UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2082

September Term, 2014

EVELYN FAYE CARTRETTE

v.

BERNARD ODELL JEFFERS, et al.

Kehoe,
Nazarian,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: November 16, 2015

*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.

Appellant Evelyn Faye Cartrette attempted to attach her ex-husband's shares in a business, only to find that he had already transferred the business's sole asset and diverted the proceeds from the sale. Representing herself, Cartrette filed suit to set aside the transfer on the ground that it was a fraudulent conveyance. The circuit court entered summary judgment against her. Later, the court awarded attorneys' fees to her adversary under Md. Rule 1-341, finding that Cartrette brought the suit in bad faith and without substantial justification. In addition, the court vacated orders of default against two defendants who had failed to respond. Cartrette appealed.

QUESTIONS PRESENTED

Cartrette presents six questions, which we have rephrased and consolidated as follows:[1]

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[1] Cartrette phrased her questions as follows:

1. Did the trial Judge abuse her discretion and/or commit clear error by prohibiting Appellant from being permitted to consult with counsel while she was arguing her Motion for Summary Judgment and the Appellee's such motion pro se?

2. Did the Circuit Court for Anne Arundel County Commit reversible error by denying Appellant's Motion for Summary Judgment?

3. Did the trial court commit reversible error in granting the Appellee's Motion for Summary Judgment?

4. Did the trial judge abuse her discretion and/or commit clear error by refusing to take judicial notice of the file in Appellant's divorce case versus Defendant Jeffers?

(continued…)

1. Did the circuit court err by refusing Cartrette's request to have "standby counsel" present for her to consult at the hearing on the summary judgment motion?

2. Did the circuit correctly enter summary judgment against Cartrette?

3. Did the circuit court err by refusing to consider the court file from Cartrette's divorce case, which she brought to the court's attention at the hearing on the summary judgment motion?

4. Did the circuit court correctly set aside orders of default against two defendants who failed to file responsive pleadings?

5. Did the circuit court err in ordering Cartrette to pay attorneys' fees under Maryland Rule 1-341?

We affirm the grant of summary judgment and the related rulings, but reverse the award of fees. We decline to consider the decision to vacate the orders of default against other parties, because it is not properly before us on this appeal.

FACTUAL AND PROCEDURAL HISTORY

The pertinent facts, viewed in the light most favorable to Cartrette as the party against whom the court entered summary judgment, are as follows:

Cartrette was the fourth wife of Bernard Odell Jeffers. Jeffers was the sole owner of Brooklyn Cycle World, Inc.

During the marriage, Brooklyn Cycle purchased a piece of real property located at 5808 Ritchie Highway, Brooklyn Park, Maryland 21225 (the "Property"). In 1998,

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5. Did the circuit court Judge abuse his discretion and/or commit clear error in awarding the Appellee $21,228.27 in counsel fees under Maryland Rule 1-341?

6. In the circumstances, did the trial court commit reversible error in granting the Appellee's Motion to Set Aside Orders of Default which had been entered against the two other, non-responding Defendants in this matter in that court?

Brooklyn Cycle leased the Property, on a "long-term" basis, to Rite Aid for $15,000.00 per month.

The couple separated in December 2005. In connection with the separation, the Circuit Court for Anne Arundel County entered an "interim" consent order, in which both spouses agreed not to make any sale, gift, or other disposition of any substantial assets without the permission of the other. In the divorce case, the circuit court wrote that the order applied "pending the hearing on the merits of their divorce."

The divorce became final on June 1, 2009. Under the divorce judgment, Cartrette was to receive 40 percent of the value of the couple's marital assets (in a monetary award of $2,280,177.00) and indefinite alimony of $7,500.00 per month. Her ex-husband, however, did not comply with all of his obligations.

Because of a concern that Jeffers was hiding assets or trying to put them beyond her reach, Cartrette obtained another consent order, dated January 7, 2011. In that order, the Circuit Court for Anne Arundel County prohibited Jeffers from transferring assets, including any of Brooklyn Cycle's assets.

Meanwhile, however, on September 26, 2010, Brooklyn Cycle had sold the Property to an entity named R.A. Brooklyn Park, LLC. On appeal, Cartrette does not contend that the purchase price, of $1,675,000.00, represented less than fair consideration.[2]

[2] Brooklyn Cycle originally contracted with an entity called CMI Management Company. A week before the closing, CMI's president, Frank Dimick, formed R.A. Brooklyn Park. CMI assigned all of its rights and duties to the new LLC, of which Dimick is the sole member.

