Circuit Court for Howard County
Case No. 13-C-18-114549

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2057

September Term, 2018

PARALEGAL CONSULTANTS, LLC,
ET AL.

v.

EDWARD J. BROWN, LLC,
ET AL.

Fader, C.J.,
Wright,
Beachley,

JJ.

Opinion by Fader, C.J.

Filed: November 13, 2019

*Wright, J., now retired, participated in the hearing and conference of this case while an active member of the Court; after being recalled pursuant to Maryland Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this Opinion.

This appeal requires us to explore when pursuing a legal theory without substantial justification may result in an award of sanctions pursuant to Rule 1-341 against (1) an attorney and (2) a party. Paralegal Consultants, LLC and its sole member, Valerie M. Nowottnick, the plaintiffs below, sued Edward J. Brown and Edward J. Brown, LLC (collectively, "Mr. Brown") for defamation and related causes of action based on statements Mr. Brown made in a court filing in a different case. Roger R. Munn, Jr. and Law Offices of Roger R. Munn, Jr. (collectively, "Mr. Munn") represented Ms. Nowottnick and Paralegal Consultants in their lawsuit.[1] The Circuit Court for Howard County granted Mr. Brown's motion to dismiss on the ground that the allegedly defamatory statements were protected by the judicial proceedings privilege. That ruling is no longer at issue.[2]

The circuit court also granted Mr. Brown's motion for sanctions under Rule 1-341 on the basis that Paralegal Consultants and Ms. Nowottnick "lacked substantial justification in maintaining this action." The court imposed $10,000 in sanctions on Paralegal Consultants, Ms. Nowottnick, and Mr. Munn, jointly and severally. Ms. Nowottnick (now self-represented) and Mr. Munn (separately represented by counsel) contend that the circuit court (1) erred as a matter of law in finding that the defamation

[1] Edward J. Brown, LLC is Mr. Brown's law firm and Law Offices of Roger R. Munn, Jr. is Mr. Munn's law firm. For our purposes—except as set forth in footnote 4—the distinction between those attorneys and their law firms is unimportant, and so we refer to each attorney and his firm collectively by the name of the attorney.

[2] As discussed below, Paralegal Consultants and Ms. Nowottnick initially filed an appeal from the ruling granting the motion to dismiss. Ms. Nowottnick subsequently dismissed that appeal, and Paralegal Consultants has failed to pursue it.

claims "lacked substantial justification" and (2) abused its discretion by imposing a $10,000 sanction. Mr. Brown cross-appeals, challenging (1) the court's failure to find that Ms. Nowottnick acted in bad faith and (2) the amount of the monetary sanction.[3] We conclude that:

> 1. The court did not abuse its discretion in determining that Mr. Munn was subject to a potential sanctions award because he lacked substantial justification for maintaining this action due to the deficient legal theory underlying the complaint;
>
> 2. In the absence of factual findings to support Ms. Nowottnick's responsibility for her attorney's deficient legal theory, the court abused its discretion in sanctioning Ms. Nowottnick;
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> 3. The circuit court did not abuse its discretion in declining to find that Paralegal Consultants and Ms. Nowottnick acted in bad faith; and
>
> 4. We must vacate the monetary sanctions and remand this case to the circuit court for determination of an appropriate sanctions award against Mr. Munn in accordance with the requirements of *Christian v. Maternal-Fetal Medical Associates of Maryland, LLC*, 459 Md. 1 (2018).[4]

[3] Paralegal Consultants did not appeal from the order imposing sanctions and has not participated in this appeal, but remains a cross-appellee to Mr. Brown's appeal.

[4] Mr. Munn has moved to dismiss the cross-appeal of Mr. Brown himself—but not of Edward J. Brown, LLC—on the basis that Mr. Brown has "acquiesce[d] in . . . the validity of the decision . . . from which [he] appeals" by serving "discovery requests in aid of enforcement under Maryland Rule 2-633." Because "a valid judgment is a precondition to a party's right to take any discovery in aid of enforcement under Rule 2-633," *Johnson v. Francis*, 239 Md. App. 530, 537 n.1 (2018), Mr. Munn posits that Mr. Brown's discovery requests have "invoked the authority of the [circuit court's] [o]rder," and he thereby has forfeited his right to challenge that order on appeal.

Mr. Munn's contention is based on a misunderstanding of the doctrine of acquiescence. According to that doctrine, "a voluntary act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review." *Exxon Mobil Corp. v. Ford*, 433 Md. 426, 462 (emphasis and internal quotation marks omitted), *as supplemented on denial of reconsideration*, 433 Md. 493 (2013). "The waiver doctrine applies only to conduct that is necessarily inconsistent with

BACKGROUND

Raver v. Beckman

This case arose collaterally from *Raver v. Beckman*, No. CSA-REG-2014-2016, 2017 WL 6493251 (Md. Ct. Spec. App. Dec. 19, 2017),[5] an appeal in a protracted and acrimonious dispute in which (1) Mr. Brown served as counsel to the appellee, Christian Beckman, and (2) Ms. Nowottnick, through Paralegal Consultants, worked as a contract paralegal for Margaret Mead, who served as counsel to the appellant, Shawn Raver. The circuit court had dismissed Mr. Beckman's defamation suit but denied Mr. Raver's motion for sanctions under Rule 1-341. Unsatisfied, Mr. Raver appealed to this Court from the denial of sanctions.

On the day that the appellant's brief was due, a two-page motion was filed on behalf of Mr. Raver that requested a two-business-day extension of time to file, allegedly due to delays in printing copies of the brief. The motion bore Ms. Mead's signature line with her name handwritten in cursive above it.

On behalf of Mr. Beckman, Mr. Brown responded with a 27-page motion to dismiss the appeal in which he accused Mr. Raver "and/or his counsel" (Ms. Mead) of as many as

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the right to appeal." *Id.* at 463 (internal quotation marks omitted). Here, Mr. Brown's discovery efforts are not inconsistent with his claims on appeal and, therefore, we will deny the motion to dismiss. *See Dietz v. Dietz*, 351 Md. 683, 689 (1998) (doctrine of acquiescence is not implicated where a party has not "tak[en] a position which is inconsistent with the right of appeal").

[5] We cite this unreported decision only to provide factual background and not as precedential authority. *See* Md. Rule 1-104(b); *Evans v. County Council*, 185 Md. App. 251, 255 n.2 (2009).

