UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1627

September Term, 2014

JANE GRAY, ET AL.

v.

HOWARD COUNTY BOARD OF ELECTIONS, ET AL.

Eyler, Deborah S.,
Nazarian,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: September 24, 2015

This appeal grows out of an effort by a group of Howard County citizens to certify the 2013 Howard County Comprehensive Zoning Plan for referendum. We do not have the merits of their complaints before us—they were litigated and decided already. *See Gray v. Howard Cnty. Bd. of Elections*, 218 Md. App. 654 (2014). After we issued that opinion, the Howard County Board of Elections Board (the "Board") asked the Circuit Court for Howard County to dismiss, on the grounds of *res judicata* and mootness, the then-still-pending declaratory judgment action arising out of the same set of factual contentions. The motion was unopposed and the court dismissed the case. But the story is not quite over: Jane Gray, Frederick Gray, Alan Schneider, and Citizens Working to Fix Howard County (collectively, the "Appellants") ask us to review several discovery rulings the circuit court made while the case was still active and sanctions the court imposed on their attorneys for filing improper interlocutory appeals. Until now: we dismiss the appeal.

I. BACKGROUND

Our reported decision in *Gray* laid out the factual underpinnings and the procedural history of this dispute thoroughly:

> On August 6, 2013, the Howard County Council enacted Ordinance 32-2013, which adopted the 2013 Comprehensive Zoning Plan of Howard County. Ten days later, appellant Citizens Working to Fix Howard County (whose officers included appellants Jane Gray and Lisa Markovitz) submitted a proposed referendum petition to the Election Director, who responded, in a letter, that he had determined that "the front page formatting of the petition" complied with the "technical" legal requirements but stressed that "a fair and accurate summary [was] required on the back of the petition that includes the substantive provisions of the law being referred" to referendum. He then concluded his letter by noting that his office was "making no judgment as to

whether the information in the summary presented fully satisfies all legal requirements."

On October 4, 2013, [A]ppellants submitted 3,454 of the required 5,390 signatures to the [Board] for approval. Two weeks later, on October 21, 2013, the Election Director wrote to [A]ppellants, informing them that the signatures they had filed had been validated and that the amount of those signatures met the threshold for extending the deadline for submitting the rest of the signatures for the certification of their petition.

After [A]ppellants had tendered the required number of signatures, within the prescribed time period, the Election Director, in a letter dated November 26, 2013, confirmed that [A]ppellants had met the signatory requirement for certification but apprised them that, "[a]fter a board meeting and on advice of legal counsel," he had "determined" that their petition did "not meet all legal requirements as set forth in 6-201(c)(2)(i) of the election law, which states: 'a fair and accurate summary of the substantive provisions of the proposal' is required if the petition seeks to place a question on the ballot." That being so, he informed [A]ppellants that he could not approve certification.

On December 5, 2013, [A]ppellants filed a petition for judicial review, in the [circuit court], challenging the Election Director's determination "that the referendum petition on parts of CB 32-2013 did not contain a 'fair and accurate summary of the substantive provisions of the proposal'" and his refusal to certify their petition.

The [Board], on December 23, 2013, moved to consolidate that petition with two other petitions for judicial review that had been filed by several of the [Appellants], challenging the [Board's] determination as to the numerical sufficiency of the signatures presented, and with a declaratory judgment action they had filed. That motion was granted on January 16, 2014, and the . . . consolidated case was specially assigned to the Honorable John H. Tisdale.

Among the motions filed in the circuit court, by the [Board] and its Director, was a motion for summary judgment, with an affidavit from the Election Director attached.

* * *

> Before the circuit court heard argument on that and other pending motions, [A]ppellants filed four different interlocutory appeals in this Court and four separate petitions for writ of certiorari in the Court of Appeals with respect to actions taken by the circuit court in dealing with their petitions. This Court eventually dismissed each of these appeals, and the Court of Appeals, in turn, denied two of appellants' four certiorari petitions. The remaining two petitions were ultimately dismissed by that Court on the grounds that it lacked appellate jurisdiction in absence of a final judgment or appealable interlocutory judgment or collateral order. *Gray v. Howard Cnty. Bd. of Elections*, 437 Md. 611 (2014).
>
> Notwithstanding the numerous unwarranted delays engendered by these appellate court filings, Judge Tisdale was ultimately able to address the three consolidated petitions for review pending before him, in a memorandum opinion dated May 28, 2014, following a hearing. In that opinion, he pointed out a number of deficiencies in [A]ppellants' summary of the contested portions of the ordinance, including the inaccuracies alleged by the Election Director in his affidavit attached to the [Board's] motion for summary judgment. He characterized [A]ppellants' petitionary description of certain provisions of the ordinance they were challenging as either "not accurate," "misleading," "lacking in precision" or "clarity," and as "intended to create an emotional reaction" from potential signatories. He therefore concluded that "[t]aken as a whole, the attempt to summarize the portions of the Ordinance for the referendum [fell] well short of the fair and accurate standard."

