to perform or to offer to perform comports with standards of good faith and fair dealing." *Restatement (Second) of Contracts* § 241 (1981).

In the instant case, however, we need not decide whether Van Scoy substantially performed under the terms of the Consent Order. We conclude that she fully performed. Van Scoy successfully worked with Voisin and Paulay for years and helped them resolve numerous disputes. She performed these tasks while keeping in mind the primary duty of her appointment — furthering the best interest of her two clients:[----] and [-----].

In addition, Van Scoy arduously called for the enforcement of numerous provisions within the Consent Order when either parties' deviation concerned the best interest of [----] and [-----]. Van Scoy cautioned the parties from discussing their contentions with their two children. Notwithstanding Dr. Campbell's refusal to mediate the parties' contentions absent satisfaction of Paulay's debt, Van Scoy endeavored to address the parties' desires to use Dr. Campbell in resolving the parties' contentions regarding the boys' extracurricular activities. Moreover, allegations of demonstrated favoritism for Voisin regarding the incidents arising out of [------] summer camp injury, [------] absence from a tae kwon do belt competition to complete schoolwork, and both boys' medical care and treatment patently overlooks other provisions of the Consent Order that provided Voisin with sole legal custody of [-----] and [----] and further prohibited Paulay's interference with the childrens' medical care and treatment:

> ORDERED, that [Voisin] shall continue to have sole legal custody [of] the minor children of the Parties, [------] . . . and [-------] . . . , and it is further
>
> ORDERED, that [Voisin] shall keep [Paulay] informed of any significant events and decisions in the children's lives and that [Paulay] shall have full access to all medical and education records pertaining to the children. [Paulay] shall not cancel or interfere with any medical appointments of the minor children, and it is further
>
> * * *
>
> ORDERED[,] that neither Party shall initiate any litigation concerning the minor children without the prior approval and authorization of the BIA, or until they have participated in three mediation sessions with her in an attempt to resolve the issue.

Indeed, Van Scoy's allegedly inconsistent intervention and agreement with Voisin were neither inconsistent nor indicative of bias. Van Scoy was abiding by the specific terms of the Consent Order. Accordingly, the circuit court's finding that Van Scoy "patently and materially breached" her duties under the Consent Order was clearly erroneous.

(B) Van Scoy's Attorney's Fees Were Reasonable And Compensable.

Paulay next contends that the circuit court correctly reduced the requested amount of attorney's fees because Van Scoy "failed to provide bills that reasonably specified the work performed, failed to specify the time spent on individuals tasks, failed to prove that the work was necessary, failed to prove that the fees were reasonable, and failed to submit her invoices in a timely manner." Thus, he argues that the in banc panel erroneously reversed the decision of the circuit court. We disagree.

When a contract indicates that an award for attorney's fees is warranted, a court must "examine the fee request for reasonableness, even in the absence of a contractual term specifying that the fees be reasonable." Maryland Rule of Professional Conduct 1.5 speaks directly to this analysis and provides:

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of the fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of 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 lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

Md. Rule 16-812, MLRPC 1.5. As observed, *supra* Part I & Part III(A), the record demonstrates that Van Scoy's intervention and allocation of the resulting attorney's fees were not arbitrary, capricious, and unnecessary instances. Further, it is indisputable that Van Scoy rendered the requisite services pursuant to the Consent Order.

Nonetheless, Paulay asserts that there were several entries in Van Scoy's billing statements that lacked sufficient detail. To be sure "[i]t goes without saying that attorneys who bill on a time basis should make their billing as detailed as reasonably possible, so that the client, and any other person who might be called upon to pay the bill, will know with some precision what services have been performed." *Diamond Point Plaza Ltd. P'ship v. Wells Fargo Bank, N.A.,* 400 Md. 718, 760 (2007). Such reasonableness is determined on a case-by-case basis. We shall therefore address Van Scoy's billing statements below.

In the March 7, 2007 billing statement, there was an entry titled "case work regarding settlement." The April 11, 2007 billing statement also had four of the same entries. These entries suggest that there were ongoing settlement negotiations. Admittedly, there could have been more detail in the description of services, but we believe that such an entry sufficiently describes the services rendered. In the July 5, 2007 billing statement, there was an entry titled, "Case work regarding DC case . . . ." The parties were involved in multiple cases in the District of Columbia. However, within the context of time, the parties should be aware which case was being addressed. Furthermore, in the October 9, 2007 billing statement, there were four entries that either stated "Case work — Winter Break ," "Case work regarding Winter Break," or "Case work regarding Winter Break; School schedule." Again, the parties should have been able to determine that the services rendered were associated with winter break. The same could be said for the entries entitled "Case work — Yom Kippur" and "Case work regarding Yom Kippur" in the October 9, 2007 billing statement.

In the November 6, 2007 billing statement, there were three entries that either stated "Case work regarding Friday access" or "Case work regarding Friday transportation." Van Scoy could have provided the date at issue or a brief description of the situation. Nevertheless, we believe that there was sufficient detail to indicate there was an issue regarding a Friday visitation. In addition, in the same billing statement, there was an entry titled "Case work regarding Order," and a similar entry titled "Case work regarding Current Order" in the January 6, 2008 billing statement, that we consider vague but sufficient. We presume that the parties knew that the order referenced was the Consent Order. Furthermore, in the January 6, 2008 statement, there are entries titled "Case work regarding Thursday" that the parties presumably knew involved a conflict concerning visitation.

In the January 29, 2008 billing statement, there were several entries that sufficiently described that Van Scoy was rendering services concerning a motion to compel. The entries were: "Case work regarding Response to Motion to Compel," "File Motion to Compel and Sanctions at Circuit Court for Montgomery County," "Review [Van Scoy's] response to Motion to Compel and for Sanctions," "To Circuit Court for copy of docket entries," and "Case work regarding [Voisin's] response to Motion to Compel."

In the February 26, 2008 billing statement, there were entries titled "Case work regarding trip transportation . . ." and "Case work regarding ski weekend; [Voisin's] arrangements . . . ." The date of the ski weekend could have been provided, or the issue could have been succinctly described. However, we believe that the parties would have been aware of the issue within the context of the timing of the billing statement. The "Case work regarding communication" and "Case work regarding open issues" entries, which were in the same statement, are somewhat unclear, but the other entries within the statement, and Van Scoy's testimony, provided context for these entries. Finally, in the same statement, we believe that there could have been a brief description of the situation that necessitated the following entries: "Case work regarding emergency; telephone conference with [Voisin]; telephone conference with Palmer; telephone conference with Goldberg office; deliver pleadings to Goldberg; Draft e-mails; telephone conference with [Paulay]; Draft Pleadings; Attend Emergency Hearing; telephone conference with children; telephone conference with Vivian; Case work regarding x-ray . . . .;" and "Assist [Van Scoy] with Emergency Motion; Call to assignment desk; Draft Certification; Draft/Review Emergency Motion; Copy exhibits; File Emergency Motion/walk through Emergency Hearing before Judge Ann Harrington . . . ." Nevertheless, Van Scoy's testimony, and the email records, suggest that the parties had sufficient knowledge regarding the entries.

The March 25, 2008 statement contained two entries titled, "Case work regarding Tuesday/Thursday switch . . . ," which in our opinion, sufficiently notified the parties that the issue concerned visitation issues. Van Scoy probably could have described the situation, but it was apparent that there was an issue concerning visitation. In the April 29, 2008 billing statement, there was an entry titled, "Case work regarding TKD Tournament." That the entry sufficiently indicated that Van Scoy was rendering services associated with a

tae kwon do tournament. Even though the use of "TKD" as shorthand could be confusing, we believe that the parties were aware that "TKD" meant tae kwon do. Furthermore, in the same billing statement, we believe that the parties would be aware that "Case work on Contempt" and "Telephone conference with Rabbi Seidel" would, respectively, be associated with one of the parties being in contempt of the Consent Order and [----] bar mitzvah.

In the May 27, 2008 billing statement, we believe that Van Scoy's testimony explained the following entry: "Case work regarding open issues." She testified that these issues concerned [------] bar mitzvah and litigation in the District of Columbia. In the June 24, 2008, the words alone of the following entries sufficiently notified the parties about the pending issues: "Case work regarding vacation/summer schedule" and "Case work regarding therapy." Furthermore, in the same statement, the entries "Case work on Summer" and "Case work regarding Summer/Vacation schedule" sufficiently described the work associated with summer schedules.

