Circuit Court for Anne Arundel County
Case No. C-02-CV-23-000145

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1725

September Term, 2024

GORDANA SCHIFANELLI, ET AL

v.

LISA TATE

Nazarian,
Albright,
Beachley, Donald E.,**
(Senior Judge, Specially Assigned)

JJ.

Opinion by Nazarian, J.

Filed: April 9, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

** Beachley, J., now retired, participated in the hearing and conference of this case while an active member of this Court. He participated in the adoption of this opinion after being recalled pursuant to Maryland Constitution, Article IV, Section 3A.

Gordana Schifanelli is a managing partner at Schifanelli Law, LLP (the "Firm"). In February 2021, Ms. Schifanelli entered into a legal services contract with Lisa Tate to represent her in a family law matter. The representation lasted until October 2022, and during those twenty months of litigation, Ms. Schifanelli helped Ms. Tate achieve most of her desired results. A dispute arose in November 2022, when, after reviewing her final bill for Ms. Schifanelli's services, Ms. Tate asserted that she'd been overcharged and stopped making payments on her outstanding balance. In January 2023, Ms. Schifanelli filed a breach of contract claim against Ms. Tate with the Circuit Court for Anne Arundel County that sought to recover $55,535 in unpaid legal fees. Ms. Tate responded with a countercomplaint alleging that Ms. Schifanelli, the Firm, and managing partner Marc Schifanelli had breached their legal services contract by, in relevant part, overbilling her, failing to send her regular billing statements, and withdrawing from her case before trial. After a two-day trial, the circuit court ruled in favor of Ms. Tate on her breach of contract claim and found that the attorneys had failed to prove their claim against her, because, due to pervasive errors in their final billing statement, they hadn't met their burden to prove damages. Ms. Schifanelli and the Firm (the "attorneys") and Ms. Tate each appeal from the court's order. Ms. Tate's appeal was untimely, so we dismiss it. Ms. Schifanelli's was timely and we affirm the judgment against her.

I. BACKGROUND

In late February 2021, Ms. Tate asked Ms. Schifanelli to represent her in a child custody action initiated by her ex-husband, Andrew Ball. Ms. Schifanelli agreed, and the

following day Ms. Tate sent her several documents to review relating to the child custody action and an associated contempt petition Mr. Ball had filed against her. Then Ms. Schifanelli sent Ms. Tate a retainer agreement (the "Agreement") and entered an appearance on her behalf in the child custody action, and Ms. Tate paid Ms. Schifanelli a $25,000.00 retainer fee as the Agreement required. Although the parties agree that Ms. Tate never signed the Agreement itself, nobody disputes that Ms. Schifanelli represented Ms. Tate or that the Agreement's terms governed their attorney-client relationship.

Under the terms of the Agreement, Ms. Schifanelli agreed to perform legal services for Ms. Tate and Ms. Tate, in return, agreed to pay for her services at a rate of $350 per hour. The Agreement provided that Ms. Schifanelli, as Ms. Tate's attorney, would "perform such work as [was] necessary and in [her] best professional judgment . . . to represent [Ms. Tate] in [her] matter." The Agreement provided as well that the Firm would represent Ms. Tate "through settlement or trial." With regard to billing, the Agreement stated that Ms. Schifanelli would charge for her services (including time spent reviewing and drafting documents, pleadings, and motions and attending meetings, depositions, and court proceedings) in increments of one tenth of an hour and would produce billing statements to Ms. Tate "at the end of the case and at least bi-monthly during the course of the case." The Agreement stated further that Ms. Tate would incur a monthly $500 late fee for any outstanding balances on her bill.

Ms. Schifanelli represented Ms. Tate from February 2021 until October 2022. By

all accounts, she represented Ms. Tate zealously through most[1] of the litigation over Mr. Ball's petition to modify custody and child support. She prepared for and attended multiple hearings on Ms. Tate's behalf, including two contempt hearings, an exceptions hearing, and a *pendente lite* hearing. She responded to and defeated at least one motion for reconsideration, responded to exceptions filed by opposing counsel in response to at least two magistrate's reports, and fought a contentious discovery battle that required her to respond to various motions to compel and for sanctions. And her work led to favorable results. While represented by Ms. Schifanelli, Ms. Tate defended successfully against Mr. Ball's contempt petition. Ms. Tate also prevailed ultimately in the child custody dispute when, after trial in 2022, the circuit court denied Mr. Ball's modification petition.

These appeals do not arise from the family law matters, but from issues related to billing. On July 1, 2021, more than four months after Ms. Schifanelli began representing Ms. Tate, she sent Ms. Tate her first complete billing statement via email.[2] The July 1 bill showed that Ms. Tate had accrued $63,910.00 in legal fees, an amount that exceeded her $25,000.00 retainer by a wide margin and left an outstanding balance of $38,910.00.

Several charges listed in the July 1 bill related to email exchanges. Ms. Tate sent

[1] As we explain below, different counsel represented Ms. Tate at trial.