A long-time real estate agent, William C. Steffey, assisted Jeffers during the sale. Steffey had been involved in the acquisition of the Property in 1998, had testified during the divorce proceedings, and had recently agreed to serve as the trustee on an indemnity deed of trust that secured a loan from Brooklyn Cycle to one of Jeffers's other businesses. Steffey reduced his commission to one percent to facilitate the sale's completion.

After Cartrette learned of the sale of the Property, she sent two writs of garnishment to the buyer, R.A. Brooklyn Park, attempting to garnish any sums that it owed to Jeffers. R.A. Brooklyn Park responded to the first, in 2011, with a handwritten note on the writ itself, stating that it had no dealings with Jeffers, but had purchased the Property from Brooklyn Cycle; that Jeffers may have had an interest in Brooklyn Cycle; and that it had paid in full at the closing. In response to the second writ, in 2012, R.A. Brooklyn Park filed a formal plea of *nulla bona*, specifically denying that it had any past or present indebtedness to Jeffers or to several of his companies, or that it possessed any of their property.

In early 2013, Cartrette, through counsel, requested information from R.A. Brooklyn Park regarding the sale of the Property in early 2013. R.A. Brooklyn Park, through counsel, provided a number of pieces of information, including the settlement sheet, which disclosed the purchase price of $1,675,000.00. R.A. Brooklyn Park threatened Cartrette and her counsel with sanctions if she made "any attempt to rescind the sale of the Property."

Dissatisfied with R.A. Brooklyn Park's voluntary disclosures, Cartrette, representing herself, filed suit on or about September 25, 2013, just before limitations

would have run. Her complaint sought to set aside the transfer of the Property on the ground that it was a fraudulent conveyance. She named three defendants: R.A. Brooklyn Park, Jeffers, and Brooklyn Cycle.

R.A. Brooklyn Park alone filed a responsive pleading. In that document, R.A. Brooklyn Park denied that the transfer had been fraudulent and requested attorneys' fees from Cartrette because of a bad-faith filing.

Despite the lawsuit, R.A. Brooklyn Park continued to provide informal responses to Cartrette's questions concerning the sale of the Property. R.A. Brooklyn Park's principal, Frank Dimick, provided Cartrette with an affidavit stating that he was the LLC's sole member, that the purchase price had come from his personal assets, and that he had no other business or other relationship with Jeffers or Brooklyn Cycle. Dimick, however, declined to give Cartrette a copy of his personal tax return, stating that it was "not relevant to the current proceedings."

After Cartrette and R.A. Brooklyn Park filed competing motions for summary judgment, the court convened a hearing on July 14, 2014. At that hearing, Cartrette requested that she be allowed to represent herself, but to have an attorney present during the proceedings to offer advice. The court denied the request. The court also denied Cartrette's request to supplement her motion for summary judgment with the records from her divorce proceeding. Ultimately, the court granted R.A. Brooklyn Park's motion for summary judgment and denied Cartrette's.

On August 20, 2014, the court held a hearing on R.A. Brooklyn Park's motion for attorneys' fees under Md. Rule 1-341. Cartrette appeared at that hearing with counsel.

At the end of the hearing, the court awarded $21,288.17 in attorneys' fees, representing the fees that R.A. Brooklyn Park had incurred since the inception of the litigation. The court stated that Cartrette had brought suit "in bad faith and without substantial justification."

After the court rejected her claim that R.A. Brooklyn Park had received a fraudulent conveyance, Cartrette filed for and obtained orders of default against the parties responsible for the conveyance – Jeffers and Brooklyn Cycle. R.A. Brooklyn Park moved to have those orders of default vacated, citing the risk of inconsistent judgments. At a November 19, 2014, hearing, at which neither Jeffers nor Brooklyn Cycle was represented, the court set aside the orders of default, reasoning that any judgment of default would involve setting aside the transfer to R.A. Brooklyn Park even though R.A. Brooklyn Park had defeated Cartrette's claim.

Because the circuit court had not adjudicated the claims against Jeffers and Brooklyn Cycle, it had not entered a final judgment. *See* Md. Rule 2-602(a). Hence, to facilitate an appeal of the ruling in favor of R.A. Brooklyn Park, Cartrette, through counsel, requested that the court direct the entry of a final judgment as to R.A. Brooklyn Park under Rule 2-602(b). On December 3, 2014, the circuit court entered judgment as to R.A. Brooklyn Park, and Cartrette filed this timely appeal.