At first blush, the "Case work regarding emergency" entries in the August 1, 2008 billing statement do not appear sufficient. However, there are entries that follow that give context to the meaning. One of those entries is "Case work – [Van Scoy's] Motion for Emergency Relief in the best interest of the minor children, [------] and [-------] Paulay, regarding 2008 vacation scheduling and summer camp." Because of those entries, the subsequent entries regarding the emergency hearing and the consent order must be considered sufficient. Furthermore, in the same statement, we also believe that there was sufficient description of the entries associated with [-------] injury, because the parties would not assume the services concerned another issue. In addition, we recognize that the entry titled "Case work regarding [----]" could have been more detailed, but the parties presumably would have been able to determine that the work corresponded with the issues concerning [-------] injury. Lastly, Van Scoy could have provided more detail regarding the entry titled, "Case work regarding [Paulay's] Vacation/Weekend," in the same statement. However, the parties should have been able to ascertain the nature of the entry based on the description.

In the August 26, 2008 billing statement, even though we are unsure whether the entry titled, "Case work regarding Camp," concerned [-------] injury at the summer camp, or [------] remaining at the summer camp, the two were related, and the parties should be aware of the issues based on the entry. In the October 3, 2008 billing statement, there were entries titled, "Case work regarding Motions," "Case work – Motions," or "Case work – Pleadings." The subsequent entries – "Hearing Preparation," "Finalize Pleading," "attend Emergency Hearing," "Case work regarding Consent Order," or "Review Line/Motion – Rubin" are associated with the abovementioned motion. Van Scoy explained that these entries concerned the enforcement of a consent order the parties entered into regarding medical treatment. The parties would have known this from their participation in the case. Moreover, in the same statement, the entries associated with "Case work – Motion for Mental Health Evaluation . . ." were sufficiently detailed, considering that a reasonable person would know that Van Scoy was performing services to address a request for a mental health evaluation. The same could be said for the following entry in the same statement: "Case work – [Van Scoy] Motion to Enforce Terms of Consent Order Dated March 12, 2007."

In the November 4, 2008 and November 25, 2008 billing statements, there are several of these entries: "Case work on Motions," "Case work — [Van Scoy] Opposition to [Paulay's] [Motion] to Reconsider; review and alter," "Case work — [Van Scoy] Opposition to [Paulay's] Motion to Reconsider Revise and Alter and Amend the Order entered on 9/15/08 and Attached as Exhibit "A"," "Case work — [Van Scoy] Opposition to Motion to Alter; Amend," "Case work regarding reply," "Case work — Revisions to [Van Scoy] Opposition," "Case work — Corrections to [Van Scoy] Opposition to [Paulay's] Motion to Alter/Amend," or "File [Van Scoy] Opposition in Circuit Court." The parties, in our opinion, should have been aware that the entries concerned the issue of seeking medical treatment. Furthermore, in the November 25, 2008 billing statement, there were multiple entries titled, "Case work regarding [--------] surgery" or "Case work regarding surgery." The parties should not have mistaken the services associated with these because there was only one major surgery during the pendency of this case.

In the December 30, 2008 billing statement, the entries titled "Case work regarding Emergency Room visit" and "Case work regarding Emergency Room visit, [----]." suggest that Van Scoy performed services regarding an emergency room visit. Obviously, more information could have been provided. However, we believe that the parties were aware of the services associated with the entries. Furthermore, in the same statement, we believe that the following entry was sufficiently detailed: "Case work regarding field trip." The entry does not indicate whether the field trip was for [----] or for [-----], but the context of the entry should have sufficiently notified the parents about the issue.

In the December 30, 2008 and February 3, 2009 statements, we believe that the entries concerning the motion for protective order were sufficiently detailed. Furthermore, in the February 3, 2009 billing statement,

we believe the parties would were aware of the issues regarding the following entry: "Case work regarding [-----] ski race," "Case work — ski weekend," "Case work regarding [----] and strep,""Review e-mail; draft e-mail; [----] weekend with [Paulay]," and "Case work regarding Vacation." In addition, in the March 3, 2009 billing statement, there was an entry titled, "Case work regarding Depositions." A reasonable person could not determine whether Van Scoy attended a deposition or was preparing for a deposition. However, that, in our opinion, is not necessary to be sufficiently detailed. The same could be said for the following entry in the March 31, 2009 billing statement: "Attend Deposition." Lastly, we believe that the entry titled, "Case work regarding boy's schedule (switching)," in the May 31, 2009 billing statement, sufficiently indicated a visitation issue.

"A precise allocation is not always practicable[.]" *Diamond Point,* 400 Md. at 760. Nor is it "reasonable to expect the lawyer to have in tow an industrial engineer with a stop watch to measure how much time was devoted to one claim or another." *Id.* Therefore, we do not believe these entries should preclude Van Scoy from receiving attorney's fees and accordingly affirm the Court In Banc for the Sixth Judicial Circuit.

JUDGMENT OF THE COURT IN BANC FOR THE SIXTH JUDICIAL CIRCUIT IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.

FOOTNOTES

1. Section 1-202 of the Family Law Article, entitled, "**Appointment of counsel for minor**[,]" outlines the appointment of a best interest attorney and specifically provides:

> (a) *In general.* – In an action in which custody, visitation rights, or the amount of support of a minor child is contested, the court may:
>
> (1) (i) appoint a lawyer who shall serve as a child advocate attorney to represent the minor child and who may not represent any party to the action; or
>
> (ii) appoint a lawyer who shall serve as best interest attorney to represent the minor child and who may not represent any party to the action; and
>
> (2) impose counsel fees against one or more parties to the action.
>
> (b) *Standard of care.* – A lawyer appointed under this section shall exercise ordinary care and diligence in the representation of a minor child.

Md. Code (1984, 2012 Repl. Vol.), § 1-202 of the Family Law Article (emphasis in original).

2. Voisin satisfied her outstanding balance of $1,266.72 prior to the hearing of January 6, 2010.

3. The Sixth Judicial Circuit is comprised of Frederick and Montgomery Counties. This particular in banc panel was composed of three judges from the Circuit Court for Montgomery County.

4. For a discussion of Article IV, Section 22 of the Maryland Constitution, *see* Part II, *infra.*

5. Maryland Rule 2-551, entitled, "**IN BANC REVIEW**[,]" in pertinent part, provides:

> **(a) Generally.** When review by a court in banc is permitted by the Maryland Constitution, a party may have a judgment or determination of any point or question reviewed by the court in banc by filing a notice for in banc review . . . . Upon the filing of the notice, the Circuit Administrative Judge shall designate three judges of the circuit, other than the judge who tried the action, to sit in banc.
>
> **(b) Time for Filing.** Except as otherwise provided in this section, the notice for in banc review shall be filed within ten days after entry of judgment. When a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice for in banc review shall be filed within ten days after entry of an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534. A notice for in banc review filed before the disposition of any of these motions that was timely filed shall have no effect, and a new notice for in banc review must be filed within the time specified in this action.

Md. Rule 2-551 (emphasis in original).

6. *See* note 2, *supra.*

7. In his brief, Paulay presents the following issues before this Court:

> 1. Whether a Best Interest Attorney who materially breaches a Consent Order under which she is appointed may nevertheless recover her claimed fees *in toto*;
>
> 2. Whether professional standards of attorney billing apply to a Best Interest Attorney, and if so, whether . . . Van Scoy adhered to those standards; and
>
> 3. Whether fees claimed by a Best Interest Attorney are "reasonable" and compensable when the work was found to be unnecessary, intrusive, and severely biased.

8. Voisin filed her complaint for absolute divorce in the Circuit Court for Montgomery County on December 3, 1998.

9. The use of the term "guardian *ad litem*," in connection with the appointment of an attorney for a child has since been repudiated by the Court of Appeals in *Fox v. Wills*, 390 Md.

620 (2006).