[2] Before July 1, Ms. Schifanelli prepared two "mini bills" that she provided to Ms. Tate before the contempt hearings held on April 21 and June 11, 2021. These documents, which Ms. Schifanelli filed along with her contempt responses to support Ms. Tate's requests for attorney's fees, didn't contain complete running totals of the fees Ms. Tate had accrued up to the dates of the hearings. The mini bills included only the fees for Ms. Schifanelli's work related to the contempt proceedings: $1,890.00 for the April 21 hearing and $6,195.00 for the June 11 hearing.

Ms. Schifanelli drafts of emails that she wanted to send to Mr. Ball and asked Ms. Schifanelli to provide feedback before she responded. Ms. Schifanelli reviewed the draft emails and advised Ms. Tate on what to say and what not to say and included the time expended on this advice in Ms. Tate's bill. On July 2, Ms. Tate responded to Ms. Schifanelli's email about the bill and explained that because Ms. Schifanelli had told her previously that she wouldn't charge for "communication with [her]," she "did not realize [she] would be charged for these emails." She stated that she was "seeing about $6790 in communication charges that [she] did not understand that [she] would need to pay" and asked Ms. Schifanelli to waive those charges.[3] Ms. Schifanelli agreed, and she also agreed to a payment plan of $1,000.00 per month beginning on September 15, 2021. She clarified that she hadn't billed and would continue not to bill Ms. Tate for text messages and phone calls, but that going forward she would bill for email communications.

Controversy arose also over Ms. Tate's final bill, which Ms. Schifanelli sent in late November 2022. The final bill showed that as of October 2022, after accounting for her $25,000 retainer, Ms. Tate had accumulated $69,535 in legal fees and had paid a total of $13,000, for an outstanding balance of $56,535. Ms. Schifanelli later subtracted an additional $1,000 as credit for a payment not reflected in the bill, leaving Ms. Tate with $55,535 in unpaid fees. Ms. Tate made no further payments after receiving the final bill.

On November 27, 2022, Ms. Tate sent Ms. Schifanelli an email asserting that after reviewing the bill and comparing it to the MDEC records for the family law action, she

[3] Ms. Tate didn't identify which specific billing items she included in her calculation.

found that Ms. Schifanelli had "grossly overcharged" her and that "[a]lmost every line in the bill [was] outrageously inflated." She attached a fourteen-page list of alleged billing discrepancies and a revised bill and insisted that these documents showed that she had in fact overpaid Ms. Schifanelli by $14,305. Other than crediting Ms. Tate for the omitted $1,000 payment, Ms. Schifanelli made no changes to the final billing statement. On January 25, 2023, Ms. Schifanelli filed a complaint against Ms. Tate for breach of contract, asking the circuit court to order Ms. Tate to pay "actual damages . . . in the amount of $55,535.00" and "late fees in the amount of $500 per month pursuant to the contract."[4]

Ms. Tate answered the complaint on August 18, 2023, denying all allegations and asserting various defenses. Eleven days later she filed a countercomplaint against Ms. and Mr. Schifanelli and the Firm (the "counter-defendants"); she amended the countercomplaint *first* on September 7 and *again* on December 2, 2023. In her Recaptioned and Amended Countercomplaint (the "countercomplaint"), Ms. Tate made seven claims against the counter-defendants, only two of which are relevant to this appeal: "Claim II – Breach of Contract" and "Claim III – Legal Malpractice/Professional Negligence."[5]

Among other things, in her breach of contract claim Ms. Tate alleged that the

[4] The complaint also included claims for fraud and material misrepresentation, detrimental reliance, and promissory estoppel that aren't relevant to this appeal.

[5] The countercomplaint included also claims for invalidity of contract, breach of fiduciary duty, detrimental reliance/promissory estoppel, fraud, and malicious abuse of process and wrongful conduct. The circuit court dismissed the invalidity of contract and malicious abuse of process claims on March 25, 2024, and dismissed all of the claims except for breach of contract in its August 27 order.

counter-defendants failed to perform their obligations under the Agreement "by not providing adequate legal services, not billing or providing billing statements according to the contract . . . and ultimately abandoning her representation." She identified specific provisions of the Agreement that she alleged the counter-defendants had breached. She asserted that the counter-defendants breached paragraph three, which provided that Ms. Schifanelli would "perform such work as [was] necessary and in [her] best professional judgment . . . to represent [Ms. Tate] in [her] matter" and that the Firm would represent Ms. Tate "through settlement or trial." The counter-defendants breached this provision, Ms. Tate alleged, because Ms. Schifanelli "neglected to provide the necessary work to adequately represent Ms. Tate in her matter"; because Ms. Schifanelli's "'best professional judgment' frequently contravened the Maryland Rules of Professional Conduct"; and because Ms. Schifanelli pulled out of the case five days before trial to work on her political campaign for an upcoming election, requiring Ms. Tate to hire a new attorney not employed by the Firm. Ms. Tate alleged also that Ms. Schifanelli failed to meet her obligation to provide bi-monthly billing statements under paragraph eleven, and that she breached paragraph six's requirement that she charge for the work performed on Ms. Tate's case in increments of one tenth of an hour because she and the Firm "did not bill the actual amount of time [Ms. Schifanelli] expended on the matter . . . but instead . . . inflated the actual time spent on almost every entry in the billing statement."

