Circuit Court for Montgomery County
Estate No. W78573

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2215

September Term, 2016

IN THE MATTER OF
THE ESTATE OF
CHARLES M. MCCONKEY, JR.

Wright,
Reed,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: April 9, 2018

At all relevant times, Anthony Holcomb, appellee, was a tenant on the property known as 11 Maplewood Park Court, Bethesda, Maryland ("the Property"). The Property was owned by Charles K. McConkey, Jr. and, after he died, by the Estate of Charles K. McConkey, Jr. ("the Estate"), appellant. On October 7, 2016, the Orphans' Court for Montgomery County ordered the Estate, through its Personal Representative, Wayne Eig, to reimburse Mr. Holcomb, within ten days of the order's filing date, the amount of $5,460 for homeowner's association (HOA) fees that Mr. Holcomb had paid over a two-year period.

On October 17, 2016, Mr. Eig filed a Motion to Alter or Amend the court's October 7, 2016 order. The court denied the motion by order dated November 4, 2016, docketed on November 14, 2016. In addition to denying the motion, the court awarded Mr. Holcomb $680 for attorney's fees incurred in litigating the motion. On December 13, 2016, Mr. Eig noted an appeal from the court's November 4, 2016 order.

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

1. Did the orphans' court err in finding that Mr. Holcomb's claim was not barred by the statute of limitations pursuant to Md. Code (2011 Repl. Vol.) § 8-103(c) of the Estates and Trusts Article, as the claim was not presented to the Personal Representative within six (6) months of the date on which Mr. Holcomb knew of his alleged injuries and their cause?

2. Did the Orphans' Court err in disregarding the statutory priority for payment of claims pursuant to Estates and Trusts Article § 8-105(a) by ordering payment of Mr. Holcomb's claim before payment of other claims?

3. Did the Orphans' Court err by imposing sanctions against the Personal Representative in the absence of a motion seeking such relief, without providing the Personal Representative an opportunity to respond after the issue of sanctions was raised, without holding a hearing or making factual findings, and in the absence of evidence of bad faith or substantial justification?

For the reasons set forth below, we shall reverse the October 7, 2016 and November 14, 2016 orders of the orphans' court.

FACTUAL AND PROCEDURAL BACKGROUND

On September 25, 2013, Charles McConkey, Jr., the then owner of the Property, leased it to Mr. Holcomb. The lease provided, in part, that Mr. Holcomb was required to pay the utilities, including water, gas, electric and cable. The lease did not expressly provide that Mr. Holcomb was responsible for the payment of HOA fees.

On November 18, 2013, Mr. McConkey died, and the Property became part of his Estate. On January 8, 2014, pursuant to Mr. McConkey's last will and testament, Mr. Eig, an attorney with the law firm Paley, Rothman, Goldstein, Rosenberg, Eig & Cooper, Chtd., was named as Personal Representative of the Estate.

In December 2013, Mr. Eig began leaving envelopes for Mr. Holcomb at the door of the Property. The envelopes contained utility and HOA bills plus a handwritten note, stating "Tony-Please pay." Beginning in December 2013, Mr. Holcomb made payments of $250 per month for the HOA fees for a period of "two and half years," until October 6, 2015, when he made the last payment. In the fall of 2015, Mr. Eig filed, in District Court, a "Failure to Pay Rent – Landlord's Complaint for Repossession of Rented Property" against Mr. Holcomb for unpaid rent allegedly owed by Mr. Holcomb. On January 6, 2016,

the court held a hearing. During cross-examination, Mr. Eig, after examining the lease, testified that it was silent regarding the tenant's responsibility for the payment of HOA fees. Mr. Holcomb's counsel then requested the court to provide a credit against the Estate's claim in the amount of the HOA fees paid. The court declined the request, stating that Mr. Holcomb would have to sue separately.