10. Tatyana Paulay ("Tatyana") and Forrestine Paulay ("Forrestine") are Paulay's second wife and mother, respectively.

11."Malaria is a disease caused by a parasite that is transmitted to humans by the bite of an infected Anopheles mosquito. These mosquitoes are present in the tropics and subtropics in almost every country." *See Malaria (" Malaria I")*, http://www.hopkinsmedicine.org/healthlibrary/conditions/adult/infectious_diseases/malaria_85,P00635 (last visited June 12, 2013). *See also Malaria ("Malaria II"*), http://www.mayoclinic.com/health/malaria/DS00475/METHOD=print (last visited June 12, 2010) It is the most deadly tropical disease. *Malaria I, supra.* Symptoms of the disease include the following: fever, chills, headache, muscle ache, malaise, nausea, vomiting, diarrhea, and coughing. *Id.* These symptoms ordinarily manifest from seven to thirty days after the mosquito bite. *Id.* "However, some types of malaria parasites can lie dormant in [a person's] body for months, or even years." *Malaria II, supra*.

12. Van Scoy raised no contentions regarding Voisin's outstanding balance because Voisin had satisfied her debt. Consequently, the issue was not addressed by the court in banc. *See* note 2, *supra.*

13. *See* note 5, *supra*.

NO TEXT

Cite as 8 MFLM Supp. 97 (2013)

Divorce: appellate attorneys' fees: required considerations

Richard S. Sternberg
v.
Sheryl S. Sternberg

No. 0403, September Term, 2012

Argued Before: Graeff, Berger, Salmon, James P. (Ret'd, Specially Assigned), JJ.

Opinion by Salmon, J.

Filed: July 10, 2013. Unreported.

In awarding attorneys' fees to defray the costs of defending an appeal, the trial court clearly considered 1) the financial resources of both parties, 2) the financial needs of both parties, and 3) whether there was substantial justification for prosecuting or defending the proceeding; and, under the circumstances, it was not an abuse of discretion to rely on information about the parties' resources already in the file.

Richard Sternberg ("Richard") and Sheryl Sternberg ("Sheryl") were married in August, 1984. The two separated in September, 2009. Three children were born of the marriage, one of whom is still a minor.

In February, 2010, Sheryl filed a complaint in the Circuit Court for Montgomery County in which she asked the court to grant her: 1) child support, 2) a monetary award, 3) child custody, 4) attorney's fees, and 5) an absolute divorce based on Richard's adultery. Richard filed a counter-complaint and the matter was heard on the merits in a four-day trial commencing on June 20, 2011. The matter was taken under advisement and on September 26, 2011, the trial judge, the Honorable Mary Beth McCormick, granted Sheryl a judgment of absolute divorce based on Richard's adultery. Among other things, the court ordered Richard to pay Sheryl a monetary award in the amount of $28,500, child support in the amount of $1,706 per month and $70,000 to help Sheryl pay her attorney's fees. The judgment of absolute divorce was accompanied by a twenty-page opinion in which Judge McCormick explained her reasons for granting the divorce and ordering Richard to make the payments just mentioned. Richard filed a timely appeal to this court on October 4, 2011. A panel of this court affirmed Judge McCormick's judgment in all respects.

Ed. note: Unreported opinions of the states courts of appeal are neither precedent nor persuasive authority. Rule 8-114. Unofficial publication of an unreported opinion does not alter the force of that rule. See Nicholson v. Yamaha Motor Co., 80 Md. App. 695, 566 A.2d 135 (1989). Headnotes are not from the courts but are added by the editors. Page numbers are from slip opinions.

See Sternberg v. Sternberg, September Term, 2011, No. 1612 (unreported) filed, January 7, 2013 (hereinafter "the first appeal").

Meanwhile, about four months after the first appeal was filed, on February 9, 2012, Sheryl filed a motion asking the circuit court to order that Richard pay her $25,000, which was the amount she believed she would have to pay in attorney's fees to defend against Richard's first appeal. Richard, on February 24, 2012, filed an opposition to Sheryl's motion for appellate attorney's fees. On the same date, he also filed a separate motion asking the court to award him attorney's fees. On March 13, 2012, Sheryl filed a reply to Richard's opposition to her motion for attorney's fees. Neither Sheryl or Richard asked for a hearing on the pending motions for attorney's fees, but on March 19, 2012, the administrative judge for Montgomery County signed a scheduling order setting March 14, 2012 as the date for the court to have a hearing on the motions for attorney's fees. That same scheduling order also set August 14, 2012 as the date the court would hear two other pending motions, i.e., Richard's motion to modify child support and Sheryl's motion to enforce the provisions of the judgment of absolute divorce signed on September 28, 2011.

On April 3, 2012, the clerk of the Montgomery County Circuit Court filed an order, signed by the Honorable Michael D. Mason, which read, in material part, as follows:

> Upon consideration of Plaintiff's Motion for Appellate Attorney's Fees, and any opposition thereto, the same having been read and considered, it is, by the Circuit Court for Montgomery County, Maryland, this 28th day of March, 2012,
>
> ORDERED, that the Plaintiff's Motion for Appellate Attorney's Fees be, and is hereby GRANTED; and it is further,
>
> ORDERED, that the Defendant shall pay to Plaintiff advanced attorney's fees for the prosecution of the appeal in the amount of Fifteen

> Thousand Dollars ($15,000), which amount shall be paid to the Plaintiff within thirty (30) days of the entry of this Order; and it is further,

Also on April 3, 2012, the Clerk filed a separate order, also signed by Judge Mason, denying Richard's motion for appellate attorney's fees. Richard filed the subject appeal on May 3, 2012, in which he raises one question:

> Did the trial court err in awarding advanced appellate attorney's fees without considering the necessary statutory factors?

We shall hold that the court did not err. The record is clear that Judge Mason did consider the necessary statutory factors before making a $15,000 award to Sheryl to help her pay her appellate attorney's fees.

I.

Paragraph nine of Sheryl's motion for attorney's fees reads as follows:

> An award of attorney's fees in this matter is governed by Md. Code Ann., Family Law Article §§ 7-107(b), 8-214(b) and 12-103(a), all of which provide that the court may award reasonable and necessary expenses to parties in divorce, divorce property disposition, and child support actions, including counsel fees and costs.

Among the exhibits that were before Judge Mason when he ruled on Sheryl's request for attorney's fees was a copy of Judge McCormick's twenty page memorandum opinion that was filed on September 26, 2011 (hereinafter "Exhibit "A"). Exhibit "B" was the judgment of absolute divorce also signed on September 26, 2011. The civil appeal information form that Richard's counsel filed with this court in regard to the first appeal was attached to Sheryl's motion as Exhibit "C". Finally, she attached as Exhibit "D" an affidavit, signed by one of her attorneys, in which the affiant estimates that the approximate cost of defending Richard's appeal would be $25,000.

Richard filed a timely opposition to Sheryl's motion for attorney's fees in which he accurately sets forth the three statutory factors that the court must consider when it decides whether to grant attorney's fees. See Maryland Code (2012 Repl. Vol.), Family Law Article ("FL") §§ 7-107(b), 8-214(b), and 12-103(a). Richard said, in paragraph one of his opposition:

> The awarding of attorney's fees is governed by Md. Code Ann., Fam. Law §§ 7-107, 8-214, and 12-103 in the cases of divorce, disposition of property, and child support respectively. Each of the above provisions requires the court to consider, (1) the financial resources of both parties, (2) the financial needs of both parties; and (3) whether there was substantial justification for prosecuting or defending the proceeding. Upon review of the above factors, the Court can then determine if an award of attorney's fees is appropriate.

In paragraph three, he also stated:

> Defendant submits as Exhibit "A" his 2009 and 2010 Federal tax return reflecting an adjusted gross income of $16,168 for 2009 and $5,946 for 2010. As Defendant has maintained throughout the proceedings, his income has been greatly reduced during the current economic recession, a fact supported and reflected in his tax filings.

Sheryl, in her motion, and Richard in his opposition, discuss, in detail, all three statutory factors.

In regards to the first factor (financial resources of the parties), Sheryl relied on Exhibit A, which was Judge McCormick's memorandum opinion entered on September 26, 2011 in which Judge McCormick analyzed, in great detail, the resources of both of the parties. For our purposes, it is unnecessary to state, in detail, what those resources were. Suffice it to say, however, the financial resources of both parties were substantial.