"As a direct result of the firm's multiple breaches of contract," Ms. Tate alleged, she "endured emotional distress, physical sickness, harm to her case, and other harms," and

"was forced to hire new counsel, causing her to incur additional expenses." She asked the court to award her $55,535 in "compensatory damages" and $27,000 as compensation for the legal fees she incurred when she hired new counsel for trial. In addition, she asked the court to order the counter-defendants to return the $39,000 she had paid already.

Second, Ms. Tate alleged that Ms. Schifanelli committed "legal malpractice and negligence" by failing to perform the work that was necessary and to use her best professional judgment to represent Ms. Tate, as paragraph three of the Agreement required. She alleged, among other instances of perceived misconduct, that "Ms. Schifanelli failed to maintain contemporaneously created records documenting the hours claimed to have been worked, intentionally and maliciously charged fees for little or no work performed, and inflated her fees by billing more hours than actually worked." She alleged further that Ms. Schifanelli billed her improperly for work related to an incident in which she made herself a witness in the case, including hours spent responding to opposing counsel's motion to strike her as Ms. Tate's attorney and other motions; responding to a deposition request and drafting a motion for a protective order; and attending a motions hearing.

The circuit court held a two-day bench trial on May 31 and June 3, 2024. Before hearing Ms. Tate's opening statement, the court confirmed that Ms. Tate hadn't identified an expert witness to testify on the standard of care for her legal malpractice and professional negligence claim. The court then informed Ms. Tate that because expert testimony was required to prove a breach of the standard of care, she would be unable to prove her malpractice claim. The court instructed Ms. Tate to focus on proving she'd been

overbilled as a defense to Ms. Schifanelli's breach of contract claim and "present what [she] believe[d] to be the correct billing."

After opening statements, Ms. Schifanelli testified about the work she performed on Ms. Tate's family law case during the twenty months of litigation. Ms. Schifanelli testified about three hearings she prepared for and attended on Ms. Tate's behalf: two contempt hearings on April 21 and June 11, 2021 and a *pendente lite* hearing in June 2021. She explained that she spent a significant number of hours in the life of the case responding to exceptions and motions for reconsideration filed by Mr. Ball's counsel—whom she described as highly litigious—after "every single court order on any single matter." Ms. Schifanelli testified that she also spent a considerable amount of time on discovery, locating documents; communicating back and forth with opposing counsel about missing or illegible documents; and responding to and filing motions for sanctions and motions to compel. She stated that Ms. Tate asked to review all legal documents she prepared before filing and would suggest edits. According to Ms. Schifanelli, she would reply to Ms. Tate's suggestions with "advice why her changes would not be the best thing to do," and her billing reflected the time spent on this back and forth.

In her testimony, Ms. Schifanelli agreed that another attorney, Charlotte Weinstein, represented Ms. Tate at the trial for the child custody matter. She stated, however, that she appeared on behalf of Ms. Tate on October 6, 2022, the first day of trial, and argued a contempt motion before Ms. Weinstein took over and argued the merits of the case. On cross, Ms. Schifanelli testified that in addition to the July 1, 2021 billing statement and the

November 2022 final bill, she provided Ms. Tate with two other comprehensive billing statements during the twenty months of representation: a December 23, 2021 year-end statement, which she sent via email, and an August 26, 2022 attestation of her attorney's fees, which she asked Ms. Tate to review before filing with the court. She confirmed that the only bills she provided Ms. Tate before July 1 were two "mini bills" containing only the charges for her preparation for the April 21 and June 11 2021 contempt hearings. In addition, Ms. Schifanelli admitted that Ms. Tate's final bill included a charge for a June 21, 2021 contempt hearing that wasn't listed on the circuit court docket and never occurred.

Ms. Tate asked Ms. Schifanelli on cross about specific items in the final billing statement that she believed were overinflated. For example, she inquired about an entry dated April 19, 2021 that charged her for 0.6 hours (thirty-six minutes) of work for "email from client for review." Ms. Schifanelli agreed that Ms. Tate emailed her on April 19, 2021 at 2:03 p.m., and that she responded fourteen minutes later at 2:17 p.m., but denied that she'd responded fully to the email in fourteen minutes yet charged for thirty-six minutes of work. Ms. Tate asked also about two entries dated March 18, 2021 that charged for 1.7 hours of work for "client email re: answer at 8 p.m." and 1.6 hours of work for "client comm re: changes at 9:26 p.m." Ms. Schifanelli agreed that Ms. Tate emailed her at 8:02 p.m. and followed up at 8:32 p.m., that she emailed back at 9:13 p.m., and that Ms. Tate replied at 9:26 p.m. with "Okay, great. Goodnight." But she denied that the 1.7-hour charge was for the email exchange from 8:02 p.m. to 9:13 p.m. and that the 1.6-hour charge was for reading Ms. Tate's 9:26 p.m. response. Instead, she testified that the 1.7-hour charge

for "client email re: answer at 8 p.m." was for the time she spent drafting an answer to Mr. Ball's complaint for modification of custody, and the 1.6-hour charge for "client comm re: changes at 9:26 p.m." was for the entire email exchange from 8:02 p.m. until 9:26 p.m.

