MARY BERZINS *v.* DAVID BERZINS
(SC 18708)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan, Eveleigh and Harper, Js.*

*Argued April 27—officially released September 17, 2012***

Linda C. Lehmann, for the appellant (substitute defendant Daniel King).

Susan Boyan, for the appellee (plaintiff).

Opinion

McLACHLAN, J. In this certified appeal,[1] we consider certain remedies available to the trial court to address litigation misconduct and we clarify the scope of our holding in *Ramin* v. *Ramin*, 281 Conn. 324, 351, 915 A.2d 790 (2007). Daniel King, the substitute defendant and administrator of the estate of David Berzins (administrator), appeals from the judgment of the Appellate Court affirming the trial court's award of attorney's fees to the plaintiff, Mary Berzins. *Berzins* v. *Berzins*, 122 Conn. App. 674, 938 A.2d 1281 (2010) (*Berzins II*). The administrator argues that the trial court improperly relied on *Ramin* to grant the plaintiff's motion for sanctions and attorney's fees. The plaintiff responds that the trial court properly awarded attorney's fees pursuant to *Ramin*, and also argues that the judgment of the Appellate Court may be affirmed on the alternate ground that the trial court's award of attorney's fees constituted a proper exercise of its inherent authority to impose sanctions against a litigant for filing frivolous and duplicative motions. We agree with the administrator that the trial court's award of attorney's fees does not fall within the scope of *Ramin*, and we also conclude that the court did not act within its inherent authority in awarding attorney's fees because it failed to make a finding that the administrator had acted in bad faith as defined in *Maris* v. *McGrath*, 269 Conn. 834, 845–46, 850 A.2d 133 (2004). Accordingly, we reverse the judgment of the Appellate Court and remand the case to the trial court for the purpose of making that determination.

The record reveals the following undisputed facts and procedural history. The parties were married on August 24, 1991. In May, 2005, the plaintiff commenced the present action seeking a legal separation from the named defendant, David Berzins (Berzins), and other relief. Berzins failed to file an appearance and the case was placed on the uncontested list for a January 26, 2006 hearing, at which Berzins failed to appear. At the hearing, the plaintiff filed a motion to amend her complaint to seek dissolution of the marriage. The court, *Hon. Lawrence C. Klaczak*, judge trial referee, rendered a default judgment against Berzins and dissolved the parties' marriage pursuant to the terms of the plaintiff's proposed orders. These orders required, inter alia, that Berzins "quitclaim his interest in the marital residence to the plaintiff" in exchange for a "mortgage note and deed payable to him for the sum of $140,000 . . . ."

While the plaintiff's action was pending, Berzins filed a separate action for dissolution. After prevailing at the January 26 hearing, the plaintiff moved to dismiss Berzins' dissolution action; her motion was granted on February 14, 2006. On February 23, 2006, Berzins filed a motion to open the judgment of dissolution arguing that he failed to file an appearance because the plaintiff

had represented to him that she had withdrawn the action. Finding that Berzins "did not rely upon any representations of [the] plaintiff" in failing to file an appearance, the court, *Swords*, *J.*, denied Berzins' motion to open the judgment. Berzins appealed, and the Appellate Court affirmed the judgment of the trial court. *Berzins* v. *Berzins*, 105 Conn. App. 648, 654, 938 A.2d 1281, cert. denied, 289 Conn. 932, 958 A.2d 156 (2008) (*Berzins I*).

Berzins died on January 25, 2008, the same day that notice of the Appellate Court's judgment was sent to the parties. On March 17, 2008, the plaintiff moved to substitute the administrator as the defendant. On July 15, 2008, the administrator simultaneously moved to intervene in the litigation and to dismiss the appeal. The Appellate Court granted the administrator's motion to intervene and the plaintiff's motion to substitute the administrator as the defendant. That court treated the administrator's motion to dismiss as a motion to withdraw the appeal and granted the motion. The administrator then petitioned this court for certification, contending that he had "sought to intervene for the limited purpose of seeking dismissal of the appeal on the basis that a deceased party's estate representative lacks standing in a dissolution action" and that, "had he known that he had the standing to bring a motion for reconsideration or a petition for certification," he "may not have filed" the motion to dismiss. We denied certification to appeal. *Berzins* v. *Berzins*, 289 Conn. 932, 958 A.2d 156 (2008).