Judge McCormick, after giving a thorough explanation in her written opinion, expressed the view that Richard had been untruthful in his testimony regarding the income that he had earned since the parties separated in 2009. Judge McCormick found that as of the time of the hearing (June, 2011), Sheryl's income as a physical therapist was holding steady at approximately $5,729 per month and that Richard currently earned at least $120,000 per annum (net) from his law practice.

Richard's opposition to the motion for attorney's fees, filed on February 24, 2012, was supported by copies of Richard's 2009 and 2010 Federal income tax returns and a document showing that, effective December 1, 2011, Richard had obtained health insurance through the Maryland Health Insurance Plan - a plan for low income individuals who reside in Maryland. The 2009 and 2010 Federal tax returns filed with Richard's opposition, were also exhibits at the trial presided over by Judge McCormick. Nevertheless, Judge McCormick expressed the belief in her memorandum opinion that Richard earned far more per year

than the amount shown on his tax returns.

On March 19, 2012, when Sheryl filed her reply to Richard's opposition she, once again, discussed all three statutory factors that a judge is required to consider before making an attorney's fee award.

II.
Standard of review.

In a case such as the one *sub judice*, ". . . the trial court is vested with wide discretion in deciding whether to award counsel fees and if so, in what amount." *Malin v. Mininberg,* 153 Md. App. 358, 435-436 (2003). Although that discretion is subject to appellate review, an appellate court will not disturb an attorney's fee award unless the exercise of discretion was arbitrary or clearly wrong. *Id.* at 436.

Before making an award of attorney's fees, it is mandatory that the court consider three statutory factors, namely: 1) the financial resources of both parties, 2) the financial needs of both parties; and 3) whether there was substantial justification for prosecuting or defending the proceeding. *Petrini v. Petrini*, 336 Md. 453, 468 (1994). To demonstrate that he (or she) has considered the three statutory factors, the trial judge does not have to recite any "magical words". *Beck v. Beck*, 112 Md. App. 197, 212 (1996).

In his brief, Richard does not contend that Judge Mason failed to appropriately balance the three statutory factors. Nor does he contend that the fees awarded were unreasonable. Instead, he argues as follows:

> Richard respectfully requests that this Court vacate the lower court[']s June 27, 2013 judgment and correct the error of that court for the following reason. Maryland statute requires that certain factors be considered when the trial court is considering an award of attorney's fees in a domestic relations matter. The trial court here failed to consider the factors before awarding Sheryl advanced appellate attorney's fees; a legal error. This Court may remedy the legal error of the lower court by vacating the decision granting Sheryl appellate attorney's fees.

To support his argument that Judge Mason did not consider the three statutory factors, Richard also asserts:

> In this divorce case, the trial court awarded Sheryl advanced appellate attorney's fees without the benefit of a hearing, contrary to the expectations of the parties, and without the current financial information of either Richard or Sheryl. Furthermore, there was no opinion issued giving an indication that the trial judge considered the required statutory factors. *See generally*, Docket Entries. The above strongly indicates that the trial court failed to consider the required statutory factors in its award of attorney's fees; a legal error and grounds for reversal.
>
> *See Carroll*, 320 Md. at 177. The present situation is analogous to that considered by the Maryland Court of Appeals in *Carroll County v. Edelmann*, a domestic relations case in which attorney's fees were at issue. Carroll County v. Edelmann, 320 Md. 155 (Md. 1990).

(Reference to record extract omitted).

The *Carroll County v. Edelmann* case is inapposite. In *Edelmann*, a best interest attorney was appointed to represent the interest of a minor child in a case initially filed by the Carroll County Department of Social Services [DSS] to increase the amount of child support the father [*Edelmann*] was then paying. 320 Md. at 155. The minor child's mother then filed an action to terminate the father's parental rights. The mother's petition was later treated by the Court of Appeals as a "separate action" consolidated with the complaint for an increase of child support. *Id.* at 165. During the proceedings, the trial judge appointed Ralph Uebersax, Esquire to represent the interest of the child. *Id.* at 161, 177. Subsequently, Mr. Uebersax filed a petition for attorney's fees. The trial judge, without a hearing, and without giving any reasons, granted the petition and ordered DSS to pay Mr. Uebersax attorney's fees in the amount of $1,200. *Id.* at 163. DSS appealed, and the attorney fee award was vacated by the Court of Appeals. *Id.* at 177. Judge Wilner, speaking for the court, said:

> Normally, when a court appoints counsel for a child and assesses the cost against a party to the action, that assessment will not be disturbed on appeal unless the appellate court finds that it constituted an abuse of discretion. Lopez v. Lopez, 206 Md. 509, 520–21, 112 A.2d 466, 471 (1955). Section 12–103(b) requires the court, in exercising its discretion, to consider the financial status of the parties, the needs of the parties, and whether there was substantial justification for bringing or defending the proceeding. Quite apart from the

> statute, those would be the factors that a court would have to consider in any event.
>
> There is no indication in this record that the court considered any of those factors; as we indicated, the order setting and assessing the fee was entered without the benefit of a hearing and without any evidence as to David's financial status. We shall therefore remand this aspect of the case as well for further proceedings. In determining who shall pay Mr. Uebersax's fee, the court will have to consider DSS's substantial justification for bringing the initial action and defending against the unwarranted attempt by Bonnie and David to terminate David's parental obligations as well as the financial circumstances of the respective parties.

Sheryl argues that the *Edelmann* case is distinguishable from the subject case because here the record shows that Judge Mason did consider all three factors. Sheryl points out, correctly, that in both her motion for attorney's fees and in Richard's opposition to the motion, the parties provided the court with "copious" material germane only to the three statutory factors.

We agree with Sheryl in this regard. Judge Mason made clear in the first twenty words of the order that he signed that he did consider the three statutory factors. To reiterate, he said "upon consideration of Plaintiff's Motion for Appellate Attorney's Fees and any opposition thereto, the same having been read and considered . . . ." If Sheryl's motion for attorney's fees and Richard's opposition were in fact considered, Judge Mason could not have failed to consider the three statutory factors because the exclusive focus of both the motion and the opposition was on those factors. This is important because a judge is presumed to have performed his or her duties effectively. *See State v. Woodward,* 337 Md. 510, 526 (1995). In his brief, Richard points to nothing in the record that would rebut the aforementioned presumption.

We turn next to consider the portion of Richard's brief in which he complains that the motion for attorney's fees was decided without a hearing, even though both he and his ex- wife expected [because of the scheduling order] that there would be a hearing on August 12, 2012. This argument, at least conceivably, might be read to suggest that under such circumstances, the failure to conduct a hearing prior to signing the order warrants a reversal. But at oral argument, appellant's attorney specifically disavowed any such implied suggestion and said that he did not contend that the motion could be legitimately decided without a hearing. The aforementioned concession was well-founded. *See* Md. Rule 2-311(f). ("A party desiring a hearing on a motion . . . shall request the hearing in the motion or response under the heading 'Request for hearing.'"). As previously stated, neither Sheryl nor Richard asked for a hearing.

Richard also complains that Judge Mason decided the motion, "without current financial information as to either Richard or Sheryl." Judge Mason did not abuse his discretion in deciding the attorney's fees issue on the material already in the file. Most importantly, Judge Mason had before him Judge McCormick's twenty page opinion that dealt, in large part, with the financial circumstances of each of the parties. Nothing in the motion or opposition suggests that anything material [concerning financial circumstances] had happened between the date of Judge McCormick's memorandum opinion and the date Judge Mason awarded counsel fees.[1]

For the reasons set forth above, we reject Richard's argument that the attorney's fees award should be vacated.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

FOOTNOTE

1. Significantly, in his opposition to Sheryl's motion for attorney's fees, Richard did not claim that his income had declined since the date of Judge McCormick's memorandum opinion. Instead, in an effort to show that he was presently impoverished, he relied on tax returns that Judge McCormick had already considered but did not credit.

Cite as 8 MFLM Supp. 101 (2013)

Child support: paternity determination: full faith and credit

Montgomery County Office of Child Support Enforcement, et al. v. Ainul Faruqui

No. 1619, September Term, 2012

Argued Before: Graeff, Berger, Salmon, James P. (Ret'd, Specially Assigned), JJ.