Finally, Ms. Schifanelli testified on cross-examination about several billing entries relating to work arising from an incident that occurred on the evening of June 28, 2021, after the *pendente lite* hearing in the child custody action. That evening, Ms. Schifanelli was waiting in the parking lot of the school where Ms. Tate was to exchange her daughter with Mr. Ball because she planned to take Ms. Tate to dinner after the exchange. While waiting in the parking lot, Ms. Schifanelli witnessed an argument between Mr. Ball, Ms. Tate, and their daughter. Ms. Schifanelli admitted that she told opposing counsel she would testify about the incident at trial "if necessary," and that Mr. Ball's counsel then filed a motion to strike her appearance as counsel for making herself a witness in the case. Ms. Tate questioned Ms. Schifanelli about several billing entries relating to the motion to strike, including a 3.3-hour charge for back-and-forth email communications with opposing counsel while the incident was unfolding, a 1.9-hour charge from July 14, 2021 for reviewing the motion and attached exhibits, a 4.3-hour charge from that same day for researching and drafting a response to the motion, and a 4.7-hour charge from July 28 for researching and drafting a motion for a protective order to prevent Mr. Ball from deposing her as a witness and a reply to Mr. Ball's opposition to that motion.

After Ms. Schifanelli, Ms. Tate testified. She stated that when reviewing the bill, she'd identified 32.3 hours, or $11,480, of charges related to the incident in the parking lot

and motion to strike that she didn't believe she should have to pay. These charges included the June 28, July 14, and July 28 billing entries she'd cross-examined Ms. Schifanelli about, as well as several charges from June 29 and 30, 2021; one from July 12; two from July 15; and charges from December 1 and 2, 2021. Ms. Tate explained that she became concerned about the size of her bill and decided to review it line-by-line after she read Mr. Ball's written closing statement for the custody trial, in which his attorney argued that Ms. Schifanelli had overbilled her by a "concerning" amount. She testified that she thought "most of the lines of the bill ha[d] been inflated beyond what [she] believe[d was] the actual time spent on the matter." She identified 46.5 hours in charges for discovery, 14.9 of which were for drafting interrogatories and requests for production. She introduced into evidence an email from Ms. Schifanelli from February 28, 2021 asking her to type interrogatories for Mr. Ball and identify documents to include in her requests for production and expressed that the 14.9 hours in charges for drafting interrogatories and requests for production "didn't seem right to [her]" because she "had done a large portion of the work."

Ms. Tate testified also about three billing entries from March 29, 2021: a 2.8-hour charge for "work on RPDs DocsGoogle"; a 1.9-hour charge for "LINKs to Interr/RPDs again"; and a 0.2-hour charge for "RPD signature page final." She introduced into evidence a document showing that on March 29 at 12:16 p.m., she had sent Ms. Schifanelli the links to the interrogatories and requests for production that she'd drafted back in February and that Ms. Schifanelli responded about forty-five minutes later, at 1:31 p.m., to tell her she'd worked on the documents and that they were ready for Ms. Tate's signature. The exhibit

also contained the version history for the documents, showing Ms. Schifanelli last accessed the documents at 1:14 p.m. on March 29, shortly before she emailed Ms. Tate to say she was finished reviewing them. Ms. Tate characterized the total of 4.9 hours across the three March 29 entries as an inflated charge for what was really only forty-five minutes of work. Finally, Ms. Tate said that after the July 1, 2021 billing statement, she received only two more comprehensive bills from Ms. Schifanelli: one on August 26, 2022 and the final bill in November 2022. She didn't mention a year-end statement from December 2021.

Ms. Tate testified as well about Ms. Schifanelli's withdrawal from her case before trial despite the Agreement's express provision that the Firm would represent her through trial. According to Ms. Tate, Ms. Schifanelli texted her on August 24, 2022 and asked if she would consider letting Ms. Weinstein take over the case because Ms. Schifanelli was busy with her election campaign. Ms. Tate refused initially, but on October 1, five days before her October 6 trial date, the three women agreed that Ms. Schifanelli would appear on October 6 to argue a contempt motion before trial and Ms. Weinstein would take over and represent Ms. Tate for the trial on the merits. They agreed also that Ms. Tate would pay Ms. Weinstein the same rate she was paying Ms. Schifanelli. Ms. Tate testified that Ms. Weinstein ended up charging her $27,000 on top of the fees she already owed Ms. Schifanelli: a $10,000 retainer and additional $17,000 for her representation at trial. She testified also that contrary to Ms. Schifanelli's earlier testimony, and although Ms. Schifanelli was present for the first three hours of trial on October 6 and charged Ms. Tate for her presence, she didn't argue the contempt motion because "the judge did not allow

her to put on the contempt separate from the merits."[6] On cross-examination, Ms. Tate admitted that she hadn't paid Ms. Weinstein yet for her services.

