Circuit Court for Prince George's County
Case No. CAD15-01097

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 951

September Term, 2016

NANNETTE NICKOLE LANGFORD

v.

JAMES JULIAN LEWIS, SR.

Graeff,
Kehoe,
Friedman,

JJ.

Opinion by Graeff, J.

Filed: January 24, 2017

*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.

On August 2, 2009, Nannette Nickole Langford, appellant, and James Julian Lewis, Sr., appellee, were married.[1] On December 30, 2015, the Circuit Court for Prince George's County issued a Judgment of Absolute Divorce, which ordered, *inter alia*, that the parties would have joint legal custody and shared physical of their two children. On February 9, 2016, the Judgment was docketed. On February 19, 2016, Ms. Langford filed a "Motion to Alter or Amend the Judgment of Absolute Divorce Entered on February 9, 2016 or in the Alternative for a New Trial." On June 3, 2016, after the parties filed further motions, the circuit court issued an order (a) denying Ms. Langford's motion to alter or amend, (b) granting both parties' motions for contempt, and (c) granting, in part, Mr. Lewis' motion for modification of custody.

On appeal, Ms. Langford presents the following three questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court abuse its discretion or commit legal error when it refused to amend the Judgment of Absolute Divorce or grant a new trial on custody given appellee's misrepresentations about his status as a registered sex offender?

2. Did the circuit court abuse its discretion or commit legal error when it awarded tie-breaking authority for decisions regarding the minor children to the appellee, a registered sex offender, on all issues except education?

3. Did the circuit court abuse its discretion or commit legal error when it awarded attorneys' fees to appellee after finding that appellant acted in bad faith in requesting that the lower court amend the judgment of divorce

[1] On February 9, 2016, a Judgment of Absolute Divorce was entered in the Circuit Court for Prince George's County which, *inter alia*, restored appellant's former surname, "Langford." We will refer to her as "Ms. Langford" throughout this opinion because it is the name of record used in these proceedings.

> or for a new trial and for opposing appellee's request for sole custody of the minor children?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Background

On August 2, 2009, Ms. Langford and Mr. Lewis were married in Catonsville, Maryland. The parties had two children together: J.L., born in June 2005, and P.L., born in March 2011.

On December 16, 2013, Mr. Lewis, who at the time was a registered nurse, pled guilty in Ohio to gross sexual imposition and patient abuse, charges alleging that he sexually assaulted a woman during childbirth. Pursuant to the plea agreement, Mr. Lewis was required to relinquish his nursing licenses in Maryland, Ohio, and Pennsylvania, and he lost "the ability to work as a registered nurse" or be "reemployed at a health care position where Medicaid or Medicare is provided." Mr. Lewis subsequently sent a letter to the Maryland Board of Nursing, stating that he was surrendering his Maryland nursing license and affirming that he would "NEVER apply for reinstatement." On March 11, 2014, an Ohio court sentenced appellant to "a community control sanction for a period of two years," with the first 60 days of his sentence to be spent in a county jail, and the remainder on supervised probation. As a result of his sex offense conviction, Mr. Lewis was required to register as a sex offender.

Ms. Langford was not present at Mr. Lewis' plea hearing, but she was present at his sentencing. She later testified that Mr. Lewis told her that he was innocent and pled guilty

to protect his family from the hardships of trial. Ms. Langford stated that, at the time, she believed his claims of innocence because she "couldn't fathom that the man that [she] loved, [her] husband, would drug and molest a pregnant woman."

Divorce and Custody Proceedings

On January 26, 2015, Ms. Langford filed a Complaint for Absolute Divorce and Custody. During trial, Mr. Lewis testified about his status as a probationer and sex offender. When asked about the terms of his probation, Mr. Lewis testified that he had to see his probation officer every month and report once every six months. Counsel then asked about other restrictions, and the following occurred:

> [COUNSEL:] Okay. Do you have to register as a sex offender?
>
> [MR. LEWIS:] Yes, I have to report once every six months.
>
> [COUNSEL:] Okay. And so, I mean as a sex offender, . . . aren't there a lot of restrictions as far as your movement in the community?
>
> [MR. LEWIS:] Wherever my address is I do have to report where my address is, yes, ma'am.
>
> [COUNSEL:] Okay. Are you, there's no restrictions about where you need, where you can live or anything like that?
>
> [MR. LEWIS:] Not that I'm aware of.
>
> [COUNSEL:] Okay. So the only, your probation, the only thing you have to do is report every six months and that's it?
>
> [MR. LEWIS:] I have to report every six months; that's correct.
>
> [COUNSEL:] Okay. And, okay, there's no restrictions about being near a schools or anything like that as a sex offender?
>
> [MR. LEWIS:] Are you, are you --
>
> [COUNSEL:] I'm asking, I don't know, I'm asking you.

[MR. LEWIS:] Not that I'm aware of.

[COUNSEL:] Okay. Okay. So that wasn't something that was part, that was in your probation paperwork or anything like that?

[MR. LEWIS:] Not that I'm aware of.

* * *

[COUNSEL:] When did you enter your I guess plea agreement with the State of Ohio?

[MR. LEWIS:] December 16, 2013.

[COUNSEL:] Okay. And as part of that agreement, wasn't your license revoked?

[MR. LEWIS:] It was not.

[COUNSEL:] It was not.

[MR. LEWIS:] It was not.

[COUNSEL:] Okay.

[MR. LEWIS:] I voluntarily surrendered my licenses, realizing -- per counsel, so that I could go back and get my license.