Opinion by Salmon, J.

Filed: July 10, 2013. Unreported.

The circuit court improperly dismissed a Uniform Support Petition on the grounds that the child's mother was married to another man when the child was born, both because the presumption of legitimacy is rebuttable in Maryland and because a New Jersey court, in the mother's divorce action, conclusively determined that her husband was not the father of the child.

Ainul Faruqui ("Faruqui") is a resident of Bethesda, Montgomery County, Maryland. Kelly Casey and her 15 year old daughter, Janette A. (hereinafter "Janette") live in Columbus, Franklin County, Ohio.

On May 16, 2012, at the request of the Child Support Enforcement Agency of Franklin County, Ohio, the Montgomery County Office of Child Support Enforcement ("MCOCSE") filed a Uniform Support Petition pursuant to the Uniform Interstate Family Support Act. The petition, which was filed in Montgomery County, Maryland, sought to establish that Faruqui is the father of Janette. The petition also sought to establish Faruqui's child support obligations. Faruqui filed an answer to the petition on July 8, 2012 and, six days later, filed a motion to dismiss the petition.

The dismissal motion was heard on September 14, 2012. On that same date, the Circuit Court for Montgomery County dismissed the support petition. This timely appeal followed, in which MCOCSE raises two questions phrased as follows:

> 1. Did the trial court err in granting Mr. Faruqui's motion to dismiss the Uniform Support Petition, which alleges that Mr. Faruqui is the child's biological father, on the erroneous assumption that the mother's ex-husband, whose paternity was disestablished in a New Jersey enrolled divorce judgment, remains the presumed father?
>
> 2. In the alternative, did the circuit court err when it dismissed the Uniform Support Petition on the pleadings without allowing the introduction of any evidence or without conducting a best interest analysis?

For the reasons set forth below, we shall hold that the court erred when it dismissed the child support petition.

Ed. note: Unreported opinions of the states courts of appeal are neither precedent nor persuasive authority. Rule 8-114. Unofficial publication of an unreported opinion does not alter the force of that rule. See Nicholson v. Yamaha Motor Co., 80 Md. App. 695, 566 A.2d 135 (1989). Headnotes are not from the courts but are added by the editors. Page numbers are from slip opinions.

I.

A. Background

The MCOCSE filed the petition in this case on behalf of Kelly Casey pursuant to the Maryland Uniform Interstate Family Support Act, which is codified in Maryland Code (2012 Repl. Vol.), Family Law Article ("FL") Sections 10-301-359.

FL, § 10-319 authorizes a child support enforcement agency, such as the MCOCSE, to provide services, upon request, to a person such as Kelly Casey, who lives out of state and who wishes to sue a Maryland resident in order to establish paternity and obtain child support.

FL, § 10-323 provides:

> (a) *Contents*. – In a proceeding under this subtitle, a plaintiff seeking to establish a support order, to determine parentage, or to register and modify a support order of another state must file a complaint. Unless otherwise ordered under § 10-324 of this subtitle, the complaint or accompanying documents must provide, so far as known, the name, residential address, and Social Security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, Social

Security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the complaint must be accompanied by a copy of any support order known to have been issued by another tribunal. The complaint may include any other information that may assist in locating or identifying the defendant.

(b) *Claim.* – The complaint must specify the relief sought. The complaint and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

FL § 10-315 provides:

Except as otherwise provided in this subtitle, a responding tribunal of this State shall:

(1) apply the procedural and substantive law generally applicable to similar proceedings originating in this State and may exercise all powers and provide all remedies available in those proceedings; and

(2) determine the duty of support and the amount payable in accordance with the law and support guidelines of this State.

(Emphasis added).

If a person who lived in Maryland had brought an action similar to the one brought on behalf of Kelly Casey, the applicable statute of limitations would be that set forth in FL,

§ 5-1006, which provides:

(a) *Child's eighteenth birthday.* – Except as otherwise provided in subsection (d) of this section, a proceeding to establish paternity of a child under this subtitle may be begun at any tine before the child's eighteenth birthday.

(b) *Complaint during pregnancy.* – A paternity proceeding under this subtitle may be begun during pregnancy.

(c) *Out-of-state conception or birth.* – A complaint under this subtitle is not barred because the child born out of wedlock was conceived or born outside this State.

(d) *Dependent child's twenty-first birthday.* – A proceeding to establish paternity of a child who is dependent on a parent because of a mental or physical infirmity may be begun at any time before the child's twenty-first birthday.

FL, § 10-315 when read in conjunction with FL, 5-1006 clearly required that the court, in this case, apply the statute of limitations provision set forth in FL, § 5-1006.

B. The Complaint

The complaint filed by the MCOCSE fully complied with the requirements (quoted above) set forth FL § 10-323. Attached to the complaint was an affidavit that was signed by Ms. Casey and some exhibits. The complaint, together with the attached exhibits, showed that Ms. Casey married one Mushtag Ahmed on March 20, 1997. About three months later, on June 22, 1997, Ms. Casey, in Columbus, Ohio, gave birth to a daughter named Janette. On Janette's birth certificate, a copy of which was attached to the complaint, Mr. Ahmed is listed as the child's father.

Mr. Ahmed and Ms. Casey were divorced, by a judgment entered by the Superior Court for Ocean County New Jersey, on August 21, 2000. The divorce was granted to Ms. Casey from Mr. Ahmed on the grounds of "extreme cruelty." A true-test copy of the judgment of absolute divorce was attached to the petition filed in this case. The true-test copy shows, on its face, that Ms. Casey and Mr. Ahmed, appeared before the court *pro-se*. Although the final judgment was drafted by Ms. Casey, the Superior Court Judge that handled the matter, the Honorable Sheldon R. Franklin, struck out several typed provisions in the draft presented to him by Ms. Casey. Judge Franklin then made several hand written changes, which he initialed.

The first twenty-five words of the final judgment, as originally drafted, read as follows. "This matter coming on to be heard in the presence of Kelly Nadine Ahmed, Plaintiff *Pro-se*, and (illegible) appearing for the Defendant . . . ." (Emphasis added). Judge Franklin struck the words that we have underlined and instead of the illegible word inserted the words "the Defendant." Therefore, as modified, the beginning lines of the judgment of absolute divorce read as follows: This matter coming on to be heard in the presence of Kelly Nadeen Ahmed, plaintiff *pro-se*, and the Defendant appearing . . . . The second relevant change was made on the second page of the judgment in the paragraph that read "ORDERED and ADJUDGED that the Plaintiff shall have custody of the child(ren) to wit, Janette Hoda Ahmed [,] born June 22, 1997." After that sentence, Judge Franklin inserted the following sen-

tence: "Janette is not the child of the Defendant."

The last two paragraphs of the judgment, as drafted by Ms. Casey, read:

> ORDERED and ADJUDGED Defendant shall dismiss all rights concerning Janette. Defendant shall not have contact with child and in turn will not pay any support to the Plaintiff. He married me when I was five months pregnant and he and I know that he is not the blood father.
>
> ORDERED and ADJUDGED Plaintiff will get the apartment inspected by Paradise Club Apartments on the date before the court hearing and show proof of the inspections. In turn, Plaintiff will not be responsible for any damages done to the apartment afterwards.

Judge Franklin scratched out all the words that we have underlined and initialed each of the scratch-outs.

The petition filed in the subject case alleged that Faruqui is Janette's father. The complaint asserts that Ms. Casey told Mr. Faruqui, as well as welfare officials, that Mr. Faruqui was Janette's father. She further alleged that when she told Faruqui that he was the father, the latter offered to pay for an abortion or for associated medical expenses. She also alleged that there were witnesses who could verify that she and Faruqui had a relationship. In the affidavit attached to the petition, Ms. Casey admits that besides Faruqui, she had sexual relations with one Ahmad Aloseh, address unknown, "during the time 30 days before or 30 days after the child was conceived."

According to the petition, Ms. Casey, a college student, has no source of income except for a Social Security disability payment of $736.60 per month; Janette receives $698.00 a month in supplemental security income (SSI) and both Ms. Casey and her daughter receive State medicaid benefits in Ohio.

