

Circuit Court for Anne Arundel County
Case No. 02-C-14-190282

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1651

September Term, 2017

SADIE M. CASTRUCCIO

v.

ESTATE OF PETER A. CASTRUCCIO

Wright,
Graeff,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: February 14, 2019

*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 Court has reviewed multiple cases related to litigation involving Sadie M. Castruccio, appellant, and the estate of her deceased husband, Dr. Peter A. Castruccio (the “Estate”), appellee.¹ In this appeal, Ms. Castruccio challenges the September 28, 2017, order of the Circuit Court for Anne Arundel County finding her in constructive civil contempt and directing her to pay the Estate’s attorneys fees in the amount of \$228,523.26.

Ms. Castruccio presents the following questions for this Court’s review:

1. Did the trial court err by holding Ms. Castruccio in contempt?
2. Did the trial court err by signing a defective and improper order?
3. Did the trial court err in failing to incorporate an appropriate purge provision?
4. Did the trial court err in awarding \$228,523.26 in legal fees to the Estate?

We answer the first question in the affirmative, and therefore, we shall reverse the order of the circuit court and remand for further proceedings consistent with this opinion.

¹ Prior cases regarding the administration of Dr. Castruccio’s estate include: *Castruccio v. Estate of Peter Adalbert Castruccio*, No. 2622, Sept. Term 2014 (filed Feb. 3, 2016), *cert. denied* 447 Md. 298 (addressing the validity of several deeds that conveyed parcels of land to Dr. Castruccio); *Castruccio v. the Estate of Peter Adalbert Castruccio*, 230 Md. App. 118, 128-29 (2016), *aff’d* 456 Md. 1 (2017) (addressing the validity of Dr. Castruccio’s will); *Castruccio v. Estate of Peter A. Castruccio*, No. 862, Sept. Term 2015 (filed Dec. 20, 2016) (addressing contempt sanctions against Ms. Castruccio and the award of attorneys’ fees to the Estate); *Estate of Castruccio v. Castruccio*, No. 623, Sept. Term 2015 (filed July 11, 2017) (addressing Ms. Castruccio’s attempt to remove John Greiber, Esq. from his role as personal representative of the Estate); *Castruccio v. Estate of Castruccio*, 239 Md. App. 345 (2018); and *Castruccio v. Barclay*, No. 1234, Sept. Term, 2017 (filed Dec. 17, 2018) (addressing whether Ms. Castruccio’s claim of negligent breach of notarial duty against Darlene Barclay in connection with the transfer of properties was barred by the statute of limitations, *res judicata*, and collateral estoppel).

FACTUAL AND PROCEDURAL BACKGROUND

Dr. Castruccio died on February 19, 2013. For much of his life, he worked at an office on Dicus Mill Road (the “Office”), which contained numerous records, papers, and other property, including a safe.²

Shortly after Dr. Castruccio’s death, Ms. Castruccio directed her employee, Danny Stinchcomb, to change the locks at the Office. She also asked him to transfer a safe, file cabinets, books regarding her real estate business, and other documents from the Office to her residence. Among the documents removed from the Office were 2011 and 2012 tax records, which Ms. Castruccio provided to her accountant.

On March 13, 2013, Robert Cawood, counsel for the Estate, sent Mr. Kenneth Frank, counsel for Ms. Castruccio, a letter stating that he “had been informed that records and documents [were] being taken . . . from the business and being destroyed.” Mr. Cawood advised that the “records and documents involve matters related to administration of the [E]state,” and they “cannot be removed or destroyed.” He asked Mr. Frank to “advise when a key [would] be made available to the business.”

On April 5, 2013, several months after Ms. Castruccio had moved materials from the Office to her home, John Greiber, Jr., the personal representative of the Estate, petitioned the orphans’ court to compel Ms. Castruccio to grant the Estate access to Dr.

² The Office is located in a building that Ms. Castruccio and Dr. Castruccio jointly owned until Dr. Castruccio’s death. Ms. Castruccio’s attorney described the Office as “cluttered,” saying it was “like a horror show,” and he had “never seen anything like it.”

