Circuit Court for Montgomery County
Case No. 40283FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1840

September Term, 2023

LINDA WONG SMITH

v.

MICHAEL ROBERT SMITH

Nazarian,
Friedman,
Zic,

JJ.

Opinion by Nazarian, J.

Filed: July 2, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B)

Linda Wong Smith and Michael Robert Smith divorced in 2005. On October 3, 2022, they reached a settlement agreement after Ms. Smith filed a complaint against Mr. Smith for unpaid child support and education expenses. They agreed that Mr. Smith would pay his outstanding child support obligation that day, transfer custody of their children's educational savings accounts (the "RESP accounts") to Ms. Smith, and transfer a lump sum of 39,400.00 Canadian dollars (CAD) to her bank account. Also, they agreed to submit to a final audit of Mr. Smith's child support account by the Montgomery County Office of Child Support Enforcement ("OCSE"), and he agreed to pay any arrearage duly owed. The Circuit Court for Montgomery County incorporated the agreement into an order entered on December 5, 2022.

On March 28, 2023, Ms. Smith filed a petition for contempt and enforcement of the agreement and Mr. Smith filed a countermotion for the same. The circuit court ruled that neither party was in contempt, that Ms. Smith had to pay a portion of Mr. Smith's attorneys' fees, and that Mr. Smith's payment of $873.63 would extinguish the outstanding money owed between them. The court ordered the parties to cooperate in transferring the RESP accounts within thirty days and concluded that Mr. Smith had satisfied his child support obligation on October 3, 2022. Ms. Smith appeals the circuit court's order. We affirm the court's judgment in part, vacate it in part, and remand the case for further proceedings consistent with this opinion.

I. BACKGROUND

The parties were married on November 21, 1992 and divorced on March 21, 2005.

They had two children during the marriage, a son and a daughter. Their judgment of absolute divorce incorporated their settlement agreement of February 16, 2005, which had addressed the parties' financial obligations for their (then) minor children's college expenses:

> The parties have currently in existence two educational plans for the children. The parties agree that the combined value of the two educational plans is approximately $20,000. The parties have agreed to commit to pay a portion of each child's college expenses to include tuition, room and board. Mr. Smith's portion shall be 60 percent of tuition, room and board. Mrs. Smith's portion shall be 40 percent of tuition, room and board. And the parties have agreed to a cap on their commitment not to exceed the tuition, room and board for an in-state student at the University of Maryland at College Park. Parties agree that of the two existing educational accounts for the children, that each will get credit for $10,000 to use towards the aforesaid contribution and commitment to the children's college expenses.

On November 22, 2005, the court ordered Mr. Smith to pay $958.00 in monthly child support.

In or around 2011, Ms. Smith left the country with their children to live in the United Arab Emirates. Mr. Smith would testify later that he didn't know where the children went to school and kept paying child support for his daughter (their youngest) past her eighteenth birthday, until February 2014. He testified to contacting the OCSE about his child support obligation at that time and his belief that the OCSE had sent a letter to Ms. Smith about his call. He testified that he didn't hear anything about child support again until September 13,

2021, when Ms. Smith filed a complaint seeking a judgment for child support arrears.[1]

In her complaint, Ms. Smith asserted that Mr. Smith was not in compliance with his child support obligation for their daughter, had accumulated at least $7,500.00 in arrears, and had not contributed his share of the children's college tuition and room and board expenses. The matter came before the circuit court on October 3, 2022 (the "settlement hearing"), and the parties reached a settlement agreement and proffered its terms on the record before the court. Mr. Smith agreed to transfer custody of the RESP accounts to Ms. Smith within forty-five days of the hearing. The Royal Bank of Canada ("RBC") held and administered the accounts.[2] Additionally, Mr. Smith agreed to transfer the equivalent of 39,400.00 CAD to Ms. Smith's designated RBC account within thirty days.

During the litigation, Mr. Smith learned that his daughter had graduated from high school on June 1, 2014. As a result, when the parties were in court, he gave Ms. Smith a check for $2,874.00, which represented the amount he believed to be the final amount owed for child support—his payments for March, April and May 2014—based on OCSE records and his daughter's graduation. Finally, the parties agreed that OCSE would audit Mr. Smith's account to confirm the amount of child support paid and owed, notwithstanding his in-court payment that day.

After their court appearance, the parties couldn't commit their settlement terms to a

[1] At some point, Ms. Smith had moved back to the United States, and she identified Montgomery County as her residence in the complaint.

[2] Even though they live in the United States, the parties and the children are Canadian citizens.

written consent order. The court incorporated (but did not merge) their terms, as set forth in the transcript of the settlement hearing, into an order dated November 23, 2022 and entered by the court on December 5, 2022. The parties' inability to memorialize the agreement would foreshadow the conflict to follow.

A. Transfer of 39,400.00 CAD

The day after the settlement hearing, Ms. Smith, through counsel, gave Mr. Smith her RBC account number, transit number, and institution number so that he could transfer 39,400.00 CAD[3] to her designated RBC account. On October 31, 2022, Mr. Smith initiated an international transfer for that amount from his PNC account to Ms. Smith's RBC account. The RBC transfer form listed Ms. Smith's address as "5500 Friendship Blvd Apt N822, Chevy Chase, MD 20815, Canada - CA." The transfer form also had a designated field for her bank account number, which Mr. Smith provided, but not for the institution or transit numbers.

On November 10, 2022, Mr. Smith received a wire transfer of 28,404.99 USD back into his PNC account—1,466.12 USD less than what he had transferred.[4] He found out that the bank had listed Ms. Smith's country as "Canada" instead of the "United States" incorrectly, which impeded the transfer of funds to her account. Mr. Smith tried to send a

[3] 39,400.00 CAD is the equivalent of 29,871.11 U.S. dollars ("USD") at the then-prevailing exchange rate of 1.3190.

[4] Later, at a contempt hearing on October 5, 2023 (the "contempt hearing"), Mr. Smith surmised that the decrease was due largely to the changing exchange rate between CAD and USD.

second wire transfer on December 6, 2022 for 39,400.00 CAD.[5] This time he made sure the country listed on the transfer form was "United States of America - US" but otherwise supplied the same address for Ms. Smith.

On December 16, 2022, Ms. Smith left Mr. Smith a voicemail saying that the address on the transfer form had to match the address as it appeared on her RBC account exactly, and that he couldn't use the abbreviation "APT" for her apartment. On December 21, Ms. Smith's attorney at the time, David Coaxum, emailed Mr. Smith's attorney, Spencer Hecht, reiterating the information in her voicemail and shared, for the first time, a voided check displaying Ms. Smith's address as it appeared on her RBC account.[6] That day, the second international transfer bounced back to Mr. Smith's account, this time in the amount of 27,904.04 USD, 2,062.49 USD less than what he had sent.