Thereafter, on February 27, 2009, the plaintiff filed a motion requesting that the administrator be sanctioned and ordered to pay reasonable attorney's fees for the costs of defending against a number of postjudgment motions filed by the administrator. The administrator also filed a motion seeking sanctions. In their motions, both parties relied, inter alia, on the inherent authority of the trial court to impose sanctions against a litigant for a course of bad faith litigation misconduct. Following argument on the motions, the court, *Shluger*, *J.*, found that the administrator had filed at least seven postjudgment motions against the plaintiff that were "either withdrawn or resolved in the plaintiff's favor."[2] The court also expressly found a number of these motions to be "frivolous," "duplicative" and without "basis in the law." The trial court cited *Ramin* for the proposition that it "has the authority and discretion to award attorney's fees to a party who incurs those fees largely due to the other [party's] egregious litigation misconduct." Subsequently, the court, Judge Klaczak, denied the administrator's motion for reconsideration and awarded attorney's fees of $12,584 to the plaintiff. That court later denied the administrator's second motion for reconsideration.

The administrator appealed from the decision of the

trial court to the Appellate Court, which affirmed the judgment of the trial court, concluding that the trial court acted within its discretion in awarding attorney's fees pursuant to *Ramin* v. *Ramin*, supra, 281 Conn. 324. *Berzins I*, supra, 105 Conn. App. 681.[3] In arriving at its holding, the Appellate Court explained that the trial court "reasonably could have concluded that the administrator engaged in egregious litigation misconduct" by filing "frivolous" and "duplicative" motions seeking to relitigate issues that had already been "resolved in the plaintiff's favor." Id., 684–85. This appeal followed.

I

On appeal to this court, the administrator argues that the Appellate Court improperly relied on our holding in *Ramin* v. *Ramin*, supra, 281 Conn. 324, in upholding the award of attorney's fees. Because we conclude that the *Ramin* rule is limited to discovery misconduct, we agree with the administrator.

The question of whether *Ramin* applies to the type of litigation misconduct that is at issue in the present case is a "question of law subject to our plenary review." *Fish* v. *Fish*, 285 Conn. 24, 37, 939 A.2d 1040 (2008). "[T]he common law rule in Connecticut, also known as the American Rule, is that attorney's fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contractual or statutory exception." (Internal quotation marks omitted.) *Commissioner of Environmental Protection* v. *Mellon*, 286 Conn. 687, 695, 945 A.2d 464 (2008). One such statutory exception, codified at General Statutes § 46b-62, provides in relevant part that "the court may order either spouse . . . to pay the reasonable attorney's fees of the other in accordance with their respective financial abilities and the criteria set forth in [General Statutes §] 46b-82." Section 46b-82, in turn, permits the court to take into consideration such factors as "the length of the marriage, the causes for the . . . dissolution of the marriage . . . the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate and needs of each of the parties and the award, if any, which the court may make pursuant to [General Statutes § 46b-81]."

We interpreted these statutory provisions in *Maguire* v. *Maguire*, 222 Conn. 32, 608 A.2d 79 (1992), to mean that "an award of attorney's fees in a marital dissolution case is warranted only when at least one of two circumstances is present: (1) one party does not have ample liquid assets to pay for attorney's fees; or (2) the failure to award attorney's fees will undermine the court's other financial orders." *Ramin* v. *Ramin*, supra, 281 Conn. 352 (discussing *Maguire* v. *Maguire*, supra, 44). In the present case, the trial court made no finding that the plaintiff either lacked "ample liquid assets to pay for attorney's fees," or that "failure to award attorney's

fees [would] undermine the court's other financial orders." Therefore, § 46b-62 is not implicated in this appeal.