21 separate violations of the Maryland Rules, and asked that Mr. Raver's "spite-based appeal" be dismissed. Among his many accusations, Mr. Brown alleged that Ms. Mead had violated the Maryland Rules[6] by "ha[ving] a contract paralegal prepare, sign and submit the motion" for extension of time. Mr. Brown based that allegation on a comparison between Ms. Mead's signature on the document and her signature on other filings, and apparently assumed that a contract paralegal had signed it instead based on a telephone conversation he had with Ms. Nowottnick on the day the motion was filed. Although Mr. Brown's motion was directed primarily at Ms. Mead, it repeatedly referred to the "contract paralegal" who had assisted her. For example, Mr. Brown wrote that "[i]f the Motion was prepared signed and submitted by a contract paralegal, with no supervision by counsel of record, then the Motion should be stricken on that ground alone"; that "the only inference is that Ms. Mead did not even supervise or review the work of this contract consultant paralegal" (emphasis removed); and that "in a desperate attempt to avoid the excusable neglect standard [Ms. Mead] had a likely unwitting contract paralegal prepare and sign a pathetically non-compliant Motion in the Court of Special Appeals of Maryland."

[6] Rule 1-311(a) provides that "[e]very pleading and paper of a party represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State and who complies with Rule 1-312." "The signature of an attorney on a pleading or paper constitutes a certification that the attorney has read the pleading or paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for improper purpose or delay." Md. Rule 1-311(b). A pleading or paper that lacks the required signature "may be stricken," and "[f]or a willful violation of th[e] Rule, an attorney is subject to appropriate disciplinary action." Md. Rule 1-311(c).

Mr. Brown's motion to dismiss did not identify Ms. Nowottnick by name, but it did (mis)identify her firm as "Paralegal Consulting." An affidavit that Mr. Brown attached to the motion included the correct name and telephone number of Paralegal Consultants, but again did not name Ms. Nowottnick individually. After receiving the motion, Ms. Mead emailed Mr. Brown to explain that "no paralegal . . . signed [her] name," but that her "law partner, who is also [her] son, was granted the [ ] authority to sign [her] name."[7]

Paralegal Consultants and Ms. Nowottnick Sue Mr. Brown

Ms. Nowottnick and Paralegal Consultants, both initially represented by Mr. Munn, sued Mr. Brown. The complaint alleged that Mr. Brown's statements in the *Raver* motion to dismiss had defamed Ms. Nowottnick and Paralegal Consultants, and cast them in a false light, by accusing them falsely of committing or abetting a violation of Rule 1-311. Ms. Nowottnick and Paralegal Consultants sought $1.5 million in damages.

Mr. Brown moved to dismiss, asserting that the complaint was "patently frivolous" because "attorneys . . . are absolutely privileged to publish defamatory matters during the course of a judicial proceeding." Mr. Brown also moved for sanctions against both plaintiffs and Mr. Munn under Rule 1-341, arguing that the complaint "was filed in bad faith and/or without substantial justifications." Mr. Brown professed to find it "shocking" and "incredible" that both Mr. Munn—an attorney "licensed to practice law in the State of

[7] The parties continue to dispute who, exactly, signed Ms. Mead's name on the motion. At a hearing on the motion to dismiss the amended complaint in this action, Ms. Mead testified that a paralegal in her office, not Ms. Nowottnick (and not Ms. Mead's law partner son), signed on her behalf. Mr. Brown apparently remains unconvinced. The truth of that matter is not important to resolving this case.

Maryland since 1996"—and Ms. Nowottnick—a paralegal with a "vast and lengthy wealth of experience . . . including researching and drafting appellate briefs"—"would be unaware that attorneys have absolute privilege regarding statements made in court or pleadings or other documents related to or in connection with the case."

Ms. Nowottnick and Paralegal Consultants opposed both motions. In doing so, they argued that the judicial proceedings privilege applied only where the "party being defamed or slandered" was involved in the judicial proceedings in which the offending statement was made. Because Ms. Nowottnick and Paralegal Consultants were "neither parties nor witnesses to the *Raver v. Beckman* matter," they contended, the judicial proceedings privilege did not immunize Mr. Brown's statements.

Before the circuit court ruled on either of Mr. Brown's motions, Ms. Nowottnick and Paralegal Consultants filed an amended complaint, which differed from the original only in ways that are immaterial to this appeal. Two days later, the court signed an order granting the motion to dismiss the original complaint, without identifying the reason for the ruling. Thirteen days after that, the court denied the motion for sanctions.

Mr. Brown moved to dismiss the amended complaint on the same grounds upon which he had moved to dismiss the first complaint. Paralegal Consultants and Ms. Nowottnick opposed the motion, also on the same grounds they had raised previously.

The motion was assigned to a different judge, who held a hearing that centered mostly on an examination of Ms. Mead.[8]

At the close of the hearing, the circuit court granted the motion to dismiss. The court acknowledged Ms. Nowottnick's and Paralegal Consultants' "argu[ment] that judicial immunity doesn't apply because they weren't parties," but "d[id] not find that argument persuasive." Ms. Nowottnick, the court observed, "was an agent of the attorney for . . . [o]ne of the parties in the appeal." The court noted that "[t]he alleged defamatory statements were made during the course of the proceeding before the Court of Special Appeals," and that the statements "ha[d] a rational articulable relevance and responsiveness to the proceedings" because they "alleg[ed] a procedural defect that [a] pleading . . . wasn't signed by [an] attorney." Accordingly, the court concluded that the alleged defamatory statements were privileged and that the complaint ought to be dismissed. A written order of dismissal followed.

The day after the circuit court issued its written order, (1) Mr. Munn filed a motion to withdraw as counsel, and (2) Mr. Brown renewed his motion for sanctions. The renewed motion again argued that the complaint "was filed in bad faith and/or without substantial justification." Relying in part on statements Mr. Munn made at a deposition, Mr. Brown asserted that "either Mr. Munn and/or Ms. Nowottnick" failed to "research[] the issue of Judicial Privilege prior to filing suit," or else they "deliberately misconstrued Judicial

[8] The record does not explain why the parties presented testimony during a hearing on a motion to dismiss that was based on the legal sufficiency of the complaint. Because the court's ruling on that motion is not before us, we need not resolve that curiosity.

Privilege in order to justify this vexatious and harassing suit." Mr. Brown sought damages of $40,153.05, the amount of attorney's fees he claimed he had incurred up to that date in defending the action.

The circuit court granted Mr. Munn's motion to withdraw as counsel and scheduled a hearing on the motion for sanctions. Ms. Nowottnick appeared at the hearing on her own behalf and Mr. Munn appeared with his own counsel. Paralegal Consultants, which no longer had counsel and could not appear unrepresented, did not appear at all. Three days after the hearing, the court issued an order finding that the "Plaintiffs lacked substantial justification in maintaining this action," granting Mr. Brown's motion for sanctions, and ordering Paralegal Consultants, Ms. Nowottnick, and Mr. Munn, jointly and severally, to pay $10,000 "as a sanction pursuant to Maryland Rule 1-341."