Castruccio’s “Offices, Property, Records, and Papers.”³ On July 16, 2013, the orphans’ court granted the petition, and ordered (the “Access Order”), as follows:

B. That Sadie M. Castruccio or her attorney are DIRECTED to and SHALL within 72 hours of the entry of this Order, and within 72 hours of each subsequent request for access made by Mr. Greiber or his counsel, provide unfettered access to Dr. Castruccio’s Offices, Property, Records, and Papers (including the safe and other property or records removed from Dr. Castruccio’s offices on or after February 19, 2013) to Mr. Greiber and his counsel and any other individual, including, but not limited to, Darlene Barclay, whose assistance Mr. Greiber or his counsel seek in their efforts to take immediate possession and control of Dr. Castruccio’s property.

C. That Sadie M. Castruccio and her attorney may be present when Mr. Greiber and his counsel are provided access to Dr. Castruccio’s Offices, Property, Records, and Papers but their unavailability shall not be deemed just cause to (1) refuse to allow Mr. Greiber and his counsel access or (2) curtail Mr. Greiber’s attempts to perform his statutory duties and obligations.

D[(1)]. That Sadie M. Castruccio and her attorney are DIRECTED to and SHALL provide to Mr. Greiber within (5) days of the date of this Order: (1) all originals and any copies (including scans, pdf files, or other electronic copies) of all records, papers or other property removed from Mr. Castruccio’s offices on or after February 19, 2013, and (2) a written inventory of all records, papers, and other property which were contained in Mr. Castruccio’s offices on February 19, 2013 and later removed and/or destroyed.^[4]

D[(2)]. That Sadie M. Castruccio is DIRECTED and SHALL file with this Court, within five (5) days of her compliance with Paragraph D[(1)] of this Order, a certification of compliance which shall be verified under oath by Sadie M. Castruccio and her attorney[.]

³ In a letter dated June 27, 2013, counsel for Ms. Castruccio informed counsel for the Estate that she had transferred the safe to her residence.

⁴ The Access Order contains two paragraphs labeled D. For clarity, we will refer to the last two paragraphs as paragraph D(1) and D(2).

Ms. Castruccio did not comply with Paragraphs B and D(1) of the Access Order within the specified deadlines. She did, however, by agreement with the Estate, permit the Estate an opportunity to inspect the Office on July 29, 2013, 13 days after the Access Order was issued.

On July 26, 2013, three days before the inspection, Ms. Castruccio's nephew, George Scardina, in the presence of Ms. Castruccio, was able to open the safe at Ms. Castruccio's residence. According to an affidavit filed by Mr. Frank on March 19, 2013, the process was videotaped, and a review revealed the contents of the safe. With respect to property of Dr. Castruccio or the Estate, the safe contained: (1) two \$100,000 promissory notes payable to Dr. Castruccio by Mr. Greiber; and (2) the check register for Dr. Castruccio's Wells Fargo line on which Mr. Greiber's obligation under the promissory notes was recorded. Ms. Castruccio's position was that these items were taken back to the Office and scanned by the Estate on July 29, 2013.⁵

On July 29, 2013, counsel for the Estate and Mr. Greiber arrived at the Office to conduct an inspection. By prior agreement between the parties, the Estate was permitted to make copies of the documents and records in the Office, but it was not permitted to take originals. During the inspection, Ms. Castruccio's attorney prevented the Estate from looking at documents that belonged to Ms. Castruccio.

⁵ On December 12, 2013, Ms. Castruccio mailed the Estate the video recording of the opening of the safe. Ms. Castruccio stated in subsequent affidavits that all documents relating to Dr. Castruccio's property that were removed from the Office were returned to the Office and none were destroyed.

Following the July 29, 2013, inspection, the Estate made six additional requests to access the Office, on: (1) August 30, 2013; (2) November 15, 2013; (3) November 26, 2013; (4) May 19, 2014; (5) June 5, 2014; and (6) January 23, 2015. The Estate also made requests to access other properties owned by Dr. Castruccio on: (1) October 18, 2013; (2) November 26, 2013; and (3) February 12, 2015. The Estate did not gain access, but counsel for Ms. Castruccio stated that they offered to give access and the Estate refused.

On October 12, 2013, the Estate filed a Petition for Show Cause Order, requesting the orphans' court to issue an order to Ms. Castruccio and her counsel to show cause why they should not be held in constructive civil contempt for failing to comply with the Access Order. The petition asked the court to impose a \$15,000 "civil fine" against Ms. Castruccio and her attorney "for the reasonable fees and costs actually incurred by the Estate . . . to prosecute its contempt petition."⁶

On October 23, 2013, Ms. Castruccio filed a response, indicating that they had located additional documents in response to the Estate's requests and would produce the documents. She submitted, therefore, that no show cause order was necessary.