218 Md. App. at 658-62 (footnotes omitted).

The *Gray* decision followed Appellants' appeal of the circuit court's May 28, 2014 ruling, in which they asserted that their referendum petition did, in fact, provide a "fair and accurate summary" of the portions of the ordinance at issue. We disagreed. We held that "the misrepresentations in the petition were, in our view, so manifest and substantial that

it is inconceivable that [A]ppellants did not know that their summary was not a fair and accurate representation of the contested provisions of the ordinance." *Id.* at 670. Appellants filed a Petition for Writ of Certiorari in the Court of Appeals, and the Court denied it on August 19, 2014. *Gray v. Howard Cnty. Bd. of Elections*, 439 Md. 694 (2014). That petition conclusively resolved their three consolidated petitions for judicial review, but the Board's declaratory judgment action remained pending in the circuit court.

The case then returned to the circuit court and, at a hearing on August 27, 2014, the court inquired about what was left to decide:

> [COURT]: There are outstanding a number of motions and today is set in to consider those outstanding motions. I tried to be sure that I've identified the motions, but one of the things that seems to be the case is that there are 20-some motions somewhat in the nature of motions to compel for depositions.
>
> Now, let me just ask this at the outset. Given the status of the case are those still at issue or an issue? And I'll look to this side now?
>
> [COUNSEL FOR THE BOARD]: Your Honor, I – candidly, I think that in light of the posture of the case that the petition for judicial review has been finally determined and the Court of Appeals has denied certiorari, so the summary has been declared to be not fair and accurate and that would be *res judicata*.
>
> In all fairness I think that the entire action at this point, both the complaint for declaratory judgment as well as the counter-complaint, I'd like to suggest, Your Honor, that it is now moot and that there is really no relief whatsoever that this court can grant the parties.
>
> * * *

> So if the court and if the parties concur that these entire proceedings have been rendered moot by the final and non-appealable determination of the Court of Special Appeals, then I think that all outstanding motions except for two. Your Honor, one being a motion for sanctions pursuant to Maryland Rule 1-341. And then another matter having to deal with a motion for sanctions that was a part of Maryland Rule 2-433, I believe it is.

After hearing argument as to whether the declaratory judgment action was rendered moot by our decision, the circuit court ruled that it was:

> [COURT]: In this case – and I don't take any pride in it. It's just a fact. I made a decision. The Court of Special Appeals upheld it. The parties tried to get the – asked the Court of Appeals to take a look at it with the hope that the Court of Appeals would disagree with the Court of Special Appeals. It chose not to take the case. That ends the matter as far as the ballot goes. That renders moot the issues.

Then, in response to a motion the Board had filed seeking sanctions against Appellants' counsel, the circuit court imposed a $6,000 sanction against Susan Gray and Allen Dyer, after finding that they improperly filed four interlocutory appeals that caused an unwarranted delay in the proceedings:

> [COURT]: I'm . . . concerned with the fact that the other parties in this case had to deal with an appeal improperly filed, because had I been able to deal with this here in court, we could have resolved this matter and moved on. You would have had some depositions. The citizens would have been protected in a much better way, but I never had that opportunity.
>
> And the Court of Special Appeals was required then to deal with an improper appeal and frankly your clients were dealt – were required to respond to it. There was a motion to dismiss on your part as there have been in some other instances with these interlocutory appeals.

> So [with] all of that in mind and having reviewed your affidavits and your requests, I note that you have charged your clients. Your hourly rate is $[325] an hour. Your paralegal, you charge $180 an hour. That's – I find that is a total of $505.
>
> I have practiced and been here long enough to believe it took at least 12 hours to develop responses for these appeals. I'm going to grant sanctions as you request in the amount of $6,000. I'll reduce that judgment against [Appellants' counsel] Ms. Gray and [Mr.] Dyer, but not against the individual parties.