In an accompanying memorandum opinion, the circuit court explained that it found a lack of substantial justification in maintaining the action because Paralegal Consultants, Ms. Nowottnick, and Mr. Munn—"an attorney with 20 years of experience"—"should have been aware of the doctrine of judicial immunity prior to filing suit." "[E]ven if they weren't," the court reasoned, Mr. Brown "brought that legal princip[le] to [their] attention in the first motion to dismiss," and "it is presumed that counsel would have researched the issue and learned that [the] case could not be maintained." The court characterized Ms. Nowottnick's and Paralegal Consultants' argument that "the doctrine doesn't apply to non-parties" as "not supported by the law," and their argument "that the statements were not rationally related to the underlying judicial proceeding" as "not supported by the facts."

As counsel, Mr. Munn was "certainly expected to zealously represent his client," the court concluded, "but not in a case that substantially lacks merit."

The court thus limited its finding that Ms. Nowottnick, Paralegal Consultants, and Mr. Munn lacked substantial justification in maintaining the action to the legal merits of the complaint in light of the judicial proceedings privilege. The circuit court found that "both parties"—Ms. Nowottnick and Mr. Brown—"had a significant personal stake in this case, and that their actions in the case had been influenced by that fact." Although the court determined that "Ms. Nowottnick's actions in continuing the litigation were fueled at least in part by her animosity and anger toward [Mr. Brown], rather than a cool headed analysis of the merits of her action," it did not make a finding of bad faith by anyone involved.

The court discussed the amount of sanctions awarded as follows:

> In this case, the Court has reviewed the submitted billing data and affidavit, the case history and filings, and arguments of counsel and the parties. The Court will impose a sanction in the amount of $10,000.00 to be paid jointly and severally by Mr. Munn and the Plaintiffs.

Mr. Brown timely appealed the circuit court's ruling with respect to "the amount of Rule 1-341 Sanctions to be paid." Mr. Munn, represented by counsel, and Ms. Nowottnick, now self-represented, both timely appealed as well. Paralegal Consultants did not note an appeal from the order on sanctions.

DISCUSSION

To impose sanctions under Rule 1-341(a), "a court [must] make two separate findings, each with different, but related, standards of review." *Christian v. Maternal-*

Fetal Med. Assocs. of Md., 459 Md. 1, 20 (2018). First, the "court must make an explicit finding that a party conducted litigation either in bad faith or without substantial justification." *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 72 (2017). "This finding should be supported by a 'brief exposition of the facts upon which [it] is based,'" and "will be upheld on appellate review unless it is clearly erroneous or involves an erroneous application of law." *Id.* (quoting *Talley v. Talley*, 317 Md. 428, 436 (1989)). The appellate court owes "significant deference" to the trial court's "factual determinations," *L.W. Wolfe Enters. v. Md. Nat'l Golf*, 165 Md. App. 339, 344 (2005), and must view "evidence . . . 'in a light most favorable to the prevailing party,'" *Christian*, 459 Md. at 21 (quoting *Liberty Mut. Ins. v. Md. Auto. Ins. Fund*, 154 Md. App. 604, 609 (2004)). No such deference "appl[ies] to legal conclusions," however. *YIVO Inst. for Jewish Research v. Zaleski*, 386 Md. 654, 662 (2005) (quoting *Nesbit v. GEICO*, 382 Md. 65, 72 (2004)). "When the trial court's [decision] 'involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are legally correct under a *de novo* standard of review.'" *Id.* (alteration in *YIVO*) (quoting *Nesbit*, 382 Md. at 72).

Second, should the court determine that a litigant or attorney acted in bad faith or without substantial justification, it "must separately find," *Christian*, 459 Md. at 21, "whether the party's conduct merits the assessment of costs and attorney's fees," *Fort Myer*, 452 Md. at 72. The latter finding "will be upheld on appellate review unless found to be an abuse of discretion." *Id.* A court abuses its discretion when it "acts 'without reference to any guiding rules or principles,'" *Wilson v. John Crane, Inc.*, 385 Md. 185,

198 (2005) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)), or "adopts a position that no reasonable person would accept," *Ibru v. Ibru*, 239 Md. App. 17, 47 (2018) (quoting *Pinnacle Grp. v. Kelly*, 239 Md. App. 436, 476 (2018)); *see also Sydnor v. Hathaway*, 228 Md. App. 691, 708 (2016) ("[A] court's discretion is always tempered by the requirement that the court correctly apply the law applicable to the case." (quoting *Scholtzhauer v. Morton*, 224 Md. App. 72, 84 (2015))). Although "[t]he trial court enjoys a large measure of discretion in fixing the reasonable value of legal services," *DeLeon Enters. v. Zaino*, 92 Md. App. 399, 419 (1992) (quoting *Head v. Head*, 66 Md. App. 655, 669 (1986)), the court must support its decision with "specific findings of fact on the record" to ensure that "the imposed fees are not arbitrary" and that the appellate court "has [the] means to review [the] court's exercise of discretion," *Christian*, 459 Md. at 30-34 (quoting *Barnes v. Rosenthal Toyota*, 126 Md. App. 97, 106 (1999)).

I. PARALEGAL CONSULTANTS' APPEAL WILL BE DISMISSED.

We must first tie up the loose end that is Paralegal Consultants' appeal from the order granting Mr. Brown's motion to dismiss. Both Ms. Nowottnick and Paralegal Consultants, through Mr. Munn, timely appealed the circuit court's order granting Mr. Brown's motion to dismiss. After Mr. Munn withdrew as counsel, Ms. Nowottnick (then self-represented) filed a document purporting to dismiss that appeal on behalf of both herself and Paralegal Consultants. With respect to Ms. Nowottnick herself, her filing successfully dismissed that appeal. With respect to Paralegal Consultants, it did not.

Limited liability companies such as Paralegal Consultants "are legally separate" from their members, *Norman v. Borison*, 192 Md. App. 405, 422-23 & n.12 (2010), *aff'd*,

418 Md. 630 (2011), and "must be represented by counsel in civil proceedings in a circuit court," *Peterson v. Evapco, Inc.*, 238 Md. App. 1, 61 (2018) (brackets omitted) (citing Md. Rule 2-131(a)(2)). That is true even when an LLC has only a single member, *see Lattanzio v. COMTA*, 481 F.3d 137, 139 (2d Cir. 2007) (per curiam), or when the LLC and its member "fac[e] joint and severa[l] liability," *Peterson*, 238 Md. App. at 61. Courts refuse to allow a single-member LLC's sole member to appear in court on its behalf because the member, having accepted "the benefits of the corporate form"—such as "enjoy[ing] limited responsibility for the debts, obligations, and liabilities of the LLC"—also must "bear the burdens" that come with that status, "such as the need to hire counsel to sue or defend in court." *Lattanzio*, 481 F.3d at 140.

Ms. Nowottnick, who is not an attorney, thus lacked the authority to withdraw Paralegal Consultants' appeal. *See Floyd v. Mayor & City Council of Baltimore*, 179 Md. App. 394, 427 (2008), *aff'd*, 407 Md. 461 (2009). Nonetheless, Paralegal Consultants has failed to prosecute its appeal in any way. As a result, we will dismiss Paralegal Consultants' appeal from the dismissal of its complaint for failure to file a brief pursuant to Rule 8-602(c)(5).