On November 12, 2013, Ms. Castruccio and her attorneys filed a Certificate of Compliance with the Register of Wills, Anne Arundel County, which stated, as follows:

Each of the undersigned hereby certifies that they have not destroyed any property of Peter Adalbert Castruccio located in his offices at Dicus Mill Road as of the date of his death, and to the best of their knowledge any such

⁶ The Petition for Show Cause Order asked that "all but \$10,000" of the \$15,000 civil fine be suspended "as a purge provision to ensure [Ms.] Castruccio and her counsel's future compliance" with the orphans' court's orders.

property removed temporarily for inspection and/or copying has been returned.

The document, which was signed by Ms. Castruccio, Mr. Frank, and Mr. Jarashow, does not appear to have been “verified under oath,” as required by Paragraph D(2) of the Access Order.

In a decision dated July 3, 2014, the orphans’ court found Ms. Castruccio in contempt of the Access Order, stating that the order “was not complied with in a timely manner.” Specifically, the court stated that it was concerned that Ms. Castruccio had not granted “additional unfettered or unrestricted access to Dr. Castruccio’s office, property and papers.” Accordingly, the orphans’ court ordered that Ms. Castruccio provide the Estate “unfettered access to Dr. Castruccio’s office, property and papers within 30 days” of the decision. The court also expressed concern that attorneys were not present when the safe was opened, and it ordered that Ms. Castruccio provide a “written inventory of all papers, property (including the contents of the safe) that were removed and/or returned from Dr. Castruccio’s office since February 18, 2013.”

On July 28, 2014, Ms. Castruccio appealed the order of the orphans’ court to the Circuit Court for Anne Arundel County.⁷ While the appeal was pending, Ms. Castruccio

⁷ A party may appeal an order of the orphans’ court to the circuit court pursuant to Maryland Code (2013 Repl. Vol.) § 12-502(a) of the Courts and Judicial Proceeding Article (“CJP”), which states, in pertinent part, as follows:

- (a) *In general; exception in Harford and Montgomery Counties—*
(1)(i) Instead of a direct appeal to the Court of Special Appeals pursuant to § 12-501 of this subtitle, a party may appeal to the circuit court for the county from a final judgment of the orphans’ court.
(ii) The appeal shall be heard de novo by the circuit court.

filed a motion for summary judgment, arguing that the “[o]rphans’ [c]ourt lacked jurisdiction to consider the Petition for Show Cause Order.” She included as an exhibit a new “certificate of compliance,” which stated:

Each of the undersigned hereby certifies under the penalties of perjury, that they have not destroyed any property of Peter Adalbert Castruccio located in his offices at Dicus Mill Road as of the date of his death, and to the best of their knowledge all such property is now, and has always been in the building in which his office was located, except to the extent any such records were temporarily provided to an outside service for scanning or copying, in which case copies were provided to the Estate and all such records were returned to the office immediately thereafter.^[8]

In March 2015, after Ms. Castruccio’s initial attorneys withdrew their appearance, Ms. Castruccio’s new attorney, Charles Bagley IV, arranged for another inspection on March 26, 2015. Counsel for the Estate, in argument and affidavit, stated that, during that inspection, the Estate discovered numerous documents and records that had been removed from the Office, and to which they had not been given access.⁹

(iii) The de novo appeal shall be treated as if it were a new proceeding and as if there had never been a prior hearing or judgment by the orphans’ court.

“[W]hen a case has been appealed from an orphans’ court to the circuit court, the Court of Special Appeals will review the judgment of the circuit court, and not that of the orphans’ court.” *Kaouris v. Kaouris*, 324 Md. 687, 714 (1991).

⁸ The certificate of compliance was signed by Ms. Castruccio and Mr. Frank. There is no indication that it was notarized or attested to under oath.

⁹ Counsel for the Estate listed certain file folders that were missing documents, including: (1) a file folder labeled “2012 tax information,” which did not contain any tax records; (2) empty file folders labeled 8229 Anglers Edge Trail and Unitrusts; (3) an empty box with markings suggesting that it was used to store original deed files; (4) and an empty US Postal Service crate containing notebooks related to several properties owned by the Castruccios, but not including notebooks related to two properties owned by the Estate.