On September 10, 2014, the Board moved to dismiss the declaratory judgment action on the grounds of *res judicata* and mootness. Importantly, Appellants *did not oppose the motion*, and the circuit court dismissed the action on October 16, 2014. Appellants filed a notice of appeal.

II. DISCUSSION

Appellants do not challenge the circuit court's decision to dismiss the declaratory judgment action (nor could they, since they never opposed the motion). They ask us instead to reverse several discovery rulings the circuit court made while the case was still active

and the discovery sanctions the court imposed on their counsel.[1] Unfortunately, the uncontested dismissal of the declaratory judgment action renders their grievances with the circuit court's discovery rulings moot, and they lack standing to challenge the circuit court's imposition of sanctions against their counsel.[2]

A. Appellants' Challenges To The Circuit Court's Discovery Rulings Are Moot.

During the course of the proceedings in the circuit court, the Board served subpoenas for videotaped depositions on Appellants, as well as certain non-parties who had circulated petitions to certify the Comprehensive Zoning Plan for referendum. Appellants moved to quash and the Board moved to compel, and the circuit court eventually granted the latter. Appellants contend that the circuit court erred in requiring them to respond to discovery because (1) the Board had no standing to bring the declaratory judgment action because the referendum petition was never certified; (2) the Board's

[1] Appellants' brief phrased their Questions Presented as follows:

> 1. Whether the trial court impermissibly granted Maryland Rule 1-341 sanctions against [Appellants'] counsel?
>
> 2. Whether the trial court erred in finding that unlimited discovery as to petition circulators did not implicate their first amendment rights?
>
> 3. Whether there was a right of interlocutory appeal for party circulators in this matter?

[2] On September 9, 2015 (after oral argument), appellants filed a Motion for Judicial Notice of Motions, Affidavits, Correspondence and Rulings in Court of Appeals No. 2091, September Term, 2014. We deny the Motion as it would have no effect on the outcome of this appeal.

allegations were insufficient as a matter of law; (3) the Board's claims were time-barred; (4) there was no statutory support for the Board's claims; (5) outstanding dispositive motions had not been resolved; and (6) discovery infringed on the First Amendment rights of the petition circulators. We need not address these contentions, however, because the circuit court's unchallenged decision to dismiss the declaratory judgment action rendered them moot.[3]

"This Court ordinarily does not render judgment on moot questions." *La Valle v. La Valle*, 432 Md. 343, 351 (2013) (citation omitted). A question is moot when "past facts and occurrences have produced a situation in which, without any future action, any judgment or decree the court might enter would be without effect." *Hayman v. St. Martin's Evangelical Lutheran Church*, 227 Md. 338, 343 (1962). Appellants do not dispute that the circuit court appropriately dismissed the declaratory judgment action on *res judicata* grounds after our decision in *Gray*. 218 Md. App. 654. Indeed, the majority of their arguments about the circuit court's discovery rulings flow from the premise that the circuit court should not have required them to respond to discovery *because* the case should have been dismissed.[4]

[3] For that reason, we have described this contentious and far-more-voluminous discovery litigation in general terms.

[4] In their reply brief, Appellants claim that the discovery issues are not moot because they deal with "constitutional rights, [and i]t is clearly in the public interest that these questions be decided because they involve the relationship between government and its citizens, affect fundamental Constitutional rights, or [are] likely to recur, and are currently intimidating the participation or citizens in the referendum process." Although they refer broadly to *Reyes v. Prince George's County*, 281 Md. 279 (1977), *Reyes* (continued…)

At oral argument, and perhaps as a way of explaining the interlocutory appeals we discuss in the next section, Appellants expressed confusion about how and when they could, or should, have obtained appellate review of the circuit court's discovery rulings. In the life of this litigation, though, a proper appeal from a final judgment denying them a declaratory judgment would have included the opportunity to challenge discovery rulings. By not opposing dismissal of the declaratory judgment action, Appellants effectively waived that opportunity. And because that unchallenged dismissal eliminates any possibility that we could afford Appellants any relief were we to agree with them (and we express no views on the merits of their arguments), their challenges to the circuit court's discovery rulings are moot.

does not support the proposition that we could, let alone should, reach their discovery disputes on this posture. There, the Court determined during oral argument that the nominal parties to the case were not truly adverse to each other, and that the purpose of the litigation was to obtain a judicial opinion regarding the validity of a bond issue. Ultimately, the Court defined a narrow set of circumstances under which it could address and resolve issues in the absence of a truly adversarial set of parties. *See id.* at 296-97. But *Reyes* does not give us *carte blanche* to reach constitutional issues based on their perceived importance, especially since there was, in this case, a way these discovery questions could properly have been raised on appeal.