[COUNSEL:] But that was part of your agreement, correct?

[MR. LEWIS:] Was to surrender my license. I couldn't control how long the State took to accept that recension [sic], voluntary concession.

[COUNSEL:] Okay. So --

[MR. LEWIS:] They were not taken --

[COUNSEL:] -- so you voluntarily rescinded it in --

[MR. LEWIS:] In December.

[COUNSEL:] -- in December, correct?

[MR. LEWIS:] Correct. I was licensed in three States -- four, actually, and Maryland, my primary State, took the longest, actually it wasn't until two days before I went to sentencing that it was accepted and that was very

> pivotal, it needed to be accepted because that's what the part, I had until my sentencing date to have it on record that it was no longer valid.

Mr. Lewis and his counsel insisted throughout the trial that Mr. Lewis entered an *Alford* plea in his 2013 Ohio sex offense case.[2]

At the end of trial, the circuit court issued its ruling from the bench. It first granted Ms. Langford an absolute divorce from Mr. Lewis. With respect to the parties' children, the court granted the parties joint legal custody and shared physical custody. On December 30, 2015, the court issued a Judgment of Absolute Divorce, which reiterated in writing the court's earlier oral rulings. On February 9, 2016, the Judgment was entered onto the court's docket.

The Daycare Dispute

Following the November 2015 trial, a number of issues occurred regarding the care of the parties' children. One issue involved a dispute over who could pick up the parties' younger son, P.J., from daycare. On January 15, 2016, Crystal Zell, Mr. Lewis' girlfriend, went to pick up P.J. from the Carousel Child Development Center ("Carousel"), but the staff refused to release him to Ms. Zell. Mr. Lewis testified that it took "an hour of phone calls [and] emails" to convince Carousel to allow Ms. Zell to pick up P.J. Several days

[2] "An *Alford* plea . . . lies somewhere between a plea of guilty and a plea of *nolo contendere*. Drawing its name from *North Carolina v. Alford*, 400 U.S. 25 (1970), such a plea is a guilty plea containing a protestation of innocence." *Bishop v. State*, 417 Md. 1, 19 (2010) (citations and quotation marks omitted). Mr. Lewis now concedes that he "technically entered a guilty plea," but he contends that he testified at the divorce proceedings that he entered an *Alford* plea because that was his belief. He states on appeal that "his criminal counsel in Ohio had advised him to enter an *Alford* plea prior to his criminal trial in December 2013."

later, the parties received a letter from Carousel, stating that they had approximately two weeks to submit a written list of persons approved to pick up their son from daycare or he would be "disenrolled." Ms. Langford refused to allow Ms. Zell to be on the list, resulting in the parties being unable to agree on a list.

On February 3, 2016, Ms. Langford sent Mr. Lewis a lengthy email enumerating her reasons for refusing to permit Ms. Zell to pick up their children from daycare. She explained that it would be damaging to their children's "emotional health" because they were aware that Ms. Zell was his "mistress," and Ms. Langford could not condone "the perpetual reminder" that Mr. Lewis "chose to display in front of the children." Second, she noted "safety concerns" regarding Mr. Lewis and Ms. Zell leaving the children home alone. Finally, she alleged that Mr. Lewis and Ms. Zell exhibited a "[l]ack of expected parental judgment," citing an alleged incident where Ms. Zell "was seen in public extremely intoxicated barely able to walk and barefoot." Ms. Zell testified that, notwithstanding all of her concerns, Ms. Langford has never requested any information from her regarding criminal, drug, alcohol, or medical problems.

On February 4, 2016, Mr. Lewis provided Carousel a copy of the circuit court's judgment, which indicated that he and Ms. Langford had joint custody of their children. The following Monday, however, when Mr. Lewis went to drop off P.J., Carousel informed him that Ms. Langford had "disenrolled" P.J. from the daycare. On February 8, 2016, Ms. Langford sent Mr. Lewis an email regarding the daycare pickup issue. She stated that it was her understanding that the Judgment of Absolute Divorce had not yet been docketed,

and therefore, Mr. Lewis had "either provided fraudulent legal documentation or unofficial paperwork posed as official, which is unethical at best." She stated that, on "numerous occasions," she had "attempted to come to a resolution by giving multiple options and solutions but unfortunately [she] was forced to discontinue [their son's] care at Carousel due to [Mr. Lewis'] lack of response." She stated that she had "stumble[d] upon a facility more aligned" with their son's needs and enrolled him there. She also informed Mr. Lewis that, due to his sex offense, he was "not legally able to enter the premises," and she directed him to pick up their son at her house at times that she designated. Ms. Langford concluded the letter by stating that Mr. Lewis "may choose to utilize alternate childcare facilities during [his] visitation," that the email was simply a "courtesy" to inform him where their son would be "during the day," and it was "not an invitation to create the same drama [he] created at Carousel." Mr. Lewis testified that this email was the first time Ms. Langford had informed him of her decision to remove P.J. from Carousel and reenroll him in another daycare center.

Post-Trial Motions

Ms. Langford contends in her brief that, "[a]fter the November 2015 custody trial, [she] discovered that much of the evidence and testimony that [Mr. Lewis] presented in court about his status as a registered sex offender was incorrect and misleading." Specifically, she states that, "after the trial, [she] learned that [Mr. Lewis] was actually guilty of the crime for which he was accused of in Ohio, despite [Mr. Lewis'] insistence throughout the marriage that he was not guilty." Accordingly, on February 17, 2016,

Ms. Langford filed a "Motion to Alter or Amend the Judgment of Absolute Divorce Entered on February 9, 2016 or in the Alternative for a New Trial," which she subsequently amended on February 19.