DISCUSSION

I. The Circuit Court Did Not Abuse Its Discretion in Not Permitting Cartrette to Employ Standby Counsel at the Summary Judgment Hearing

At the summary judgment hearing, Cartrette requested permission to have an attorney, who had not entered an appearance,[3] sit at the counsel table (or just behind the bar) so that she could confer with him throughout the hearing. The circuit court denied her request. We see no abuse of discretion.

In criminal cases, a court has discretion to permit a self-represented defendant to use "standby counsel" to assist in the "exercise of the [constitutional] right of self-representation" and "to assist 'the court in maintaining some measure of control over the proceeding.'" *Harris v. State*, 344 Md. 497, 506 (1997) (quoting *Harris v. State*, 107 Md. App. 399, 413 (1995)); *see also Parren v. State*, 309 Md. 260, 264 (1987) (stating that self-represented criminal defendant may have "the aid, advice and allocution of counsel in the discretion of the trial judge").

No Maryland court has ever considered whether a self-represented party has a similar right to "standby counsel" in a civil case. But even assuming the existence of a right to standby counsel in a civil case, the right would certainly be subject to the trial court's discretion, as the right to standby counsel is in criminal cases. *See Harris*, 344 Md. at 506.

[3] The record does not disclose why counsel declined to enter an appearance, but one may infer that it was because he did not want to subject himself to the possibility of an award of fees under Rule 1-341 for formally advocating a position that lacked substantial justification.

Here, the circuit court patiently entertained the request and even gave the parties an hour to research the basis for a right to standby counsel. Yet, Cartrette cited nothing other than Rule 2-131, which concerns the formal appearance of counsel and says nothing about standby counsel. The court might have given Cartrette still more time to research the issue (as R.A. Brooklyn Park requested), but she insisted that she preferred to move forward, without standby counsel if necessary. The circuit court's decision, allowing her to do so, does not resemble an abuse of discretion. *See North v. North*, 102 Md. App. 1, 14 (1994) (for a court to have abused its discretion, "[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable").[4]

In any event, Cartrette cannot discharge her burden of showing that she sustained any prejudice as a result of the court's decision not to allow her to use standby counsel. *See Barksdale v. Wilkowsky*, 419 Md. 649, 660 (2011) (stating that, generally, the appealing party has the burden "to show that an error caused prejudice"); *Crane v. Dunn*, 382 Md. 83, 91 (2004) (stating that "the burden is on the appellant in all cases to show prejudice as well as error"). In her brief, Cartrette admits that "[i]t is, at this point, impossible to predict how [counsel's] advice might have helped" her. Furthermore, the request for standby counsel occurred at a hearing on a motion for summary judgment, which had been fully briefed, which could be granted only if the moving party was

[4] Cartrette argues that the court failed to exercise its discretion because it did not know of the criminal cases that recognize a right to standby counsel. The court did not know of the cases because Cartrette failed to bring them to the court's attention. Cartrette cannot fault the court for not considering cases that she failed to cite.

entitled to judgment as a matter of law (Md. Rule 2-501(f)), and which is subject to plenary review for legal error in this Court (*see*, *e.g*., *Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 176, *cert. denied*, 444 Md. 641 (2015)), where Cartrette has experienced appellate counsel. As a consequence, it is difficult to imagine how standby counsel's participation could have made a difference in the outcome of the case.[5]

II. The Circuit Court Properly Granted R.A. Brooklyn Park's Motion for Summary Judgment and Denied Cartrette's Cross-Motion for Summary Judgment

Cartrette argues that the circuit court erred in granting R.A. Brooklyn Park's motion for summary judgment and denying her cross-motion. In support of her argument she asserts that R.A. Brooklyn Park participated in a fraudulent conveyance, because, she says, it had notice that Jeffers was racing to sell the Property and put the proceeds beyond her reach. The court correctly disposed of the motions as it did, because Cartrette had no admissible evidence to support her assertion.

When a party moves for summary judgment, the court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f).

[5] Since the date of the summary judgment hearing, the Court of Appeals has modified Rule 1.2 of the Maryland Lawyers' Rules of Professional Conduct and Md. Rule 2-131 to permit an attorney to enter a "limited appearance," including an appearance limited to representing a client in arguing a motion. It is unclear whether the new rules would have addressed the situation in this case, because Cartrette's proposed standby counsel may not have been willing to enter even a limited appearance. *See supra* n.3.