II. WHEN A REPRESENTED PARTY'S LEGAL ARGUMENTS ARE "WITHOUT SUBSTANTIAL JUSTIFICATION," A COURT GENERALLY SHOULD NOT SANCTION THE CLIENT UNLESS THE COURT SPECIFICALLY FINDS FACTS THAT SUPPORT THE CLIENT'S RESPONSIBILITY.

When imposing sanctions based on the absence of substantial justification for a party's legal arguments, a court must be cognizant of the different roles played by lawyers and clients in formulating legal strategy. The Maryland Attorneys' Rules of Professional

Conduct, although not determinative, are informative in this respect. Under our advocacy system, the lawyer, not the client, "assume[s] responsibility for . . . legal tactical issues." Md. Rule 19-301.2, cmt. 1. Rule 19-301.2(a) provides in pertinent part:

> [A]n attorney shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued. . . . An attorney shall abide by a client's decision whether to settle a matter.

See also Att'y Grievance Comm'n v. Powers, 454 Md. 79, 101 (2017). Except for certain, "specified fundamental decisions, . . . strategic and tactical decisions are the exclusive province of . . . counsel, after consultation with the client." *Jones v. Barnes*, 463 U.S. 745, 753 n.6 (1983) (citing ABA Model R. Prof'l Conduct 1.2(a); ABA Standards for Crim. Just. 4-5.2). The lawyer bears ultimate responsibility "to present the client's case in accord with counsel's professional evaluation." *Id.* at 751.

We agree with the United States Court of Appeals for the Second Circuit that "[n]on-attorney clients" such as Ms. Nowottnick "do not share the same ethical obligations that their attorneys owe th[e c]ourt." *Ransmeier v. Mariani*, 718 F.3d 64, 71 (2d Cir. 2013). Maryland lawyers are bound by the Attorneys' Rules of Professional Conduct "not [to] bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous." Md. Rule 19-303.1. Clients fairly expect that, in evaluating their cases, their attorneys will employ "the legal knowledge, skill, thoroughness and preparation" that the Rules require. Md. Rule 19-301.1. If a lawyer tells a client that a frivolous case is meritorious, then the client "should not be punished" simply

for his or her attorney's poor "exercise of [ ] professional judgment." *See Ransmeier*, 718 F.3d at 71.

Rule 1-341 provides that the court may sanction "the offending party or the attorney advising the conduct or both." Md. Rule 1-341(a). Which of those entities should be sanctioned (if either) depends on the facts and circumstances of the alleged wrongdoing in a particular case. For example, when an action lacks factual justification, the litigant will often, though not always, be positioned as well as if not better than the attorney to know whether the case is substantially justified. With respect to legal justification, however—at least where the issue is purely one of law—the lawyer typically will be in the better position to assess the case's merit.

To be sure, in certain instances, such as when the client "affirmatively admits that she 'worked closely' with [the] [a]ttorney [ ] in preparing" the sanctionable motion, *see Ransmeier*, 718 F.3d at 71, a court may be justified in imposing sanctions directly on the client even when the failing is one of law. But in such a case, the court must "analyze the conduct of parties and their attorneys separately" and, when sanctioning a client, must "specify conduct of the client herself that is bad enough to subject her to sanctions." *Id.* (quoting *Gallop v. Cheney*, 660 F.3d 580, 584 (2d Cir. 2011) (per curiam), *vacated in part on other grounds*, 667 F.3d 226, 231 (2d Cir. 2011)).

In short, before a court may sanction a client for maintaining a claim that lacks substantial justification due to a deficient legal theory, the court must identify more than just the absence of a legal basis for the claim. The court must find a sufficient factual basis for holding the client responsible for what is essentially a legal failing. A non-exhaustive

list of factors a court may consider in conducting such an analysis includes the relationship between lawyer and client; any legal training the client possesses; the client's level of sophistication; the complexity of the relevant legal principles; the client's actual knowledge of relevant law; and, if available and not protected by privilege, any instructions the client provided to the lawyer or advice the lawyer provided to the client.

III. THE CIRCUIT COURT DID NOT ERR OR ABUSE ITS DISCRETION IN SANCTIONING MR. MUNN, BUT ERRED IN SANCTIONING MS. NOWOTTNICK.

Separately analyzing the conduct of Mr. Munn and Ms. Nowottnick, we conclude that the court did not err in concluding that the legal basis underlying this action was deficient and did not clearly err in finding that Mr. Munn lacked substantial justification for maintaining the action after Mr. Brown filed his first motion to dismiss. We also conclude that the court did not abuse its discretion in deciding that the absence of substantial justification merited the assessment of an award of costs and attorney's fees against Mr. Munn. We determine, however, that the court did err in imposing sanctions on Ms. Nowottnick in the absence of specific factual findings sufficient to hold her responsible for the legal deficiency of the complaint.

A. The Judicial Proceedings Privilege Protected Mr. Brown's Statements.

"[W]hen assessing whether a claim has substantial justification," we "must conduct 'an examination of the merits' under the totality of the circumstances presented to the court." *Christian*, 459 Md. at 23. Thus, even though Ms. Nowottnick dismissed her appeal

of the circuit court's order granting Mr. Brown's motion to dismiss, we consider the merits of her claim for purposes of reviewing the court's sanctions order.

We begin by reviewing briefly the statements that gave rise to this action, which, as noted, Mr. Brown made in a motion to dismiss filed in this Court in the *Raver* action. The statements referred, albeit not by name, to Ms. Nowottnick. Using strong, accusatory language, Mr. Brown alleged that (1) a contract paralegal, rather than the attorney by whom she had been retained (Ms. Mead), had signed a motion for an extension of time; (2) that act violated Rule 1-311; and (3) the appeal should be dismissed due to that rule violation, as well as others allegedly committed by Ms. Mead.

Ms. Nowottnick's and Paralegal Consultants' complaint alleged that Mr. Brown's statements were defamatory and cast Ms. Nowottnick in a false light. Mr. Brown argues that, defamatory or not, his statements were absolutely protected by the judicial proceedings privilege and, therefore, the complaint was frivolous. He contends that Mr. Munn should have known that before filing the complaint, but that even if he did not, he certainly should have known it once he received Mr. Brown's initial motion to dismiss. The circuit court agreed.