In her motion, Ms. Langford argued, *inter alia*, that the parties' current "custodial arrangement [was] not in the children's best interest." She asserted that, at trial, Mr. Lewis "glossed over" his Ohio convictions, and she subsequently discovered that his crimes "were in fact horrific" and "involving moral turpitude," and therefore, "much more evaluation [was needed] before joint legal custody and a shared access schedule such as [the one] entered by the [c]ourt would be appropriate." She argued that, in light of her discovery regarding the accuracy of Mr. Lewis' trial testimony, Mr. Lewis' "judgment [was] seriously questionable."

On February 18, 2016, Mr. Lewis filed a combined Motion for Modification of Custody and motion for contempt. In the modification portion of the motion, Mr. Lewis sought sole legal and physical custody of both children.

That same day, Mr. Lewis filed a Motion for Emergency *Ex Parte* Relief. Citing the daycare incident, he sought sole legal custody of P.J. "for the purpose of reenrolling him in Carousel Child Development Center."

On February 18, 2016, the circuit court issued a *Pendente Lite* Order of Court, granting Mr. Lewis' emergency motion. The court awarded sole legal custody of P.J. to Mr. Lewis, and it scheduled a hearing to address the parties' motions.[3]

On March 15, 2016, Ms. Langford filed an opposition to Mr. Lewis' Motion to Modify Custody, which she subsequently amended. On May 4, 2015, Ms. Langford filed a Motion to Dismiss Defendant's Motion to Modify Custody.

Additional Incidents

Approximately two days after the court issued the *Pendente Lite* order, another incident involving P.J. occurred. Mr. Lewis testified that, on or about February 20, 2016, P.J. was helping him make pizza when he leaned over the hot oven to look at the finished pizza and his chin "grazed the handle portion of the pizza stone for all of a split second." P.J. "only cried for a few seconds because he was more interested in . . . . seeing the burn." Mr. Lewis and P.J. "ran to the bathroom, took a look at it under the light . . . , just put a cold compress on it for a sec [sic] and then put some triple antibiotic ointment on it, . . . and left it open." Mr. Lewis emailed Ms. Langford the next day to inform her of what had happened.

On February 22, 2016, Ms. Langford's mother sent a picture and text message to Mr. Lewis' phone. The picture depicted P.J. in a car seat, and the accompanying text message read: "It's a second degree burn that required medical attention [w]hich he has

[3] The parties each filed subsequent motions for contempt. The parties do not raise any claims on appeal regarding these motions, and therefore, we will not discuss them in detail.

now received." Ms. Langford subsequently sent Mr. Lewis an email, which stated: "After seeing [P.J.'s] burn I decided to take him to the urgent clinic. Doctor said it was second degree and prescribed topical antibiotics for 7-10days [sic]." Mr. Lewis testified that he was not informed beforehand that she intended to have P.J. treated at an urgent clinic, nor did Mr. Lewis consent to P.J. being removed from daycare for that purpose.

Shortly thereafter, another dispute developed involving J.L.'s soccer activities. In April 2016, Ms. Langford emailed Mr. Lewis to inform him that J.L. wanted to continue playing for his current soccer league in Virginia. Mr. Lewis responded that, because J.L. was with him "the majority of the weekends," he and J.L. had decided to register J.L. for a soccer team near Mr. Lewis' residence. Ms. Langford opposed that "unilateral" decision and asked that Mr. Lewis provide her with the "club information, coach and schedule (games and practice)." Mr. Lewis did not provide Ms. Langford that information, despite repeated requests, stating that he did not want to provide Ms. Langford that information until he was sure that she actually was interested in attending the games and not just plotting to tell everybody that he was a registered sex offender in an attempt to "sabotage" his efforts to "create some sense of normalcy for [his] children."

Resolution of the Parties' Motions

In May 2016, the circuit court held hearings on all of the pending motions. After the court heard opening arguments, but before any evidence or testimony was presented, the court denied Ms. Langford's motion to alter/amend, stating: "I'm not going to grant a new trial. I'm not going to say these people weren't divorced in December of 2015. We're

here . . . to determine if there's some grounds for a modification. So, the motion to alter/amend is denied."

With respect to his Motion to Modify Custody, Mr. Lewis withdrew his claims regarding physical custody, but he continued to pursue sole legal custody of the children. During redirect examination of Mr. Lewis, the following colloquy occurred:

> [COUNSEL:] Mr. Lewis, I can show you that [Notice of Sexual Offender Registration Requirements] page again we just talked about that [counsel] just mentioned. Before your signature that was dated June 24, 2014, there's a statement that says, I swear and affirm that I have read or have been read the above requirements and have been provided a copy of this form. Is that correct?
>
> [MR. LEWIS:] It says that.
>
> [COUNSEL:] Right. But were you provided a copy of the form?
>
> [MR. LEWIS:] A copy of this form?
>
> [COUNSEL:] Well, this -- in other words, you certified that you either read or had read to you the form and that you were provided a copy of the form and you signed that as being true. Is that correct?
>
> [MR. LEWIS:] I did sign this form. I did not receive a copy of it and, unfortunately, I did not -- I mean, I don't recall reading this section right above it, unfortunately.
>
> [COUNSEL:] So you recall signing it, but you don't recall reading it or receiving a copy of it?
>
> [MR. LEWIS:] Clarification. This is my signature[.]
>
> [COUNSEL:] Right
>
> [MR. LEWIS:] But I do not recall this day and in looking at this form, I do not recall reading this last section, because I did not get a copy of the Criminal Procedure Article 11-722.
>
> [COUNSEL:] No, no. Did you get a copy of this form, however? Not the article that's referenced, but the form that you signed.

