

UNREPORTED  
IN THE  
COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 738

September Term, 1998

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BETTY M. MASSIMINI

v.

WILLIAM H. PROCTOR, P.C.

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Kenney,  
Adkins,  
Bloom, Theodore G.  
(Retired, Specially  
Assigned)

JJ.

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Opinion by Adkins, J.

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Filed: January 8, 1999

This case arises out of a legal malpractice claim in which Betty M. Massimini, appellant, sued William H. Proctor, P.C. (the Firm). In January 1997, Massimini obtained a jury verdict award against the defendant in the amount of fifty three thousand five hundred dollars (\$53,500). This appeal rests on appellant's belated insistence that she sued William H. Proctor (Proctor),<sup>1</sup> individually, and that the judgment entered against the "defendant" was effective against Mr. Proctor, individually.

In an effort to collect her judgment, Massimini caused a writ of attachment to be issued against property that Proctor owned. Proctor objected to this attachment and the Circuit Court for Baltimore City (Themelis, J.) released the real property from levy on March 18, 1998. This appeal followed.

Appellant asks us to hold that the trial court erroneously released the levy on Proctor's property at 3310 Edgerton Street, Baltimore, Maryland. Further, appellant asks us to impose sanctions against appellee. Proctor asks us to affirm the trial court's decision and to issue sanctions against Massimini and her counsel for the filing of the instant appeal.

For the reasons that follow, we hold that the trial court did not err in releasing the levy and that an award of sanctions against either party is inappropriate in this case.

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<sup>1</sup>In July of 1997, William H. Proctor consented to disbarment.

### **FACTS AND PROCEDURAL HISTORY**

Proctor, a solo-practitioner and only licensed attorney of the Firm, represented Massimini as the plaintiff in a federal employment discrimination action. During that case, he failed to file a timely opposition to the defendant's motion for summary judgment. The federal court, finding that the defendant's motion was meritorious, granted the motion and dismissed Massimini's case in March 1994. As a result of Proctor's oversight, appellant filed suit for legal malpractice, identifying "WILLIAM H. PROCTOR, ATTORNEY-AT-LAW, P.C./LAW OFFICE OF WILLIAM H. PROCTOR, P.C." as the defendant in the suit. At the malpractice trial, a jury rendered a verdict in favor of Massimini. The body of the verdict sheet did not specify the defendant by name, but the caption of the case appearing at the top of the verdict sheet specified William H. Proctor, P.C. as the defendant. Entry of judgment on the docket reflected simply a judgment against "defendant."

In February 1997, the Firm filed an appeal with this Court. During the pendency of the appeal, Massimini filed a Writ of Wage Garnishment against Proctor. Proctor filed a motion to quash the writ on the ground that the judgment was only entered against the Firm. The circuit court quashed the writ on July 17, 1997, and stated that the judgment was "entered against the Defendant, William H. Proctor, P.C., a Maryland Professional Corporation, and

no judgment was entered against William H. Proctor, individually." Massimini filed a motion for reconsideration, which was denied by the court on August 8, 1997, "for reasons set out in the Court's Order dated July 17, 1997."

Massimini filed an Application for Leave to Appeal to this Court, which we denied on September 29, 1997. In denying the motion we stated, "Because notice of appeal is the only method of securing this Court's review of the circuit court's Order quashing [Massimini's] Writ of Garnishment, [Massimini's] Application for Leave to Appeal is DENIED . . . ." Massimini did not take any corrective action to protect her right to appeal. On that same day, we also found the Firm to be in default under Maryland Rule 8-602(a)(7) for failure to timely file a brief in its appeal, and the Firm's appeal was dismissed. Massimini then filed a petition for certiorari, which the Court of Appeals denied.

Thereafter, Massimini caused a writ of execution to be levied against real property owned by Proctor individually. Proctor responded by filing a motion to release the real property from levy, which was granted. Following the release of the levy by the circuit court on March 18, 1998, Massimini filed a notice of appeal and an emergency request to this Court, asking us to direct the circuit court to immediately transmit the record to our Court and stay the order of the circuit court releasing the real property from the levy. We denied the motion for failure of appellant to

file a brief and ordered Massimini to show cause why her appeal should not be dismissed. She responded to the show cause order on April 21, 1998.