On January 5, 2023, Mr. Smith attempted a third international wire transfer, this time sending 27,904.04 USD directly. At the contempt hearing, he testified that he sent the money in USD to avoid dealing with the fluctuating exchange rate and "because [he didn't] want to keep buying the Canadian money because they [kept] changing the address." He resolved to "send U.S. money this time, because [he didn't] want to keep getting caught up in [the] buying and selling [of currency]." To match the voided check, he corrected Ms. Smith's address on the transfer form by removing "APT."

[5] This amount was equivalent to 29,966.53 USD at the exchange rate of 1.3148.

[6] At the contempt hearing, Mr. Smith testified that the voided check was dated December 16, 2022 and had not been provided on October 4, 2022 for his first transfer attempt.

By January 10, 2023, the transfer had still not gone through. Mr. Coaxum proposed transferring the funds through the attorneys' trust accounts. On January 17, the third transfer bounced back to Mr. Smith's account in the amount of 27,879.04 USD due to a $25.00 bank fee. Mr. Smith testified that he never received any explanation for the return, saying that "the wires were not rejected. They were sent to RBC. RBC received them, held on [to them] for 10 to 15 days. And then, wired money back in a separate transaction with no explanation."

Rather than risk a fourth failed transfer, Mr. Smith instructed his counsel, Mr. Hecht, to send Ms. Smith's attorney, Mr. Coaxum, a check for 27,904.04 USD.[7] Mr. Hecht did so on March 21, 2023. According to Mr. Smith's countermotion for contempt, in April 2023, Mr. Coaxum indicated that the check payment didn't satisfy the parties' agreement of 39,400.00 CAD fully and that he was no longer representing Ms. Smith. Mr. Coaxum returned the check on or around May 2, 2023. Also around this time, Mr. Hecht learned that Ms. Smith had filed a *pro se* petition for contempt. Several months later, Ms. Smith's new attorney, Daniel Kennedy, III, demanded the immediate wire transfer of 39,400.00 CAD, sent another copy of a voided check for Ms. Smith's RBC account, and indicated that Mr. Smith would have to use "the swift code, ROYCCAT2" to effectuate the wire transfer.

[7] At the contempt hearing, Mr. Smith explained that he wrote the check for the amount he received back from the second failed transfer based on the exchange rate that day.

B. Transferring Custody of the RESP Accounts

After the settlement hearing, Mr. Smith contacted the RBC for instructions on how he should transfer custody of the RESP accounts to Ms. Smith. Mr. Hecht emailed Mr. Coaxum on January 3, 2023, relaying the steps Ms. Smith would have to follow to facilitate the transfer. He attached a joint "letter of direction" signed by Mr. Smith (one of the procedural steps), featuring a line for Ms. Smith's signature. Mr. Coaxum replied to the email, misstating that the agreement "was only a transfer from one RBC account to another," and suggesting that Mr. Smith "cash out" the RESP accounts and deposit the funds into Ms. Smith's account directly.

In a reply letter dated March 21, 2023, which enclosed Mr. Smith's check for 27,904.04 USD, Mr. Hecht explained that the funds couldn't be cashed out and deposited into Ms. Smith's account because the RESP accounts were custodial and that the parties had agreed that Ms. Smith would become the "custodian of the accounts[]." He reminded Mr. Coaxum of the paperwork he had sent to transfer custody of the accounts, referring specifically to the letter of direction. According to Mr. Smith's later countermotion for contempt, in April 2023, Mr. Coaxum said that he had not received the letter of direction.

At the contempt hearing, Ms. Smith testified that she saw Mr. Hecht's January 3, 2023 email and the letter of direction sometime before May 2023. She said that she went to an RBC branch in Burlington, Ontario around that time and received instructions to open two accounts under the children's names. On August 24, 2023, Mr. Kennedy sent Mr. Hecht a letter of direction to transfer the RESP accounts, this time signed by Ms. Smith

with a blank signature line for Mr. Smith. This letter was similar substantially to the letter Mr. Hecht had sent to Mr. Coaxum on January 3, 2023—the main difference being that Ms. Smith's version used the words "in-kind" to describe the transfer.

C. The Audit of Mr. Smith's Child Support Account

After the settlement hearing, Ms. Smith had at least six meetings with OCSE while the audit was pending to find out the amount of Mr. Smith's child support arrears, and each time OCSE reported a different amount. On March 28, 2023, OCSE gave her a document stating that Mr. Smith owed $8,622.00 in arrears. When she went to OSCE on June 20, 2023, OSCE staff said that the final audit had been completed and that Mr. Smith owed $3,832.00, an amount that didn't count his previous check payment of $2,874.00. At the contempt hearing, Ms. Smith testified that she asked Mr. Kennedy to visit OCSE and confirm that $3,832.00 was the correct amount. Mr. Kennedy did so, and OSCE confirmed the amount on August 21, 2023. After counting Mr. Smith's support payment for March, April, and May 2014, OSCE had reported an arrearage of $958.00 due for the month of June 2014, even though the parties' daughter had graduated from high school on June 1, 2014.

D. The Parties' Contempt Filings

On March 28, 2023, the same day OCSE reported that Mr. Smith owed $8,622.00 in child support, Ms. Smith filed a *pro se* petition for contempt alleging that he had "made no effort to pay," and requesting his incarceration. On April 27, 2023, Mr. Smith filed a countermotion for contempt and enforcement for Ms. Smith's refusal to accept his lump-sum check payment and to execute the letter of direction that his attorney had sent

on January 3, 2023. Mr. Smith asked the court to award him the attorneys' fees he incurred from trying to comply with the settlement agreement and from defending against "any meritless suit" brought by Ms. Smith. On September 1, 2023, Ms. Smith filed an amended petition for contempt, entry of judgment, and enforcement of the settlement agreement, including the attorney-fee provision, and retracted her request for incarceration.

The court held the contempt hearing on October 5, 2023, followed by a hearing on October 11, 2023 to announce its ruling. The court decided against holding either party in contempt. It found that Mr. Smith initiated the first attempted wire transfer of 39,400.00 CAD within the agreed timeframe and credited his testimony about the failed wire transfer attempts. Further, it found that Mr. Smith had acted based on the information he had received from the bank and determined that the bank, not him, was at fault for the failed transfers.