"The issue of whether a trial court properly granted summary judgment is a question of law." *Zilichikhis*, 223 Md. App. at 176. "In an appeal from the grant of summary judgment, this Court conducts a de novo review to determine whether the circuit court's conclusions were legally correct." *Id.* (citing *D'Aoust v. Diamond*, 424 Md. 549, 574 (2012)). The relevant inquiry is well known:

> When reviewing a grant of summary judgment, we determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. This Court considers the record in the light most favorable to the nonmoving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party. A plaintiff's claim must be supported by more than a scintilla of evidence[,] as there must be evidence upon which [a] jury could reasonably find for the plaintiff.

Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 107-08 (2014) (citations and quotation marks omitted).

Under the most forgiving standards applicable to her claim to set aside the conveyance to R.A. Brooklyn Park as a fraudulent conveyance, Cartrette would need to show that R.A. Brooklyn Park was not "a purchaser for fair consideration without knowledge of the fraud at the time of the purchase[.]" Md. Code (1975, 2013 Repl. Vol.), § 15-209 of the Commercial Law Article. Through affidavits and supporting documents, however, R.A. Brooklyn Park showed that it purchased the property for fair consideration and without any knowledge of Jeffers's alleged fraudulent intent. Indeed, on appeal, Cartrette does not argue that R.A. Brooklyn Park paid less than fair consideration for the Property. Consequently, Cartrette could defeat summary judgment

only if she could adduce admissible evidence tending to show that R.A. Brooklyn Park somehow had "knowledge of the fraud at the time of the purchase."

In her attempt to marshal that evidence, Cartrette told the circuit court that at the time of the conveyance on September 26, 2010, R.A. Brooklyn Park had notice of a 2010 court order that, she said, prohibited Jeffers from conveying (or, more precisely, causing Brooklyn Cycle to convey) the Property. Cartrette now concedes that that argument was erroneous, because the circuit court did not enter any such order until January 7, 2011, more than three months after the conveyance to R.A. Brooklyn Park.

Nonetheless, Cartrette argues that R.A. Brooklyn Park had notice of the 2005 "interim" consent order in the divorce case, in which Jeffers agreed not to make any sale, gift, or other disposition of any substantial assets. Cartrette, however, does not explain how that "interim" order would have survived the final judgment and division of assets in the divorce litigation in 2009, especially given that the order expressly applied only "pending the hearing on the merits of their divorce." Moreover, the "interim" order, by its terms, prohibited Jeffers from conveying his own assets, but did not apply to Brooklyn Cycle and, hence, did not prohibit Brooklyn Cycle from conveying the real estate that was titled in its corporate name. In view of these undisputed facts, the circuit court correctly recognized that at the time of the conveyance in 2010 "there was no lien" on the Property.[6]

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[6] Cartrette claims that the circuit court agreed that the interim order was still in force in 2010 because, at the summary judgment hearing, when she asserted that assets "were frozen from 2005," the court responded, "Uh-huh." In a language that puts a premium on understatement, one would call that claim unconvincing.

Cartrette goes on to argue that the real estate agent, Steffey, was in cahoots with her ex-husband and was aiding him in liquidating Brooklyn Cycle's assets and placing them beyond her reach. She then proceeds to make the bald assertion, which she appears not to have made in the circuit court, that Steffey was a dual agent, representing both Brooklyn Cycle and R.A. Brooklyn Park. On the basis of that assertion, Cartrette argues that under the law of agency Steffey's alleged knowledge of Jeffers's alleged fraudulent intent is imputed to his other alleged principal, R.A. Brooklyn Park.

In support of her assertion of dual agency, Cartrette cites three pages of the record extract. The first, E. 164, is a page from her motion for summary judgment, in which she discusses Steffey's association with Jeffers, but says nothing about dual agency. The second, E. 250, is the first page of the January 7, 2011, consent order, which says nothing either about Steffey or dual agency. The third, E. 253, is a page from Cartrette's opposition to R.A. Brooklyn Park's summary judgment motion, in which she mentions Steffey, but says nothing about dual agency. In short, Cartrette's assertion of dual agency is unsupported by any admissible evidence in the record.