The judicial proceedings privilege—also known as the litigation privilege—"immunizes a party for statements made in a judicial proceeding." *O'Brien & Gere Eng'rs v. City of Salisbury*, 447 Md. 394, 398 (2016). The privilege dates as far back as Elizabethan England, and "rests on the vital public policy of the 'free and unfettered administration of justice.'" *Id.* at 409 (quoting *Adams v. Peck*, 288 Md. 1, 5 (1980)). For "the judicial process . . . to function effectively, those who participate must be able to do

so without being hampered by the fear of private suits for defamation." *Id.* at 409-10 (quoting *Adams*, 288 Md. at 5). Accordingly, the judicial proceedings privilege protects judges, parties, witnesses, and attorneys from civil liability for statements made "in the institution of, or during the course and as a part of, a judicial proceeding in which [they] participate[]." *Id.* at 411 n.10 (quoting Restatement (Second) of Torts § 586 (privilege for attorneys)); *see also* Restatement (Second) of Torts §§ 585 (privilege for judicial officers), 587 (parties), 588 (witnesses), & 589 (jurors).

Maryland applies the judicial proceedings privilege to protect statements made by witnesses, parties, judges, and, with one important difference, attorneys. "For witnesses, parties, and judges," Maryland "employ[s] the 'English' rule, which provides that the putative tortfeasor enjoys absolute immunity from civil liability, even if the statement is wholly unrelated to the underlying proceeding." *Norman* , 418 Md. at 650. "For attorneys whose appearances are entered in a case," though, Maryland "follow[s] the majority American rule and require[s] that the defamatory statement have some rational relation to the matter at bar." *Id.* Hence, for an attorney's statement to be privileged, the statement must "ha[ve] some rational, articulable relevance or responsiveness to the proceeding." *Id.* at 660. The statement need not be "relevant" in the sense of "the evidentiary relevance test," *id.* n.19 (quoting *Woodruff v. Trepel*, 125 Md. App. 381, 392 (1999), but it must have some "reference or relation to, or connection with, the case," *Norman*, 418 Md. at 660 n.19 (quoting *Maulsby v. Reifsnider*, 69 Md. 143, 162 (1888)). That additional requirement prevents attorneys, "under pretense of pleading [their] cause[s]," from "wander[ing] designedly from the point in question" and "gratify[ing] private malice by uttering

slanderous expressions . . . which have no relation to the cause or subject-matter of the inquiry." *Maulsby*, 69 Md. at 162 (quoting *Hoar v. Wood*, 3 Metcalf 193 (Mass. 1841); *McMillan v. Birch*, 1 Binn. 178 (Pa. 1806)).

Once the judicial proceedings privilege applies, "its protection is absolute." *Day v. Johns Hopkins Health Sys. Corp.*, 907 F.3d 766, 772 (4th Cir. 2018) (discussing Maryland law). The use of the word "'[a]bsolute . . . does not mean that there are 'no exceptions' to the privilege." *O'Brien & Gere Eng'rs*, 447 Md. at 411. Indeed, as we have already observed, it offers no protection to statements made by attorneys that have no rational relation to the case at hand. Rather, the privilege is "absolute" in the sense that it "provides complete immunity" and "may not [be] overcome . . . by establishing that a defamatory statement was made with actual malice." *Lindenmuth v. McCreer*, 233 Md. App. 343, 357 n.5 (2017). "This absolute privilege protects the person publishing the defamatory statement from liability even if his purpose or motive was malicious, he knew that the statement was false, or his conduct was otherwise unreasonable." *Adams*, 288 Md. at 3.

Here, Mr. Brown's allegedly defamatory statements were protected by the judicial proceedings privilege. Those statements were made by an attorney, "during the course of [a judicial] proceeding," *Norman*, 418 Md. at 660 (internal quotation marks omitted), and in a motion filed with this Court, *see Forras v. Rauf*, 39 F. Supp. 3d 45, 55 (D.D.C. 2014) (holding that "statements . . . contained in [a] motion to dismiss" were "were made in the course of a judicial proceeding" and thereby "protected by the judicial proceedings privilege"), *aff'd on other grounds*, 812 F.3d 1102 (D.C. Cir. 2016). Furthermore, the statements bore "some rational, articulable relevance or responsiveness to the proceeding,"

Norman, 418 Md. at 660, in that the motion was premised on the contention that Ms. Mead had violated numerous Maryland Rules, and Mr. Brown's reference to Ms. Nowottnick's alleged action supported directly one of those contended violations.

Before the circuit court, Mr. Munn argued that the judicial proceedings privilege did not bar Ms. Nowottnick's defamation and false light claims for two reasons. First, Mr. Munn contended that Mr. Brown's statements went farther than necessary to make his point and, therefore, lacked any rational relationship to the case. Mr. Munn suggested that Mr. Brown could have "argue[d] that the pleading was signed by someone other than Ms. Mead," rather than specifically "accus[ing] [Ms. Nowottnick]" of doing it. It is, of course, true that Mr. Brown could have made his argument differently, but his identification of the alleged signer as a "contract paralegal" does not become entirely disconnected from the case—thus lacking any "rational relation" to it—simply because it was more specific than may have been strictly necessary. The judicial proceedings privilege does not apply merely when a statement is *necessary* to counsel's argument. Rather, it protects all statements that have a "reference or relation to, or connection with, the case before the [c]ourt." *Norman*, 418 Md. at 660 n.19 (quoting *Maulsby*, 69 Md. at 162). Mr. Brown's statements easily met that standard.

Second, Mr. Munn also asserted that the judicial proceedings privilege did not apply because Ms. Nowottnick and her firm "were third-party contractors . . . not parties to the matter of *Raver v. Beckman*." In other words, Mr. Munn posited that the judicial proceedings privilege does not protect statements made about persons who are "neither witnesses nor parties to the action." That theory, however, gets the privilege backwards.

The privilege protects words spoken *by* participants in the judicial process, not words spoken *about* them. *See, e.g.*, *Norman*, 418 Md. at 650 (describing privilege as applied when "the putative tortfeasor is a witness/ party/ judge, or an attorney of record in the case"); *Maulsby*, 69 Md. at 162 (discussing application of privilege to statements made about "a party or witness *or any other person*" (emphasis added)). The question is whether the words at issue "had reference to the subject-matter of inquiry before the court," not whether the person allegedly being defamed is a witness or a party to the case. *See id.* at 164.

In applying the judicial proceedings privilege, we do not consider whether Mr. Brown's accusations regarding Ms. Nowottnick were reckless, intemperate, hyperbolic, sloppy, unprofessional, unethical, or even false. Our concern is solely whether they bore a "rational relation to the matter at bar." *O'Brien & Gere Eng'rs*, 447 Md. at 410. Because they did, they were protected by the judicial proceedings privilege. As noted, of course, that the legal theory did not prevail does not mean it lacked substantial justification. It is to that question that we now turn.

B. The Circuit Court Did Not Err in Finding that Mr. Munn Lacked Substantial Justification for Maintaining This Action on Behalf of Ms. Nowottnick and Paralegal Consultants.