In *Ramin*, we recognized a "limited expansion" of *Maguire* "to provide a trial court with the discretion to award attorney's fees to an innocent party who has incurred substantial attorney's fees due to the egregious litigation misconduct of the other party when the trial court's other financial orders have not adequately addressed that misconduct." *Ramin* v. *Ramin*, supra, 281 Conn. 351. The scope of *Ramin*'s "limited expansion" for egregious discovery misconduct must be understood in light of the particular circumstances at issue in that case. Although in isolation, the phrase "egregious litigation misconduct" could encompass conduct outside the context of discovery, the phrase must be understood in light of the entire opinion in *Ramin*. *Ramin* involved particularly egregious *discovery* misconduct on the part of the defendant, and our opinion made clear that our expansion of *Maguire* was limited to *discovery* misconduct.[4]

For example, in determining that the expansion was warranted, we took as our starting point the public policy principles that we had relied on in *Billington* v. *Billington*, 220 Conn. 212, 595 A.2d 1377 (1991), in which we "analogized the marital relationship, even in the context of a dissolution case, to the special relationship between fiduciary and beneficiary, insofar as the requirement of *disclosure* is concerned." (Emphasis added; internal quotation marks omitted.) *Ramin* v. *Ramin*, supra, 281 Conn. 349. We explained that, "[b]y recognizing today this limited expansion of *Maguire*, we are reinforcing the marital partners' mutual obligation of full and frank *disclosure* by permitting the trial court an additional remedy for egregious violations *of that obligation* when those violations have not otherwise been adequately addressed by the court." (Emphasis added.) Id., 354. This statement clarifies that *Ramin*'s expansion of *Maguire* was limited to the discovery context. We therefore conclude that the "limited expansion" set forth in *Ramin* does not apply to postjudgment litigation misconduct.

In the present case, the parties' dispute turns on a finding of *postjudgment* litigation misconduct, and has nothing whatsoever to do with the discovery process. To be sure, the trial court found that the motions filed by the administrator were frivolous; however, the trial court made no finding that the administrator withheld discovery materials sought by the plaintiff prior to the entry of a final judgment or in any other way violated an obligation of full and frank disclosure.[5] Such conduct does not implicate the policy principles of full and frank disclosure which drove our decision in *Ramin*. Accordingly, we conclude that the Appellate Court improperly affirmed the trial court's judgment, which improperly

relied on *Ramin* in awarding attorney's fees to the plaintiff.

II

Because we conclude that our holding in *Ramin* did not justify the award of attorney's fees in the present case, we consider the plaintiff's claim that the judgment of the Appellate Court may be affirmed on the alternate ground that, in awarding attorney's fees, the trial court properly could have acted within its inherent authority to impose sanctions against a litigant for filing frivolous and duplicative postjudgment motions. The administrator argues that, because the trial court did not make the required, two part finding pursuant to *Maris* v. *McGrath*, supra, 269 Conn. 844—namely, that the administrator's claims were entirely without color and that the administrator acted in bad faith—this court cannot affirm the judgment of the Appellate Court on the basis that the trial court properly acted within its inherent authority. Specifically, the administrator claims that the trial court did not make any finding that the administrator acted in bad faith. We agree with the administrator that the trial court did not make findings sufficient to support the award of sanctions pursuant to its inherent authority.

The following additional facts and procedural history are relevant to this claim. Following a series of postjudgment motions filed by both parties, each sought sanctions against the other side. After a hearing on, inter alia, the cross motions for sanctions, the court, *Shluger*, *J.*, granted the plaintiff's motion for sanctions and denied the administrator's motion. In finding that the plaintiff was entitled to recover attorney's fees, the court relied on numerous and duplicative motions filed by the administrator—each set forth by the court in the memorandum of decision—which the court expressly found to have been frivolous. In further support of its determination, the court took judicial notice of two additional actions brought by the administrator or Berzins against the plaintiff, seeking to relitigate the division of property ordered by the court in the January 26, 2006 dissolution decree, which the court found to have been wholly without basis.[6] The administrator's subsequent motions seeking reconsideration of the award of attorney's fees were denied.