After considering her response, on May 28, 1998, this Court ordered that the appeal would not be dismissed, but limited the issue to "whether the circuit court erroneously released Appellant's levy on 3310 Edgerton Street, Baltimore, Maryland. The request for sanctions is deferred until the merits of the appeal have been addressed."

## **DISCUSSION**

### **I.**

#### **Attachment of Property**

Appellant contends that Proctor's refusal to pay anything toward the judgment against the Firm and his recent disbarment that ended the Firm "affects the outcome of the case" and is "[m]anifestly wrong and substantially injurious." She argues that the circuit court erred because 1) her complaint clearly incorporated Proctor individually, 2) the Firm was a solo practice in which Proctor was the only licensed attorney, 3) Proctor neglected her case by allowing inexperienced law clerks to work on it, 4) Proctor failed to monitor her case, and 5) Proctor personally failed to provide her with services she deserved. Proctor contends that appellant did not sue him individually and, accordingly judgment was entered as to the Firm only. Proctor

asserts that appellant is barred, pursuant to Maryland Rule 8-202, from raising this issue since she did not raise that issue in her earlier appeal. We agree with Proctor's contentions.

This review is limited by Chief Judge Murphy's Order, dated May 28, 1998, which states: "ORDERED that the appeal will not be dismissed, is limited to the issue of whether the circuit court erroneously released Appellant's levy . . . ." The rationale for this limitation imposed by Chief Judge Murphy was that judgment was entered on January 27, 1997, and, according to Maryland Rule 8-202, Massimini had thirty days to file an appeal. That thirty-day period would have been the appropriate time for Massimini to appeal an issue regarding the entry of the judgment. Her failure to do so precludes our review of the issue concerning the identity of the judgment debtor. See *Jenkins v. Jenkins*, 112 Md. App. 390, 395-96 (1996), cert. denied, 344 Md. 718 (1997). Were we to review such issue, however, we would agree with the decision of the trial court that the suit was filed and judgment entered only against the Firm.

From a review of the pleadings and record, it is clear that Massimini only sued the professional corporation. The Complaint, filed by Massimini, demonstrates that she did not sue Proctor as an individual. The Complaint caption lists the defendant as "WILLIAM H. PROCTOR, ATTORNEY-AT-LAW, P.C./LAW OFFICE OF WILLIAM H. PROCTOR, P.C." In addition, in the first paragraph of the Complaint, Massimini states that she is suing "William H. Proctor, Attorney-

At-Law, P.C./Law Office of William H. Proctor, P.C. (hereinafter "Proctor"), Defendant . . . ." Further, the Complaint explains that "Defendant Proctor is the corporate name of the law practice of William H. Proctor, Esquire, operating out of Baltimore City, Maryland." This language alludes to only a corporate defendant. Moreover, the caption of the jury verdict sheet lists "WILLIAM H. PROCTOR, P.C." as the only defendant.

Maryland Rule 2-641 governs the issuance and content of Writs of Execution pertaining to levies. The rule states:

Upon the written request of a judgment creditor, the clerk of a court where the judgment was entered or is recorded shall issue a writ of execution directing the sheriff to levy upon property of the *judgment debtor* to satisfy a money judgment.

(Emphasis added). "In Maryland, a writ of execution may be exercised upon any legal or equitable interest *possessed by the judgment debtor* in either real or personal property[.]" *Dodds v. Shamer*, 339 Md. 540, 544 (1995) (citing Md. Code (1974, 1995 Repl. Vol.) § 11-501 of the Courts and Judicial Proceedings Article, and Md. Rules 2-641 to 2-644) (emphasis added). In this case, there was a judgment against the Firm and a levy against property owned by Proctor.<sup>2</sup> Clearly, as explained above, Proctor is not a judgment debtor. The property, therefore, cannot be attached.

The unfortunate oversight by appellant's counsel in failing to

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<sup>2</sup>Appellant does not argue that the property at issue is owned by William H. Proctor individually.

include Proctor as a party to the suit and the failure to appeal the entry of judgment within thirty days brings Massimini's legal claims to a close for now. In reviewing the history of this case, we observe that Betty Massimini has experienced an unfortunate set of circumstances in her quest for justice that suggest inadequate legal representation in two cases. We regret that the legal profession has served her so poorly thus far. We find, however, no error by the trial court in the releasing of the levy attached to Proctor's property at 3310 Edgerton Street, Baltimore, Maryland.