C. Faruqui's Motion to Dismiss

Maryland Code (2011 Rep. Vol.) Estates and Trusts Article § 1-206 provides that: "(A) A child born or conceived during a marriage is presumed to be the legitimate child of both spouses . . . ." In his motion to dismiss, Faruqui stressed that the portion of section 1-206(a) just quoted was applicable. He emphasizes the fact that Mushtag Ahmed, the man to whom Ms. Casey was married when Janette was born, is presumed to be Janette's father. Faruqui further maintains that the aforementioned presumption was not undermined or weakened by the statement in the New Jersey divorce decree that stated that Mr. Ahmed was not Janette's father. In that regard, Mr. Faruqui asserted:

> There are so many cross outs in . . . [the New Jersey] Decree that unless a transcript of the proceedings can be obtained, the Decree looks suspect. It would appear that the Petitioner wrote the Divorce Decree herself **but then the Court crossed out sections of the Decree that it disagreed with**.
>
> **That the presumption that the putative father is not the father of the minor child should be established by paternity and not by Petitioner** . . .
>
> That the minor child should be declared to be the child's (sic) Putative father (sic), Mushtag Ahmed, under Maryland Estates and Trust Section 1-206(a) and all paternity proceedings against the defendant dismissed.

Faruqui's dismissal motion also relied on section 3111.03(A)(1) of the Ohio Code, which, insofar as here pertinent, contains the same presumption as that set forth in section 1-206(a), of the Estates & Trust Article.

In his dismissal motion, Faruqui also argued that "Petitioner should not be allowed to bring a paternity action against the Defendant based on Ohio presumptive law of paternity." Movant failed to explain, however, why the existence of the presumption would allow a court to dismiss the petition. Notably, Faruqui did not argue, or even suggest, that the presumption was irrebuttable.

Faruqui, in his motion to dismiss, also claimed that the petition should be dismissed on the basis that it was barred by the statute of limitations and/or laches because Janette's mother did not file suit until Janette was 15 years old. Finally, movant alleged that the petition failed to state a cause of action because, purportedly, "[t]he Petitioner in stating that there may be two fathers, fails to state a claim upon which relief may be granted."

D. Hearing on Motion to Dismiss

At the hearing, counsel for MCOCSE argued that the New Jersey order should be given full faith and credit by the court and that the Circuit Court for Montgomery County should not "go behind the reasoning or wording of the order." Impliedly, counsel for MCOCSE contended that the presumption of paternity set forth in the Estates & Trust Article was rebutted by the judgment signed by the Superior Court of the State of New Jersey, County of Ocean.

Counsel for Mr. Faruqui commenced his argument by pointing out that Ms. Casey had said in her

interrogatory answers that the order signed by Judge Franklin was prepared by her and that the Circuit Court Judge made the various cross outs. Counsel argued the New Jersey order should not be given full faith and credit, viz:

> There was no DNA testing done. Like I said, this is based on her divorce in 2000, because she got married in 1997. It was based on extreme cruelty. So it could be — I don't know what the Court thought. You know, maybe the Court ordered that he not have any visitation, that he not pay child support, that he have nothing to do with the child.

Faruqui's counsel next argued, as he had in his motion to dismiss, that there existed under both Ohio and Maryland law a presumption that Ms. Casey's former husband was the father of Janette.

The remaining part of defense counsel's argument concerned whether it was fair to establish paternity and obtain a judgment for child support when Ms. Casey had waited fifteen years before filing suit.

The motions judge granted the motion to dismiss on two grounds. First, the judge said that he would not give the New Jersey judgment full faith and credit insofar as the New Jersey court decreed that Mr. Ahmed was not Janette's father because the New Jersey judgment did not arise out of "a paternity case." The judge explained:

> I mean, if it had been a paternity case and there is evidence put on about paternity, then I would agree with Mr. Koonz [counsel for MCOCSE] that, that would be entitled to full faith and credit.
>
> So the full faith and credit is that the parties were divorced and Maryland will give full faith and credit to the fact that they are divorced. If they want to get remarried in Maryland, they can get remarried in Maryland to somebody else or to, back, I guess, to themselves if they wanted to, because they are legally divorced.
>
> So I don't think the full faith and credit argument applies to the paternity, because paternity was not an issue in the divorce case.

No explanation was given as to how the court arrived at the conclusion that paternity was not an issue in the divorce case filed in New Jersey. Nor did the court explain why it was incumbent on a plaintiff who opposed a motion to dismiss to produce "evidence."

The second reason given for granting the motion to dismiss was based on the case of *Mulligan v. Corbett,* 426 Md. 670 (2012). The motions judge read *Mulligan* to mean that in the light of the presumption set forth in the Estates & Trust Article, the court could not "order a paternity blood test even as a matter of discretion in a case such as the one *sub judice*. The motions judge worded his decision as follows:

> I think [*Mulligan*] was decided in May of this year. And like I said, there was a dissent that sort of talks about, well, you know, you got to look at these statutes and try to figure out what the intent of the legislature is and that sort of thing. <u>But the majority is, the Court cannot order a paternity blood test, as a matter of discretion, where you have — I mean, obviously, the facts are different. But it's an analogous situation, in terms of where a child is born during the course of the marriage</u>.
>
> And the, I don't know if it's significant, but here, of course, we have the additional factor that not only was the child born while the parties were married, but also that the former husband is listed as the father on the birth certificate.

So for those reasons, I'm going to grant the motion to dismiss.

(Emphasis added).

II. Standard of Review

In ruling on a motion to dismiss, a court must assume the truth of the well-pleaded factual allegations of the complaint, including all reasonable inferences that may be drawn from those allegations. *Reichs Ford Rd. Joint Venture v. State Rds. Comm'n of the State Highway Admin.,* 388 Md. 500, 509 (2005); *Adamson v. Corr. Med. Servs.,* 359 Md. 238, 246 (2000). In the end, "[d]ismissal is proper only if the complaint would fail to provide the plaintiff with a judicial remedy." *Reichs Ford Rd.,* 388 Md. at 509 (citing *Bobo v. State,* 346 Md. 706, 709 (1997)); *see also Allied Inv. Corp. vs. Jasen,* 354 Md. 547, 555 (1999). An appellate court, reviewing the grant of a motion to dismiss, must analyze the court's ruling to determine whether the court was legally correct. *See Benson v. State,* 389 Md. 615, 626 (2005); *Fioretti v. Md. State Bd. of Dental Exam'rs,* 351 Md. 66, 71 (1998). As we said in *Hrehorovich v. Harbor Hosp. Ctr., Inc.,* 93 Md. App. 772, 784 (1992):

"When moving to dismiss, a defendant is arguing

that even if the pleaded facts are true, the plaintiff is not entitled to recover under the law . . . [W]hen the court considers the motion to dismiss, it should consider only the sufficiency of the pleading."

III. Analysis
A. Full Faith and Credit

The MCOCSE argues that "the Circuit Court improperly found that the New Jersey judgment, holding that Ms. Casey's ex-husband is not Janette's father, was not entitled to full faith and credit in Maryland." MCOCSE relies on Article IV section 1 of the United States Constitution, which provides in relevant part: "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." *See also* 28 U.S.C. § 1738 (2003) ("Judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken.")