The Court of Appeals has warned courts repeatedly to act "cautiously" with respect to Rule 1-341 sanctions. *E.g.*, *Christian*, 459 Md. at 19. "Unlike Rule 11 of the Federal Rules of Civil Procedure, Rule 1-341 is not punitive in nature," *Barnes*, 126 Md. App. at 105, and "does not provide for a monetary award to punish a party that misbehaves," *Major v. First Va. Bank-Cent. Md.*, 97 Md. App. 520, 530 (1993). Nor is the rule "intended to

simply shift litigation expenses based on relative fault." *Worsham v. Greenfield*, 435 Md. 349, 368-69 (2013) (quoting *Zdravkovich v. Bell Atl.-Tricon Leasing Corp.*, 323 Md. 200, 212 (1991)). Instead, Rule 1-341's "purpose is to deter unnecessary and abusive litigation" by "compensat[ing] the aggrieved party for their reasonable costs and expenses." *Christian*, 459 Md. at 19; *Worsham*, 435 Md. at 369 (same). Thus, attorney's fees should only be awarded "sparingly" under Rule 1-341 as "an 'extraordinary remedy' . . . in rare and exceptional cases." *Christian*, 459 Md. at 19 (quoting *Barnes*, 126 Md. App. at 105; *Major*, 97 Md. App. at 530).

In *Christian*, the Court of Appeals recently stated the standard for whether a proceeding lacks substantial justification. The Court stated that "proceedings [may] lack substantial justification" when "a party has no evidence to support its allegations," or when a claim is "frivolous" and "indisputably ha[s] no merit." 459 Md. at 23. The Court emphasized, however, that "lack[] [of] substantial justification . . . cannot be found exclusively on the basis that 'a court rejects the proposition advanced by counsel and finds it to be without merit.'" *Id.* at 25 (quoting *State v. Braverman*, 228 Md. App. 239, 260 (2016)); *see also Att'y Grievance Comm'n v. Dyer*, 453 Md. 585, 650-51 (2017) ("[A] lawyer who files appellate papers that are dismissed simply because the lawyer is wrong about the law . . . is generally not subject to discipline . . . ."). The Court determined that "[a] litigant ought not be penalized for innovation or exploration beyond existing legal horizons unless such exploration is frivolous," *Christian*, 459 Md. at 20 (quoting *Dent v. Simmons*, 61 Md. App. 122, 128 (1985)), meaning that "any reasonable attorney" would deem the argument "totally and completely without merit," *see Dent*, 61 Md. App. at 128

n.3 (quoting *In re Marriage of Flaherty*, 31 Cal. 3d 637, 650 (1982)). Thus, to be sanctionable, a legal argument must be "patently frivolous" and "outside the zone of what is considered legitimate advocacy."[9] *Christian*, 459 Md. at 25, 27.

Here, the circuit court concluded that once Mr. Brown had filed his motion to dismiss the original complaint, Mr. Munn lacked substantial justification for maintaining his legal argument that the judicial proceedings privilege did not bar Ms. Nowottnick's and Paralegal Consultants' claims. We hold that the court did not err in determining that Mr. Munn's argument lacked legal justification or clearly err in finding that Mr. Munn lacked substantial justification for pressing that argument after Mr. Brown filed his initial motion

[9] We note that our appellate courts have articulated the standard for "substantial justification" differently in the context of § 12-103 of the Family Law Article. Under § 12-103, courts may award attorney's fees in child custody and child support proceedings, but they first must consider, among other things, "whether there was substantial justification for bringing, maintaining, or defending the proceeding." Md. Code Ann., Fam. Law § 12-103(b)(3) (Repl. 2019). In *Davis v. Petito*, the Court of Appeals construed the term "substantial justification" as used in § 12-103 by drawing on "federal jurisprudence addressing the same standard in fee-shifting cases." 425 Md. 191, 204 n.8 (2012). The Court specifically cited *Pierce v. Underwood*, in which the United States Supreme Court held that "substantially justified" meant, for purposes of the federal Equal Access to Justice Act (EAJA), "'justified in substance or in the main'—that is, justified to a degree that could satisfy a reasonable person"—or "ha[ving] [a] reasonable basis both in law and in fact." *Davis*, 425 Md. at 204 n.8 (quoting *Pierce*, 487 U.S. 552, 565 (1988)). Thus, the Court of Appeals held that, for purposes of § 12-103, the standard of "substantial justification" requires a court to "assess whether each party's position was reasonable" in the context of "the merits of the case." *Davis*, 425 Md. at 204.

Although other states have employed the *Pierce* standard when issuing sanctions for discovery violations, *see, e.g.*, *Doe v. U.S. Swimming*, 200 Cal. App. 4th 1424, 1434-35 (2011); *Penn Cent. Corp. v. Buchanan*, 712 N.E.2d 508, 513 (Ind. Ct. App. 1999); *Goldstein v. Peacemaker Props.*, 828 S.E.2d 276, 287-88 (W. Va. 2019), or awarding fees under state analogues to the EAJA, *see, e.g.*, *Crowell Constructors v. State ex rel. Cobey*, 342 N.C. 838, 843-44 (1996), we apply the Court of Appeals's different formulation from *Christian* for purposes of reviewing an award of sanctions under Rule 1-341.

to dismiss. As discussed above, the judicial proceedings privilege applied as a matter of law to the statements on which the complaint was based, and neither reason Mr. Munn offered to the contrary was based on a tenable reading of settled law or a good faith argument for a modification thereof.

Mr. Munn first argued that the judicial proceedings privilege did not bar Ms. Nowottnick's complaint because Mr. Brown's statements did not bear a rational relation to the case in which they were made. But, as discussed, the test articulated by the Court of Appeals for application of the privilege asks only whether the statements have "some rational, articulable relevance or responsiveness to the proceeding." *Norman*, 418 Md. at 660. Mr. Munn might have believed that it was overkill for Mr. Brown to identify Ms. Nowottnick in his pleading, even if only as an unnamed "contract paralegal," but that hardly deprives the allegations of any rational relationship to the proceeding.

Mr. Munn next contended that the judicial proceedings privilege does not apply to statements made about persons uninvolved with the proceedings at issue. Under the circumstances of this case, that assertion is similarly unconvincing. To be clear, we do not suggest that it would be irrational to exempt statements made about uninvolved third parties from the protections of the privilege, nor do we suggest that a lawyer would lack substantial justification in making a "good faith argument" that the privilege should be modified to carve out such an exception. *See Christian*, 459 Md. at 24. But Mr. Munn did not make such an argument. Instead, he proffered an untenable reading of the cases to contend that existing law already supported his position. Moreover, even if there were an exception to the privilege for statements made about persons uninvolved in the proceedings, that

exception would not apply to Ms. Nowottnick, who was not only involved, but whose alleged conduct was directly at issue in the motion in which the allegedly defamatory statements were made.