[MR. LEWIS:] I don't remember on this day, ma'am, but I do have a copy of this form.

[COUNSEL:] You do have a copy of the form?

[MR. LEWIS:] I do have a copy of the form.

[COUNSEL:] And then it says, Additionally, [sic] I further understand that I must comply with Criminal Procedure Article 11-701 and 11-722, as it relates to my reporting and registration responsibilities and have been explained the penalties for violating such laws.

Where you explained the penalties for violating the law with regard to reporting and registration?

[MR. LEWIS:] There was no further explanation that I can recall. I see all that is on this form and I have a copy of this form.

[COUNSEL:] So you -- in your possession, in your personal records, you have a copy of this form and so it's available to you to reference at any point in time that you need it, correct?

[MR. LEWIS:] I have a copy of this form.

[COUNSEL:] All right. Now, with regard to the letter, I'm a little confused about the resignation -- sorry, the surrender of your license to practice as a registered nurse and certified registered nurse anesthetist, with the license number that we've talked about, Plaintiff's No. 11.

When you sent this to . . . [the] president of the Maryland Board of Nursing, did you believe that you surrendered your license to practice as a registered nurse and certified registered nurse?

[MR. LEWIS:] I believe that I did voluntarily surrender my license, that's correct.

[COUNSEL:] You surrendered your license. And the first page on the letter says, I agree to voluntarily surrender all nursing licenses in my name in all states and commonwealths in which I am currently registered, including Ohio, Pennsylvania and Maryland. You signed that acknowledgement as well. That's on the first page of the letter, correct, sir?

[MR. LEWIS:] You asked me that question already, my signature is on the second page.

[COUNSEL:] Right. But you understood that you resigned your -- surrendered your licenses in Ohio, Pennsylvania and Maryland.

[MR. LEWIS:] Yes, because I voluntarily surrendered them.

[COUNSEL:] Okay. And then on the second page, your understanding of the word never is different, I guess, than mine. Your understanding of the word never means that at some point in time you can apply for reinstatement somewhere or other?

[MR. LEWIS:] I know the definition of the word never, but its defined based on where the document or where the plea was actually taken. I mean, I can't sit up here and reference the counsel I received and I also did not lean on my own understanding, because I had hired counsel. So I don't know how to answer your question.

[COUNSEL:] Okay. Nevertheless, the letter said, I will never apply for reinstatement. And that you had the right to a hearing on your license, whether your license would be surrendered or not, correct?

[MR. LEWIS:] I believe that's what the letter says.

[COUNSEL:] And then further at the end, right before your signature, I acknowledge that I may not rescind this letter of surrender in part or in its entirety for any reason whatsoever. So you understood that that was your voluntary action.

[MR. LEWIS:] Yeah, if I go back before the Board of Nursing, just because you can't rescind . . . the letter doesn't mean you don't get to explain why you submitted the letter.

So, you know, you get an opportunity -- I mean, in theory. I mean, the this is, is I'm telling you -- see, it's difficult to answer because I can't reference the counsel that I received. So I don't know how to answer the question. And I think I've already answered it. I think you've asked me three of the same question.

[COUNSEL:] Well, because I'm trying to understand. When you say I will never apply for reinstatement --

[MR. LEWIS:] I defined never for you. I can't define it as an attorney in Ohio.

> [COUNSEL:] So to your understanding, you can't -- you will and can apply for reinstatement; is that what you're saying?
>
> [MR. LEWIS:] That's my understanding.
>
> * * *
>
> [COUNSEL:] Now, you indicated that you had had discussions about the incident in Ohio with your then-wife Ms. Langford. You told her that you did not commit the acts of which you were charged, did you not?
>
> [MR. LEWIS:] I did.
>
> [COUNSEL:] Okay. But we reviewed yesterday that you, . . . in December 2013 pleaded guilty to those charges, the amended indictment is that right?
>
> [MR. LEWIS:] You have the plea.
>
> [COUNSEL:] Okay. Did you read it? You were there,
>
> [MR. LEWIS:] I --
>
> [COUNSEL:] Did you read the transcript?
>
> [MR. LEWIS:] I pled to a misdemeanor and I pled to a misdemeanor of sexual imposition and a felony of patient abuse, yes.
>
> [COUNSEL:] And that was not an Alford plea, was it?
>
> [MR. LEWIS:] Ma'am, I'm not an attorney. See, I thought the language was interchangeable, I did take a plea.

During closing argument, the court asked Ms. Langford's attorney why the evidence regarding Mr. Lewis' sex offender status and relinquishment of his nursing licenses previously was unavailable. Counsel replied that "the problem was . . . [that Ms. Langford] didn't think [Mr. Lewis] was lying." The court countered that Ms. Langford's beliefs "didn't make it unavailable." Counsel responded: "It did not make it unavailable, but she didn't realize that he was not telling the truth until she heard him testify at the trial," and it was not until the "discussion of the *Alford* plea" that they became curious and decided to

obtain a copy of the sentencing transcript. Counsel contended that Ms. Langford believed Mr. Lewis when he told her that he was "really not guilty" of the offenses that he pleaded to in Ohio, and that was "her position at the time, up until trial and then she heard these things coming from him that gave her some concern."