## **II. Sanctions**

Appellee filed a Motion for Sanctions to this Court on April 9, 1998. He claims that

because Appellant Massimini (1) noted her appeal on April 1, 1998, (2) is essentially appealing the Circuit Court's order of January 27, 1997, (3) this Court has previously dismissed Appellant Massimini's two previous appeals of the Circuit Court's order of January 27, 1997, and (4) the Court of Appeals has previously denied Appellant Massimini's petition for writ of certiorari, Appellant Massimini's appeal should be dismissed.

Appellant, in her brief, also asks us to impose sanctions and states:

The clear law exposes Mr. Proctor's position as without merit, and he has still "blocked" Massimini's attempts to collect on a jury verdict. Because of the clear law, it is shocking that Mr. Proctor has requested sanctions. In fact, sanctions should be



imposed on him for his shameful undermining of a fair jury verdict.

The imposition of sanctions is governed by Maryland Rule 1-341. It provides:

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

This rule was made applicable to this Court in *Blanton v. Equitable Bank Nat'l Ass'n*, 158 (1985). The imposition of sanctions involves making a finding of bad faith or lack of substantial justification "as well as the careful exercise of judicial discretion." *Zdravkovich v. Bell Atlantic-Tricon Leasing Corp.*, 323 Md. 200, 212 (1991).

From examining the brief submitted by appellant, and the arguments made within, we do not find that the bringing of the present action by Massimini was done in bad faith. It appears that appellant did not intend to harass appellee; rather, appellant and her counsel were merely seeking an overturn of the circuit court's order. As it turned out, appellant did not pursue the correct avenues of appeal when they were available to her. We find that the seeking of the levy by appellant, and this subsequent appeal, may not have been in good faith, but this finding of a failure of "good faith is not the functional equivalent of a finding of bad faith." *Art Form Interiors, Inc. v. Columbia Homes, Inc.*, 92 Md.

App. 587, 598, *cert. denied*, 328 Md. 567 (1992).

The second prong of our analysis is to determine whether the suit was brought without substantial justification. See Md. Rule 1-341. This Court has explained the standard as follows: Where it is "patently apparent that [a party] had no colorable claim or novel legal theory to support [the party's] actions[,] the action is without substantial justification. *Johnson v. Baker*, 84 Md. App. 521, 531 (1990), *cert. denied*, 322 Md. 131 (1991). Judge Alpert further explained that "conduct lacks substantial justification when there is no basis in law and/or in fact to support the plaintiff's claim against the defendants . . . ." *Id.* at 529.

In this case, it is patently clear from the record, as mentioned previously, that the Complaint was only filed against the professional corporation, William H. Proctor, P.C. In fact, the Writ of Garnishment had previously been quashed for that specific reason and a motion for reconsideration was denied for the same reason. We find no colorable claim presented by this instant appeal and thus find that it was brought by appellant without substantial justification.

The sanction rule allows a sanction to be imposed against "the offending party or the attorney advising the conduct or both of them . . . ." Md. Rule 1-341; see also *Watson v. Watson*, 73 Md. App. 483, 495 (1988). This case might justify a sanction to be imposed against appellant's attorney, Rickey Nelson Jones, Esquire, although not the appellant herself, Betty Massimini. Appellee,

however, has failed to inform us of any expenses incurred in defending this appeal, and no amount was supported by an affidavit or in the body of the motion itself. Thus, we decline to impose a sanction when we are "left to speculate as to what amount of attorney's fees would be reasonable." *Kirsner v. Edelmann*, 65 Md. App. 185, 198 (1985). We deny appellee's Motion for Sanctions. Whether we would impose a sanction against Rickey Nelson Jones, had proper information been provided, is a matter we need not decide.

Appellant's sanction request is denied because appellee was correct on the narrow legal issue presented in this case.

**JUDGMENT AFFIRMED; APPELLEE'S  
MOTION FOR SANCTIONS DENIED;  
COSTS TO BE PAID BY APPELLANT.**