The circuit court entered its order and opinion on the breach of contract action on August 27, 2024 (the "Order"). The court found *first* that Ms. Schifanelli had breached her contract to provide legal services to Ms. Tate "in a competent and professional manner." It explained that there existed between the parties "an implied contract to perform services competently," and that "it was implied that [Ms. Schifanelli] would properly bill [Ms. Tate] and not charge her for services not rendered nor overcharge her for services rendered." The court compiled a non-exhaustive list of twelve examples of billing inconsistencies raised by Ms. Tate in her testimony and the list she prepared after reviewing her final bill, which she offered into evidence at trial. Although the circuit court found "that many of the charges billed may have indeed been properly invoiced," it was unable to overlook the "glaring and proven overbilling" exemplified by the twelve identified entries. Despite finding Ms. Schifanelli in breach of the legal services contract, however, the court declined to award Ms. Tate specific damages because she'd "failed to delineate between charges properly incurred and those that were not." In addition, because it recognized that Ms. Schifanelli had helped Ms. Tate achieve many favorable results during the custody litigation, the court declined to order Ms. Schifanelli and the Firm to return the fees Ms. Tate had paid already.

[6] The October 6 trial transcript reveals that Ms. Tate was correct. The circuit court declined to separate out the contempt hearing and the trial on the merits and instead stated that it "was going to have them together." However, Ms. Schifanelli did give the opening statement at Ms. Tate's trial.

Second, the circuit court found that Ms. Schifanelli failed to meet the burden of proving her breach of contract claim against Ms. Tate. Specifically, it found that due to the inconsistencies in her billing, Ms. Schifanelli had failed to prove that the $55,535 in fees that she sought to recover from Ms. Tate was properly due and owing. Because she hadn't proved damages, her claim failed. Thus, in the end, neither side won any damages.

On September 5, 2024, the attorneys and Ms. Tate both filed motions to alter or amend the Order. The court denied Ms. Tate's motion on October 1 and denied the attorneys' motion on October 24. On October 28, 2024, the attorneys appealed from the Order. Ms. Tate filed a cross-appeal on November 21, 2024.

DISCUSSION

The attorneys present two questions for review, which we rephrase:

1. Did the circuit court err when it found that Ms. Schifanelli materially breached her legal services contract with Ms. Tate?

2. Did the circuit court err when it found that Ms. Schifanelli failed to prove her breach of contract claim against Ms. Tate because, based on errors in her billing statements, she hadn't met her burden to prove damages?[7]

[7] The attorneys phrased their Questions Presented as follows:

1. Did the lower court err when it found that seven itemized billing errors out of several hundred recorded by a Maryland attorney during twenty months of successful legal representation of a non-indigent client in a contested custody matter was tantamount to a "failure to provide legal services in a competent and professional manner" and was (apparently) a material breach of contract?

2. Did the lower court err when it determined that seven "inconsistencies, overbilling and erred billing" made by a Maryland attorney in a contested family law litigation matter precluded the attorney from showing that *any* of her several hundred billing entries made during twenty months of litigation were "earned,

Continued . . .

In her cross-appeal, Ms. Tate presents her own seven questions for review.[8] Unfortunately, those questions aren't before us because her notice of appeal was untimely.

The circuit court entered the original order that contains the decisions underlying both sides' appeals on August 27, 2024. Fewer than ten days later, on September 5, 2024, both parties filed motions to alter or amend the Order under Maryland Rule 2-534. Generally, a party must file a notice of appeal within thirty days after the entry of the court's order. Md. Rule 8-202(a). But here, the parties' filing of their motions to alter or amend tolled the period for filing a notice of appeal until the court's entry of its orders disposing of the motions. *See* Md. Rule 8-202(c) ("In a civil action, when a timely motion is filed

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properly due and owing" and therefore the attorney could not prove a breach of contract by the client who refused to pay for the representation?

[8] Ms. Tate phrased her Questions Presented as follows:

1. Did the Trial Court Err in Denying Appellant's Motion to Dismiss for Lack of Standing Due to the Plaintiffs' Forfeited LLP Status?
2. Did the Trial Court Err in Failing to Recognize the Plaintiffs' Bad Faith Litigation, Fraud and Perjury?
3. Did the Trial Court's Denial of the Appellee's Request for Sanctions Under Maryland Rule 1-341 Constitute an Abuse of Discretion?
4. Was the Trial Court's Finding that Expert Testimony is Required to Find Legal Malpractice and/or Professional Negligence in Error?
5. Did the Trial Court's Decision Not to Exercise Its Authority to Award the Appellee Clawback Restitution Due to "Successful . . . Taken on the Part of the [Appellee]" Constitute an Abuse of Discretion?
6. Was the Trial Court's Conclusion that "Glaring and Proven Overbilling" and Material Breach of Contract Did Not Constitute Legal Malpractice or Breach of Fiduciary Duty in Error?
7. Did the Trial Court Demonstrate Judicial Bias, Improper Commentary, Arbitrary Rulings and Burden Shifting that Constitutes an Abuse of Discretion and Legal Error?

pursuant to Rule . . . 2-534 . . . the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order . . . disposing of [the] motion . . . .").