The court then issued its factual findings.[4] With respect to the issues surrounding Mr. Lewis' Ohio conviction and sex offender status, the court stated:

> I spent some time . . . going through that [plea] transcript. For anybody to suggest they didn't know what was going on, would suggest to me that they were either asleep or have some serious attention issues.
>
> It was not an Alford plea, it was a guilty plea. And I believe, and I'm fairly certain, that Alford pleas apply in Ohio and this was not an Alford plea, as I read it. I don't know where the misunderstanding would be.
>
> I do understand where someone may be thinking that they're making a plea for whatever reason, for family purposes or whatever. Pleas are negotiated, it happens every day. An Alford plea says I'm not admitting it, but I agree the State has sufficient evidence that if presented to the trier of fact, that trier of fact may find beyond a reasonable doubt that I'm guilty. This was not such a plea.
>
> * * *
>
> We'll go back to this plea. I believe that Ms. Langford said do what you have to do to avoid jail, or something to that end, and I commend her for it. Standing up there and supporting him for the benefit of the kids was commendable. What Mr. Lewis did -- I looked at the details -- is not commendable. And he knows that, I assume, and he's got a criminal record as a result. But it does show that she was in on this whole business.
>
> * * *
>
> Mr. Lewis suggested that he would be able to reapply for his nursing license and there's no question in my mind he can reapply. Whether or not

[4] The judge issued his oral findings as he reviewed his notes from the hearing, and therefore, his comments regarding each issue were not always sequential. We have grouped together the court's comments with respect to each issue for continuity.

> you'll ever get it, that's a whole separate question. Whether or not it's a violation of the order, that's something for the board or commission that approves the license to decide. They may look at that and say, okay, you filled out the form, too bad, go home. So he didn't really mislead when he said he could reapply, any inference that it would be granted, that's not for me to decide, that's for the nursing board to decide or the medical board to decide.
>
> If he were to suggest he did not know there were restrictions, because of the sex offender list, I don't buy that for a second. He signed it, it's there, it's in black and white and he still has a copy.
>
> [W]hether or not it's enforceable against him later on is a question mark because an official didn't sign it and I do know the effect of a probation form in that regard.
>
> * * *
>
> With regard to never apply or never seeking reinstatement as a nurse, I'm reminded of the James Bond movie, "Never Say Never."
>
> I'm reminded of -- for him to suggest to his then-wife that he didn't do it -- I'm reminded of any number of politicians who would suggest that there's a reason why he would say that. God will forgive him for lying, his wife won't forgive him for the indiscretion.
>
> To suggest again -- for Mr. Lewis to suggest he was unaware of any restrictions is a serious -- begs a serious credibility issue.

With respect to the daycare pick-up issue, the court stated that the pick-up issue was a red herring, stating: "It's a classic, classic example of someone being upset that the 'other woman' is picking up the children. There's no basis for any concern." The court continued:

> It was after my order that the -- if I recall correctly, that [P.J.] was disenrolled from Carousel. And Ms. Langford admits that she wasn't going -- that he was disenrolled because she was not going to agree to Ms. Zell being the pick-up person.
>
> * * *

> Then we have -- once again, I've come to the business about the pick-up. She admits that [P.J.] was terminated from Carousel, due to her refusal to allow Ms. Zell to pick up the child. That -- the effect of that, given Mr. Lewis' sex offender status and inability to go onto the daycare center grounds, is such that she would control the daycare. And it does begin to suggest a pattern in some of this. Even today, she still -- after testimony yesterday in this trial, she testifies today that she does not want Ms. Zell to pick up the child, which, again has every indication that the incident is I'm not letting the other woman pick up my child.
>
> * * *
>
> Ms. Langford, obviously, she went online, she was able to find out a lot of stuff after the fact, but it's obvious she knows her way around case search and things of that nature, so she could have -- I think it's a reasonable inference -- done whatever investigation she wanted, might have wanted to do, to see if Crystal Zell had any DUIs, any DWIs. There was a suggestion yesterday that she was seen falling down drunk. There was no testimony to that.
>
> And if we denied everybody who ever at any point had found themselves drunk, if we denied them the ability to pick up their children from daycare, we'd have to create an entire separate agency to pick up kids from daycare.

With respect to the burn issue, the court noted that "Mr. Lewis is a registered nurse," and "his testimony is, and I believe him, because there's nothing to suggest otherwise, he treated him with triple antibiotic ointment, which was better than the one offered by . . . the urgent care center." The court stated: "I looked at the pictures. It's not pretty, but it's not an emergency, it had been treated, and it wasn't a situation that had just occurred." The court then concluded:

> And then I look at the testimony and Ms. Langford said she was shocked when she saw [P.J.'s] chin after the burn, I've seen the pictures. Again, I'll reiterate, it was three days later. The treatment he got from his father was probably every bit as good as what he got from the urgent care center and, of course, Ms. Langford knows that her ex-husband is a medically trained person.

> * * *
>
> There was no emergency the Monday after the burn.

With respect to the dispute regarding the soccer practice information, the court directed Mr. Lewis to provide the information to Ms. Langford. And finally, the court commented on Ms. Langford's motion to alter/amend or for a new trial and the parties' motions for attorneys' fees:

> [T]he evidence, it's suggested was new evidence, may have been new to some people, but it was readily available at the time of trial.
>
> * * *
>
> I'm going to take a further look at the prior denial of the opposition to the motion. It would appear that there was not a valid basis under the rules seeking a new trial, it's not an issue that I need to decide today. I'll decide that when I look at both fee petitions together.
>
> I would note that -- and I don't think this is an issue, but I think it's important, there has been no evidence presented that would suggest that Mr. Lewis is not a fit and proper parent and nobody is questioning the physical custody or access arrangement.