The circuit court found also that Mr. Smith had tried to transfer the RESP accounts to Ms. Smith and had sent her a letter of direction no later than January 3, 2023. The court didn't find willful contempt under those circumstances, even if Mr. Smith had sent the letter of direction slightly outside of the forty-five-day timeframe. Again, the court found the bank at fault for not giving specific instructions for transferring the RESP accounts successfully, including the need to state "in-kind" in the letter of direction.

On the issue of child support, the circuit court determined that the parties' settlement agreement was for OCSE to audit Mr. Smith's account "with respect to all the years up until and through March, April, and May of 2014." The court reasoned that both parties

knew at the settlement hearing that their daughter had graduated on June 1, 2014 and, thus, recognized that the audit would cover the "final months of March, April, and May and potentially [any months] . . . that slipped through the cracks before that." The court found that "the parties were submitting to the calculations of [OSCE], but they weren't submitting to [its] determination of [the] months" duly owed. Because the parties had agreed that Mr. Smith's support obligation didn't extend past May 2014, the court concluded that he didn't owe any arrears.

The circuit court found that the parties' agreement to work out any child support owed, rather than seek enforcement, placed the issue outside of the attorneys' fees provision of the settlement agreement. As a result, it denied Ms. Smith's request for attorneys' fees to enforce the bank transfers because "there was nothing to enforce." The court restated its findings that the bank had been at fault for the untimeliness of both bank transactions and that Mr. Smith had made every effort to get them done. The circuit court found that Ms. Smith had acted in bad faith when she filed the March 28, 2023 contempt petition, alleging that Mr. Smith had made no effort to pay and asking that he be incarcerated. The court recognized that Mr. Kennedy had filed an amended petition that retracted the incarceration request and, other than its assertion that child support was due for June 2014, found it "reasonable" and "on par" with Mr. Smith's countermotion.

The circuit court awarded Mr. Smith 100% of the attorneys' fees he incurred from March 28, 2023 until September 1, 2023, the date of Ms. Smith's amended petition. The court awarded Mr. Smith 50% of the fees he incurred from September 1 until October 11,

2023, the day of its ruling.[8] The court found Mr. Hecht's fees of $400 an hour "very reasonable" and commensurate with similarly experienced attorneys in Montgomery County. Relying on an invoice from Mr. Hecht, the court assessed $28,061.65 in attorneys' fees.

Next, the circuit court addressed the outstanding bank transfers. The court found that Mr. Smith still owed Ms. Smith a lump sum of 39,400.00 CAD, which it converted to 29,966.53 USD.[9] The court ordered the parties to split the "bank fee" from one of the failed wire transactions, amounting to a cost of 1,031.25 USD each, and deducted that cost from the lump sum payment, leaving 28,935.28 USD. Then the court deducted Ms. Smith's attorney fee obligation from that amount, concluding that both debts would be extinguished by Mr. Smith making a final payment of $873.63 to Ms. Smith. The court ordered Mr. Smith to make the final payment within thirty days. The court also ordered Mr. Smith to sign whatever form Ms. Smith deemed necessary to transfer the RESP accounts. The court gave Ms. Smith fifteen days to send those documents and gave Mr. Smith fifteen days to sign and return them. On November 20, 2023, Ms. Smith appealed the court's ruling.

[8] The court awarded 100% of Mr. Smith's attorneys' fees through September 1, 2023 because Ms. Smith had filed the amended complaint in the afternoon, "and so fees were spent through that day . . . ." Although the court stated that Ms. Smith owed 50% of fees incurred from September 1, 2023 through October 11, 2023, we interpret the court to have meant September 2, 2023, based on its stated reasoning.

[9] 29,966.53 was the larger USD amount of the two attempted transfers that involved a conversion from CAD.

II. DISCUSSION

Ms. Smith raises five questions[10] on appeal which we rephrase and condense as follows: *first*, whether the circuit court erred in its interpretation of the parties' settlement agreement as to Mr. Smith's child support and attorneys' fees obligations; *second*, whether the court erred in finding that Ms. Smith initiated contempt proceedings in bad faith; and *third*, whether the circuit court abused its discretion by awarding Mr. Smith attorneys' fees of 28,061.65 USD. We hold that the circuit court interpreted the parties' settlement agreement correctly and found that Ms. Smith had acted in bad faith properly, but abused its discretion in the amount of attorneys' fees it awarded.

[10] Ms. Smith phrased her Questions Presented as follows:

1. Did the trial court commit reversible error in failing to grant the Appellant a judgment for the unpaid child support established by the audit of the Montgomery County Office of Child Support Enforcement?
2 Did the trial court commit reversible error in failing to grant Appellant a judgment of $29,966.53, without setoffs or reduction, for the funds Appellee had failed to transfer to her in accordance with the Agreement of October 3, 2022?
3. Did the trial court commit reversible error in failing to grant Appellant a judgment for the RESP college trust funds Appellee failed to transfer to the Appellant?
4. Did the trial court commit reversible error in determining Appellant litigated the numerous breaches of Appellee regarding the Agreement of October 3, 2022 in bad faith and sanctioning her by awarding Appellee attorney's fees and costs of $28,061.65?
5. Did the trial court commit reversible error in failing to award Appellant attorney's fees for Appellee's breach of the Agreement of October 3, 2022?

Mr. Smith presented identical questions on appeal.

Under Maryland law, "'[s]ettlement agreements are enforceable as independent contracts, subject to the same general rules of construction that apply to other contracts.'" *Pattison v. Pattison*, 262 Md. App. 504, 523 (2024) (*quoting 4900 Park Heights Ave. LLC v. Cromwell Retail 1, LLC*, 246 Md. App. 1, 18 (2020), *cert. granted*, 489 Md. 243 (2024)). Accordingly, interpretation of a settlement agreement "'including the determination of whether [its] language . . . is ambiguous, is a question of law, subject to *de novo* review by an appellate court.'" *4900 Park Heights*, 246 Md. App. at 19, (*quoting Erie Ins. Exch. v. Estate of Reeside*, 200 Md. App. 453, 461 (2011)). Before awarding attorneys' fees for bad faith conduct, a court must "make two separate findings" that we consider under "different, but related, standards of review." *Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459 Md. 1, 20 (2018). *First*, we review a circuit court's bad faith finding for clear error. *Christian*, 459 Md. at 21. *Then*, we assess whether the court abused its discretion in finding that the bad faith conduct warranted an assessment of attorneys' fees. *Id.* at 21 (*citing Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267–68 (1991)).

A. The Court's Conclusion That Mr. Smith Did Not Owe Child Support Was Correct Because A Reasonable Person Would Have Understood That The Reason For The OCSE Audit Was To Confirm Whether Any Arrears Due On Or Before May 2014 Were Outstanding.