On March 19, 2015, Ms. Castruccio submitted an inventory. It was signed by Ms. Castruccio and stated as follows:

This constitutes an inventory in accordance with Paragraph D(1) of that Order of the Orphans Court of Anne Arundel County dated July 16, 2013, of all property, records, papers and other property of Peter A. Castruccio which to the best of the knowledge of the undersigned were contained in his offices on February 19, 2013 and later removed and/or destroyed: NONE^[10]

On April 28, 2015, the Estate filed a motion for summary judgment on the issue of whether Ms. Castruccio was in constructive civil contempt of the orphans' court's Access Order. The Estate also sought attorneys' fees and costs on the grounds that the defense of the contempt proceeding was "in bad faith and without substantial justification."

The court held a hearing on the summary judgment motions on May 1, 2015. During the hearing, counsel for Ms. Castruccio argued that there was a "factual dispute of whether there was compliance" with the Access Order. He claimed that Ms. Castruccio, to the best of her knowledge, had provided the Estate all the requested documents. Furthermore, he asserted that the safe was the "personal property" of Ms. Castruccio, and the Estate had been given the contents of the safe. With regard to the Estate's additional requests for access, counsel explained that Ms. Castruccio's attorneys had offered to schedule a date, but the Estate "never g[a]ve a date to come back." Counsel argued that there was nothing

¹⁰ Ms. Castruccio's counsel stated at a subsequent hearing that he interpreted the phrase "removed and/or destroyed" in Paragraph D(1) of the Access Order as "removed and destroyed," not "removed or destroyed."

in the record to show that Ms. Castruccio “deliberately and willfully disobeyed” the Access Order.

On May 7, 2015, the circuit court denied Ms. Castruccio’s motion for summary judgment and granted the Estate’s motion for summary judgment. It found Ms. Castruccio, in constructive civil contempt for her “willful failure to comply with the Access Order,” and it ordered her to comply with the order in the future. The court further found that Ms. Castruccio’s defense of the contempt proceedings violated Maryland Rules 6-141 and 1-341 because it “was in bad faith and without substantial justification.” Accordingly, the court ordered Ms. Castruccio to pay reasonable attorneys’ fees and costs in the amount of \$228,523.26. It provided that the contempt finding could be purged by paying the full amount of the attorneys’ fees and costs by May 21, 2015.

Ms. Castruccio appealed, arguing that the circuit court erred by deciding disputes of material fact on summary judgment and by failing to make the requisite findings to uphold the contempt judgment. This Court, in an unreported opinion, *Castruccio v. Estate of Castruccio*, No. 0862, Sept. Term, 2015 (filed Dec. 20, 2016), vacated the contempt order because the circuit court failed to make the necessary findings under Maryland Rule 15-207. Specifically, we stated:

The motions hearing followed copious filings by both parties, and Sadie absolutely disputed that she had violated the Access Order. We can see from the hearing transcript and its written order that the court disagreed. But we can’t tell from either the transcript or the written order *which* alleged actions of Sadie’s amounted to a “willful failure . . . to comply with the Access Order,” which in turn prevents us from assessing whether the factual premises of the contempt finding were undisputed. The court didn’t take testimony at the hearing—it heard argument from counsel about what happened (or didn’t), what had been produced (or not) and when, and why,

arguments that included discussion of competing affidavits. We cannot say, therefore, that all of the facts were undisputed. And without some grounding in specific facts or actions, we can't determine whether Sadie's contempt arose from an undisputed flouting of the Access Order or the court's resolution of a disputed question, such as what assets were Sadie's (rather than Peter's) or when property was made available for inspection.

Slip op. at 14.

Additionally, we held that the purging provision imposed, i.e., the payment of the Estate's attorneys' fees within 20 days of the order, was invalid because it "circumvent[ed] the remedial purpose of a contempt sanction, and really function[ed] as a penalty for past behavior." *Id.* at 15. In remanding to the circuit court, we stated:

It may be possible on the existing record to decide whether undisputed acts on Sadie's part or other undisputed facts support a finding that she willfully violated the Access Order, and that the court could decide as much in an order that specified the undisputed facts on which the contempt finding was based. The court may, on the other hand, decide to take testimony on disputed points, or to assess credibility. The errors we identify lie in the absence of written findings and in the structure of the sanction, not in the decision to find Sadie in contempt.