The court then ordered that the parties would have joint legal custody of the children, and they were expected to attempt to make all major decisions jointly. In the event of an impasse, however, the court granted Mr. Lewis tie-breaker authority on all major medical and daycare decisions and Ms. Langford tie-breaker authority on all educational decisions. With respect to all other major decisions that the parties could not agree upon, the court ordered that the parties must attend two sessions of mediation. If

after those sessions the parties were still at an impasse, Mr. Lewis would have tie-breaker authority.[5] On June 3, 2016, the circuit court issued a written order to that effect.[6]

That same day, the court issued a second order, addressing the parties' various motions for attorneys' fees. The court stated that, for the most part, neither party "filed a pleading or took an action that was in bad faith." It noted two exceptions, however, "Ms. Langford's Motion to Dismiss [Defendant's Motion to Modify Custody] and to a significant extent her Motion to Alter or Amend the Judgment of Absolute Divorce." In that regard, the court cited its comments made at trial and noted its "continued concern" regarding Ms. Langford's "lack of good faith and credibility dealing with day to day issues between the parties and their child." Accordingly, it awarded Mr. Lewis $3,500 in attorneys' fees.

Additional facts will be discussed as necessary in the discussion that follows.

DISCUSSION

I.

Newly-Discovered Evidence

Ms. Langford argues that the circuit court "abused its discretion and committed legal error when it refused to amend the Judgment of Absolute Divorce or grant a new trial on

[5] The court explained in its subsequent order that the parties were "not required to conduct mediation prior to exercising their tie-breaking authority on decisions regarding education, daycare and medical."

[6] The court also granted all of the parties' motions for contempt. It waived sanctions for two of the motions, but with respect to the third motion for contempt, it awarded Mr. Lewis one extra week of access to their children during the summer of 2016.

custody given [Mr. Lewis'] misrepresentations about his status as a registered sex offender." She asserts that, pursuant to Maryland Rule 2-535(c), "the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533." Specifically, she asserts that the following evidence could not reasonably have been discovered prior to trial: (1) that Mr. Lewis pled guilty to the offenses, as opposed to entering into an Alford plea; and (2) as a convicted sex offender, Mr. Lewis may not knowingly enter on school property. Ms. Langford contends that this information was material because it shows Mr. Lewis' bad character and his lack of fitness as a parent.

Mr. Lewis argues that the trial court properly denied Ms. Langford's motion because she "did not provide a sufficient factual basis upon which the trial court could grant the relief sought." He asserts that the evidence Ms. Langford contends was "newly discovered" was known to her, noting that she was aware of the nature of his charges and participated in his sentencing. Moreover, he notes that, despite this knowledge, she still left the children in his sole custody while she worked overseas, and counsel for Ms. Langford stated at the custody trial that physical custody was not a "huge issue." He contends that Ms. Langford's "change of heart" post-divorce is not the discovery of new evidence.

Initially, we note that Ms. Langford's motion to alter/amend or for a new trial was based on Maryland Rules 2-533 and 2-534, not Rule 2-535(c). Maryland Rules 2-533 and 2-534 permit the circuit court to grant a new trial or alter or amend a judgment upon a

motion made within 10 days after the entry of a judgment. Ms. Langford's motion was timely filed. Rule 2-535(c), which provides that the court may grant a new trial pursuant to that subsection only when the supposed newly discovered evidence "could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533," is inapplicable. Accordingly, there was no need to show that the evidence was newly discovered as defined in Rule 2-535(c).

The court did, however, legitimately question why evidence of Mr. Lewis' sex offender status and relinquishment of his nursing license warranted a modification of the custody order. When counsel stated that Ms. Langford had believed that Mr. Lewis did not commit the crimes until his testimony at trial, the court asked why the new information she was presenting was not available prior to trial. The court ultimately determined that the information to which Ms. Langford referred was available at the time of trial, and the motion to alter/amend or for a new trial should be denied.

We review a court's denial of a motion for a new trial and/or to alter or amend a judgment for an abuse of discretion. *See, e.g.*, *Miller v. Mathias*, 428 Md. 419, 438 (2012); *Mahler v. Johns Hopkins Hosp., Inc.*, 170 Md. App. 293, 321, *cert. denied*, 396 Md. 13 (2006). "'There is an abuse of discretion where no reasonable person would take the view adopted by the [circuit] court, or when the court acts without reference to any guiding rules or principles.'" *Bord v. Baltimore County*, 220 Md. App. 529, 566 (2014) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

Here, we perceive no abuse of discretion in denying Ms. Langford's motion. Ms. Langford clearly was aware that Mr. Lewis was a convicted sex offender and that his status as a probationer and registered sex offender may have been relevant to the child custody proceedings. It was within the discretion of the circuit court to reject Ms. Langford's argument that her misguided beliefs as to Mr. Lewis' innocence caused her to fail to diligently seek the evidence that she admitted was available before trial and was, as demonstrated by her own actions, easily obtainable. We perceive no error.[7]

II.

