

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1321

September Term, 2021

JOHN LICCIONE

v.

MOEA GORON-FUTCHER

Wells, C.J.,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: June 21, 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.

John Liccione, appellant, filed a petition for contempt in the Circuit Court for Howard County, seeking to compel his former wife, Moea Goron-Futcher, to comply with a subpoena for records. Following a hearing, the circuit court denied Liccione’s motion for contempt.

Goron-Futcher moves to dismiss the appeal on numerous grounds. Because Liccione cannot, as a matter of law, appeal the circuit court’s denial of his motion for contempt, we shall grant Goron-Futcher’s motion and dismiss the appeal.

FACTUAL BACKGROUND

On January 7, 2019, the circuit court granted the parties an absolute divorce, incorporating the terms of a marital property settlement agreement negotiated by the parties. *See Liccione v. Goron-Futcher*, No. 3116-2018, 2020 WL 6483139, at *1 (Md. Ct. Spec. App. Nov. 4, 2020). Liccione appealed that decision. In *Liccione v. Goron-Futcher*, No. 3116-2018, this Court affirmed various rulings of the circuit court relating to the divorce proceedings. *Id.*

On December 3, 2020, Goron-Futcher filed a motion in the circuit court seeking attorneys’ fees for the costs incurred in defending Liccione’s appeal of the divorce judgment. Two days before the hearing on the motion for attorneys’ fees, Liccione served Goron-Futcher’s counsel with a subpoena, seeking the production of certain documents and the testimony of Goron-Futcher at the hearing.

On February 5, 2021, the parties and their respective counsel attended the remote hearing before Judge Timothy J. McCrone. The court admitted into evidence the tax documents that Goron-Futcher produced in response to Liccione’s subpoena. Liccione’s

counsel did not object to the documents or reference them during the hearing. At the conclusion of the hearing, the court awarded Goron-Futcher \$31,411.20 in attorneys' fees and \$1,140.04 in costs. Liccione appealed the court's order.

On September 11, 2021, while Liccione's appeal of the attorneys' fees order was pending, he filed a petition for contempt in the circuit court. Liccione alleged that Goron-Futcher had violated the Judgment of Divorce by filing the motion for appellate attorneys' fees and "defying a valid subpoena for her financial records." The petition requested that the court incarcerate Goron-Futcher, vacate the judgment awarding attorneys' fees, strike the writ of garnishment of his bank account, and award him \$37,140.20 in attorneys' fees.

On September 20, 2021, the court (Bernhardt, J.) denied Liccione's petition for contempt, finding that the petition was "frivolous on its face." Liccione filed a motion for reconsideration, arguing that the court had failed to address his request for a finding of contempt for Goron-Futcher's alleged noncompliance with the subpoena. On October 22, 2021, the court (Bernhardt, J.), denied Liccione's motion for reconsideration. On October 26, 2021, the court entered a separate order explaining:

Upon review of the record, the Court notes that [Liccione] did not address the production of documents identified in the subpoena during the February 5, 2021 hearing at any time. [Liccione] filed his petition for contempt more than seven months later on September 11, 2021. The Petition for Contempt, as it related to the subpoena, was untimely and did not attempt to compel [Goron-Futcher's] compliance with any Court Order in effect as of its filing.

Liccione noted an appeal.

On April 20, 2022, we issued our decision in the consolidated case of *Goron-Futcher v. Lopes*, No. 1383-2020 and *Liccione v. Goron-Futcher*, No. 98-2021, 2022 WL

1165500 (Md. Ct. Spec. App. Apr. 20, 2022). We affirmed the circuit court’s order awarding attorneys’ fees, concluding that, although the parties’ marital settlement agreement prohibited an award of appellate attorneys’ fees, the trial court did not err in awarding the fees under Maryland Rule 1-341, based on a showing of bad faith by Liccione and a lack of substantial justification in pursuing the appeal. *Goron-Futcher v. Lopes*, 2022 WL 1165500 at *2.

DISCUSSION

I.

Appeal of Contempt Order

Liccione’s sole contention on appeal is that the circuit court erred in denying his contempt petition. Because the denial of a motion for civil contempt is not reviewable on appeal, we have no jurisdictional basis to consider this argument. *See Pack Shack, Inc. v. Howard Cnty.*, 371 Md. 243, 254 (2002). In Maryland, the right to appeal is “wholly statutory.” *Id.* at 247. Section 12-304 of the Courts and Judicial Proceedings Article (CJP) of the Maryland Code (2006, 2020 Repl. Vol.) “clearly and unambiguously limits the right to appeal in contempt cases to *persons adjudged in contempt.*” *Id.* at 254 (emphasis added). In the absence of statutory authority, we cannot review an appeal brought by someone who has not been held in contempt of court. *Id.* Accordingly, because Liccione was not held in contempt of court, his challenge to the circuit court’s order denying his contempt petition is not reviewable on appeal.

II.

Attorneys' Fees

Goron-Futcher argues that Liccione filed this appeal in bad faith, while his appeal of the circuit court's order awarding attorneys' fees for his previous unjustified appeal was pending. She argues that this appeal is a continuation of Liccione's "vexatious litigation against [her] in an effort to run up her attorney's fees" and requests an award of attorneys' fees.

Maryland Rule 1-341 authorizes "the court in any civil action to require a party to pay an opposing party's attorneys' fees for unjustified proceedings" pursued "in bad faith or without substantial justification." *Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459 Md. 1, 18 (2018). Under Rule 1-341, bad faith "means vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons." *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991). A claim lacks "substantial justification" if it is beyond "the realm of legitimate advocacy." *Id.* (citation and quotation marks omitted).

We have no difficulty concluding that Liccione maintained this appeal in bad faith and without substantial justification. As Judge Bernhardt noted, the contempt petition "was frivolous on its face" and indisputably lacking in merit. Liccione's appeal was also frivolous, as he had no substantive legal right to appeal the circuit court's denial of his contempt petition. Following our opinion in *Goron-Futcher v. Lopes*, No. 1383-2020, 2022 WL 1165500, affirming the award of attorneys' fees for Liccione's bad faith and unjustified appeal in that case, Liccione should have dismissed this appeal. *See Century I*

Condominium Ass’n, Inc. v. Plaza Condo. Joint Venture, 64 Md. App. 107, 121 (1985) (holding that appeal was maintained without substantial justification where it should have been dismissed following a decision on the substantive issues).

Goron-Futcher is entitled to an award of attorneys’ fees for the costs incurred in defending this groundless appeal. We shall dismiss the appeal and remand the case for a determination of reasonable attorneys’ fees.

**APPEAL DISMISSED. CASE REMANDED
FOR FURTHER PROCEEDINGS NOT
INCONSISTENT WITH THIS OPINION.
APPELLANT TO PAY COSTS.**