B. Appellants Lack Standing To Challenge Sanctions Imposed On Their Counsel.

Appellants *next* take issue with the circuit court's decision to impose a $6,000 sanction on their counsel, Ms. Gray and Mr. Dyer, for filing inappropriate interlocutory appeals that needlessly expanded and stalled the proceedings. Unfortunately, this is not their battle to fight.

If a court finds that a proceeding has been maintained in "bad faith" or "without substantial justification," it may impose sanctions against the offending party *or* counsel:

> 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.

Md. Rule 1-341(a). When a court imposes sanctions against a party's counsel pursuant to Rule 1-341 and reduces it to a money judgment, the sanctioned attorney has an independent right to seek appellate review. *See Legal Aid Bureau, Inc. v. Farmer*, 74 Md. App. 707, 712-13 (1988). In *Farmer*, the Legal Aid Bureau, Inc. represented a group of tenants in eviction proceedings before the district court. 74 Md. App. at 708. After receiving an unfavorable result in the district court, the tenants filed an appeal to the circuit court. *Id.* Finding that the appeal was taken without substantial justification, the circuit court affirmed the judgments of the district court and entered a judgment against Legal Aid and one of its attorneys pursuant to Rule 1-341. *Id.* On appeal, we held that, although further appellate review of the underlying eviction proceedings was committed exclusively to the

Court of Appeals, we had jurisdiction to review the sanctions award because it constituted a wholly collateral judgment. *Id.* at 709, 713-14.

Here, the circuit court imposed Rule 1-341 sanctions against Appellants' counsel and *only* against Appellants' counsel—the names of the individual Appellants had been typed into the proposed Order submitted with the motion, but the trial court crossed out their names and imposed sanctions only, and specifically, against the attorneys. In accordance with *Farmer*, Appellants' counsel were free to appeal the circuit court's imposition of sanctions. But counsel did not appeal: the September 26, 2014 Notice of Appeal lists only Appellants, by name, as the parties to the appeal, and did not include counsel among them.

Appellants nevertheless seek to challenge the sanctions award on behalf of their attorneys, and they direct our attention to *Newman v. Reilly*, 314 Md. 364 (1988). But *Newman* does not stand for the proposition that parties can appeal sanctions ordered specifically against counsel on counsel's behalf. The trial court in *Newman* had entered Rule 1-341 sanctions against both a party to the action *and* the party's counsel. 314 Md. at 382. We held that a notice of appeal naming only the party did not bring the sanctions imposed on counsel before us. *Id.* at 382-83. The Court of Appeals looked at it the other way and reversed, holding that parties' appeal did not *preclude* appellate review of the sanctions against the attorney, that "a commonality of interest" between the party and the attorney counseled in favor of construing the notice of appeal liberally. *Id.* at 386-88. The Court found it significant that when Rule 1-341 sanctions are imposed against both the

client and the attorney, "the previous, relatively clear distinction between the client as party and the attorney as counsel" are blurred. *Id.* at 384.

In this case, however, there is no such commonality of interest between the party and the attorneys. The circuit court here imposed Rule 1-341 sanctions against Appellants' counsel, and elected explicitly not to impose sanctions against Appellants. Moreover, in contrast to *Newman*, Appellants' brief takes pains to note that it was filed solely on behalf of Appellants and *not* their counsel. This leaves us with Appellants seeking to challenge a sanctions award against their counsel even though they have not been personally aggrieved by the decision. And their lack of standing to bring this challenge on their lawyers' behalf requires us dismiss the appeal. *See Kendall v. Howard Cnty.*, 431 Md. 590, 603 (2013) ("'Under Maryland common law, standing to bring a judicial action generally depends on whether one is aggrieved, which means whether a plaintiff has an interest such that he [or she] is personally and specifically affected in a way different from . . . the public generally.'" (quoting *Jones v. Prince George's Cnty.*, 378 Md. 98 (2003))); *Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 432 Md. 292, 313 (2013) ("A litigant must have standing to maintain a judicial action." (citation omitted)).

APPEAL DISMISSED; COSTS TO BE PAID BY APPELLANTS.