On April 27, 2016, Mr. Holcomb filed a claim against the Estate in the amount of $5,460. Attached to the claim was a "Complaint Against the Decedent's Estate," which contained exhibits, including the lease, the envelopes containing the handwritten instructions, and a statement reflecting the payments made. On May 2, 2016, Mr. Eig sent a Notice of Disallowance of Mr. Holcomb's claim. On May 11, 2016, in response, Mr. Holcomb filed a petition in the orphans' court requesting it to allow his claim. On May 23, 2016, Mr. Eig filed a Motion to Dismiss on the grounds that Mr. Holcomb's claim was "barred on its face by the six (6) month statute of limitations set forth in Md. Code, Estates & Trusts Art., § 8-103(c) for claims against the Estate based on the conduct of the Personal Representative." In support, Mr. Eig noted that because Mr. Holcomb's last payment was on October 6, 2015, his claim, filed on April 27, 2016, exceeded the six-month period permissible under the statute.

On September 16, 2016, the orphans' court held a hearing on the motion to dismiss, followed by a hearing on the merits. At the hearing on the motion, counsel for the Estate acknowledged "that the personal representative asked Mr. Holcomb to pay the homeowner's fees on the subject property of the lease and Mr. Holcomb paid the fees . . .

from December of 2013 to October of 2015." Counsel for the Estate contended that because Mr. Holcomb's last payment was on October 6, 2015, his claim against the Estate, which was filed on April 27, 2016, exceeded the six-month limitation by 21 days.

Counsel for Mr. Holcomb argued that the statute of limitations started to run when he discovered that he was not obligated to pay the HOA fees, which occurred at the January 6, 2016 hearing. Counsel noted that because Mr. Eig is an attorney, when Mr. Holcomb was presented with the envelope and a request to pay the HOA fees, he complied with the request, relying on Mr. Eig's expertise. Counsel asserted that Mr. Eig "may be estopped to assert the statute of limitations as a defense, if the delay in commencing an action was induced by the personal representative." Counsel added that Mr. Eig "stood in the way of any statute of limitations running any earlier because of his demands and his position as an attorney, as the PR, as an expert and as, you know, part of Paley Rothman."

Counsel for the Estate responded that Mr. Holcomb's argument based on discovery was unavailing because the "discovery rule applies to the discovery of facts, not the discovery of whether, of your rights." Counsel for the Estate argued that because of the parties' contentious relationship during this period, (1) there could not have been any reasonable reliance, and (2) there were no allegations that Mr. Eig "ever made any assurances that the claim period would be tolled or that Mr. Holcomb did not have to file a claim." Counsel noted that even after the January 6, 2016, hearing, Mr. Holcomb had enough time to file a claim within the statutory period.

Before issuing its ruling on the motion, the court noted that

in January 2016, Mr. Eig, during the District Court trial, is unable to identify the portion of the lease that justifies his demanding the claimant to make those payments. So, one of two conclusions I could draw.

One, he knew the lease didn't cover it and demanded it anyway, in which case, at this point, he would be estopped from raising the statute of limitations claim, or, two if he didn't know and then he realized in January, then wouldn't that be a mutual mistake of fact by both the claimant and [Mr. Eig] and the fact then becomes known to both parties in January and therefore, he filed in April, within the statute of limitations.

The court then ruled on the motion, as follows:

[I]n looking at this claim, the claim for reimbursement of the HOA fees that was paid by the tenant, who occupied the property of the decedent, so, once the decedent, so this lease apparently was entered into between the claimant here and the decedent. Once he died, the PR took over and stood in the place of the landlord. And, at that point, the PR began requesting that the tenant make these HOA fee payments either by leaving the bill or leaving an envelope for him and the tenant paid those.

And, I guess, it became known in January of 2016, that, apparently, he shouldn't have been making that request and the tenant should not have been required to make those payments. So, under that factual and then this claim that was filed in April of 2016, within three months of when that fact came to light. So, I think under either scenario, if the PR was requiring that the tenant make this payment against the terms of the lease, then the PR would now be estopped from raising the claim of statute of limitations.

