Circuit Court for Howard County
Case Nos. C13CV20000172 & C13FM18000446

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1383, Sept. Term, 2020
No. 98, Sept. Term, 2021

MOEA GORON-FUTCHER

v.

JOHN LOPES, et al.

JOHN LICCIONE

v.

MOEA GORON-FUTCHER

Wells, C.J.,
Friedman,
Wright Jr., Alexander
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wells, C.J.
Concurring Opinion by Friedman, 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.

The present appeals are the latest filings in an extended series of suits arising from the dissolution of the marriage between Moea Goron-Futcher and John Liccione. Because both appeals involve the same parties and arise from their divorce, we exercise our discretion and address both appeals in this opinion. In the first appeal, No. 1383, Goron-Futcher appeals the Circuit Court for Howard County's dismissal of certain counts in a civil suit she filed against Liccione alleging defamation, false light invasion of privacy, and intentional infliction of emotional distress. Goron-Futcher presents four issues for our review asserting that the circuit court abused its discretion in dismissing her claims against Liccione.[1]

[1] Goron-Futcher's verbatim questions presented in her appeal read:

1. DID THE TRIAL COURT ERR AND/OR ABUSE ITS DISCRETION IN GRANTING APPELLEE'S MOTION TO DISMISS COUNT ONE OF THE COMPLAINT WHEN APPELLANT HAD ESTABLISHED A PRIMA FACIE CASE FOR DEFAMATION?

2. DID THE TRIAL COURT ERR AND/OR ABUSE ITS DISCRETION IN GRANTING APPELLEE'S MOTION TO DISMISS COUNT THREE OF THE COMPLAINT WHEN APPELLANT HAD ESTABLISHED A PRIMA FACIE CASE FOR FALSE LIGHT INVASION OF PRIVACY?

3. DID THE TRIAL COURT ERR AND/OR ABUSE ITS DISCRETION IN GRANTING APPELLEE'S MOTION TO DISMISS COUNT FIVE OF THE COMPLAINT WHEN APPELLANT HAD ESTABLISHED A PRIMA FACIE CASE FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS?

For the reasons we explain, we determine that in Case Number 1383, Goron-Futcher has not obtained a final judgment below. Therefore, her appeal is premature and will be dismissed.

In the second case, Number 98, Liccione appeals a judgment for appellate attorneys' fees following his unsuccessful appeal of a Judgment of Absolute Divorce. Liccione asks us now to review the circuit court's order and presents one question:

> Did the Circuit Court for Howard County err in ordering [Liccione] to pay [Goron-Futcher] $31,411.20 for her appellate attorney's fees, litigating [Liccione]'s appeal in Case Number: CSA-REG-3116-2018?

We hold that in Appeal No. 98, while the circuit court erred in its interpretation of the marital settlement agreement, the circuit court did not err in awarding appellate attorneys' fees because Liccione's appeal was brought in bad faith and without substantial justification. Thus, we affirm the circuit court's award.

FACTUAL BACKGROUND

In the following set of facts, we will attempt to provide the relevant factual background and context for both appeals before us. The parties married in July of 2010, separated in January 2017, and divorced in January 2019.

---

4. DID THE TRIAL COURT ERR AND/OR ABUSE ITS DISCRETION IN GRANTING APPELLEE'S MOTION TO DISMISS COUNTS ONE, THREE, AND FIVE OF THE COMPLAINT WHEN APPELLEE DID NOT HAVE AN ABSOLUTE PRIVILEGE AND WAIVED THE CONDITIONAL PRIVILE[]GE DUE TO MALICE AS TO THE DEFAMATORY STATEMENTS CONTAINED IN THE COMPLAINT?