By contrast, the contract of sale indicated that Steffey represented only the seller, and the settlement statement showed that he was paid only by the seller. On the basis of these undisputed facts, therefore, the circuit court would not have erred in rejecting Cartrette's dual-agency argument had she presented it to the court.[7]

[7] Cartrette finds it significant that Steffey reduced his commission to make it easier for the conveyance to occur. We fail to see how Steffey's financial concession to his client transformed him into R.A. Brooklyn Park's agent.

Elsewhere, Cartrette argues that, as a real estate agent, Steffey had a duty to disclose all material facts that he knew or should have known pertaining to the Property. She asserts that Steffey knew of Jeffers's efforts to sell the Property so as to put the proceeds beyond her reach. Hence, she appears to conclude Steffey must have informed Brooklyn Cycle of Jeffers's evil intentions. But even accepting the dubious premise that Steffey knew that Jeffers intended to spirit away the sales proceeds before his wife could assert a claim to them,[8] Dimick testified, without contradiction, that he had no knowledge of Jeffers's alleged fraudulent intent. R.A. Brooklyn Park cannot be charged with knowledge that Steffey did not convey.

In summary, Cartrette presented the circuit court with no admissible evidence that at the time of the conveyance of the Property on September 26, 2010, R.A. Brooklyn Park had any knowledge, actual or constructive, of Jeffers's fraudulent intent. No judgment, lien, or other order prohibited Brooklyn Cycle from conveying the Property, or prohibited Jeffers from causing Brooklyn Cycle to convey the Property. Nor did R.A. Brooklyn Park have any reason to suspect that Jeffers might abscond with the sale proceeds in order to put them beyond his wife's reach. Indeed, it is almost beyond comprehension that R.A. Brooklyn Park would pay almost $1.7 million, which is indisputably fair consideration, if it had any inkling that a creditor of the seller's principal

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[8] The evidence of Steffey's alleged knowledge of the fraud is underwhelming. Steffey had been involved in securing the Rite Aid lease in 1998; he had testified in the divorce case; and after the divorce he had served as the trustee under an indemnity deed of trust on that secured a loan from Brooklyn Cycle to one of Jeffers's other businesses.

would later attempt to set aside the conveyance on the ground that it was fraudulent. We hold therefore that the circuit court did not err in granting R.A. Brooklyn Park's motion for summary judgment and denying Cartrette's cross-motion.[9]

III. Cartrette's Divorce File Was Not a Proper Subject for Judicial Notice

At the summary judgment hearing, Cartrette asked the court to "go over" a file containing unspecified materials from the divorce case, including the 2005 "interim" consent order. R.A. Brooklyn Park objected, and the court declined to consider the file. Cartrette now contends that the circuit court committed reversible error in not taking "judicial notice" of that file. We disagree.

Although "[a] court shall take judicial notice if requested by a party and supplied with the necessary information" (Md. Rule 5-201(d)), Cartrette did not formally "request" that the court to take judicial notice of anything: she simply asked the court to "go over" certain documents that she had not attached to her motion for summary judgment or the opposition to R.A. Brooklyn's motion. She appears to have been trying to supplement her motion or opposition, or perhaps trying (improperly) to introduce evidence at a summary judgment hearing. Cartrette cannot fault the court for failing to take judicial notice of the file when she did not clearly state that she wanted the court to take judicial notice of it.

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[9] In supporting her own motion for summary judgment and opposing R.A. Brooklyn Park's, Cartrette did not file formal affidavits. Instead, at the end of her papers, she swore, purportedly upon personal knowledge, that the contents were true. Although R.A. Brooklyn Park did not raise this issue either here or in the circuit court, Cartrette's averments were defective, because they contain no language to verify that she was competent to testify. *See Zilichikhis*, 223 Md. App. at 181.

Even if we were to interpret Cartrette's request that the court "go over" the documents as a request that the court take judicial notice of the facts contained therein, it is doubtful that the materials in the court file were the proper subject of judicial notice. *See*, *e.g.*, *Abrishamian v. Washington Med. Grp., P.C.*, 216 Md. App. 386, 414 (2014) (the judicial notice "doctrine does not typically extend to facts relating *specifically* to the parties involved") (citing *Walker v. D'Alesandro*, 212 Md. 163, 169 (1957)); *Attorney Grievance Comm'n of Maryland v. Bear*, 362 Md. 123, 138 (2000) (generally, "a court may not take judicial notice of proceedings or records in another cause so as to supply, without formal introduction of evidence, facts essential to support a contention in a cause then before it") (citations and quotation marks omitted).