Modification of Custodial Rights

Ms. Langford next argues that the trial court "abused its discretion and committed legal error when it awarded [Mr. Lewis], a registered sex offender, with tie-breaking authority on all legal custody decisions regarding the minor children, except for education." Although she recognizes that, in deciding legal custody matters, courts apply a number of factors, she contends that, "when determining which parent, if any, to award with tie-breaking authority, factors such as the fitness, character, and reputation of each parent must be given great consideration." She argues that the court abused its discretion in awarding Mr. Lewis tie-breaker authority because "there is no indication that [Mr. Lewis], a

[7] Moreover, although the circuit court did deny Ms. Langford's motion to alter or amend the judgment, it nonetheless conducted a full hearing on Mr. Lewis' motion to modify custody, which, in essence, resulted in the same process that Ms. Langford was seeking, i.e., an opportunity to present her "new" evidence to the court in the context of a review of the custody arrangement. Accordingly, Ms. Langford states no claim for relief in this regard.

registered sex offender who lied under oath about his status as a registered sex offender, has the ability to exercise the judgment and decision-making that is necessary when having tie-breaking authority."

Mr. Lewis argues that the trial court did not abuse its discretion "in awarding the parties joint legal custody and allowing [Mr. Lewis], a trained medical professional and devoted father, to make final decisions regarding medical care and daycare." He contends that, during the proceedings below, Ms. Langford "never asserted that [he] was unfit to have joint legal custody of the parties' children because of his status as a registered sex offender and the trial court noted that 'there has been no evidence presented that would suggest that Mr. Lewis is not a fit and proper parent.'"

In *Santo v. Santo*, 448 Md. 620 (2016), the Court of Appeals reiterated the legal principles for determining custody issues. The Court explained that, "[w]ith respect to a circuit court's authority in child custody cases, 'the power of the court is very broad so that it may accomplish the paramount purpose of securing the welfare and promoting the best interest of the child.'" *Id.* at 627 (quoting *Taylor v. Taylor*, 306 Md. 290, 301-02 (1986)). Factors to consider in determining whether joint custody is appropriate include: (a) "Capacity of the Parents to Communicate and to Reach Shared Decisions Affecting the Child's Welfare"; (b) "Willingness of Parents to Share Custody"; (c) "Fitness of Parents"; (d) "Relationship Established Between the Child and Each Parent"; (e) "Preference of the Child" (f) "Potential Disruption of Child's Social and School Life"; (g) "Geographic Proximity of Parental Homes"; (h) "Demands of Parental Employment"; (i) "Age and

Number of Children"; (j) "Sincerity of Parents' Request"; (k) "Financial Status of the Parents"; (l) "Impact on State or Federal Assistance"; (m) "Benefit to Parents"; and (n) and "Other Factors." *Taylor*, 306 Md. at 304-11. Courts additionally have considered a number of other, albeit sometimes interrelated, factors, including: (1) Parents' "character and reputation"; (2) "agreements between the parties"; (3) "Parents' ability to maintain relationships between the children and others who may affect the children's best interests"; (4) "Parents' ability to maintain a stable, appropriate home"; (5) "potentiality of maintaining natural family relations"; (6) "material opportunities affecting the future of the child"; (7) "length of separation from the natural parents"; and (8) "prior voluntary abandonment or surrender." *See Santo*, 448 Md. at 641-42; *Best v. Best*, 93 Md. App. 644, 655-56 (1992).

Ms. Langford, for good reason, cites no authority that indicates that being a registered sex offender and/or offering allegedly questionable testimony at trial *per se* disqualifies a parent from having legal custody of his child and tie-breaking authority in certain matters. To the contrary, she correctly notes that trial courts apply a number of "non-exclusive factors" and custody decisions are within the court's discretion, to be reviewed under an abuse of discretion standard. *Santo*, 448 Md. at 625 ("We review a trial court's custody determination for abuse of discretion.").

Here, the circuit court did not put much stock into Ms. Langford's "newly-discovered" evidence regarding Mr. Lewis' sex offender status and his credibility as a trial witness. To the contrary, the court explicitly found that "there has been no evidence

presented that would suggest that Mr. Lewis is not a fit and proper parent." The court carefully considered all of the circumstances and concluded that the parent with the medical training, Mr. Lewis, would have tiebreaking authority on medical issues. Moreover, given that the younger child was terminated from day care due to Ms. Langford's refusal to allow Mr. Lewis" girlfriend to pick him up, and that Mr. Lewis' sex offender status potentially prevented him from picking up the child, the court reasonably concluded that Mr. Lewis should have tiebreaking authority regarding daycare matters to prevent future problems with daycare. The court's factual findings were not clearly erroneous, and it was not an abuse of the court's discretion to award Mr. Lewis joint legal custody and tie-breaker authority with respect to these two matters.

III.

Attorneys' Fees

Ms. Langford next contends that the trial court abused its discretion "when it awarded attorneys' fees to [Mr. Lewis] after finding that [she] acted in bad faith in requesting that the lower court amend the judgment of divorce or for a new trial, and for opposing [Mr. Lewis'] request for sole custody of the minor children." She asserts that the trial court "was clearly erroneous" in concluding that her motions were filed in bad faith, stating that she had "a reasonable basis for filing both of these motions and did not file either motion with the intent to harass or unreasonably delay the proceedings." In any event, Ms. Langford argues that, even if her motions were filed in bad faith, her actions did

not constitute a "serious abuse of judicial process," and therefore, this case "does not meet the high standard that is required for an imposition of sanctions under Rule 1-341."