If, in fact, the PR misunderstood the lease or did not understand the lease or did not read the lease himself, and he learned about this fact in January at the same time of the claimant, then I would determine that January 2016 would have been the date that this, the nature of this claim and the cause of action would have arisen, to the knowledge of the claimant and to the knowledge of the PR. And therefore, the filing of this claim in April of 2016 would fall within the six month statute of limitations.

So, at this point, based upon the facts of this case, I'll deny the motion to dismiss the claim filed by the claimant.

The orphans' court then held a hearing on the merits of Mr. Holcomb's petition for allowance of the claim. Mr. Holcomb testified that Mr. Eig left envelopes containing the bills for the property's utilities and HOA fees at the door of the Property for him to pay. He testified that he paid the bills directly, and that he paid $250 per month for the HOA fees, for a period of "two and a half years," which amounted to a total of $5,460. He testified that he discovered that he was not responsible for payment of the HOA fees at the January 6, 2016 hearing.

On cross-examination, Mr. Holcomb answered affirmatively that he wrote a check each month for the HOA fees, and that the payment was made because Mr. Eig instructed him to do so by writing "please pay" on the envelopes. Mr. Holcomb testified that he stopped making the payments for the HOA fees when Mr. Eig stopped leaving the bill, and that he did not receive a bill for the HOA fees after the parties went to court on January 6, 2016.

At the conclusion of the testimony, the court ruled in favor of Mr. Holcomb, granting his petition for reimbursement in the amount of $5,460 from the Estate. The court noted that the HOA fees "should have been paid by the estate, but was paid by [Mr. Holcomb] on the estate's behalf."

On October 7, 2016, the court issued its order, requiring the Estate to pay Mr. Holcomb's claim within ten days. On October 17, 2016, Mr. Eig filed a "Motion of [the] Personal Representative to Alter or Amend the October 7, 2016 Order." In support of the motion, Mr. Eig argued that the orphans' court committed the following errors:

> (1) By finding that the accrual of [Mr.] Holcomb's claim did not occur when he suffered injury and knew that injury had been suffered and thereby not barring the claim as untimely under the applicable statute of limitations for claim against the estate; (2) By finding that the Personal Representative was estopped to assert the statute of limitations where the record contains no evidence that the Personal Representative ever dissuaded [Mr.] Holcomb from filing a claim; and (3) By contravening the Estates and Trusts Article by ordering that [Mr.] Holcomb's claim be paid by a date certain when there are high priority claims outstanding against the Estate**.**

On October 27, 2016, Mr. Holcomb filed his opposition to the motion in which he requested that the court award attorney's fees due to the "frivolous filing of [Mr. Eig's] Motion to Alter or Amend October 7, 2016 Order." Counsel attached an affidavit that detailed the fees and costs associated with litigating the pending motion.

By order dated November 4, 2016, docketed on November 14, 2016, the orphans' court denied the motion to alter or amend and granted Mr. Holcomb's request for attorney's fees in the amount of $680. On November 9, 2016, after the order was signed, Mr. Eig filed a reply in support of the motion to alter or amend, noting to the court that there was no basis for the court to award sanctions.

The court ordered Mr. Eig and his law firm to pay the fees within ten days of the order's filing date. The court did not make any findings of fact in support of its order awarding attorneys' fees.

On November 28, 2016, Mr. Eig filed a "Motion of Personal Representative to Alter or Amend New Judgment in November 14, 2016 Order and Request for Hearing.[1]

[1] The motion filed on November 28, 2016, "was not filed within ten (10) days of the November 14, 2016 Order" and, therefore, is a motion pursuant to Md. Rule 2-535. The (…continued)

On December 13, 2016, the Estate noted an appeal to this Court.