Cartrette made no proffer of the contents of the file (except to refer to the 2005 order). Consequently, the circuit court had no basis to evaluate whether the file contained adjudicative facts that were properly the subject of judicial notice. *See Abrishamian*, 216 Md. App. at 414 (describing adjudicative facts as undisputed facts that everyone knows or that are capable of prompt confirmation). Accordingly, we hold that the circuit court did not err in declining to take "judicial notice" of the file of materials from the divorce proceeding.[10]

[10] Cartrette moved to supplement the record on appeal to include the materials of which she wanted the circuit court to take judicial notice. In an order dated April 6, 2015, this Court denied the motion.

IV. This Court Lacks Appellate Jurisdiction to Consider the Propriety of the Ruling Vacating the Orders of Default against Jeffers and Brooklyn Cycle

Cartrette challenges the circuit court's decision to vacate the orders of default against Jeffers and Brooklyn Cycle. The issue is not properly before us because the interlocutory rulings pertaining to Jeffers and Brooklyn Cycle are not encompassed by the court's decision to employ Rule 2-602(b) to certify an appealable final judgment as to R.A. Brooklyn Park.

Md. Rule 2-602(b)(1) allows a court, after an express, written finding that there is "no just reason for delay," to direct the "entry of a final judgment . . . as to one or more but fewer than all of the claims or parties[.]" Here, the circuit court properly employed Rule 2-602(b) to direct the entry of a final judgment as to one or more, but fewer than all, of the parties – R.A. Brooklyn Park. *See Barclay v. Briscoe*, 427 Md. 270, 277-79 n.6 (2012) (approving use of Rule 2-602(b) when court entered summary judgment in favor of sole solvent defendant).

Through the use of Rule 2-602(b), the circuit court has empowered us to consider the grant of summary judgment and the award of fees in favor of R.A. Brooklyn Park. Cartrette, however, wants us to consider other rulings concerning other parties. We do not have the power to do so.

The Court of Appeals has rejected the contention that a permissible interlocutory appeal, such as this one, "'can carry along wholly unrelated holdings.'" *Snowden v. Baltimore Gas & Elec. Co.*, 300 Md. 555, 560 n.2 (1984) (quoting *United States v. Fort Sill Apache Tribe*, 507 F.2d 861, 864 (Ct. Cls. 1974)); *see Md. Bd. of Physicians v. Geier*,

___ Md. App. ___, 2015 WL 5735234, at *12 (Oct. 1, 2015). Accordingly, in a permissible interlocutory appeal under the predecessor of Rule 2-602(b), the Court refused to consider a challenge to any decision other than the specific interlocutory decision that had come before it. *Snowden,* 300 Md. at 559 n. 2; *see also Geier*, ___ Md. App. at ___, 2015 WL 5735234, at *14 (in a permissible interlocutory appeal under the collateral order doctrine, holding that the appellate court had jurisdiction to consider only the collateral order itself, and not other orders in the case); *Banashak v. Wittstadt*, 167 Md. App. 627, 671 (2006) ("roundly reject[ing] the tactic of attempting to smuggle a non-appealable issue aboard by coupling it with an appealable traveling companion").

In certifying the judgment in favor of R.A. Brooklyn Park as a final judgment under Rule 2-602(b), the circuit court has empowered us to consider that judgment, and that judgment alone. The court has not empowered us to consider the rulings affecting any parties, such as the interlocutory rulings vacating the orders of default against Jeffers and Brooklyn Cycle. Accordingly, we decline to address those orders on the merits.[11]

V. The Circuit Court Erred in Awarding Rule 1-341 Sanctions Because it Did Not Articulate a Sufficient Factual Basis to Conclude the Claim was Brought in Bad Faith

Cartrette contends that the circuit court erred in awarding over $21,000 in attorneys' fees, representing R.A. Brooklyn's Park's total bill from the inception of the

[11] As a matter of logic, however, now that the circuit court has rejected Cartrette's request to set aside the fraudulent conveyance to R.A. Brooklyn Park, it is inconceivable that it could possibly grant her request to set aside *that same conveyance* in the proceedings against Jeffers and Brooklyn Cycle. *See generally Curry v. Hillcrest Clinic, Inc.*, 337 Md. 412, 415, 430 (1995).

litigation. Cartrette argues that the circuit court "did not make the necessary subsidiary findings" and that the court abused its discretion or was clearly erroneous in awarding fees under Md. Rule 1-341. We vacate the circuit court's award of attorneys' fees and remand for further proceedings, because the record does not reflect that the circuit court made sufficient findings to support the conclusion that, from the inception of the litigation, Cartrette had proceeded in bad faith or without substantial justification.