Id. at 15–16.

On September 7, 2017, the circuit court held another hearing. No evidence or testimony was adduced at the hearing. Instead, counsel for the Estate and Ms. Castruccio made arguments regarding the contempt petition and the award of attorneys' fees.

Counsel for the Estate noted that the court had the record from 2015, and he asked the circuit court to "reaffirm its finding of contempt and bad faith" and "cure the procedural issues" that caused this Court to vacate the original contempt finding. Counsel listed three provisions of the Access Order that were violated: (1) provide unfettered access to Dr. Castruccio's offices and property within 72 hours of the Access Order and any subsequent

request for access; (2) provide by July 21, 2013, an inventory of all property in the office on the day Dr. Castruccio died that was later removed or destroyed; and (3) file by July 26, 2013, a certificate of compliance verified under oath.¹¹

Counsel for Ms. Castruccio made several arguments. Initially, he argued that summary judgment was not “an appropriate vehicle for a finding of constructive civil contempt,” and there should be an evidentiary hearing. He asserted that Ms. Castruccio had the right to tell the court, and have the court “judge from her credibility and from the other evidence whether or not she acted willfully and violated the court order.” Counsel stated that there were “material facts” related to the contempt finding that were in dispute, which could not be resolved on summary judgment. In that regard, he set forth multiple disputes of fact that were material to the contempt finding, including whether Ms. Castruccio: (1) provided “unfettered access” to Dr. Castruccio’s “offices, properties and papers,” during the July 29, 2013, inspection, including the contents of the safe;¹² (2)

¹¹ Counsel backed off the argument that Ms. Castruccio was in contempt for failing to give, within 72 hours of the order, unfettered access to the papers and things in Dr. Castruccio’s office. Although he initially discussed numerous documents subsequently seen at Ms. Castruccio’s home office, when counsel for Ms. Castruccio argued that many of the documents identified had been in the Office in July 2013, counsel for the Estate ultimately agreed that this was a dispute of fact. Counsel then pivoted to his argument that there was no dispute that Ms. Castruccio did not provide the inventory or certificate of compliance as required by the Access Order.

¹² Counsel for Ms. Castruccio stated that Ms. Castruccio did not give access within 72 hours of the Access Order because there was an agreement with counsel for the Estate to do it on July 29, 2013. Counsel stated that he disagreed with the assertion that Ms. Castruccio did not give unfettered access at that time, which was a question of fact.

cooperated with the Estate’s requests for additional access to the Office;¹³ and (3) filed a valid certificate that she complied with Paragraph D of the Access Order.

Counsel stated that he “knew of no document that [the Estate has] not had access to, that we have not given them, and he stated that the inventory provided that “there are no documents that were removed—that were not present in the offices when they visited.” Counsel asserted that there was nothing else, and there was “no way” that Ms. Castruccio could “do anything further.” He further argued that there was “no evidence of a willful violation,” and Ms. Castruccio was “not trying to violate a court order.”

Counsel for the Estate summarized his argument:

“[T]he basis of the summary judgment motion is the requirements were not met in a timely way and were not met to the letter of the order. And because we still don’t have the written inventory of what was removed, we still don’t know what we don’t know. And we don’t know what we don’t have. So that’s the basis for the summary judgment motion.

The circuit court ultimately made an oral finding that Ms. Castruccio was in constructive civil contempt of the Access Order. It found:

Well, the way I look at it is as follows. I’m going to find that she’s in constructive civil contempt. She’s failed to comply with paragraphs (b) and the two double (d) s of the [A]ccess [O]rder and so I’m going to allow her—she can—I’ll impose a fine of \$10,000. She can purge that contempt by providing access and all the records within 10 days and—to purge that contempt and also the attorney’s fees that—to get the—to keep going on with this case, I’m going to award those attorney’s fees of \$228,000.

¹³ Counsel stated that Ms. Castruccio offered access at additional times but the Estate refused until they got an inventory, even though counsel advised that everything was in the Office at the time.