In Case No. 1383, Goron-Futcher appeals the dismissal of counts against Liccione for defamation (Count One), false light invasion of privacy (Count Three), and intentional infliction of emotional distress (Count Five). Goron-Futcher alleges that, between 2013 and 2015, Liccione and a private detective who he hired, John Lopes and his company, called The Agency, Inc., made a series of defamatory statements about her, including, in Goron-Futcher's words, statements describing Goron-Futcher's attempt to murder Liccione, her attempt to poison Liccione, that Goron-Futcher had an affair with three men, and that Goron-Futcher produced "horse pornography." Goron-Futcher did not learn about the statements, however, until 2019 when, she alleges, they were "recited in pleadings and exhibits to pleadings" by Liccione. Goron-Futcher filed her complaint against Liccione, Lopes, and The Agency on February 13, 2020. Liccione then moved to dismiss the counts against him and Judge William V. Tucker of the Howard County Circuit Court held a hearing on the motion on December 7, 2020. The circuit court granted Liccione's motion to dismiss Counts One, Three, and Five against Liccione, finding that Liccione's statements were made in court filings, and thus were entitled to absolute privilege. Counts Two, Four, and Six, made against Lopes and The Agency, Inc., remain. Goron-Futcher now appeals that trial court's order dismissing the counts against Liccione.

In Appeal No. 98, Liccione appeals the decision of the circuit court awarding Goron-Futcher appellate attorneys' fees. This appeal stems from a marital property settlement agreement orally entered into by both parties, acting through their attorneys, on December 6, 2017. The oral agreement was reduced to writing and signed by both parties on January 10, 2018. A couple of weeks later however, the parties jointly dismissed without prejudice

the complaint for absolute divorce. Then in June 2018, Goron-Futcher filed a complaint for absolute divorce followed by Liccione's counter complaint in July. After a series of motions, the Circuit Court for Howard County granted a Judgment of Absolute Divorce on January 7, 2019, incorporating—but not merging—the previously agreed-to settlement agreement. Liccione subsequently appealed. On November 4, 2020, we affirmed rulings from the circuit court addressing issues relating to the various motions filed by Liccione. *Liccione v. Goron-Futcher*, No. 3116-2018, 2020 WL 6483139, at *12 (Md. Ct. Spec. App. Nov. 4, 2020). Following our opinion, Goron-Futcher filed a motion for appellate attorneys' fees on December 3, 2020 and requested a hearing. Judge Timothy J. McCrone held a hearing on Goron-Futcher's motion for appellate attorneys' fees on February 5, 2021 and awarded Goron-Futcher $31,411.20 in attorneys' fees and $1,140.04 in costs. Liccione now appeals the award of $31,411.20 for appellate attorneys' fees.

APPEAL NO. 1383

As noted, Goron-Futcher filed a complaint in the Circuit Court for Howard County against Liccione, Lopes, a private detective, and Lopes' business, The Agency, Inc., alleging that they defamed her, portrayed her in a false light, and intentionally inflicted emotional distress. Although the circuit court granted Liccione's motion to dismiss Counts One, Three, and Five of the complaint, all pertaining to him, the remaining counts involving Lopes and The Agency, Inc. (Counts Two (defamation), Four (false light/invasion of privacy), and Six (intentional infliction of emotional distress)), have not yet been adjudicated in the circuit court.

Appellate jurisdiction is determined entirely by statute. Generally, under Maryland Code Annotated, Courts and Judicial Proceedings Article § 12-301, a right of appeal arises in cases in which the circuit court has entered a final judgment. *Quillens v. Moore*, 399 Md. 97, 116 (2007). Ordinarily, a party cannot appeal a judgment that is not final. *Nnoli v. Nnoli,* 389 Md. 315, 324 (2005). Requiring cases to have reached final judgment before permitting appeal reflects Maryland's long-established policy against piecemeal appeals. *See, e.g., Med. Mut. Liab. Ins. Soc. of Md. v. B. Dixon Evander and Assocs.*, 331 Md. 301, 313 (1993) ("[Reviewing an order with unresolved claims] is clearly contrary to the policy against piecemeal appeals.").

An order will constitute a final judgment if it possesses the following attributes: (1) "it must be intended by the court as an unqualified, final disposition of the matter in controversy"; (2) "it must adjudicate or complete the adjudication of all claims against all parties"; and (3) "the clerk must make a proper record of it" on the docket. *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989); *McLaughlin v. Ward*, 240 Md. App. 76, 83 (2019); *see also* Md. Rule 2-601. Each and every claim pending before the circuit court must be adjudicated to become a final judgment. *Schuele v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555, 565 (2010). The language of Maryland Rule 2-602 emphasizes this requirement:

> (a) Generally. Except as provided in section (b) of this Rule, **an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action** ... or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:
>
> (1) **is not a final judgment**;

> (2) does not terminate the action as to any of the claims or any of the parties; and
>
> (3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.