The court denied Ms. Tate's motion on October 1, 2024 and denied the attorneys' motion on October 24, 2024. The attorneys filed their notice of appeal from the Order on November 1, 2024, within thirty days of the court's entry of its order denying their motion. Ms. Tate, however, filed her notice of appeal from both the Order and the court's October 1 order denying her motion on November 21, well outside of the thirty-day period to appeal from either. And Ms. Tate's appeal isn't saved by the cross-appeal Rule. Because the attorneys filed a timely notice of appeal, Ms. Tate, as another party to the action, could have "file[d] a notice of appeal within ten days after the date on which the first notice of appeal was filed or within any longer time otherwise allowed by [Rule 8-202]." Md. Rule 8-202(e). Ms. Tate's notice failed both tests: she filed it more than ten days after the attorneys filed theirs and more than thirty after the circuit court denied her motion to alter or amend. And we can't stretch to treat her notice as a timely appeal or cross-appeal from the circuit court's denial of the attorneys' motion to alter or amend because she won that motion, so there's no appellate relief we could afford *her* from that decision. *See Unger v. State*, 427 Md. 383, 400 (2012) ("[A] litigant is not, under Maryland law, entitled to appeal from a judgment which is wholly in [their] favor."). Accordingly, we dismiss her appeal. *See* Md. Rule 8-602(b)(2) ("The [C]ourt shall dismiss an appeal if . . . the notice of appeal was not filed with the [circuit] court within the time prescribed by Rule 8-202.").

This leaves us, then, to decide the questions raised by the attorneys in their timely

appeal. We hold *first* that the circuit court found Ms. Schifanelli in material breach of her legal services contract with Ms. Tate properly. *Second*, we hold likewise that the circuit court's finding that Ms. Schifanelli failed to prove her breach of contract claim against Ms. Tate because she didn't meet her burden to prove damages was proper.

The attorneys appeal from a circuit court judgment entered after a bench trial. Under Maryland Rule 8-131(c), when this Court reviews an action tried without a jury, we "review the case on both the law and the evidence," applying a dual standard. *Id.*; *Kunda v. Morse*, 229 Md. App. 295, 303 (2016). We defer to the trial court's factual findings—giving "due regard to the opportunity of the trial court to judge the credibility of the witnesses"—and set aside those findings only if clearly erroneous. Md. Rule 8-131(c); *Kunda*, 229 Md. App. at 303. We consider the evidence presented at trial "'in [the] light most favorable to the prevailing party,'" *Della Ratta v. Dyas*, 414 Md. 556, 565 (2010) (*quoting Ryan v. Thurston*, 276 Md. 390, 392 (1975)), and we don't disturb the circuit court's factual findings "'[i]f there is any competent evidence'" to support them. *Id.* (*quoting Solomon v. Solomon*, 383 Md. 176, 202 (2004)). Conversely, we don't defer to the trial court's legal conclusions and instead "review the trial court's application of law to facts *de novo*." *Kunda*, 229 Md. App. at 303.

Whether a party to a contract committed a material breach or committed only a minor breach and otherwise substantially performed their obligations under the contract is a question of fact that we review for clear error. *Kunda*, 229 Md. App. at 303 ("[W]hether th[e] breach was material . . . . is a question of fact . . . ."); *Schackow v. Med.-Legal*

Consulting Serv., Inc., 46 Md. App. 179, 187 (1980) ("'What is or is not substantial performance of a contract is a question of fact to be determined by the trier of facts in light of the circumstances of each case.'" (*quoting William F. Klingensmith, Inc. v. David H. Snell Landscape Contractor, Inc.*, 265 Md. 654, 665 (1972))).[9] Similarly, the extent of the damages suffered by the non-breaching party, if any, is a fact question subject to the "clearly erroneous" standard of review. *See Cherry v. Mayor of Baltimore County*, 475 Md. 565, 632–33 (2021) (finding "no clear error" in the circuit court's calculation of damages for breach of contract); 5A M.L.E. *Contracts* § 145 (2025) ("The extent of damages from a breach is a fact issue . . . where the evidence is in dispute.").

A. Based On The Totality Of The Evidence At Trial, The Court's Finding That Ms. Schifanelli Materially Breached Her Legal Services Contract With Ms. Tate Wasn't Clearly Erroneous.

First, the attorneys argue that the circuit court erred when it ruled in Ms. Tate's favor on her breach of contract claim. They state that there is no evidence in the record to support the court's holding that Ms. Schifanelli breached her contract with Ms. Tate by providing incompetent legal services. Instead, they assert, the record reveals that Ms. Schifanelli represented Ms. Tate "competently with the knowledge and skills required of a Maryland barred attorney and as contemplated by the rules of professional conduct or any

[9] As the attorneys point out correctly, when the material facts of the case aren't in dispute and permit only one reasonable conclusion, "the question of substantial performance becomes a matter of law for the court to decide." *Lawless v. Merrick*, 227 Md. 65, 72 (1961); *see also Speed v. Bailey*, 153 Md. 655, 661–62 (1927). But the facts of this case—especially when it comes to the billing issues—are highly disputed and permit more than one reasonable conclusion.

other standard of care" by responding to all motions filed by opposing counsel, attending all hearings, communicating regularly with Ms. Tate about her case, and navigating a prolonged discovery battle skillfully. They contend that the billing errors and infrequency of billing noted by the court didn't amount to a material breach because they can be remedied easily and didn't impair the purpose of Ms. Schifanelli's contract to provide legal services to Ms. Tate in exchange for compensation. Ms. Tate, to the contrary, argues that the circuit court ruled correctly in her favor because Ms. Schifanelli did breach an "implied contract to perform services competently" materially by overbilling her, by failing to provide bi-monthly billing statements as provided in the Agreement, and by withdrawing from her case before trial. We hold that the circuit court's ruling wasn't in error.