On September 28, 2017, the court issued a written order, finding that there was no dispute of fact that Ms. Castruccio: (1) knowingly and willfully failed to comply with the July 16, 2013, Access Order, and; (2) had the ability to comply with the Access Order. Specifically, the court found that Ms. Castruccio: (1) did not return the unopened safe to Dr. Castruccio's offices and give unfettered access to the Estate, but instead, she opened the safe and removed its contents when counsel was not present; (2) did not give Mr. Greiber unfettered access to Dr. Castruccio's records and papers within 72 hours of subsequent requests for access; (3) willfully failed to provide by July 29, 2013, all records removed from the Office on or after February 19, 2013; (4) willfully failed to provide, by July 21, 2013, a written inventory of all property contained in Dr. Castruccio's offices that were removed and/or destroyed, stating that the unsigned inventory provided 607 days after the deadline did not comply with the Access Order; and (5) willfully failed to file a certificate of compliance with the Access Order verified under oath. The court found Ms. Castruccio to be in constructive civil contempt for her knowing and willful failure to comply with the Access Order.

As a penalty for the contempt, the court imposed a civil fine of \$10,000. It stated that the fine "shall be reduced to a money judgment" against Ms. Castruccio unless she purged the contempt under the following conditions: (1) within 10 days of the order, Ms. Castruccio and Mr. Frank file a written inventory, verified under oath, of "all records, papers and other property" that were contained in the Office on February 19, 2013, and later "removed and/or destroyed," and identify the location of items removed and, if destroyed, the date of destruction; (2) within 10 days of the order, Ms. Castruccio and Mr.

Frank provide Mr. Greiber “all originals and any copies (including scans, pdf files, or other electronic copies) of all records, papers or other property removed from Dr. Castruccio’s offices on or after February 19, 2013”; (3) within 10 days of the order, and within 72 hours of each subsequent request for access, Ms. Castruccio or Mr. Frank provide the Estate unfettered access to Dr. Castruccio’s “Offices, Property, Records, and Papers (including the safe and other property or records removed from Dr. Castruccio’s offices on or after February 19, 2013.”

The court then addressed the request for attorneys’ fees. It found that Ms. Castruccio’s defense against the contempt proceeding was “in bad faith and without substantial justification,” citing the willful failure to comply with the Access Order and its rejection of the argument that the inventory only applied to records “removed and destroyed” or “destroyed.” It awarded the Estate “\$228,523.26, for reasonable attorneys’ fees and costs” incurred to “successfully prosecute the contempt proceeding.” The court directed the clerk of the court to enter a money judgment in that amount in favor of the Estate’s attorneys.

This appeal followed.

STANDARD OF REVIEW

“We review a grant of summary judgment without deference, and construe the facts, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party.” *Calvo v. Montgomery Cty.*, 459 Md. 315, 323 (2018). We consider the “same information from the record and decide[] the same issues of law as the trial

court.” *Catler v. Arent Fox, LLP*, 212 Md. App. 685, 706 (2013) (quoting *Cooper v. Berkshire Life Ins. Co.*, 148 Md. App. 41, 56 (2002)), *cert. denied*, 435 Md. 502 (2013).

Summary judgment is only merited when, “viewing the motion and response in a light most favorable to the non-moving party, there are no genuinely disputed issues of material fact, and the moving party is entitled to judgment as a matter of law.” *Messing v. Bank of Am., N.A.*, 373 Md. 672 (2003). “A material fact is a fact the resolution of which will somehow affect the outcome of the case.” *Hogans v. Hogans Agency, Inc.*, 224 Md. App. 563, 569 (quoting *King v. Bankerd*, 303 Md. 98, 111 (1985)).

DISCUSSION

I.

Contempt Finding

Ms. Castruccio contends that the circuit court “erred in holding [her] in contempt.” She makes several contentions in this regard. Initially, she argues that it was “entirely inappropriate” to find her in constructive civil contempt on summary judgment because: (1) she did not have a “meaningful opportunity to challenge the [contempt] allegations”; and (2) there were genuine disputes of material fact. Moreover, she argues that the order is defective and improper because: (1) it was based on an *ex parte* submission of a proposed order by the Estate; (2) the order is “overreaching” and “replete with errors”; and (3) it “lacks an appropriate purge provision.”¹⁴

¹⁴ Ms. Castruccio also asserts that there is a “genuine dispute as to whether the Estate’s pursuit of contempt against [Ms. Castruccio] [was] in good faith.” This contention was not raised below, and therefore, it is not preserved for this Court’s review. *See* Maryland Rule 8-131(a).