To award fees under Rule 1-341, a "judge must make two separate findings." *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267 (1991). First, the court "must find that the proceeding was maintained or defended in bad faith and/or without substantial justification," which "will be affirmed unless it is clearly erroneous or involves an erroneous application of law." *Id.* Next, the court must find that the conduct "merits the assessment of costs and/or attorney's fees," which is reviewed for abuse of discretion. *Id.* at 267-68.

Despite the deferential standards of review, "some brief exposition of the facts upon which the finding is based and an articulation of the particular finding involved are necessary for subsequent review." *Talley v. Talley*, 317 Md. 428, 436 (1989). Because "[t]he award of attorney's fees under Rule 1-341 is an 'extraordinary sanction [that] should not be assessed lightly,'" the trial judge must give an appellate court a basis to review both its decision that an action has been brought, maintained, or defended in bad faith or without substantial justification, and its discretionary awarding of costs. *Claibourne v. Willis*, 347 Md. 684, 693 (1997) (quoting *Talley*, 317 Md. at 434-36).

After an hour-long hearing in this case, the circuit court[12] said:

> Well, I have heard the argument today. I, frankly, believe that the matter -- in looking at the affidavit -- Dimick says other than the purchase of this property I had no other business or personal relationship, knowledge of, or contact with the seller of Brooklyn Cycle World or Bernard Jeffers. [The judge who granted summary judgment] obviously agreed.
>
> In any event, I really think this matter was brought in bad faith and without substantial justification. And under the circumstances, I feel the fees should be paid and so I am going to order that the fees be paid - - $21,288.17 -- to the law firm.

This represents the entirety of the court's findings. They are not sufficient for us to evaluate and uphold this fees award under Rule 1-341.

Aside from its reference to the grant of summary judgment itself, the court cited only one fact in support of its conclusion – Dimick's affidavit, given shortly after the commencement of this action, in which he said that, aside from the conveyance of the Property, he had no other business or personal dealings with Brooklyn Cycle or Jeffers. Cartrette, however, was "not bound to adhere to the viewpoint of the opposing side[.]" *Art Form Interiors, Inc. v. Columbia Homes, Inc.*, 92 Md. App. 587, 597 (1992). Notwithstanding that her adversary asserted that her claims were baseless, Cartrette was still entitled to go to court and avail herself of her right to pursue discovery that might undermine the adversary's assertion. The elements of bad faith or lack of substantial justification arguably came into existence only when she persisted with the litigation despite her failure to unearth any evidence to refute her adversary's contentions.

[12] The judge who presided over the Rule 1-341 hearing is not the judge who presided at the summary judgment hearing. He did, however, preside over the divorce proceedings between Jeffers and Cartrette.

We hold that the court did not sufficiently articulate an adequate basis to conclude that Cartrette *brought* the action in bad faith or without substantial justification. We vacate the award of fees and remand the case so "that the trial court may, with greater clarity, determine precisely when the bad faith [or lack of substantial justification] began." *Optic Graphics, Inc. v. Agee*, 87 Md. App. 770, 792 (1991). Unless the court can articulate an additional basis for concluding that Cartrette was proceeding in bad faith or without substantial justification from the inception of the litigation, the court would abuse its discretion in awarding *all* of the fees that R.A. Brooklyn Park incurred. *See, e.g.*, *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 106 (1999) ("a court must make specific findings of fact as to which part of the litigant's attorney's fees and expenses are attributable to the maintenance of the meritless claims").

CONCLUSION

We affirm the grant of summary judgment in favor of R.A. Brooklyn Park, the court's decision not to permit Cartrette to use standby counsel at the summary judgment hearing, and the court's decision not to take judicial notice of the file in Cartrette's divorce case. We decline to consider the propriety of the decision vacating the orders of default as to Jeffers and Brooklyn Cycle, as they are not parties to this permissible

interlocutory appeal. Finally, we vacate and remand the order of attorneys' fees for further proceedings not inconsistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED IN PART AND REVERSED IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID FIVE-SIXTHS BY APPELLANT, ONE-SIXTH BY APPELLEE.