Mr. Munn's arguments thus were not merely "questionable," "tenuous," or "misconceived." *Garcia v. Foulger Pratt Dev.*, 155 Md. App. 634, 684 (2003); *In re Chaires*, 249 B.R. 101, 106 (Bankr. D. Md. 2000) (quoting *Hess v. Chalmers*, 33 Md. App. 541, 545 (1976)). Instead, those arguments "indisputably ha[d] no merit." *Christian*, 459 Md. at 23. The circuit court found that even if it was acceptable for Mr. Munn to have made those arguments before Mr. Brown pointed out their deficiencies, Mr. Munn lacked substantial justification for maintaining the litigation after Mr. Brown did so.[10] That finding is not clearly erroneous.

We also conclude that the circuit court did not abuse its discretion in deciding to award sanctions against Mr. Munn. As noted, an award of sanctions under Rule 1-341 is not designed to be punitive, but is intended to "deter unnecessary and abusive litigation" by "compensat[ing] the aggrieved party for their reasonable costs and expenses." *Christian*, 459 Md. at 19. Here, the court did not abuse its discretion in deciding to award compensation for attorney's fees and costs that Mr. Brown reasonably incurred in defending this action once he made Mr. Munn aware of its substantial legal deficiency.

[10] We believe that the best reading of the circuit court's opinion is that the court found that Mr. Munn definitively lacked substantial justification for maintaining the litigation only once the initial motion to dismiss identified the legal principles that made doing so untenable. In light of the high burden for finding a lack of substantial justification, we agree that it is appropriate to limit that finding to Mr. Munn's maintenance of the litigation from that point forward.

C. The Circuit Court Erred in Finding that Ms. Nowottnick Lacked Substantial Justification for Maintaining This Action.

We reach a different conclusion regarding the circuit court's ruling with respect to Ms. Nowottnick. Crucially for our analysis, the only sanctionable conduct the court identified was the deficient legal argument made on Ms. Nowottnick's behalf. Without more, that conduct did not justify sanctioning Ms. Nowottnick under Rule 1-341.

As discussed above, a represented party, as distinct from her attorney, generally should not be sanctioned directly for a flawed legal argument unless the court finds a factual basis for holding the client responsible. Here, the only factual findings that the court made with respect to Ms. Nowottnick were that:

- She, along with Mr. Brown, "had a significant personal stake in this case," and "their actions in the case had been influenced by that fact";
- "[I]t is difficult for the Court to appreciate the level of outrage [Mr. Brown's] statements [in the motion to dismiss in *Raver*] caused Ms. Nowottnick"; and
- "Ms. Nowottnick's actions in continuing the litigation were fueled at least in part by her animosity and anger toward Defendants, rather than a cool headed analysis of the merits of her action."

Although each of these findings, in combination with others, potentially might have contributed to a finding that Ms. Nowottnick acted in bad faith or that she lacked substantial factual justification for her complaint,[11] none establish that she may fairly be held

[11] It is, of course, notable that the circuit court did not identify any lack of substantial factual justification for Ms. Nowottnick's and Paralegal Consultants' maintenance of this action. The court did not find, for example, that Ms. Nowottnick "ha[d] no evidence to support [her] allegations," *Christian*, 459 Md. at 23, or that she had fabricated any facts. To the contrary, Ms. Mead's testimony at the hearing on the motion to dismiss supported

responsible for the absence of legal justification in maintaining the action. The last of these statements comes closest, because it implies that perhaps Ms. Nowottnick could have recognized the legal deficiencies in her case through a "cool headed analysis of the merits." Nevertheless, that statement is not a finding that she conducted such an analysis or that she knew her attorney's analysis was deficient and decided to proceed anyway.

Ms. Nowottnick may have desired to bring and maintain the complaint because of her personal stake in the case; her outrage regarding Mr. Brown's comments may have been overblown; and her desire to maintain the litigation may well have been fueled by animosity and anger toward Mr. Brown. But all of that can co-exist with a sincere belief that there was a legal justification for maintaining the action, especially when her lawyer was willing to make the legal arguments and continue pursuing the case. In the absence of factual findings sufficient to hold Ms. Nowottnick responsible for the lack of legal justification for her claim, the circuit court erred in entering sanctions against her on that basis.[12] We will, therefore, reverse the imposition of sanctions against Ms. Nowottnick.

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the factual basis for Ms. Nowottnick's claims—namely, that Mr. Brown falsely accused her of signing Ms. Mead's name on the *Raver* motion. Instead, the sole basis for the court's finding of a lack of substantial justification was that Ms. Nowottnick's claims were precluded as a matter of law by the judicial proceedings privilege.

[12] In his motion for sanctions, Mr. Brown argued that Ms. Nowottnick should be sanctioned for her argument's lack of legal merit because she is a paralegal who had a "vast and lengthy wealth of experience . . . including researching and drafting appellate briefs." But Ms. Nowottnick's experience as a paralegal does not inherently mean that she bears responsibility for legal arguments made by her attorney. Indeed, we would not even necessarily hold a client who is a practicing attorney responsible for all the legal arguments made by his or her counsel, especially if the client does not practice in the area relevant to the alleged legal deficiency. In any event, the circuit court did not find that Ms.

D. The Circuit Court Did Not Abuse Its Discretion in Declining to Find that Ms. Nowottnick Filed Suit in Bad Faith.

In his cross-appeal, Mr. Brown asserts that the circuit court erred by failing to find that Ms. Nowottnick filed suit in bad faith because, he contends, her "actions [were] steeped in fraud and ill-motive."[13] As support for that contention, Mr. Brown alleges that the motion that Ms. Nowottnick drafted and filed for Ms. Mead in *Raver* contained a misrepresentation to this Court. Specifically, he asserts that although the motion stated that Ms. Mead needed an extension of time to file the appellant's brief due to printing problems, in fact Ms. Nowottnick knew that the brief had not even been fully drafted. The circuit court, however, considered Mr. Brown's arguments regarding Ms. Nowottnick's motives, and declined to find that she acted in bad faith in maintaining *this* action.[14] We see no clear error in that finding and so will not second-guess it on appeal. *Christian*, 459 Md. at 21. In the absence of "specific findings of fact on the record as to [Ms. Nowottnick]'s bad faith . . . in pursuing [her] cause of action," the court was correct not to sanction her on that basis. *See Barnes*, 126 Md. App. at 106.

Nowottnick's paralegal training constituted a basis for holding her responsible for her attorney's legal arguments.

[13] Mr. Brown does not assert that Mr. Munn acted in bad faith, nor does the record contain support for any such assertion.

[14] That conclusion, of course, does not address the propriety of the alleged conduct of either Ms. Nowottnick or Ms. Mead with regard to the motion filed in *Raver*. Serious though the allegations are, that conduct was not directly before the circuit court and is similarly not before us in this appeal.

IV. A REMAND IS NECESSARY FOR CONSIDERATION OF THE AMOUNT OF THE SANCTIONS AWARD.

Although we uphold the circuit court's determination that Mr. Munn lacked substantial justification for maintaining this action, we agree with all of the parties that the circuit court was required to explain how it calculated the amount of the sanctions award. Accordingly, we are compelled to vacate the award and remand for further proceedings.