Md. Rule 2–602(a) (emphasis added). If we lack appellate jurisdiction, however, we must dismiss an appeal. *See* Md. Rule 8-602(b); *Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 172 (2015). "[W]e can raise the issue of finality on our own motion." *Zilichikhis*, 223 Md. App. at 172.

In this case, the circuit court has not yet adjudicated Goron-Futcher's claims against Lopes and The Agency. This fact was confirmed by Goron-Futcher's counsel at oral argument. No final judgment exists in this case because the circuit court has not entered a judgment disposing of all of the claims. We, therefore, dismiss.[2]

APPEAL NO. 98

DISCUSSION

Although the Marital Settlement Agreement Prevented the Trial Court from Awarding Appellate Attorneys' Fees, the Trial Court did not Err in Awarding them Based on Bad Faith and a Lack of Substantial Justification

A. Parties' Contentions

Liccione argues that the trial court erred when it awarded Goron-Futcher appellate attorneys' fees because such an award is in direct contravention of the separation agreement agreed to by both parties, and which was later incorporated into the Judgment of Absolute

[2] At oral argument Goron-Fuchter's counsel stated that he would be inclined to dismiss the counts against Lopes and The Agency, Inc. and allow the circuit court to then certify a final judgment under Rule 8-602(g); we decline that invitation.

Divorce. According to Liccione, Section IX of the marital agreement clearly states that each party would pay for their own attorneys' fees for all litigation involving the divorce, "and for all subsequent litigation arising out of the parties' divorce proceeding[,]" including any subsequent appeals. By awarding Goron-Futcher attorneys' fees, Liccione argues, the trial court went against the agreement, which is the controlling authority.

Liccione also argues that the trial court erred when it found that his appeal in Case No. 3116-2018 was made in bad faith and without substantial justification. Liccione asserts that the trial court erred in finding that his appeal was filed and maintained in bad faith, and also that the court erred in failing to hold an evidentiary hearing on the allegations contained in Goron-Futcher's Motion for Appellate Attorneys' Fees.

Goron-Futcher contends that the trial court did not err in awarding her appellate attorneys' fees because the trial court properly found that the section concerning attorneys' fees did not constitute a waiver of recovering attorneys' fees. As evidence that Section IX did not constitute a waiver of attorneys' fees, Goron-Futcher points to other sections of the agreement that explicitly describe waivers. Specifically, Section VIII. "Mutual Waiver of Spousal Support/Alimony"; Section XIII. "Acknowledgement and Waiver of Property Distribution Law"; and Section XVII. "Waiver of Property Rights." In all three sections, the heading has the word "waiver," and a waiver is explicitly mentioned in the body of the section. The fact that the section concerning attorneys' fees does not contain the word "waiver" in either the heading or the body, Goron-Futcher argues, demonstrates that Section IX does not provide for a waiver of attorneys' fees leaving her free to recover appellate attorneys' fees.

Finally, Goron-Futcher argues that the trial court did not err by finding that Liccione filed and maintained his appeal in bad faith and without substantial justification, nor that it did so without making a factual finding after conducting an evidentiary hearing.

B. Analysis

1. The Marital Settlement Agreement

In the Judgment of Absolute Divorce ("JAD"), the court incorporated, but did not merge, the parties' marital settlement agreement that they had previously agreed to before they moved to jointly dismiss. When a settlement agreement is incorporated but not merged into a JAD, "the agreement survives as a separate and independent contractual arrangement between the parties." *Janusz v. Gilliam*, 404 Md. 524, 569 n.10 (2008) (quoting *Johnston v. Johnston*, 297 Md. 48, 56 (1983)). "Such agreements are subject to the general rules of contract interpretation." *Id.* at 534. Contract interpretation in Maryland is an objective endeavor and instructs that "unless a contract's language is ambiguous, we give effect to that language as written without concern for the subjective intent of the parties at the time of formation." *Ocean Petroleum, Co., Inc. v. Yanek*, 416 Md. 74, 86 (2010) (quoting *Cochran v. Norkunas*, 398 Md. 1, 16 (2007)).

