Appellee and then dismiss their request when Appellee asked for an accounting of the alimony account was “simply amazing to this court.” The court also found that Appellants failed to conduct an internal accounting of the escrow account and if Appellants would have conducted the accounting Appellants “probably would not have filed” its third Petition for Contempt. Lastly, the circuit court found that Appellants generated extensive attorneys’ fees that were without merit. For instance, the parties had designated an arbiter and Appellants elected to forego use of the arbiter and generated legal fees at their own expense.

Accordingly, the circuit court found sufficient facts and evidence to conclude that Appellants’ petition was maintained in bad faith and/or without substantial justification for filing its Petition for Contempt. We are not persuaded that the circuit court’s findings were clearly erroneous.

**ii. Nexus between Facts Found & Bad Faith and Substantial Justification**

Appellants argue that the circuit court’s ruling lacked specificity of fact finding and failed to establish any nexus between the facts found and bad faith and/or lack of substantial justification from those findings of fact.

Referring to Maryland Rule 1-341 sanctions, the Court of Appeals in *Talley v. Talley*<sup>16</sup> stated:

[B]efore such an extraordinary sanction is imposed there should be evidence that there has been a clear focus upon the criteria justifying it and a specific finding that these criteria

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<sup>16</sup> 317 Md. 428 (1989).

have been met. Moreover, some brief exposition of the facts upon which the finding is based and an articulation of the particular finding involved are necessary for subsequent review.

*Talley*, 317 Md. at 428.

The circuit court acknowledged the gravity of a Maryland Rule 1-341 sanction and addressed it prior to rendering its opinion by stating that “it is an extraordinary remedy, one that is not undertaken I believe, by any court lightly.” However, “based upon the testimony, exhibits, transcripts and documents contained in the five volume court file, as well as the other relevant case law” the court found that the record reflected Appellants’ bad faith and/or lack of substantial justification in litigating the third Petition for Contempt. The circuit court proceeded to list specific reasons in its 20 page oral ruling, justifying its decision. Specifically, Judge Bailey found that Appellants stated that they understood that the \$50,000 in the escrow account was specifically for monthly alimony payments to Plaintiff and that after figuring out the total amount that Appellee owed, Appellee would be credited from the monies provided to Plaintiff. Judge Bailey also stated in her oral ruling that Appellee’s counsel sent a series of letters to Appellants “requesting that that the balance that was due back to [Appellee] be remitted to him” and made numerous request for an accounting of the escrow account.<sup>17</sup> The circuit court also found that the court did not order “any specific amount for counsel fees or ... an amount of legal fees [that] were to be disbursed.”

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<sup>17</sup> The letters from Appellee’s counsel that were sent to Appellants dated: April 11, 2013; April 26, 2013; May 30, 2013; June 13, 2013; July 29, 2013; September 27, 2013; October 28, 2013; November 1, 2013; December 2, 2013; December 5, 2013.

Additionally, the circuit court found that there was no requisite basis for Appellants to file its third Petition for Contempt. Specifically, Judge Bailey found that Appellants were Plaintiff's counsel throughout Plaintiff's collection suits for her alimony payments. The circuit court indicated that Appellants should have been aware that the tax consequences that Appellee was projected to incur on the base alimony payments fluctuated from year to year. Judge Bailey stated in her oral ruling that, prior to filing its Petition for Contempt, Appellants did not conduct an internal accounting of the escrow account. The circuit court found this accounting should have been done prior to Appellee hiring new counsel, prior to the Petition for Contempt hearing, and "probably prior to the petition being filed in light of the history of this case." Moreover, the circuit court found that Appellee's tax information was within Appellants' and Plaintiff's control, "as well as the accounting" of the escrow account.

This Court finds that the circuit court's ruling found specific facts to establish a nexus between the specific facts found and bad faith and/or lack of substantial justification for Appellants filing its third Petition for Contempt. Specifically, Appellants were in control of the escrow account and failed to conduct an internal accounting; Appellants had Appellee's tax information in its possession; and Appellants should have known that Appellee's tax responsibility on Plaintiff's alimony payments may fluctuate from year to year because Appellants had first-hand knowledge of the history of this case. However, Appellants filed a third Petition for Contempt and requested that Appellee be incarcerated. The petition was only dismissed when questions were asked about the funds in the escrow account and how those funds were allocated. Moreover, the record shows that Appellee



attempted on numerous occasions to have an accounting of the escrow account but his letters were ignored.