STANDARD OF REVIEW

The appeal before this Court is from the November 4, 2016, order, docketed on November 14, 2016, awarding sanctions and denying Mr. Eig's motion to alter or amend. We review a court's denial of a motion to alter or amend a judgment for an abuse of discretion. *See, e.g.*, *Miller v. Mathias*, 428 Md. 419, 438 (2012); *Mahler v. Johns Hopkins Hosp., Inc.*, 170 Md. App. 293, 321, *cert. denied*, 396 Md. 13 (2006). "'There is an abuse of discretion where no reasonable person would take the view adopted by the [circuit] court, or when the court acts without reference to any guiding rules or principles.'" *Bord v. Baltimore County*, 220 Md. App. 529, 566 (2014) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). "This Court has recognized that trial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature." *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 675 (2008). The Court of Appeals explained that

> an error in applying the law can constitute an abuse of discretion, even in the context of a motion for reconsideration made pursuant to Maryland Rule 2-534. A court that fails to rectify a judgment based on a misunderstanding of the law applicable to the case or the procedural posture of the case, especially when that error is brought to its attention in a timely manner, abuses its discretion.

Morton v. Schlotzhauer, 449 Md. 217, 232 (2016).

Rule provides, in part, under subsection (a), that "[o]n motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534." This motion was not ruled on by the orphans' court.

DISCUSSION

I.

Statute of Limitations

A.

Accrual Date

Mr. Eig contends that the orphans' court erred in holding that Mr. Holcomb's claim accrued on January 6, 2016, based on Mr. Holcomb's "lack of knowledge of his legal rights" under the lease agreement, "when it is undisputed that [Mr. Holcomb] knew of all of the facts giving rise to his claim." Mr. Eig argues that Mr. Holcomb's claims "accrued as a matter of law on each date that he paid the HOA fees," and that "[Mr. Holcomb] suffered an injury at the time that he made each payment," the last one on October 6, 2015.

Mr. Holcomb argues that, because he learned at the January 6, 2015 hearing that he was not obligated to pay the HOA fees, the orphans' court properly found that the accrual date for his claim started on January 6, 2016. We disagree.

Pursuant to Md. Code (2011 Repl. Vol.) § 8-103(a) of the Estates and Trusts Article ("ET"), "claim against the estate based on the conduct of or a contract with a personal representative is barred unless an action is commenced against the estate within six months of the date the claim arose." ET § 8-103(c).

When the underlying facts are undisputed, the date of accrual of a claim is a legal question for the court. *See Moreland v. Aetna U.S. Healthcare, Inc.*, 152 Md. App. 288, 296 (2003). The guiding principle is that "[a] claim accrues when a plaintiff suffers the

actionable harm." *Rounds v. Maryland-Nat. Capital Park & Planning Comm'n*, 441 Md. 621, 658 (2015). "Maryland has adopted the 'discovery rule,' which 'tolls the accrual of the limitations period until the time the plaintiff discovers, or through the exercise of due diligence, should have discovered the injury.'" *Windesheim v. Larocca*, 443 Md. 312, 326-27 (2015) (quoting *Frederick Rd. Ltd. P'ship v. Brown & Sturn*, 360 Md. 76, 95-96 (2000)). In *Poffenberger v. Risser*, 290 Md. 631, 636 (1981), the Court of Appeals held that the discovery rule is "applicable generally in all actions." "The discovery rule . . . applies to the discovery of *facts*, not the discovery of *law*." (Emphasis in original). *Moreland*, 152 Md. App. at 297

> The Court of Appeals has explained that,
>
> > [t]here are two types of notice: actual and constructive. Actual notice is either express or implied. As the name suggests, express notice "is established by direct evidence" and "embraces not only knowledge, but also that which is communicated by direct information, either written or oral, from those who are cognizant of the fact communicated." Implied notice, also known as "inquiry notice," is notice implied from "knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry (thus, charging the individual) with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued." Stated simply, inquiry notice is "circumstantial evidence from which notice may be inferred." Constructive notice is notice presumed as a matter of law. Unlike inquiry notice, constructive notice does not trigger the running of the statute of limitations under the discovery rule.

Id. (quoting *Poffenberg*, 290 Md. at 636-37). Moreover,

> [t]he concept of "inquiry notice" controls when limitations begin to run. A claimant is on inquiry notice when the claimant "has knowledge of circumstances which would cause a reasonable person in the position of the plaintiff[] to undertake an investigation which, if pursued with reasonable diligence, would have led to knowledge of the alleged [tort]."