In *Superior Court of California*, *County of Stanislaus v. Ricketts,* 153 Md. App. 281 (2003), Judge Ellen Hollander, speaking for this court, said:

> To comply with this constitutional directive, "'the judgment of a state court should have the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced.'" *Underwriters Nat'l. Assurance Co. v. North Carolina Life and Accident and Health Ins. Guaranty Assoc.,* 455 U.S. 691, 704, 102 S.Ct. 1357, 71 L.Ed.2d 558 (1982) (citation omitted).
>
> Accordingly, "[a] final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Baker v. General Motors Corp.* 522 U.S. 222. 233. 118 S.Ct. 657, 139 L.Ed.2d 580 (1998); *see also Estin v. Estin,* 334 U.S. 541, 546, 68 S.Ct. 1213, 92 L.Ed. 1561 (1948); *Weinburg v. Johns-Manville Sales Corp.,* 299 Md. 225, 234, 472 A.2d 22 (1984) ("The object of [the Full] Faith and Credit Clause is] to give such judgments, full faith and credit; . . . to attribute to them, positive and absolute verity, so that they cannot be contradicted, or the truth of them denied, any more than in the State where they originated.'") (citation omitted); *Rentals Unlimited, Inc. v. Administrator, Motor Vehicle Administration.* 286 Md. 104, 111, 405 A.2d 744 (1979); *Miles v. Stovall,* 132 Md. App. 71, 78, 750 A.2d 729 (2000). ("The purpose of the Full Faith and Credit Clause is to promote uniformity among states.")
>
> In *Sherrer v. Sherrer,* 334 U.S. 343, 355, 68 S.Ct. 1087, 92 L.Ed. 1429 (1948), the Supreme Court elucidated the concept, stating: "The full faith and credit clause is one of the provisions incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent, sovereign States into a nation." And, as the Supreme Court said in *Milwaukee County v. M.E. White Co.,* 296 U.S. 268, 277, 56 S.Ct. 229, 80 L.Ed. 220 (1935), the clause served to alter
>
> > the status of the several states as independent foreign sovereignties, each free to ignore obligations and created under the laws or by the judicial proceedings of the others, and . . . make[s] them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin.

Later in the *Ricketts* opinion, Judge Hollander stated:

> Nevertheless, there are limitations on the principles of full faith and credit, consistent with "the basic structure of our Nation as a union of States. . . ." *Imperial Hotel, Inc. v. Bell Atlantic Tri-Con Leasing Corp.,* 91 Md. App. 266, 270, 603 A.2d 1371 (1992). "Chief among those limitations is the caveat . . . that a "judgment of a court in one State is conclusive upon the merits in a court in another State only if the court in the first State had power to pass on the merits — had jurisdiction, that is, to render the judgment.'" *Underwriters*, 455 U.S. at 704, 102 S.Ct. 1357 (citation omitted).
>
> Of significance here, in order to obtain full faith and credit, the proceedings of another state must satisfy

"the minimum procedural requirements of the Fourteenth Amendment's Due Process Clause." *Kremer v. Chemical Construction Corp.,* 456 U.S. 461, 481, 102 S. Ct. 1883, 72 L. Ed. 2d 6 (1996). In *Durfee v. Duke*, 375 U.S. 106, 111, 84 S. Ct. 242, 11 L.Ed.2d 186 (1963), the Supreme Court addressed the limits on one state's power to enforce a judgment obtained in another state, stating:

> [W]hile it is established that a court in one State, when asked to give effect to the judgment of a court in another State, may constitutionally inquire into the foreign court's jurisdiction to render that judgment, the modern decisions of this Court have carefully delineated the permissible scope of such inquiry. From these decisions there emerges the general rule that a judgment is entitled to full faith and credit–even as to questions of jurisdiction–when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment.

Id. at 328.

In his brief, appellant relies on the following quote from *Durfee v. Duke,* 375 U.S. 106, 110-11 (1963):

> In support of this position, the respondent relies upon the many decisions of this Court which have held that a judgment of a court in one State is conclusive upon the merits in a court in another State only if the court in the first State had power to pass on the merits — had jurisdiction, that is, to render the judgment. As Mr. Justice Bradley stated the doctrine in the leading case of *Thompson v. Whitman,* 18 Wall. 457, "we think it clear that the jurisdiction of the court by which a judgment is rendered in any State may be questioned in a collateral proceeding in another State, notwithstanding the provision of the fourth article of the Constitution and the law of 1790, and notwithstanding the averment contained in the record of the judgment itself." 18 Wall., at 469. The principle has been restated and applied in a variety of contexts. However, while it is established that a court in one State, when asked to give effect to the judgment of a court in another State, may constitutionally inquire into the foreign court's jurisdiction to render that judgment, the modern decisions of this Court have carefully delineated the permissible scope of such an inquiry. From these decisions there emerges the general rule that a judgment is entitled to full faith and credit — even as to questions of jurisdiction — when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment.

(Footnotes omitted).

Relying upon the *Durfee* case, appellee argues that with "respect to the paternity issue, the only information exists regarding any record of the issue being fully and fairly litigated is a single hand-written sentence added to a typed order that primarily pertains to divorce." Preliminarily, it should be noted that the *Durfee* case does not stand for the principle evidently espoused by appellant that in order for a foreign judgment to be recognized in Maryland, there must be proof that every issue decided by the foreign court must have been "fully and fairly litigated." Instead, the *Durfee* decision concerns questions of jurisdiction. As to questions involving jurisdiction, the court that is asked to give full faith and credit to an out-of-state judgment is allowed to question whether the jurisdictional issues were fully and fairly litigated in the foreign court. In the case *sub judice,* as far as is shown by this limited record, the New Jersey Court evidently had personal jurisdiction over the parties because Ms. Casey and Mr. Ahmed both appeared before the court and nothing suggests that the New Jersey court did not have subject matter jurisdiction.

Appellant also argues that the motions judge was correct when he ruled that the "underlying issue in the New Jersey case was for (sic) divorce, not paternity." There are several problems with this argument. First, for full faith and credit purposes, it could not possibly matter what the order "primarily pertain[ed] to." Second, nothing in the record supports the implied argument that the issue of paternity was not properly before the New Jersey court.

Appellant also argues that full faith and credit should not be given to the New Jersey judgment because the MCOCSE failed to produce "any record, explanation, or justification as to why a parent's constitutional rights are being terminated in a divorce order, without any proof that due process was given." This

argument misses the mark in several respects. First of all, the argument loses sight of the fact that the motions judge was called upon to rule on a motion to dismiss. Because the exclusive focus of such a motion is whether the complaint of the non-moving party states a cause of action, the MCOCSE, in opposing the motion, had no reason to produce the "record, explanation, or justification" that appellee claims was needed.

Appellee also argues: "[t]here is every indication that the New Jersey decree was one-sided and prepared by the wife, and no indication that the husband in Ohio had notice, opportunity to contest, or due process with respect to the issue of paternity." In a related argument, appellee says "due process is wanting with respect to Mr. Ahmed's paternity rights, furthering the proposition that the trial judge did not err in deciding that the statement ["Janette is not the child of the Defendant."] was not entitled to Full Faith and Credit in Maryland."

In *McKay v. Paulson,* 211 Md. 90, 95 (1956), the Court of Appeals said that a foreign divorce decree "must be presumed to be valid and given full faith and credit" "until it is declared to be invalid by a competent court." (Citations omitted). *See also Miles v. Stovall,* 132 Md. App. 71, 78 (2000); ("A sister State's judicial finding of fact, as well as conclusions of law, must be afforded full faith and credit in Maryland, unless and until judicially impeached"). As things now stand, nothing in the record impeaches the New Jersey judgment. The judgment shows, on its face, that Mr. Ahmed was present at the judicial proceeding at which Janette was determined not to be his child. This is shown in the first sentence of the judgment entered by the New Jersey Court that states that the defendant [Mr. Ahmed] appeared at the proceeding. Thus, we disagree with appellee's assertion that there is "no indication that the husband in Ohio had notice, opportunity to defend, or due process with respect to the issue of paternity."

In summary, none of reasons given by the motions judge or by appellee in his appeal brief, provides a valid basis for not giving full faith and credit to the factual findings by the New Jersey Court that Mr. Ahmed was not Janette's father. That being said, however, it is important to note that there are some narrow exceptions to the rule that full faith and credit must be given to a judgment of a sister State. *See Miles, supra,* 132 Md. App. 79-80. *See also* Restatement (2d.) of Conflicts of Law, Section 103. If appellee can prove that a valid exception exists, then on remand, he is free to attempt to prove the applicability of an exception.[1]

B. The Rebuttable Presumption

The MCOCSE argues that "[e]ven assuming, for purposes of discussion only, that Mr. Ahmed's paternity was not conclusively disestablished in New Jersey, the trial court also erred in treating the presumption that a child born during a marriage is a child of the marriage as if it is a conclusive presumption." Appellee does not take issue with the fact that the presumption set forth in section 1-206(a) of the Estates & Trusts Article is rebuttable. Instead appellee takes issue with the contention that the motions judge treated the presumption as irrebuttable. According to appellee, the motions judge, based on *Mulligan, supra,* considered various relevant factors and concluded that genetic testing was not in Janette's best interest.