Accordingly, the circuit court made specific findings of fact to establish a nexus between those specific findings and bad faith and/or lack of substantial justification for Appellants filing its third Petition for Contempt.

## ***II. Attorneys' Fees***

### **A. Parties' Contentions**

Appellants argue that the circuit court did not have substantial justification to grant Appellee's Motion for Attorneys' Fees. Appellants alleged that Appellee must show that there was "no reasonable basis for believing that the claims would generate an issue of fact for the fact-finder" and that there is insufficient justification where "the lawyer is unable either to make a good-faith argument on the merits of the action taken or to support the action taken by a good-faith argument..." *Inlet Associates v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991). In support of its argument, Appellants contends that Appellee's own admission of failure to make payments gave Appellants a colorable claim and, therefore, the court erred when it found a lack of substantial justification in filing the third petition for contempt.

Appellee responds that Appellants presented "no argument in their brief on this issue, but rather, via footnote, state that that they are reserving the right to argue this issue before this Honorable Court." Appellee contends that Appellants did not properly raise this issue before this Court. Appellee asserts that even if Appellants properly raised the issue of attorneys' fees before this court Appellants argument holds no merit. Specifically,

Appellee contends that “evidence was presented as to the fairness, reasonableness, and necessity of Appellee’s attorneys’ fees” at the hearing. We agree.

### **B. Standard of Review**

Maryland Rule 1-341 establishes a two-prong test. The circuit court must first find if the alleged offending party’s conduct “in maintaining or defending any proceeding” was in bad faith and/or without substantial justification. *Intel Associates v. Harrison Inn Inlet, Inc.*, 324 Md. 254 (1991); *Needle v. White*, 81 Md. App 463 (1990); *Newman v. Reilly*, 314 Md. 364 (1988). This finding is made by a trier of fact under a clearly erroneous standard. If the court makes this first finding the circuit court must then find if the misconduct merits “imposing sanctions in form of costs and/or attorney[‘s] fees for maintenance or defense of proceeding in bad faith or without substantial justification.” The court reviews if the misconduct merits attorney’s fees and/or cost under an abuse of discretion standard. *Intel Associates v. Harrison Inn Inlet, Inc.*, 324 Md. 254 (1991).

### **C. Analysis**

Appellants assert that the circuit court abused its discretion when it failed to conduct an analysis on the fairness and reasonableness of the Appellee’s attorneys’ fees. Appellee responds that this court should not address this issue because Appellants failed to properly present the issue before the court. Moreover, Appellee asserts that the circuit court did not abuse its discretion in awarding him attorneys’ fees because it had conducted an analysis as to the fairness and reasonableness of Appellants’ claims.

In *Oak Crest Village, Inc. v. Murphy*, the Maryland Court of Appeals stated:

An Appellant is required to articulate and adequately argue all issues the Appellant desire the Appellate Court to consider in the Appellant's initial brief. It is impermissible to hold back the main force of an argument to a reply brief and thereby diminish the opportunity of the Appellee to respond to it.

*Oak Crest Village, Inc. v. Murphy*, 379 Md. 229, 241 (2004).

The record shows that Appellants did not raise the issue of whether the circuit court conducted the proper analysis before awarding Appellee attorneys' fees. However, this court will briefly address this issue. The record shows that Appellee submitted documentation which contained a summary of Appellee's attorneys' fees and itemized statements, "which totaled \$41,867.25 in fees and expenses." Additionally, Appellee's counsel testified as to the fairness, reasonableness, and necessity of these fees. Lastly, the circuit court received a detailed accounting of fees incurred by Appellee. In granting Appellee's Motion for Attorneys' Fees the circuit court considered, "the short time in which Ms. White, [new counsel], had to prepare, the detailed nature of the proceedings, the extensive information..., emails and letters" and the difficulty of Appellee getting an accounting of the escrow account.

Accordingly, we are not persuaded that the circuit court abused its discretion when it found that Appellants had to pay Appellee's attorneys' fees. Moreover, based on the evidence relied on, the circuit court conducted a fairness and reasonableness analysis of Appellee's attorneys' fees.

The judgment for the Circuit Court of Baltimore County is affirmed.

**JUDGMENT FOR THE CIRCUIT COURT  
FOR BALTIMORE COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANTS.**