First, Ms. Smith suggests that the circuit court overstepped by interpreting the settlement agreement to decide Mr. Smith's support obligations because the parties had agreed unambiguously to defer to OCSE's audit and determination. Mr. Smith counters that the court didn't err when it found that the parties had agreed to submit to OCSE's

calculations but not its policy determination of the months that his support obligation remained in effect.

Maryland courts apply the objective theory of contract interpretation. *Tapestry, Inc. v. Factory Mut. Ins. Co*., 482 Md. 223, 239 (2022) (*citing Plank v. Cherneski*, 469 Md. 548, 617 (2020)). Under that approach, our "primary goal . . . is to ascertain the intent of the parties in entering the agreement and to interpret 'the contract in a manner consistent with [that] intent.'" *Credible Behav. Health, Inc. v. Johnson*, 466 Md. 380, 393 (2019) (*quoting Ocean Petroleum, Co. v. Yanek*, 416 Md. 74, 88 (2010)). We place ourselves '"in the same situation as the parties who made the contract, so as to view the circumstances as they viewed them and to judge the meaning of the words and the correct application of the language to the things described."' *Seigneur v. Nat'l Fitness Inst., Inc.*, 132 Md. App. 271, 278 (2000) (*quoting Canaras v. Lift Truck Services*, 272 Md. 337, 352 (1974)). We look at the plain language of the disputed provision '"in context, which includes not only the text of the entire contract but also the contract's character, purpose, and the facts and circumstances of the parties at the time of execution."' *Credible*, 466 Md. at 394 (cleaned up) (*quoting Ocean Petroleum,* 416 Md. at 88). And we interpret that language consistent with its ordinary and accepted meaning. *Ocean Petroleum*, 416 Md. at 86 (*citing Fister v. Allstate Life Ins. Co.*, 366 Md. 201, 210 (2001)).

When the contractual language in dispute is clear, our intent inquiry considers "what a reasonable person in the position of the parties would have understood the language to mean and not the subjective intent of the parties at the time of formation." *Tapestry*, 482

Md. at 239 (cleaned up) (*quoting Credible*, 466 Md. at 393). When '"a written contract is susceptible of a clear, unambiguous and definite understanding . . . its construction is for the court to determine.'" *Sy-Lene of Wash., Inc. v. Starwood Urban Retail II, LLC*, 376 Md. 157, 167 (2003) (*quoting Langston v. Langston*, 366 Md. 490, 507 (2001), *abrogated on other grounds by Bienkowski v. Brooks*, 386 Md. 516 (2005)).

1. The settlement agreement did not obligate Mr. Smith to pay child support for June 2014.

On November 22, 2005, the circuit court ordered Mr. Smith to pay $958.00 a month in child support for the parties' children. Their son and daughter turned eighteen, respectively, in March 2012 and November 2013.[11] Mr. Smith kept paying $958.00 monthly for their daughter after she turned eighteen, through February 2014. At the contempt hearing, he testified that after speaking with OCSE, he made a final child support payment in February 2014 and didn't hear anything else about child support or his children until Ms. Smith filed her complaint for arrears, more than seven years later.

During that litigation, Mr. Smith said he learned for the first time that his daughter

[11] An individual who turns eighteen and is enrolled in secondary school has the right to receive support and maintenance from both of their parents until one of the following events occurs:

(1) the individual dies;

(2) the individual marries;

(3) the individual is emancipated;

(4) the individual graduates from or is no longer enrolled in secondary school; or

(5) the individual attains the age of 19 years.

See Md. Code (2014, 2019 Repl. Vol.), § 1-401(b) of the General Provisions Article.

had graduated from high school on June 1, 2014. At the settlement hearing, he gave Ms. Smith a check for $2,874.00, covering his child support payments for March, April, and May 2014. The parties agreed to submit to an OCSE audit of Mr. Smith's child support account to "confirm the total amount of arrears owed" because Ms. Smith believed that additional arrears existed. OCSE completed the final audit on August 21, 2023 and reported that Mr. Smith owed $3,832.00 in child support. OCSE hadn't credited his payment of $2,874.00. Once deducted, the remaining balance, $958.00, represented one child support payment for June 2014, which the OSCE system considered due.[12]

We review the sections of the settlement hearing transcript regarding the parties' child support agreement:

> [MR. HECHT]: So, during the lunch hour we were able to reach a resolution. That resolution is as follows. . . .
>
> My client has paid today what he believes or what we believe I should say is the final amount of the child support. The amount is, I don't know the exact amount, but it represents March, April, and May of 2014. [The daughter] graduated in —
>
> [THE COURT]: March, April, and May?
>
> [MR. HECHT]: Yes. [The daughter] graduated on June 1st of 2014 and that is quite frankly based on OCS[E] printouts. The plaintiff believes that one or more months is still owed and so, I think there is a request. I think it will reveal the same thing as what we have already seen, but there is a request . . . for there to be a referral to OCS[E] for an audit to be performed. What we are really just talking about [are] those particular months,

[12] Mr. Hecht proffered that the OCSE system assesses a full monthly payment for any month in which a child is registered in their system automatically, even if they're only in it for one day of the month. Because the parties' daughter graduated from high school on June 1, 2014, the OCSE software assessed a payment obligation for the month of June.

> but I know that the audit generally covers the entire gambit of child support history.
>
> * * *
>
> [MR. COAXUM]: [W]e would request . . . that the [OCSE] . . . do an audit to confirm the amount of child support owed. [Mr. Hecht] and I disagree on the extent to which there are any arrears if any [sic]. I acknowledge that counsel did provide to me check number 204 for Mr. Smith representing child support payments . . . for . . . March, April, and May of 2014. The check is . . . in the amount of [$]2,874, but we would ask that [OSCE] do their audit just to confirm the total amounts of support paid. As [Mr. Hecht] indicated we do disagree on what arrears exist if any. We will submit to their calculation.
>
> * * *
>
> [THE COURT]: So, [OCSE] will conduct an audit to confirm the total amount of arrears owed —
>
> [MR. HECHT]: Yes.
>
> [THE COURT]: — and . . . the defendant [will] be given credit for the amount of the check.
>
> * * *
>
> [THE COURT]: So, I just want to go through what . . . my understanding is of the agreement and then we will voir dire the parties. . . .
>
> The defendant has given a check in the amount of $2,874 representing what he believes is the final child support owed from March, April, and May of 2014 as the child graduated in June of 2014 and this is based on [OSCE] printouts.
>
> The parties agree that [OSCE] will conduct an audit to confirm [the] total amount of arrears owed and that the defendant [will] be given credit for the amount of the check.