A breach of contract is a "'failure, without legal excuse, to perform any promise that forms the whole or part of a contract.'" *Kunda*, 229 Md. App. at 304 (*quoting Weaver v. ZeniMax Media, Inc.*, 175 Md. App. 16, 51 (2007)). If a breach "affects the purpose of the contract in an important or vital way," then it is material. *Sachs v. Regal Savings Bank*, 119 Md. App. 276, 283 (1998), *aff'd*, 352 Md. 356 (1999). When one party to a contract commits a material breach, the non-breaching party is excused from performance. *See Rogers Refrigeration Co., Inc. v. Pulliam's Garage, Inc.*, 66 Md. App. 675, 684–85 (1986) ("[T]he issue which must be resolved is whether the appellee's failure [to perform] was a material breach of its contract so as to excuse the appellant's performance."). However, when a party commits a minor breach that does not "'defeat the object of the contract'" and otherwise substantially performs their contractual obligations, the non-breaching party

may sue for damages but isn't relieved of their reciprocal obligation to perform. *Maslow v. Vanguri*, 168 Md. App. 298, 324 (2006) (*quoting Vincent v. Palmer*, 179 Md. 365, 373 (1941)); *see also Speed v. Bailey*, 153 Md. 655, 661 (1927) ("[T]he doctrine of substantial performance . . . has been applied in many cases where the breach was relatively small as compared to the whole contract, and did not go to the root of the contract; that is to say, it is applied where the breach complained of is inconsequential in its nature, and is readily compensated for by damages.").

Before explaining the reasons for our holding that the circuit court's ruling on Ms. Tate's breach of contract claim wasn't in error, we review its opinion and explain what, in our view, the court actually held and the factual findings on which its ruling relied. This appeal arises from what the circuit court described aptly as "a rather straightforward breach of contract case." It does *not* arise from a malpractice suit. The circuit court recognized, and indeed enforced, this distinction, at the outset of the case: the court precluded Ms. Tate from putting on evidence of malpractice and professional negligence for lack of an expert, and it explained in its Order that "there being no expert witnesses to attest to the standard of care on the legal malpractice claim brought by [Ms. Tate], that claim will fail." And the court reiterated multiple times during trial that it had before it two competing breach of contract claims, not a malpractice action.

The attorneys indicate correctly that the Order doesn't express the circuit court's holding in terms of material breach versus minor breach and substantial performance. And it's true that the court couched its finding that Ms. Schifanelli breached "the contract to

provide legal services in a competent and professional manner" in terms resembling a finding of a breach of professional duty, which would have required expert testimony. *See Fishow v. Simpson*, 55 Md. App. 312, 318–19 (1983) (holding expert testimony was required to prove incompetence or negligence in legal malpractice action and noting that trial judge couldn't determine appropriate standard based on their own knowledge (*citing Bonhiver v. Rotenberg, Schwartzman Richards*, 461 F.2d 925 (7th Cir. 1972))). But because of the circuit court's clear and repeated recognition that it wasn't dealing with a malpractice case and its unequivocal statement in its Order that "[b]ased on the evidence presented, [Ms. Tate] has proven . . . that [Ms. Schifanelli breached the contract entered into between the parties by her actions," we read the circuit court's ruling to rest instead on a finding that Ms. Schifanelli breached the Agreement materially such that Ms. Tate was relieved from her obligation to pay any additional or remaining fees. *See Rogers Refrigeration Co.*, 66 Md. App. at 684–85. As we explain below, there is "'competent evidence'" in the record to support the court's finding of a material breach, and so we don't disturb that finding. *See Della Ratta*, 414 Md. at 565 (*quoting Solomon*, 383 Md. at 202).

The circuit court took issue primarily with the "unusual manner in which [Ms. Schifanelli] billed [Ms. Tate]." *First*, the court found that Ms. Schifanelli didn't provide Ms. Tate with regular, bi-monthly billing statements as required under paragraph eleven of the Agreement. The court noted that Ms. Tate didn't receive a bill from Ms. Schifanelli until five months into the representation and found that "[t]he record fails to reflect when any other bills were forwarded to [Ms. Tate] except for the final bill." Although Ms.

Schifanelli and Ms. Tate both testified that Ms. Schifanelli prepared a bill in August 2022 and Ms. Schifanelli testified that she sent an additional bill in December 2021, only the July 1, 2021 initial bill and the November 2022 final bill were admitted into evidence at trial, and the court, as the finder of fact, was entitled to give to the parties' testimony whatever weight it deemed appropriate. *See* Md. Rule 8-131(c). And even if Ms. Schifanelli did provide Ms. Tate with four comprehensive bills throughout the representation, she still would have fallen short of her obligation under the Agreement to send Ms. Tate a billing statement every other month.