As the Court of Appeals reiterated last term in *Christian*, Rule 1-341 does not mandate that a court grant a motion for sanctions whenever a frivolous claim is brought; the court may "exercise its discretion not to award fees despite the existence of the predicate for doing so." *Christian*, 459 Md. at 30 (quoting *Zaino*, 92 Md. App. at 419); *see also Worsham*, 435 Md. at 366 n.10 (observing that "an award under [Rule 1-341's predecessor] was mandatory ('*shall* require . . .')," whereas "[a]n award under Rule 1-341 is discretionary ('*may* require . . .')"). When the court does grant a motion for sanctions, it "must make findings of fact regarding its award of attorney's fees, and those findings must be made on the record." *Christian*, 459 Md. at 30-31. "The findings of the amount of fees awarded must be clearly delineated lest the court abuse its discretion," and the basis for an award "must be ascertainable in order to survive appellate review." *Id.* at 31.

Here, "[t]he court provided no reasoning for awarding $[10,000] in attorney's fees, . . . leaving us no record to review." *Ibru v. Ibru*, 239 Md. App. 17, 49 (2018). Notwithstanding the circuit court's "large measure of discretion in fixing the reasonable value of legal services," *Zaino*, 92 Md. App. at 419 (quoting *Head*, 66 Md. App. at 669), "it is incumbent upon a court . . . to demonstrate precisely how its award corresponds with

a party's misconduct," *Barnes*, 126 Md. App. at 108. Because the circuit court did not "specifically associate [Mr. Munn]'s . . . unjustified pursuit of the litigation with the expenses and costs [Mr. Brown] incurred in defending against that litigation," we are compelled to conclude that the court abused its discretion in calculating the sanctions award. *See Barnes*, 126 Md. at 108.

We will "vacate the award and remand for further proceedings to develop the factual basis for how the court chooses to exercise its discretion." *Christian*, 459 Md. at 33. On remand, the circuit court may consider the factors suggested by the Court of Appeals in *Christian*; namely, "evidence submitted by counsel showing time spent defending an unjustified or bad faith claim or defense, the judge's knowledge of the case and the legal expertise required, the attorney's experience and reputation, customary fees, and affidavits submitted by counsel." *Id.* at 32 (quoting *Major*, 97 Md. App. at 540). The court also may refer to the considerations for a reasonable fee identified in the Maryland Attorneys' Rules of Professional Conduct.[15] *See Maxima Corp. v. 6933 Arlington Dev. Ltd. P'ship*, 100 Md.

[15] Those considerations are:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the attorney or attorneys performing the services; and
> (8) whether the fee is fixed or contingent.

Md. Rule 19-301.5(a).

App. 441, 454-55 (1994). The circuit court must also issue "findings . . . on the record" regarding the reasonableness of the chosen fee. *See Christian*, 459 Md. at 30-31, 33.

Here, Mr. Brown argues that the court abused its discretion in not awarding him the full amount of his fees claim. Mr. Munn, by contrast, contends that the court's award was too high, and offers several reasons why the court may have discounted Mr. Brown's claim and, he contends, should have reduced it further. For example, Mr. Munn asserts that: (1) Mr. Brown did not submit evidence showing that he actually incurred the amounts he claims; (2) Mr. Brown should not have been awarded fees incurred during the period before he first raised the judicial proceedings privilege in his initial motion to dismiss; (3) Mr. Brown wrongly seeks fees billed in pursuit of sanctions, even though Rule 1-341 generally "does not provide for expenses incurred in asserting the claim for sanctions," *Deitz v. Palaigos*, 120 Md. App. 380, 402 (1997) (brackets omitted) (quoting *U.S. Health v. State*, 87 Md. App. 116, 132 (1991)); (4) Mr. Brown's substantial billings for discovery activities were unreasonable in light of his position that the complaint was so frivolous as to merit immediate dismissal; and (5) notwithstanding the finding of lack of substantial justification, Mr. Brown bore a share of responsibility for the fees he incurred based on his own litigation conduct.[16]

The circuit court may have credited one or more of these factors and taken them into account in determining the amount of the sanction. On the present record, that is unclear. On remand, the court should identify the time period for which it will award attorney's

[16] We express no opinion on these contentions, which are properly addressed by the circuit court in the first instance.

fees; set forth its rationale for reaching a specific award amount; and issue findings on the record regarding the reasonableness of that amount.

CONCLUSION

"[A]n award of attorney's fees" under Rule 1-341 "is considered 'an "extraordinary remedy," which should be exercised only in rare and exceptional cases.'" *Christian*, 459 Md. at 19 (quoting *Barnes*, 126 Md. App. at 105). We affirm in part the circuit court's conclusion that this is such a case. We will, therefore:

1. Affirm the circuit court's determination that Mr. Munn lacked substantial justification for maintaining this action and its exercise of discretion in deciding to award monetary sanctions against Mr. Munn;

2. Reverse the circuit court's determination that Ms. Nowottnick lacked substantial justification for maintaining this action and its award of sanctions against her;

3. Affirm the circuit court's determination not to award sanctions for alleged bad faith conduct by Ms. Nowottnick or Paralegal Consultants;

4. Vacate the award of sanctions against Mr. Munn and Paralegal Consultants; and

5. Remand for further proceedings consistent with this opinion, specifically for a determination of the amount of sanctions to be awarded against Mr. Munn.[17]

MOTION TO DISMISS CROSS-APPEAL DENIED. APPEAL OF PARALEGAL CONSULTANTS, LLC DISMISSED. JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED IN PART, REVERSED IN PART, VACATED IN PART, AND REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. 50% OF COSTS TO BE PAID BY APPELLANTS / CROSS-APPELLEES ROGER R. MUNN, JR., AND LAW OFFICES OF ROGER R. MUNN, JR.; 50% OF COSTS TO BE PAID BY APPELLEES / CROSS-APPELLANTS EDWARD J. BROWN, LLC AND EDWARD J. BROWN.

[17] As noted, Paralegal Consultants did not appeal from the award of sanctions against it. Mr. Brown's cross-appeal, however, asks that we vacate and "remand . . . for a reasoned, express determination as to the amount of sanctions against *Plaintiffs*," including Paralegal Consultants. (emphasis added). For the reasons already stated, we will do that. The judgment against Paralegal Consultants is thus vacated as a result of Mr. Brown's appeal. On remand, the circuit court will be bound by the law of the case, *see, e.g.*, *Tu v. State*, 336 Md. 406, 416 (1994), including our holding that the factual findings made by the circuit court do not support an award of sanctions against Mr. Munn's clients. As a result, although we have not reversed the underlying finding of lack of substantial justification by Paralegal Consultants, the circuit court may not enter a new award of sanctions against that entity.