Under Ms. Smith's interpretation, the parties agreed to submit to an OCSE audit covering an unrestricted period. Therefore, she argues, the settlement agreement requires Mr. Smith to pay her $958.00 in child support for June 2014. Mr. Smith maintains that both parties understood and agreed that his child support obligation ended when their daughter

graduated from high school, and, therefore, that the audit wouldn't extend past May 2014.

We agree with Ms. Smith that this term of the settlement agreement is unambiguous and interpret it '"based on what a reasonable person in the position of the parties would have understood the language to mean"' when they formed the settlement agreement rather than the parties' subjective intent. *Tapestry*, 482 Md. at 239 (*quoting Credible*, 466 Md. at 393). And we '"strive to interpret [it] in accordance with common sense."' *Credible*, 466 Md. at 397 (*quoting Brethren Mut. Ins. Co. v. Buckley*, 437 Md. 332, 348 (2014)).

In this case, the transcript lacks any suggestion that Mr. Smith should be responsible for child support after May 2014. At the settlement hearing, Mr. Smith explained that his final payment covered the period between the date of his last support payment (February 2014) and what he understood to be the end of the child support period (May 2014), as expressed by the parties' counsel and the court multiple times during that proceeding. Ms. Smith did not object to or correct any of these representations. Throughout the hearing transcript, the parties' exchanges with each other and the court derived from the (then-)accepted premise that the younger child had graduated in June 2014 and that Mr. Smith's child support obligation ended after May 2014. The circuit court's ruling noted similarly that neither party had ever suggested that the audit should reach past that point.

Ms. Smith maintains now that she never conceded that their daughter graduated on June 1, 2014, and at the contempt hearing she represented, for the first time, that she had graduated on June 9. But Ms. Smith didn't object to or correct any representations about their daughter's graduation date at the settlement hearing. Moreover, at the contempt

hearing, Mr. Smith testified that she produced a copy of their daughter's high school diploma during discovery that identified a graduation date of June 1, 2014. Ms. Smith didn't reconcile the graduation date on the diploma with her testimony at the contempt hearing and has not provided evidence of an alternative date.

During *voir dire* examination, the court framed the purpose of the OCSE audit as determining child support *arrears* which, at that time and based on the information the parties had, could only have meant an obligation due on or before May 2014. Ms. Smith indicated her understanding of this purpose, although she still had questions:

> [MR. COAXUM]: Do you understand that the agreement is that the [OCSE] will do an audit as it relates to any arrears that might exist concerning the child support account, correct?
>
> [MS. SMITH]: Yes, I understand the [OCSE] will do the audit and assess it.
>
> [MR. COAXUM]: Okay, but do you still have a question concerning child support at this point?
>
> [MS. SMITH]: Yes, I do.

Ms. Smith and Mr. Coaxum stepped outside of the courtroom. When they returned, the parties placed another term of agreement on the record:

> [MR. HECHT]: Just to clarify, and I don't think I am changing anything so, payment of child support has been made for March, April, May. Okay.
>
> [THE COURT]: Of 2014.
>
> [MR. HECHT]: Of 2014. We believe that it is now all paid up. The [OCSE] is going to do an audit. If in the unlikely event that it turns out that my client owes a month or two he is happy to pay it, but we don't want that to come into the realm of enforcement. In other words if it comes up that he hasn't paid two months or whatever he will pay that, but we don't want to start getting into attorney's fees to make him pay that. Does

> that make sense? I mean —
>
> [MR. COAXUM]: I am willing to say that if the audit reflects a payment due and owing to my client that it will be paid within 30 days.
>
> [MR. HECHT]: That is fine. That is fine and then we can avoid that coming into the realm of enforcement because I think the enforcement was really of the other things.
>
> [MR. COAXUM]: Right.

Later, the *voir dire* examination of Ms. Smith concluded:

> [MR. COAXUM]: Do you understand that [OCSE] will conduct an audit . . . determining the amount of arrears if any and pursuant to the agreement reached between the parties through counsel that if any arrears do exist that Mr. Smith upon notice will pay the balance of the arrears within 30 days of the notice, correct?
>
> [MS. SMITH]: Yes, correct.
>
> [MR. COAXUM]: And are you satisfied with [my] representation for you as counsel in this case?
>
> [MS. SMITH]: Yes.
>
> [MR. COAXUM]: And do you have any other questions concerning the agreement?
>
> [MS. SMITH]: No. Thank you.

At the settlement hearing, Ms. Smith had multiple opportunities to dispute that May 2014 was the final month of child support and she didn't. Even so, she contends that she didn't waive her claim to child support for any month during which "the law obligated" Mr. Smith to pay. But she hasn't identified any law obligating Mr. Smith to remit child support for the whole month based on his daughter having graduated from high school on the first day of the month. And even if she had, it is the settlement agreement that controls, and the parties had accepted the premise that Mr. Smith's support obligation ended in May

2014. Considering the plain language of the agreement and placing its formation into context, we hold that a reasonable person in the position of the parties would have understood that the reason for OCSE's audit was to ascertain whether any child support arrears due on or before May 2014 remained outstanding.

2. The circuit court interpreted the language of the fee-shifting provision of the settlement agreement correctly.

Ms. Smith argues that the circuit court erred by declining to award her attorneys' fees under the settlement agreement's fee-shifting provision for any enforcement made necessary by his "non-payment of any sums." Mr. Smith asserts that the circuit court determined correctly that judicial enforcement was unnecessary in this case and, therefore, that Ms. Smith was not entitled to attorneys' fees under that provision. We agree with Mr. Smith.

Maryland follows the common law "American rule" that requires each party to be responsible for their own attorneys' fees, regardless of the outcome of the case. *Royal Inv. v. Wang*, 183 Md. App. 406, 456 (2008) (*citing Friolo v. Frankel*, 403 Md. 443, 456 (2008)). One recognized exception to the rule is when the "parties to a contract have an agreement regarding attorney's fees . . . ." *Wheeling v. Selene Fin. LP*, 473 Md. 356, 400 (2021) (*citing Eastern Shore Title Co. v. Ochse*, 453 Md. 303, 330 (2017)). Indeed, contractual fee-shifting provisions that award reasonable attorneys' fees to the prevailing party are generally enforceable. *Plank*, 469 Md. at 617 (*citing Myers v. Kayhoe*, 391 Md. 188, 207 (2006)).