The language at issue from the settlement agreement which was incorporated into the JAD is as follows:

> Each of the parties hereto agrees to pay his or her attorney's fees in connection with this Agreement and of all legal services rendered or to be rendered to each of them in connection with any other matter concerning this

> Agreement and any subsequent divorce proceeding, except as provided in Paragraph XXIV.[3]

We conclude that the language in Section IX is clear and unambiguous. The section states that the parties agree to pay their own attorneys' fees for "any matter concerning" the agreement and any "subsequent divorce proceedings." An appeal properly qualifies as a "proceeding." *See Mackenzie v. A. Engelhard & Sons Co.*, 266 U.S. 131, 142–43 (1924) ("An appeal is a *proceeding* in the original cause and the suit is pending until the appeal is disposed of." (Emphasis added)); *Cook v. Wilkie*, 908 F.3d 813, 818 (Fed. Cir. 2018) ("An appeal is a *proceeding* undertaken to have a decision reconsidered by a higher authority; esp[ecially], the submission of a lower court's or agency's decision to a higher court for review and possible reversal." (Alteration in original) (emphasis added) (quoting *Appeal*, Black's Law Dict. (10th ed. 2014)).

We are not persuaded by Goron-Futcher's argument that the three other waiver provisions necessarily mean that the attorneys' fee provision is not a waiver. Whether it is a waiver or not we think is immaterial. The section simply dictates how attorneys' fees will be allocated for proceedings arising from the divorce. If we accept that the attorneys' fees section was not a waiver, it is hard to contemplate what purpose it would serve as that would permit either party to move for attorneys' fees—and yet that section explicitly provides that each side shall pay for his or her own attorneys' fees. We decline to ignore the impetus behind the inclusion of the attorneys' fees provision and hold instead that it

[3] Paragraph XXIV concerns the awarding of costs and reasonable attorneys' fees stemming from the prosecution of a breach or defense of an alleged breach of the agreement to the prevailing party.

applies to any subsequent appeals as well. Thus, the trial court erred when it awarded Goron-Futcher appellate attorneys' fees based on its finding that the settlement agreement permitted the court to do so.

2. *Md. Rule 1-341 Sanctions*

The trial court awarded appellate attorneys' fees on two grounds. The first, which we have concluded was in error, was the trial court's view that Section IX did not prevent an award of attorneys' fees. The second is the trial court's finding that Liccione's appeal was brought in bad faith and without substantial justification. The trial court explained its reasoning at the conclusion of the hearing on the motion for appellate attorneys' fees:

> Well, this case has had a very difficult history but I do find that the – that section nine of the agreement does not deprive me the ability to award attorney's fees incurred with respect to this, what I find to be, a frivolous appeal filed in bad faith. And I find that it has no substantial justification. I think it's clearly filed just to be malicious and to endeavor to make the experience as painful as possible for Ms. Futcher in a vengeful exercise to try to torment her in ways that perhaps the protective order would prevent under normal circumstances.
>
> The repeated reference to pornography production in Hungary or something was never allowed into evidence. Of course, quite frankly, I don't think it was even articulated but that's what the report would have included at the hearing if my memory serves me correctly. It was quite some time ago, but I think I would have remembered horse pornography in Hungary. That doesn't come up every day.
>
> So I do find – I do believe that Mr. Liccione is motivated almost exclusively out of spite and ill-will and anger and determination to make the Plaintiff's life as miserable as possible and that his appeal from that date, that there's no substantial justification for it under 7-107 and/or 1-341.

The two provisions that the trial court alluded to are Section 7-107 of the Family Law Article ("FL"), and Md. Rule 1-341. Section 7-107, titled "Award of expenses", provides

in part that before ordering the payment of "reasonable and necessary" expenses related to a proceeding, the court "shall consider: (1) the financial resources and financial needs of both parties; and (2) whether there was *substantial justification for prosecuting or defending the proceeding*." (Emphasis Added). The second provision, Maryland Rule 1-341(a), states:

> 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.