Estate of Adams, 233 Md. App. at 25 (quoting *Lumsden v. Design Tech Builders, Inc*., 358 Md. 435, 446 (2000)).

In this instance, Mr. Holcomb suffered harm when he made the HOA payments. The issue is when the duty to inquire arose. On September 25, 2013, Mr. Holcomb executed the lease to the Property. The lease identified the items for which the tenant was responsible. When Mr. Holcomb signed the contract, it was presumed by law that he understood the terms and conditions required of him as a tenant. *See Windesheim*, 443 Md. at 329 (parties to a contract "are presumed to have read and understood those documents as a matter of law."). *Accord Merit Music Service, Inc. v. Sonneborn*, 245 Md. 213, 221-22 (1967) ("[T]he law presumes that a person knows the contents of a document that he executes and understands at least the literal meaning of its terms."). Absent any sign of "fraud, duress or mutual mistake, one who has the capacity to understand a written document who reads and signs it, with or without reading it or having it read to him, signs it, is bound by his signature as to all of its terms." *Windesheim*, 443 Md. at 330 (quoting *Binder v. Benson*, 225 Md. 456, 461 (1961)).

To determine whether Mr. Holcomb had sufficient knowledge to require him to investigate if he was required to pay, this Court may look to the circumstances giving rise to the claim to ascertain the proper timeframe to start the accrual period and to determine when inquiry notice is triggered. *Windesheim*, 443 Md. at 330. Here, the lease provided that, as the tenant, Mr. Holcomb was responsible for the payment of the utilities listed therein. Paragraph 11 stipulated that, "[t]enant acknowledges responsibility for [w]ater,

[g]as, [e]lectric, [and] cable." With respect to any responsibility of the tenant to the homeowners' association, the lease required that the "[t]enant, [t]enant's family, guests and employees must abide by all rules and regulations and all notices governing the property," and that the tenant was responsible to cure any violations in breach of the rules and regulations. Given that Mr. Holcomb signed the lease two months prior to Mr. Eig's requests, upon receiving the request, Mr. Holcomb had a duty to inquire whether it was his responsibility as the tenant to make the payment. Mr. Holcomb's duty to inquire continued thereafter.

By exercising reasonable diligence and reading the terms of the lease, Mr. Holcomb could have determined that he was not responsible for the payments and that he had a claim against the Estate. As stated above, "[t]he statute of limitations . . . depends on inquiry notice of harm, not the legal theory that applies to that harm. 'Knowledge of facts . . . not actual knowledge of their legal significance, starts the statute of limitations running.'" *Estate of Adams*, 233 Md. App. at 28 (quoting *Moreland*, 152 Md. App. 288, 297 (2003)). *Accord Anne Arundel Cty. v. Halle Development, Inc.*, 408 Md. 539, 565 (2009) ("[N]otice of facts, and not the law, is the trigger for commencement of the limitations period.").

During the entire time period that Mr. Holcomb made the payments, he was in possession of the facts.[2] Accordingly, we hold that the orphans' court abused its discretion in denying the Motion to Alter or Amend the Judgment.

[2] Even if we were to view each payment as subject to a separate claim, the statute of limitations, pursuant to Md. Code (2011 Repl. Vol.) § 8-103(c), would only permit a (…continued)

As we have determined that Mr. Holcomb's claim was untimely, we will address whether Mr. Eig was estopped from utilizing the statute of limitations defense.

A.

Estoppel

Mr. Eig contends that the "orphans' court erred as a matter of law in finding that [he] was estopped from asserting the statute of limitations because there is no evidence that [he] induced [Mr. Holcomb's] delay in presenting the claim or represented to [Mr. Holcomb] that the statute of limitations would not be asserted as a defense. He argues that there is no evidence in the record indicating that Mr. Holcomb discussed filing a claim with him, or that he did anything to dissuade Mr. Holcomb from filing. In any event, Mr. Eig asserts that any reliance by Mr. Holcomb on written statements conflicting with the lease was unreasonable as a matter of law.