At the settlement hearing, the parties agreed that if either had to resort to court

enforcement for the other's noncompliance, the resorting party would get an award for attorneys' fees:

> [MR. COAXUM]: [I]n the event that a payment is not made within 30 days then whatever unpaid amount will be reduced to a judgment upon affidavit and then the attorney's fees incurred in the event that you need to enforce the agreement.
>
> [THE COURT]: Any unpaid amounts are —
>
> [MR. HECHT]: Reduced to judgment and I'll include that.
>
> [THE COURT]: — to judgment upon filing of a line. So, any unpaid amounts are reduced to judgment upon filing of a line and what was the other part?
>
> [MR. COAXUM]: Attorney's fees in the —
>
> [MR. HECHT]: Attorney's fees in the event of enforcement, the need to enforce.
>
> * * *
>
> [THE COURT]: So, I just want to go through what . . . my understanding is of the agreement and then we will voir dire the parties.
>
> * * *
>
> [THE COURT]: Any unpaid amounts will be reduced to judgment upon filing of a line[,] attorneys' fees in an event that there becomes a need to enforce this agreement . . . .

Because the language of the fee-shifting provision is unambiguous, we interpret it based on what a reasonable person in the parties' position would have understood as a "need to enforce" the agreement. *See Tapestry*, 482 Md. at 239.

The plain, ordinary meaning of the term "enforce" is to "constrain, compel." *See Merriam-Webster's Collegiate Dictionary* 413 (11th ed. 2011). Enforcement is "[a]n attempt to make someone else comply with a law, rule [or] obligation," and "[t]he act or process of compelling compliance with a law, mandate, command, decree, or agreement;

specif[ically] the forcible or compulsory exaction of some duty, such as making a payment, honoring a promise, or otherwise meeting a responsibility." *Enforcement*, *Black's Law Dictionary* (12th ed. 2024). Applying the customary, ordinary, and accepted meaning of these terms, *Ocean Petroleum*, 416 Md. at 86 (*quoting Fister*, 366 Md. at 210), we interpret the fee-shifting provision of the settlement agreement to cover instances where a party's noncompliance made court enforcement necessary to compel compliance with its terms.

The circuit court's conclusion that there was no need for enforcement here was correct. The court found the banks, not Mr. Smith, at fault for the failed bank transactions, and credited his testimony about his efforts to transfer 39,400.00 CAD and custody of the RESP accounts to Ms. Smith:

> I find that the bank is at fault. . . . I credit [Mr. Smith's] testimony that he gave the information that the bank requested. And I find that he should be able to rely on the bank. . . .
>
> He relied on the bank, and the bank requested insufficient information I find. And I find that it was the bank's fault that none of these transactions went through. . . .
>
> [T]he defendant made efforts to have [the RESP] accounts transferred. And he even sent [the letter of direction] . . . that he had signed, or its dated December 13th, 2022. This paper is signed by him.
>
> It has a signature for [Ms. Smith]. And I find that that was sent to Ms. Smith's counsel at least by January 3rd of 2023. If he is, if there are some days where he's maybe a little bit out of the 45 days, I do not find that that is a willful contempt.
>
> I find then that [the letter of direction] was insufficient because the words, in kind, needed to have been used. And, again, I find that that is the bank's fault for not being specific.

The record supports the court's findings. Mr. Smith made multiple efforts to satisfy his obligations under the agreement, in multiple ways, without success. Mr. Hecht kept Mr.

Coaxum updated about the barriers Mr. Smith was confronting during this period. Mr. Smith acted on the instructions he was given, and when they didn't work, he tried again under different instructions. Mr. Smith couldn't complete the transfers on time because of poor communication about the information and steps required to make the transfers happen—circumstances beyond his control. Because there was no willful noncompliance at play, there was no need to enforce compliance with the settlement agreement. A reasonable person in the parties' position would have understood that the transfers were more complicated than the parties had imagined at first, that Mr. Smith was trying to transfer the money and the RESP accounts, albeit unsuccessfully, and that the transfers would get done eventually if they kept working at it through their counsel.[13]

Regarding the issue of child support, we agree that there was nothing to enforce. During Ms. Smith's *voir dire* examination on October 3, 2022, she said she still had questions about Mr. Smith's child support obligations, causing a recess so that she could

[13] And for the same reasons, we reject Ms. Smith's position that the court committed reversible error by not entering a judgment in her favor for the funds in the RESP account. The circuit court ordered Mr. Smith to sign whatever document Ms. Smith deemed "appropriate" for transferring the RESP accounts, which he did, and the RESP accounts are now under her exclusive custody and control. Ms. Smith herself concedes that "no judgment or further order of this Court or the trial court is required at this time on this issue." Because the RESP accounts have been transferred, and Ms. Smith is not seeking redress from this Court on this issue, "there is 'no longer an existing controversy'" or "'an effective remedy'" that this Court could grant, and the issue is moot. *State v. Dixon*, 230 Md. App. 273, 277 (2016) (*quoting Suter v. Stuckey*, 402 Md. 211, 219 (2007)). Ms. Smith maintains that she does not seek affirmative relief, only recognition that she had a viable claim as to the RESP accounts and, therefore, was not acting in bad faith when she petitioned for contempt. As we discuss next, we affirm the court's finding that Ms. Smith initiated and maintained a contempt petition for Mr. Smith's alleged noncompliance in bad faith.

confer with her attorney. Afterwards, the parties informed the court that they would prefer to resolve any arrears identified by the audit and duly owed through a payment arrangement, and not through enforcement, because that would activate the attorneys' fees provision. Accordingly, when the circuit court made its contempt ruling, it found that there was nothing to enforce because the parties had established that child support would not be covered by the attorneys' fees provision and they had accepted that May 2014 was the endpoint of Mr. Smith's support obligation. For these reasons, we hold that the circuit court determined correctly that there was no "need to enforce" the settlement agreement and that Ms. Smith was not entitled to attorneys' fees.

B. The Circuit Court's Finding Of Bad Faith Was Not Clearly Erroneous Because It Relied On Competent Material Evidence Adduced At The Contempt Hearing.

Ms. Smith asserts that the circuit court erred in finding that she had filed her contempt petition in bad faith and insists that she "initiated and maintained colorable claims for relief" throughout the proceedings. Mr. Smith argues that the circuit court relied on ample evidence to support its finding.

Maryland Rule 1-341(a) authorizes a court to assess attorneys' fees after finding that a party brought a civil suit in bad faith, such that an award of fees is appropriate:

> 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.