Mr. Lewis argues that the circuit court's findings that Ms. Langford's motions were filed in bad faith were not clearly erroneous, and the court did not abuse its discretion in awarding him $3,500 in attorneys' fees. With respect to Ms. Langford's motion to dismiss, he contends that she failed to allege that his motion was not well-pleaded. He asserts that his motion did sufficiently allege material changes of circumstances, including Ms. Langford's refusal to co-parent and her erratic behavior causing harm to the children. With respect to Ms. Langford's motion to alter/amend or for a new trial, he contends that the motion was filed in bad faith because "she asserted the discovery of 'new evidence' despite her admission that she knew about the evidence at the time of trial." He further contends that the arguments in that motion were "erroneous and baseless," asserting that, if she believed that Mr. Lewis "was not a fit and proper person to be a custodial parent, it was her responsibility to present evidence supporting that contention at the trial in November 2015." He characterizes her motion to alter/amend or for a new trial as an attempt "to get the proverbial 'second bite at the apple' to retry the custody portion of this case while circumventing the requirement of a material change in circumstances, which was in bad faith and caused [Mr. Lewis] to incur unnecessary legal fees in his defense."

In reviewing a circuit court's decision to award attorneys' fees pursuant to Rule 1-341, we engage in a two-step standard of review. First, "[w]e review a circuit court's determination whether a party maintained or defended an action in bad faith or without

substantial justification under a clearly erroneous standard." *Toliver v. Waicker*, 210 Md. App. 52, 71, *cert. denied*, 432 Md. 213 (2013). A finding is clearly erroneous only if there is "no competent and material evidence" in the record to support it. *See Green v. McClintock*, 218 Md. App. 336, 368, *cert. denied*, 440 Md. 462 (2014). Second, we review a court's assessment of sanctions for an abuse of discretion. *Worsham v. Greenfield*, 187 Md. App. 323, 342 (2009), *aff'd on other grounds*, 435 Md. 349 (2013).

We have explained that, "[i]n the context of Rule 1-341, bad faith exists when a party litigates with the purpose of intentional harassment or unreasonable delay." *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999). *Accord Art Form Interiors, Inc. v. Columbia Homes, Inc.*, 92 Md. App. 587, 594 ("The 'bad faith' referred to in Rule 1-341 is defined as acting 'vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons.'") (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991)), *cert. denied*, 328 Md. 567 (1992). "In analyzing whether a party lacked substantial justification in filing its claim, we must determine 'whether [the offending attorney or party] had a *reasonable basis* for believing that the claims would generate an issue of fact.'" *RTKL Assocs. v. Baltimore County*, 147 Md. App. 647, 658 (2002) (quoting *Inlet Assoc.*, 324 Md. at 268). "[T]o constitute substantial justification, a party's position should be 'fairly debatable' and 'within the realm of legitimate advocacy.'" *Inlet Assocs.*, 324 Md. at 268 (quoting *Newman v. Reilly*, 314 Md. 364, 381 (1988)).

Addressing first Ms. Langford's motion to dismiss, we note that, at the time she filed her motion to dismiss Mr. Lewis' motion to modify custody, she already had filed a

motion in opposition to that motion and subsequently amended it. We further note that she included no citation to any legal authority that would support dismissal of the action.[8]

Under these circumstances, and given the multitude of pleadings filed in this case, we cannot conclude that the circuit court was clearly erroneous in concluding that this motion was filed in bad faith.

With respect to Ms. Langford's motion to alter/amend or for a new trial, we have already discussed, *supra*, that this motion was lacking in merit. Ms. Langford conceded that the information that she claimed was "newly-discovered" was available to her before trial, and that she had not challenged previously Mr. Lewis' fitness as a parent.

The trial court here discussed Ms. Langford's general conduct since the November 2015 trial, noting her "lack of good faith and credibility dealing with day to day issues between the parties and their child," her refusal to allow Ms. Zell to pick up P.J. to control the daycare, which suggested a "pattern," the failure to present evidence that Mr. Lewis was not a fit parent, and the lack of a basis for the motion. Given this evidence, we cannot conclude that the circuit court was clearly erroneous in finding that Ms. Langford's motions were filed in bad faith.

With respect to the court's decision to impose sanctions, we disagree with Ms. Langford that this case fails to "meet the high standard that is required for an

[8] The only legal authority included in the motion was a citation to a single case explaining the proper analysis for assessing whether there was a "material change" in circumstances warranting modification of the custody arrangement, which reveals the true purpose of the motion, i.e., a continuation of her opposition to Mr. Lewis' motion to modify custody.

imposition of sanctions." To be sure, the cases cited by Ms. Langford do indicate that Rule 1-341 sanctions are an "extraordinary remedy" that should be imposed "sparingly" when there is a "serious abuse of judicial process." *See Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 677-78 (2003); *RTKL Associates*, 147 Md. App. at 658; *Black v. Fox Hills N. Cmty. Ass'n, Inc.*, 90 Md. App. 75, 84, *cert. denied*, 326 Md. 177 (1992). This Court, however, has noted that Rule 1-341 sanctions "can be an effective tool for the deterrence of unnecessary or abusive litigation," *Zdravkovich v. Bell Atlantic-Tricon Leasing, Corp.*, 323 Md. 200, 209 (1991), and in cases where a party prosecutes or defends a suit in a manner that is "patently frivolous and devoid of any colorable claim," the court is within its discretion to award reasonable attorneys' fees, *see Black*, 90 Md. App. at 84.

Here, we conclude, as did the circuit court, that Ms. Langford's motions were meritless. Accordingly, the circuit court did not abuse its discretion in awarding Mr. Lewis attorneys' fees as compensation for the time that his counsel spent responding to Ms. Langford's baseless motions.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.