Mr. Holcomb contends that as the Estate's personal representative, "[Mr. Eig] is estopped from asserting the statute of limitations as a defense to [his] claim against the Estate" because Mr. Eig "repeatedly insisted that [he] was obligated to pay the HOA fees and demanded that he do so by leaving the envelopes . . . on a monthly basis that contained the HOA bills and writing on the envelopes, 'Tony – please pay.'" Mr. Holcomb argues that Mr. Eig's voluntary representation that he was obligated to pay the HOA fees to his

claim of reimbursement up to six months after each payment. Because the HOA payments were made from December 2013 to October 2015, we would arrive at the same conclusion as the claim was not filed within six months after the last payment.

detriment, as well as Mr. Eig's bad faith behavior, demonstrates why, as personal representative, he was estopped from asserting the statute of limitations. We disagree.

In determining whether a party is estopped from raising the statute of limitations defense, "all that is needed to create an equitable estoppel is (1) voluntary conduct or representation, (2) reliance, and (3) detriment." *Grimberg v. Marth*, 338 Md. 546, 555-56 (1995) (quoting *Lampton v. LaHood*, 94 Md. App. 461, 475-76 (1993)). In *Cunninghame v. Cunninghame*, 364 Md. 266, 298 (2001), the Court of Appeals held that for a personal representative to be estopped from asserting the statute of limitations as a defense to bar a claim, "the personal representative must take some affirmative act or make some affirmative statement that the claimant reasonably relies upon to the claimant's detriment." The Court explained that the personal representative's affirmative representation "makes the claimant reasonably believe that the claimant does not need to file a claim within the relevant time period." *Id*. at 300. Specifically, the Court instructed that, "[t]here must be a substantial detrimental representation that the claimant need not file a claim with the estate, made by one who then has the present power, or who later has the power, to bind the estate." *Id*. Thus, in this instance, for Mr. Eig to be estopped from asserting the statute of limitations defense, Mr. Holcomb had the burden to show that he relied on a representation or affirmative act from Mr. Eig to his detriment. *See id*. at 290.

The relevant facts are undisputed. Mr. Eig's written communication to Mr. Holcomb was not an attempt to delay or thwart a claim against the Estate. At most, the effect was to change the limitations period from six months after the decedent's death to

six months after the injury due to the actions of the personal representative. *See* ET § 8-103(c).

The record reveals that Mr. Holcomb stopped making the HOA payments due to the filing of the Estate's complaint seeking unpaid rent. Seeking the payment of rent was not an affirmative act or representation preventing Mr. Holcomb from filing a claim. The record simply reflects that the only reason for the delay was "due to a lack of diligence" on Mr. Holcomb's part to timely file. *Cornett v. Sandblower*, 235 Md. 339, 342 (1964); *see also Chesapeake Homes, Inc. v. McGrath*, 249 Md. 480, 489 (1968) (if claiming the benefit of estoppel, one "must also act with good faith and reasonable diligence; otherwise no equity arises in his favor.").

Accordingly, we find that the court erred when it estopped Mr. Eig from asserting the statute of limitations as a bar to Mr. Holcomb's claim; therefore, it abused its discretion by denying the motion to alter or amend.

II.

Because we reverse the court's denial of the motion with regard to the allowance of the claim, we need not address the second issue, which concerns whether the court erred by requiring payment of the claim within ten days.

III.

Awarding Sanctions

Regardless of the merits of the underlying motion, Mr. Eig contends that the court's award of sanctions was "procedurally and substantively improper." He argues that the

court did not hold a hearing, made no specific findings of fact, and did not provide an opportunity to respond to the request for sanctions.

Mr. Holcomb contends that the "trial court properly awarded attorneys' fees due to Mr. Eig's bad faith behavior" which is substantiated by the record. He asserts that the court "provided [Mr. Eig] with adequate due process prior to awarding attorneys' fees" as Mr. Eig "filed a reply on November 9, 2017, which addressed, *inter alia*, [Mr. Holcomb's] request for attorneys' fees."