Before awarding attorneys' fees, a circuit court must find "that the conduct of a party during a proceeding, in defending or maintaining the action, was without substantial justification or was done in bad faith." *Christian*, 459 Md. at 20–21. Our Supreme Court has explained that "'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.'" *Zdravkovich v. Bell Atl.-Tricon Leasing, Corp.*, 323 Md. 200, 210 (1991) (*quoting Talley v. Talley*, 317 Md. 428, 436 (1989)). The burden of proving that the court committed clear error rests with the appealing party, *Christian*, 459 Md. at 21, and that burden will not be met if "'there is any competent material evidence to support the factual findings of the [ ] court . . . .'" *Id.* (*quoting Major v. First Va. Bank-Cent. Md.*, 97 Md. App. 520, 531 (1993)). Bad faith under Rule 1-341 refers to an action taken "'vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons.'" *Christian*, 459 Md. at 21–22 (*quoting Inlet Assocs.*, 324 Md. at 268).

In this appeal, the circuit court found that Ms. Smith filed and pursued her March 28, 2023 contempt petition in bad faith:

> I find that specifically, the contempt filed . . . on March 28th of 2023, was in bad faith. I find that filing a contempt . . . when there was no audit from child support, and when three wires were attempted, and a check sent over, not for the amount that [Ms. Smith] thought was due, but for a substantial amount. . . .
>
> And when a letter was sent over, saying that, with instructions on how to deal with RESP accounts, I find it is, it is in bad faith to request incarceration and state to the Court that he has made no effort underlying to pay.
>
> That is a misrepresentation to the Court. Incarceration is a legitimate enforcement arm of the Court, and it is one that is

often merited. But it is not something that anybody should take lightly.

And it is not something that should be filed for when someone is making every effort to pay. So, I find that that was made in bad faith. I find that that set the stage for contentious litigation in this case.

And especially in light of the fact that . . . Ms. Smith had to go to the bank and opened a dummy account at PNC to investigate what was really going on, tells me that she didn't know either.

That it was very confusing. That this wasn't something that was a clear intent. . . . [U]nder all these circumstances, it makes no sense that this was an intent to get away with something on behalf of, on Mr. Smith's part.

But I find that it, under all the circumstances it shows that . . . it was clearly a confusing situation. And I find that she went out and sought for incarceration under all of the circumstances where it was confusing.

And I find that she was looking for incarceration and then went to justify and try to find a problem that didn't exist in order to seek incarceration for whatever reason. So I find that this is filed in bad faith.

* * *

But the bottom line is, she filed a contempt before, I mean [child support] wasn't even supposed to be a part of any contempt. And she didn't even have an audit from child support. And she indicated she was getting different amounts every time she went to child support.

So, she was simply too impatient to wait for the audit. And that motivated her to file a bad faith contempt, because it turns out, no child support is owing. And I find that she knew that [Mr. Smith] was making every effort to get her the money he owed her.

And even by sending over a check, although that check wasn't the amount that . . . she thought was appropriate, that required not the filing of a petition for contempt for incarceration, but perhaps a phone call and some negotiation with her learned counsel that she had.

So, up through, from the time she filed from March 28th, 2023,

through September 1st of 2023, because that amended complaint wasn't filed until the afternoon, and so fees were spent through that day, I find that she owes [Mr. Smith] 100 percent of his attorneys fees.

* * *

I do find that there was substantial justification for [the amended petition]. Like I said, [Mr. Kennedy] saved her.

But I find that her actions, her behavior, her testimony at trial, all indicate to me that she made this more contentious, she made this litigation more protracted than it needed to be.

If she wanted to fight over the amount that was being deducted from the check, it didn't need to come to this. And I say that in light of all of the circumstances . . . that this is a request, this is litigation for child support where the children are in their late 20s.

And I've seen . . . from the financial statements, no party has any particular need. [Ms. Smith] is, she has a good income, so does [Mr. Smith]. But she has a good income. So, I questioned why the wait?

What happened that — it doesn't diminish that [Mr. Smith] might owe, and that he agreed to pay certain things. But this case has a real flavor of vindictiveness to it that very much troubles the Court.

And it's particularly, after all these years to come at [Mr. Smith], and then at the moment, that things aren't perfect to file for contempt and request incarceration is just not what the legal system is for.

* * *

And I particularly noted when she testified, and was questioned by [Mr. Hecht], she indicated she wanted . . . I find that she still wants incarceration. She said incarceration for as long as the Judge wants. And then she was the one shaking her head yes.

When I asked [Mr. Kennedy] whether this was an intentional deceit [by Ms. Smith], and he said no, it was negligent because he's a good reasonable attorney, and she was shaking her head, yes.

She thinks this is intentional, which I find preposterous. So, I am going to charge her for 50 percent of [Mr. Smith's]

attorney's fees . . . from September 1st until today.

The circuit court said it all, and it drew from "competent, material evidence" at the hearing to conclude that Ms. Smith initiated and maintained contempt proceedings in bad faith. *Christian*, 459 Md. at 21. Ms. Smith disagrees with the court's ruling, but she has not met her burden of proving that the court erred clearly. Therefore, we affirm its finding of bad faith.

C. The Circuit Court's Calculation Of The Attorneys' Fee Award Was An Abuse Of Discretion Because It Included Fees That Didn't Relate To Ms. Smith's Contempt Petition.

Ms. Smith argues that the circuit court abused its discretion by awarding Mr. Smith attorneys' fees in the amount of $28,061.65 and by failing to establish with specificity which fees he incurred because of her bad faith conduct. We hold that the circuit court's calculation of the award included attorneys' fees that Mr. Smith incurred for reasons other than Ms. Smith's contempt petition. As a result, we remand this case to the circuit court to determine which attorneys' fees Mr. Smith incurred *because of* her contempt petition and to calculate the award accordingly.

After determining that a party has acted in bad faith, the circuit court must make a discretionary finding "that the acts committed in bad faith . . . warrant the assessment of attorney's fees." *Christian*, 459 Md. at 21 (*citing Inlet Assocs.*, 324 Md. at 267–68). An abuse of discretion occurs when "'no reasonable person would take the view adopted by the [trial] court or when the court acts without reference to any guiding rules or principles.'" *Santo v. Santo*, 448 Md. 620, 625–26 (2016) (cleaned up) (*quoting In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). Absent a finding that the

circuit court exercised its discretion arbitrarily, or that the judgment was plainly wrong, we will not reverse an award of attorneys' fees. *Petrini v. Petrini*, 336 Md. 453, 468 (1994) (*citing Danzinger v. Danzinger*, 208 Md. 469, 475 (1955)).