Our review of the trial court's decision is a deferential one. First, we observe that, "[w]here the trial court reaches a correct decision but on [alternate] grounds, this court has repeatedly sustained the trial court's action if proper grounds exist to support it. . . . [W]e . . . may affirm the court's judgment on a dispositive alternate ground for which there is support in the trial court record." (Citation omitted; internal quotation marks omitted.) *Pequonnock Yacht Club, Inc.* v. *Bridgeport*, 259 Conn. 592, 599, 790 A.2d 1178 (2002). Additionally, "[i]t is well established that we review the trial

court's decision to award attorney's fees for abuse of discretion. . . . This standard applies to the amount of fees awarded . . . and also to the trial court's determination of the factual predicate justifying the award." (Citations omitted.) *Schoonmaker* v. *Lawrence Brunoli, Inc.*, 265 Conn. 210, 252, 828 A.2d 64 (2003).

As we noted earlier in this opinion, "[t]he common law rule in Connecticut, also known as the American Rule, is that attorney's fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contractual or statutory exception." (Internal quotation marks omitted.) *Commissioner of Environmental Protection* v. *Mellon*, supra, 286 Conn. 695. One such exception is the inherent authority of a trial court "to assess attorney's fees when the losing party has acted in bad faith, vexatiously, wantonly or for oppressive reasons." *Schoonmaker* v. *Lawrence Brunoli, Inc.*, supra, 265 Conn. 253.

We most recently explained the narrow scope of this exception in *Maris* v. *McGrath*, supra, 269 Conn. 848, in which we upheld a trial court's determination that attorney's fees should be awarded to the defendant because the trial court had found both that the case was "wholly without merit" and that "the plaintiff repeatedly had testified untruthfully and in bad faith." We reiterated principles that this court previously had articulated indicating that a litigant seeking an award of attorney's fees for the bad faith conduct of the opposing party faces a high hurdle. Specifically, quoting our previous decision in *CFM of Connecticut, Inc.* v. *Chowdhury*, 239 Conn. 375, 393, 685 A.2d 1108 (1996), overruled in part on other grounds by *State* v. *Salmon*, 250 Conn. 147, 154–55, 735 A.2d 333 (1999), we stated: "We agree, furthermore, with certain principles articulated by the Second Circuit Court of Appeals in determining whether the bad faith exception applies. To ensure . . . that fear of an award of attorneys' fees against them will not deter persons with colorable claims from pursuing those claims, we have declined to uphold awards under the bad-faith exception absent both clear evidence that the challenged actions are entirely without color and [are taken] for reasons of harassment or delay or for other improper purposes . . . and a high degree of specificity in the factual findings of [the] lower courts. . . . Whether a claim is colorable, for purposes of the bad-faith exception, is a matter of whether a reasonable attorney could have concluded that facts supporting the claim might be established, not whether such facts had been established. . . . To determine whether the bad-faith exception applies, the court must assess whether there has been substantive bad faith as exhibited by, for example, a party's use of oppressive tactics or its wilful violations of court orders; [t]he appropriate focus for the court . . . is the conduct of the party in instigating or maintaining the litigation." (Citations omitted; internal quotation marks omitted.) *Maris* v.

McGrath, supra, 845–46.

Maris makes clear that in order to impose sanctions pursuant to its inherent authority, the trial court must find *both* that the litigant's claims were entirely without color *and* that the litigant acted in bad faith.[7] The findings of the trial court in the present case do not satisfy this requirement. Specifically, although the court found that the administrator's actions were entirely without color and supported that finding with a high degree of specificity in its factual findings, the court did not make a separate finding that the administrator acted in bad faith.[8]

The judgment of the Appellate Court is reversed and the case is remanded to the Appellate Court with direction to remand the case to the trial court for further proceedings in accordance with this opinion.

In this opinion the other justices concurred.

* The listing of the justices reflects their seniority status on this court as of the date of oral argument.