In reviewing a circuit court's decision to award attorneys' fees pursuant to Rule 1-341, we engage in a two-step standard of review. First, "[w]e review a circuit court's determination whether a party maintained or defended an action in bad faith or without substantial justification under a clearly erroneous standard." *Toliver v. Waicker,* 210 Md. App. 52, 71, *cert. denied*, 432 Md. 213 (2013). A finding is clearly erroneous only if there is "no competent and material evidence" in the record to support it. *See Green v. McClintock,* 218 Md. App. 336, 368, *cert. denied*, 440 Md. 462 (2014). Second, we review a court's assessment of sanctions for an abuse of discretion. *Worsham v. Greenfield*, 187 Md. App. 323, 342 (2009), *aff'd on other grounds*, 435 Md. 349 (2013).

We have explained that, "[i]n the context of Rule 1-341, bad faith exists when a party litigates with the purpose of intentional harassment or unreasonable delay." *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999). *Accord Art Form Interiors, Inc. v. Columbia Homes, Inc.*, 92 Md. App. 587, 594 ("The 'bad faith' referred to in Rule 1-341 is defined as acting 'vexatiously, for the purpose of harassment or unreasonable delay, or

for other improper reasons.'") (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991)), *cert. denied*, 328 Md. 567 (1992). "In analyzing whether a party lacked substantial justification in filing its claim, we must determine 'whether [the offending attorney or party] had a *reasonable basis* for believing that the claims would generate an issue of fact.'" *RTKL Assocs. v. Baltimore County*, 147 Md. App. 647, 658 (2002) (quoting *Inlet Assoc.*, 324 Md. at 268). "[T]o constitute substantial justification, a party's position should be 'fairly debatable' and 'within the realm of legitimate advocacy.'" *Inlet Assocs.*, 324 Md. at 268 (quoting *Newman v. Reilly*, 314 Md. 364, 381 (1988)).

Pursuant to Md. Rule 1-341, in a civil action, a court, using its remedial authority, may impose sanctions if it

> finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party opposing it.

This Court has instructed that in awarding sanctions to parties under Rule 1-341, "it is incumbent upon a court not only to make specific findings on bad faith and lack of substantial justification, but additionally to demonstrate precisely how its award corresponds with a party's misconduct." *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 108 (1999). In conducting an appellate review of an award of sanctions, "[w]e, as an appellate court, cannot review a Rule 1-341 proceeding without factual determinations on the record that specifically associate a party's bad faith or unjustified pursuit of the

litigation with the expenses and costs the opposing party incurred in defending against that litigation." *Id*.

Our review of the record and our decision on the merits of this appeal reflect that Mr. Eig's motion before the court was not frivolous. Indeed, we have reversed the court's decision. As we have stated, the imposition of sanctions is to provide "for recovery of expenses incurred in opposing the unjustified or bad faith maintenance or defense of a proceeding." *Barnes*, 126 Md. App. at 105 (quoting *U.S. Health, Inc. v. State*, 87 Md. App. 116, 130-31 (1991)).

Moreover, the court executed an order imposing sanctions before the response to the request was filed and without specific findings on the issue of bad faith or substantial justification. This Court has explained that the only instance where a court awarding sanctions would not need to make findings is when it denies a motion for sanctions because the record before it makes it abundantly clear that findings are not necessary, as the motion was meritless. *See Fowler v. Printers II, Inc.*, 89 Md. App. 448, 487 (1991), *cert. denied*, 325 Md. 619 (1992). When, as here, "the record is devoid of the requisite findings of fact about bad faith and a lack of substantial justification . . . we hold that the court's award of attorney's fees was clearly erroneous." *Id*. at 106.

Accordingly, we reverse the court's order granting attorney's fees as sanctions under Rule 1-341.

ORDERS DATED OCTOBER 7, 2016 AND NOVEMBER 4, 2016 OF THE ORPHANS' COURT FOR MONTGOMERY COUNTY REVERSED. COSTS TO BE PAID BY APPELLEE.