During the contempt hearing, Mr. Smith submitted an invoice from Mr. Hecht into evidence that itemized $34,261.65 in fees incurred. The circuit court relied on the invoice and determined that Ms. Smith should pay all fees that Mr. Smith incurred from the day of her initial contempt petition through the day of her amended filing (the "100% award"), and half of the fees he incurred from that day through the day of the court's ruling (the "50% award"):

> So, up through, from the time she filed from March 28th, 2023, through September 1st of 2023, because that amended complaint wasn't filed until the afternoon, and so fees were spent through the day, I find that she owes the defendant 100 percent of his attorneys fees.
>
> * * *
>
> So, I am going to charge her for 50 percent of the attorney's fees of [Mr. Smith] from September 1st until today. So, that comes to a total of what she owes him in attorney's fees of $28,061.65.
>
> Fifty percent of the attorney's fees from September 1st until today is [$]12,400 divided by two which is $6,200. I find Mr. Hecht's attorney's fees to be reasonable. He charges $400 an hour, which I find to be a very reasonable rate commensurate with attorneys of his experience in the county.
>
> I find that his fees were reasonable, especially in light of the fact that for most of the time, he was planning on defending his client from having to be incarcerated. And that[] [added] a ratcheted-up litigation flavor in this case. So, I find his fees to be reasonable**.**

Awarding attorneys' fees under Rule 1-341 is a deterrent, not a punishment.

Christian, 459 Md. at 19. The award is "a mechanism to place 'the wronged party in the same position as if the offending conduct had not occurred.'" *Id.* (*quoting Major*, 97 Md. App. at 530). Because it is a remedial sanction, the circuit court must apportion the fees "based on the particular claims requiring compensation" and limit the award "to those claims in order to be reasonable." *Id*. at 32.

Several entries in Mr. Hecht's invoice raise questions about whether the fees underlying the 100% award were, in fact, incurred because of Ms. Smith's March 28, 2023 contempt petition. For example, the circuit court counted a legal service rendered on March 21, when Mr. Hecht sent Mr. Coaxum the check for 27,904.04 USD, which preceded the relevant period of the court's award (*i.e.*, fees incurred between March 28 and September 1, 2023). The record raises uncertainty too about whether the fees incurred within the relevant period are fair game. On March 28 and 31, 2023, respectively, Mr. Hecht "[s]tarted working on motion to enforce, [sent] emails to and from [opposing counsel] and client," "[c]ontinued drafting motion to enforce, [and] reviewed all emails from prior counsel." But Mr. Smith's countermotion for contempt, filed on April 27, 2023, states that Mr. Hecht found out about the contempt petition in April 2023 from Mr. Coaxum, and that Mr. Smith hadn't been served with the petition yet. This timeline of awareness is consistent with Mr. Hecht's invoice, which states that on April 13, 2023, he had an "[i]nter-office meeting following call by client, researched contempt filing by [Ms. Smith], [wrote a] letter to [opposing counsel], [and] reviewed prior correspondence." The April 13 entry appears to be the first legal fee Mr. Smith incurred because of Ms. Smith's contempt petition. Because

the circuit court's findings didn't connect the legal work performed on these dates to Ms. Smith's bad faith conduct, we vacate the 100% award and remand this matter to the court to conduct additional fact finding.

With regard to the 50% award, the fees stated on the invoice for legal services performed between September 2 and October 11, 2023 relate to the litigation Ms. Smith initiated on March 28, 2023. Ms. Smith contends that the circuit court gave insufficient details about why fees incurred before her amended contempt petition were fully sanctionable but only half sanctionable afterwards. The court's reasoning on this point is not so mysterious to us. When we examine the court's ruling, we see that Ms. Smith's pursuit of incarceration under the circumstances coupled with her representation that Mr. Smith had made no effort to pay struck the circuit court as extreme and dishonest. The court said that Ms. Smith's original contempt petition "set the stage for contentious litigation" between the parties unnecessarily, finding it clear that a third party, the banks, were a major contributing factor to what "was clearly a confusing situation."

The circuit court credited Ms. Smith's amended petition to the extent that it retracted her request for incarceration and represented the facts of Mr. Smith's alleged noncompliance more accurately. Even so, the court found the amended filing problematic because it still maintained that Mr. Smith owed child support for June 2014, a month that "both parties clearly agreed" was not part of his support obligation, and it remained inconsistent with their agreement that child support be resolved outside of court enforcement. The court added that both contempt petitions were rooted in a delayed claim

for child support for (now) adult children "in their late 20s" where there was no "particular need" for support on account of Ms. Smith's "good income."

Under the circumstances, the court seemed to find the amended petition just as unnecessary as the initial filing, remarking that Ms. Smith's "actions, her behavior, [and] her testimony at trial" made litigation "more contentious" and "more protracted than it needed to be," and that her dissatisfaction with Mr. Smith's check for 27,904.04 USD "didn't need to come to" a lawsuit. And even though the amended filing walked back Ms. Smith's incarceration request, her trial testimony indicated to the court that "she still want[ed] incarceration" and still believed that the failed bank transfers were "an intentional deceit" by Mr. Smith, despite documentation of his attempts. After detailing these indicators of bad faith (which applied notwithstanding Ms. Smith's amended filing), the court decided that Ms. Smith should have to pay half of the legal fees Mr. Smith incurred to defend against unnecessarily "contentious" and "protracted" litigation.

From the circuit court's detailed reasoning, we see that the background and circumstances of this case guided the court in ordering the 50% award. Admittedly, we were confused at first by the court's statement that Ms. Smith's amended filing was "substantially justified," because it might seem to contradict the court's core view that bringing and maintaining contempt litigation was unnecessary and over the top under the circumstances of this case. Lack of substantial justification is a related but distinct basis for awarding attorneys' fees under Rule 1-341, and concerns "whether [the plaintiff] had a reasonable basis for believing that [her] claims would generate an issue of fact," *Inlet*

Assocs., 324 Md. at 268, whereas bad faith applies when a party initiates or maintains an action "vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons." *Id*.

The circuit court's extensive reasoning for finding bad faith and its conclusion that there was no "need to enforce" the settlement agreement through contempt litigation leaves us with the impression that the court found Ms. Smith's amended petition more reasonable than the first. But it is difficult for us to conclude on this record that the court intended to make a substantive legal conclusion when it uttered these words. Because our interpretation is consistent with the overall record, we hold that a reasonable person could share the court's view that Ms. Smith's conduct under the circumstances of this case warranted an assessment of the 50% award, *see Santo*, 448 Md. at 625–26 (*quoting In re Adoption/Guardianship No. 3598*, 347 Md. at 312), and invite the court to revisit or clarify its position on substantial justification on remand if necessary.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND VACATED IN PART AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLANT TO PAY THE COSTS.