Maryland law is clear that the presumption set forth in the Estates & Trusts Article § 1-206(a) is rebuttable. *Turner v. Whisted*, 327 Md. 106, 113-116 (1992) clearly established the principle that the presumption is rebuttable. *See also Miles, supra,* 132 Md. App. at 81-82. One of the ways that the presumption can be rebutted is by court ordered genetic testing.[2] *Id.*

If a party who seeks to rebut the presumption wishes to have a DNA blood test, and his or her opponent will not cooperate, that party may file a motion, pursuant to Maryland Rule 2-423, to compel a DNA test. *Id.* Once a motion is filed, the court has discretion as to whether to order the blood test. *Id*. at 82-83. In exercising that discretion, the court must determine whether a test would be in the best interest of the child. *Id.*

The case of *Mulligan v. Corbett,* which was relied upon by the motions judge, was concerned, exclusively, with the issue of whether the trial judge abused her discretion in denying a blood test. 426 Md. at 672. *Mulligan,* unlike the case *sub judice,* had nothing to do with whether a complaint stated a valid cause of action.

In *Mulligan,* the Court of Appeals was called upon to determine whether a man who claimed to be the father of a child conceived while the mother was married to another man, but born after the mother and her husband divorced, had an unconditional right to genetic testing to determine whether he was the biological father. *Id.* The holding in *Mulligan* was that "the circuit court did not err in performing a best interest of the child analysis when ruling on the Respondent's request for blood testing of a child conceived during the marriage, where the mother and the presumptive father raised the best interest of the child issue."

In the case *sub judice,* Faruqui argues that the motions judge, like the trial judge in the *Mulligan* case, did not abuse his discretion by concluding that blood testing in this case would not be in Janette's best interest. That argument is without merit, for several reasons. First, the complaint should not have been dismissed unless it failed to state a cause of action. When

deciding whether a cause of action was stated, the judge was obliged to treat all the allegations in the complaint as true. In the complaint, it was alleged that appellee was the father of Janette. Moreover, the complaint fully complied with the requirements of FL § 5-1010. Therefore, the complaint quite clearly set forth a valid cause of action. Under those circumstances, the motions judge erred when he dismissed the complaint.

Second, and of great importance, because there was no motion for a blood test filed, the motions judge did not have the power to exercise his discretion to determine if a blood test was in Janette's best interest. In other words, when a motion to dismiss a complaint is filed, the judge who decides that motion has no right to determine the issue of whether a blood test is, or is not, warranted.

Lastly, the motions judge said that he was dismissing the case because the facts were analogous to those in *Mulligan*. The facts, however, were in no way analogous to those presented in *Mulligan. Mulligan,* like many cases dealing with the issue of whether a blood test should be ordered, concerned a self-proclaimed father seeking blood testing in order to delegitimize a presumptively legitimate child. *Id.* at 699. In *Mulligan,* prior to the request for blood testing, the child had been in an intact two-parent family that provided the child with stability, love and nourishment. *Id.* Here, Janette, does not have a stable two parent family and, according to the complaint, the child subsists on government handouts and no male wants to be her parent. Under such circumstances, even if the issue had been before the motions judge, which it was not, the facts as alleged in the complaint, if true, may very well have presented one of the situations where a blood test would be in the child's best interest.

Appellee also relies on the doctrine of equitable estoppel as an additional reason why he contends that the motions judge was correct in dismissing the complaint. In *Knill v. Knill,* 306 Md. 527, 534-35 (1986), the court stated:

> The definition of equitable estoppel that has been consistently applied in Maryland is as follows:
>
> Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, to either of property, of contract, or of remedy.

3J. Pomeroy, *Equity Jurisprudence,* § 804 (5th ed. 1941), quoted in *Leonard v. Save-A-Stop Services,* 289 Md. 204, 211, 424 A.2d 336, 339 (1981).

Thus, equitable estoppel requires that the party claiming the benefit of the estoppel must have been misled to his injury and changed his position for the worse, having believed and relied on the representations of the party sought to be estopped. *Dahl v. Brunswick Corp.,* 277 Md. 471, 356 A.2d 221, 230-31 (1976); *Savonis v. Burke,* 241 Md. 316, 319, 216 A.2d 521, 523 (1966). Although wrongful or unconscionable conduct is generally an element of estoppel, an estoppel may arise even where there is no intent to mislead, if the actions of one party cause a prejudicial change in the conduct of the other. *Bean v. Steuart Petroleum,* 244 Md. 459, 224 A.2d 295 (1966); *Travelers v. Nationwide,* 244 Md. 401, 224 A.2d 285 (1966); *Alvey v. Alvey,* 220 Md. 571, 155 A.2d 491 (1959). Of course, the party who relies on an estoppel has the burden of proving the facts that create it. *Doub v. Mason,* 2 Md. 380, 406 (1852); *First Nat. Bank v. Mayor and City Council,* 27 F.Supp. 444, 454 (D.Md.1939).

> As indicated by the definition set forth above, equitable estoppel is comprised of three basic elements: "voluntary conduct" or representation, reliance, and detriment. These elements are necessarily related to each other. The voluntary conduct or representation of the party to be estopped must give rise to the estopping party's reliance and, in turn, result in detriment to the estopping party. *See Dahl v. Brunswick Corp., supra; Savonis v. Burke, supra.* Clearly then, equitable estoppel requires that the voluntary conduct or representation constitute the source of the estopping party's detriment.

In the circuit court, appellee never even mentioned the words "equitable estoppel" in his written motion to dismiss or in his counsel's oral argument in support of the motion. Instead, Faruqui maintained that the complaint was barred by laches and/or limitations. Neither of those defenses were viable. *See* FL §5-106, and by FL §10-315. Maryland, like seventeen other states, allows a mother to bring a paternity action at any time until the child reaches the age of 18. *See Trembow v. Schonfeld,* 393 Md. 327, 343 (2006). In sixteen other states, a mother can wait until the child is 21 before bringing a paternity action. *Id.* at 343-44. Thus, appellant's paternity action is plainly not barred by either the statute of limitations or laches.

Evidently realizing that neither the defense of laches or limitations barred the MCOCSE's claim, appellee now argues:

> the doctrine of equitable estoppel bars the mother's stale claims at this point in time. Assuming arguendo that Faruqui is the father, he has been deceived and denied from participating in the first fifteen years of his child's life, based on the voluntary conduct of the mother. Mr. Faruqui has relied upon the fact that he is not the father of the child in participating in conduct over the last fifteen years, which has profoundly shaped his life. Being put on notice that he is the purported father of the child has detrimental implications, since he is now being asked to shoulder the financial burden of Janette's support without the joys of fatherhood by the same person who affirmatively denied them to him.

(Emphasis supplied).

Taking the factual allegations set forth in the complaint as true, Kelly Casey did not make any factual misrepresentation to appellee that the latter relied upon to his detriment. According to the complaint, the only representation Ms. Casey ever made to appellee was that he (appellee) was Janette's father.[3] We therefore reject appellee's argument that the suit was appropriately dismissed based on the equitable estoppel doctrine.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

FOOTNOTES

1. Despite appellee's extensive discussion in his brief of the full faith and credit issue, we emphasize that our decision as to the propriety of the Court's granting of the motion to dismiss would not be different even if the New Jersey Court had never ruled that Mr. Ahmed was not Janette's father. As will be shown, *infra,* the presumption that Mr. Ahmed is Janette's father would in no way justify dismissal of the case because the presumption is a rebuttal one. The MCOCSE, quite obviously, was not required to rebut that presumption in response to a motion to dismiss.

2. Court ordered DNA testing is not necessarily the exclusive way the presumption may be rebutted. For example, it is at least conceivable that an expert could testify in a paternity action that, at the time of conception, the presumed father was not capable of fathering a child. Moreover, the presumptive father [in this case Mr. Ahmed] might consent to DNA testing that showed that he was not Janette's father.

3. In appellee's answer to the complaint, he stated, under the penalties of perjury, that he had "no recollection of the plaintiff." If that statement is true, it is impossible to see how appellee could ever prove that he relied to his detriment upon anything Kelly Casey did or did not do before suit was filed.

NO TEXT

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