The Estate contends that the circuit court did not err in finding Ms. Castruccio in constructive civil contempt on summary judgment because the September 7, 2017, hearing provided Ms. Castruccio a “meaningful opportunity to be heard.” It argues, moreover, that there was no “dispute of material fact” that Ms. Castruccio violated Paragraphs B, D(1), and D(2) of the Access Order, and therefore, the circuit court did not err in finding her in constructive civil contempt.

This Court recently explained the law of civil contempt, as follows:

Civil contempt proceedings are “intended to preserve and enforce the rights of private parties to a suit and to compel obedience” with court orders and decrees. *Dodson v. Dodson*, 380 Md. 438, 448, 845 A.2d 1194 (2004) (quoting *State v. Roll and Scholl*, 267 Md. 714, 728, 298 A.2d 867 (1973)). “Civil contempt ‘proceedings are generally remedial in nature and are intended to coerce future compliance.’” *Royal Inv. Group, LLC v. Wang*, 183 Md. App. 406, 447, 961 A.2d 665 (2008) (quoting *Roll*, 267 Md. at 728, 298 A.2d 867), *cert. granted*, 408 Md. 149, 968 A.2d 1064 (2009), *appeal dismissed*, 409 Md. 413, 975 A.2d 875 (2009). Regardless of the penalty imposed in a civil contempt action, it “must provide for purging.” *Dodson*, 380 Md. at 448, 845 A.2d 1194. A purge provision offers the party “the opportunity to exonerate him or herself, that is, ‘to rid him or herself of guilt and thus clear himself of the charge.’” *Jones v. State*, 351 Md. 264, 281, 718 A.2d 222 (1998) (quoting *Lynch v. Lynch*, 342 Md. 509, 520, 677 A.2d 584 (1996)).

State v. Crawford, 239 Md. App. 84, 110 (2018).

“In constructive contempt proceedings, the accused contemnor must have ‘an opportunity to challenge the alleged contempt and show cause why a finding of contempt should not be entered.’” *Id.* at 109–10 (quoting *Fisher v. McCrary Crescent City, LLC*, 186 Md. App. 86, 119 (2009)). Moreover, “‘one may not be held in contempt of a court order unless the failure to comply with the court order was or is willful.’” *Royal*, 183 Md.

App. at 447–48 (quoting *Dodson*, 380 Md. at 452)). “A negligent failure to comply with a court order is simply not contemptuous in a legal sense.” *Dodson*, 380 Md. at 452.

Here, there is no dispute that Ms. Castruccio failed to timely comply with the terms of the Access Order. Specifically, as the circuit court found, she did not comply with the following requirements: (1) “within 72 hours of the entry of the [Access Order],” provide “unfettered access to Dr. Castruccio’s Offices, Property, Records, and Papers (including the safe and other property or records removed from Dr. Castruccio’s offices on or after February 19, 2013)”; (2) “within 72 hours” of subsequent requests for access, permit the Estate to access the Office; (3) “within five days” of the Access Order, provide an inventory of “all records, papers, and other property which were contained in Mr. Castruccio’s offices on February 19, 2013 and later removed and/or destroyed”; (4) “within five days” of the Access Order, provide the Estate all “originals and any copies . . . of all records, papers or other property removed from Mr. Castruccio’s offices on or after February 19, 2013”; and (5) within five “days of her compliance with Paragraph D [of the Access Order], file a “certification of compliance” that was verified under oath by Ms. Castruccio and her attorney.

As we explained in *Crawford*, 239 Md. App. at 119 n.28, however, a violation of an order, by itself, is not sufficient to determine whether a contempt finding was justified. To determine whether such a violation constituted constructive civil contempt, the court must address whether Ms. Castruccio willfully violated the order, as well as whether subsequent compliance precludes a finding of contempt.

A party cannot “be held in contempt of a court order unless the failure to comply with the court order was or is willful.” *Bahena v. Foster*, 164 Md. App. 275, 285 (2005) (quoting *Dodson*, 380 Md. at 452). Willfulness, in this context, is “action that is [v]oluntary and intentional, but not necessarily malicious.” *Royal*, 183 Md. App. at 451 (quoting *Black’s Law Dictionary* 1630 (8th ed. 2004)). *Accord Wells v. Polland*, 120 Md. App. 699, 719 (1998) (“Willful misconduct is performed with the actor’s actual knowledge or with what the law deems the equivalent to actual knowledge of the peril to be apprehended, coupled with a conscious failure to avert injury.”)