** September 17, 2012, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] We granted the petition by Daniel King, the substitute defendant and administrator of the estate of David Berzins (administrator), for certification to appeal limited to the following issue: "Whether the Appellate Court properly affirmed the trial court's decision to order the . . . administrator to pay the attorney's fees of the plaintiff [Mary Berzins] pursuant to *Ramin* v. *Ramin*, 281 Conn. 324, 915 A.2d 790 (2007)?" *Berzins* v. *Berzins*, 299 Conn. 904, 10 A.3d 521 (2010). Subsequently, we granted the plaintiff's motion to submit alternate grounds to affirm limited to the following issue: "Whether the decision of the Appellate Court can be affirmed on the alternate [ground] of the trial court's inherent authority to impose sanctions against a litigant for filing frivolous motions."

[2] The Appellate Court observed that this statement was "technically incorrect," as one of the administrator's motions was granted, but concluded that it constituted harmless error. *Berzins II*, supra, 122 Conn. App. 685.

[3] We observe that the plaintiff also argued to the Appellate Court that the award of sanctions could be upheld on the basis of this court's decision in *Maris* v. *McGrath*, 269 Conn. 834, 850 A.2d 133 (2004). Because the parties argued to the trial court that the test in *Maris* should be applied, and the plaintiff asserted this test before the Appellate Court, she is entitled to a determination of her claim for attorney's fees applying the proper test.

[4] In denying the plaintiff's fifth motion for a court order, the trial judge in *Ramin* stated: " 'This whole thing is all about . . . discovery.' " *Ramin* v. *Ramin*, supra, 281 Conn. 335.

[5] Because we conclude that the type of misconduct found by the trial court in this case falls outside the scope of *Ramin*, we need not address the administrator's contention that he is "not a 'marital litigant' under *Ramin* or family relations law."

[6] Specifically, the court took judicial notice of an action that the administrator had brought in the Probate Court, seeking the same relief that he had been denied in the present action. The Probate Court ultimately determined that it lacked jurisdiction to consider the administrator's claims. The court also took judicial notice of a civil action filed by Berzins in the Superior Court alleging, inter alia, statutory theft and conversion of a Toyota 4 Runner by the plaintiff from Berzins' closely held corporation. *D.L. Berzins Construction* v. *Enderlin*, Superior Court, judicial district of Hartford, Docket No. HHD-CV-07-5010606-S (March 16, 2010). The plaintiff, who was the defendant in that action, prevailed on all counts at trial. Id.

[7] We recognize that there exists a certain tension between our holding in *Maris* v. *McGrath*, supra, 269 Conn. 834, that the bad faith exception applies only when a trial court has found both that the claims were without color and that the litigant acted in bad faith, and our statement in *Schoonmaker* v. *Lawrence Brunoli, Inc.*, supra, 265 Conn. 254, that "a plaintiff who brings or maintains a frivolous action engages in bad faith litigation conduct, and may be ordered to pay the defendant's attorney's fees." *Schoonmaker*, how-

ever, is distinguishable from both *Maris* and the present case. That is, by contrast with the common-law inherent authority at issue in *Maris* and the present action, *Schoonmaker* involved a statutory award of attorney's fees. Specifically, the trial court had awarded attorney's fees pursuant to General Statutes § 31-51m (c), which provides that "the court may allow to the prevailing party his costs, together with reasonable attorney's fees to be taxed by the court," and which we interpreted to permit an award of attorney's fees "only if the plaintiff acted in bad faith while bringing his or her action." *Schoonmaker* v. *Lawrence Brunoli, Inc.*, supra, 253. Consistent with our narrow construction of exceptions to the American Rule, and consistent with our recognition in *Maris* of the generally accepted, stringent requirement that a court must find both that a litigant's claims were wholly without merit and that the litigant acted in bad faith, we conclude that the *Schoonmaker* rule does not apply under the facts of the present case.

[8] We note that the plaintiff did not seek articulation from the trial court as to any other findings of fact regarding the administrator's conduct.