As Liccione rightly highlights, before a court may impose Rule 1-341 sanctions, it must "make an evidentiary finding of 'bad faith' or 'lack of substantial justification.'" *Legal Aid Bureau, Inc. v. Bishop's Garth Assocs. Ltd P'ship*, 75 Md. App. 214, 220 (1988). "Whether bad faith or lack of substantial justification is found by a court to exist in any given case is a question of fact subject to a 'clearly erroneous' standard of review." *Id.* at 220–21 (citing *Century I Condo. Ass'n, Inc. v. Plaza Condo. Joint Venture*, 64 Md. App. 107, 117 (1985)). And on appeal, we will not disturb the trial court's sanction unless the court has abused its discretion. *Id.* at 221 (citing *Century I Condo. Ass'n, Inc.*, 64 Md. App. at 120).

Liccione's argument is twofold: the trial court erred in finding that his appeal was filed and maintained in bad faith and the trial court erred in failing to hold an evidentiary hearing and awarding the attorneys' fees without making a factual finding. Liccione's first argument fails as the trial court's finding is not "clearly erroneous." Judge McCrone is deeply familiar with the facts of this case, having been involved in the case since issuing

the JAD in January 2019. Judge McCrone made his findings based on his knowledge of the case—having ruled on numerous motions between the parties—arguments from both sides, exhibits, judicial notice of our prior opinion, and his unique position as a trial judge. He clearly explained his rationale for awarding appellate attorneys' fees based on bad faith and a lack of substantial justification. Because such a determination is a factual finding, we will not disturb it unless it is clearly erroneous and decline to do so here.

The second contention, that the trial court erred in failing to have an evidentiary hearing and failed to make a factual finding, also fails because the February 5, 2021 hearing was explicitly held "on [Goron-Futcher]'s Amended Motion for Appellant Attorney Fees." During the hearing, the circuit court heard arguments from both sides and accepted numerous exhibits. At its conclusion, the trial court explicitly stated that it found that Liccione lacked substantial justification and filed the appeal in bad faith. Liccione states that Maryland caselaw requires "some brief exposition of the facts upon which the finding is based and an articulation of the particular finding involved[.]" Liccione cites to *Century I Condominium Association, Inc. v. Plaza Condominium Joint Venture*. However, in that case, we stated that a trial judge, on making a Rule 1-341 determination, need only "make an explicit determination as to the existence of" the bad faith and lack of substantial justification factors, *Century I*, 64 Md. App. at 115, which the trial court clearly made here. Liccione also states that the trial court "refused to consider certain evidence" but simply cites to the entire transcript of the hearing. Having reviewed the record, we cannot identify a single instance where the trial court refused to take evidence. Therefore, Liccione's

contentions are unavailing, and we hold that the trial court did not err in awarding appellate attorneys' fees under Rule 1-431.

To conclude, even though we hold that the trial court erred in awarding appellate attorneys' fees in contradiction of Section IX of the settlement agreement, we hold that the trial court was within its discretion to award appellate attorneys' fees pursuant to Md. Rule 1-341. The award of appellate attorneys' fees to Goron-Futcher is thus affirmed.

APPEAL NO. 1383 IS DISMISSED. APPELLANT TO PAY THE COSTS.

IN APPEAL NO. 98, THE JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY, IS AFFIRMED. APPELLANT TO PAY THE COSTS.

Circuit Court for Howard County
Case Nos. C13CV20000172 & C13FM18000446 UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1383, Sept. Term, 2020
No. 98, Sept. Term, 2021

MOEA GORON-FUTCHER

v.

JOHN LOPES, et al.

JOHN LICCIONE

v.

MOEA GORON-FUTCHER

Wells, C.J.,
Friedman,
Wright, Jr., Alexander,
(Senior Judge, Specially Assigned),

JJ.

Concurrence by Friedman, 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.

I concur in the majority opinion, however, in No. 98, I would additionally affirm on the grounds that the marital settlement agreement did not preclude the award of attorney's fees incurred in defending against efforts to set aside that agreement.

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

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1383s20cn.pdf