The circuit court did find that Ms. Castruccio willfully violated the order. It did so, however, in the context of summary judgment. Although a contempt finding in the context of summary judgment may be appropriate in certain circumstances, *see, e.g., United States v. City of Jackson, Miss.*, 318 F.Supp.2d 395, 408 (S.D.Miss. 2002) (summary judgment appropriate in civil contempt proceeding where alleged contemnor conceded that there was no dispute of material facts), *aff’d*, 359 F.3d 727 (5th Cir. 2004), this is not such a case.

Ms. Castruccio claims that “all documents covered by the Access Order were present in the [O]ffice on July 29, 2013, and none were willfully or knowingly removed or destroyed.” Additionally, she asserts that she “repeatedly offered access to the Estate,” but the Estate “declined to return to the [Office] unless and until [she] provided an inventory and certificate of compliance satisfactory to the Estate.” And Ms. Castruccio claims that the Certificate of Compliance she filed on November 12, 2013, was accurate and complied with the Access Order. Counsel for Ms. Castruccio argued that there was no willful violation of a court order.

Determining whether a party willfully violated a court order is a “factual issue that is uniquely within the province of the finder-of-fact who will be able to view the witnesses and assess their credibility.” *Konvalinka v. Chattanooga-Hamilton Cty. Hosp. Auth.*, 249 S.W.3d 346, 357 (Tn. 2008). *Accord O’Brien v. O’Brien*, 161 A.3d 1236, 1250–51 (Conn. 2017) (“Whether a party’s violation [of a court order] was wilful depends on the circumstances of the particular case and, ultimately, is a factual question committed to the sound discretion of the trial court.”). *See also Usina Costa Pinto, S.A. v. Sanco Sav. Co. Ltd.*, 571 N.Y.S.2d 264, 488 (N.Y. App. Div. 1991) (vacating order finding defendant in contempt where there were “factual disputes regarding the alleged contemnor’s willfulness in disobeying the prior order”). Accordingly, the case presented factual issues that needed to be resolved, and the finding of contempt based on summary judgment was improper. Therefore, we will remand for an evidentiary hearing to allow the parties an opportunity to adduce evidence and testimony regarding whether there was a willful violation of the Access Order.¹⁵

¹⁵ On remand, the circuit court should consider the conflicting testimony regarding what documents were made available at the July 29, 2013, inspection. It should consider this testimony, as well as any testimony in support of the statement of counsel for Ms. Castruccio at the hearing that all possible responsive documents had been provided to the Estate and there was “no way” Ms. Castruccio could “do anything further,” in conjunction with this Court’s recent decision in *Crawford*, where we stated that a “party generally may not be held in constructive civil contempt for delayed compliance with a court order if he or she has complied with the order prior to the contempt finding.” *State v. Crawford*, 239 Md. App. 84, 125 (2018). Additionally, the court should consider and make factual findings on whether Ms. Castruccio has the present ability to comply with these portions of the Access Order. *See Dodson v. Dodson*, 380 Md. 438, 450 (2004) (“[N]ormally in a constructive civil contempt action there cannot even be a finding or adjudication that the defendant is in contempt unless the defendant has the *present* ability to comply with the earlier court order or with the purging provision.”).

II.

Award of Attorneys' Fees

Ms. Castruccio contends that the court's award of \$228, 523.26 in attorneys' fees to the Estate was improper. We agree.

In awarding the attorneys' fees, the circuit court found that Ms. Castruccio's "defense of [the] contempt proceeding" was in "bad faith and without substantial justification," in violation of Rules 6-141 and Rule 1-341. Because we conclude that the circuit court erred in finding Ms. Castruccio in contempt, the judgment regarding the award of fees also must be vacated and remanded.

If the court determines, on remand, that an award of attorneys' fees is warranted, it must make findings regarding the reasonableness of the award. *See* Rule 6-141 (The court may award "reasonable attorney's fees" when a party litigates a proceeding "in bad faith or without substantial justification."); *Beery v. Md. Med. Lab, Inc.*, 89 Md. App. 81 (1991) ("A party seeking 'sanctions' under Rule 1-341, *i.e.*, reimbursement of reasonable expenses including reasonable attorney's fees . . . must not only establish the bad faith or lack of justification but also the expenses actually incurred as a result thereof."), *cert. denied*, 325 Md. 329 (1992).

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
REVERSED. CASE REMANDED FOR
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
APPELLEE.**