Next, the circuit court found that Ms. Schifanelli had engaged in "glaring and proven overbilling." In the Order, the court identified at least twelve entries from the final bill that it described as a "sample of the [billing] inconsistencies raised by [Ms. Tate]." Among these entries was the 1.6-hour entry from March 18, 2021 about which Ms. Tate cross-examined Ms. Schifanelli at trial. The court appeared not to credit Ms. Schifanelli's testimony that the 1.6 hours charged reflected a series of email communications spanning from 8:02 to 9:23 p.m. Instead, the court found that Ms. Schifanelli had billed Ms. Tate for 1.6 hours of time responding to an email when she had actually responded within the hour. The court credited Ms. Tate's testimony about the March 29, 2021 entry, finding that Ms. Schifanelli had charged Ms. Tate for 2.8 hours of work on the interrogatories and requests for production despite only working on them for under an hour. And the court expressed disapproval of Ms. Schifanelli's decision to charge Ms. Tate for three hours' worth of fees for her presence in court on the first day of trial when Ms. Tate had hired Ms. Weinstein to

appear and present her case based on Ms. Schifanelli's insistence that she could no longer handle the trial because of her political campaign.[10]

Beyond the twelve examples of overbilling specified, the court took issue with what it calculated as 29.3 hours in charges related to the incident in the parking lot where Ms. Schifanelli "inserted herself as a witness in the case" and with the 2.7-hour charge for the nonexistent June 21 contempt hearing. The court also took note of Ms. Tate's concern that she'd been overcharged for Ms. Schifanelli's work on discovery. Although no provision in the Agreement stated expressly that Ms. Schifanelli wouldn't bill Ms. Tate for time not actually spent working on her case, the court found that promise implicit in the provisions that Ms. Schifanelli would "perform such work as [was] necessary to represent" Ms. Tate and would bill Ms. Tate "based upon the amount of time [she] work[ed] on the matter" in increments of one tenth of an hour. Put differently, as the circuit court stated, "[i]t was implied that [Ms. Schifanelli] would properly bill [Ms. Tate] and not charge her for services not rendered nor overcharge for services rendered." Based on the evidence presented at trial and relied on by the circuit court, we see no clear error in the court's finding that Ms. Schifanelli breached that implied promise.

Finally, the court found that Ms. Schifanelli "caused the representation to be discontinued as she was too busy with her political campaign," despite the Agreement's express promise that the Firm would represent Ms. Tate "through settlement or trial."

[10] Most of the other example entries highlighted by the court follow a similar pattern, relying on email timestamps and document "last accessed" timestamps to conclude that more work was charged for than was actually done.

The purpose of the Agreement, as the circuit court described it, was for Ms. Schifanelli to "provide legal services to [Ms. Tate] at a rate of $350 an hour." And the court recognized that Ms. Schifanelli provided Ms. Tate with valuable legal services and took many "successful actions" on her behalf during the representation. But looking at the evidence in the light most favorable to Ms. Tate as the prevailing party, *see Della Ratta*, 414 Md. at 565, and considering the circuit court's findings that Ms. Schifanelli breached several express and implied provisions of the Agreement by failing to send Ms. Tate bi-monthly billing statements, by overbilling Ms. Tate, and by and discontinuing her representation of Ms. Tate just before trial, we don't find any clear error in the court's finding that these multiple breaches were not "inconsequential" in nature, *Speed*, 153 Md. at 661, and that they "affect[ed] the purpose of the contract in an important or vital way." *Sachs*, 119 Md. App. at 283; *see Kunda*, 229 Md. App. at 303. We hold that the circuit court didn't err in finding that despite the favorable results she helped Ms. Tate achieve in her family law matter, Ms. Schifanelli didn't perform her obligations under the Agreement substantially and instead committed a material breach that relieved Ms. Tate of her obligation to pay any additional fees.

B. There Was No Clear Error In The Circuit Court's Finding That Ms. Schifanelli Failed To Prove Damages Because Of Errors In Her Billing Statements.

Second, the attorneys argue that they proved every element of their breach of contract claim against Ms. Tate successfully and that the circuit court erred in finding that "because of [] twelve alleged errors or overbilling, [they] could never meet their burden to

show that the remaining two hundred or so entries had actually been earned, due and owing and therefore [they] could not prove a breach of contract." Ms. Tate responds that Ms. Schifanelli didn't perform her obligations under the Agreement substantially and that the attorneys "failed to prove they earned" the $55,535 in alleged outstanding fees. We hold that even if the court had found that Ms. Schifanelli performed her contractual obligations substantially, its finding that she failed to prove damages wasn't clearly erroneous.

A party who commits a minor breach of contract and otherwise performs their contractual obligations substantially may bring an action to recover the value of the performance rendered. *Hammaker v. Schleigh*, 157 Md. 652 (1929) ("[T]he weight of authority permits a recovery . . . on proof of a substantial performance . . . ."). The party claiming substantial performance bears the burden of proving the amount owed for that performance. *See William F. Klingensmith, Inc.*, 265 Md. at 666–67 (citation omitted).

As an initial matter, the attorneys misinterpret the circuit court's finding on their failure to prove damages. The court didn't find, as they claim, that "twelve alleged errors" in their billing statement precluded them from proving damages and, thus, breach of contract. Instead, the court, noting that Ms. Tate "believed that almost all of the billing entries were overstated," described the list of twelve specific entries highlighted in the Order as "a sample" of what the court found to be a larger pattern of "glaring and proven overbilling." That factual finding, as we hold above, wasn't clearly erroneous. Likewise, it wasn't clearly erroneous for the court to find, in light of all of the billing errors and inconsistencies described above and relied on by the court in its Order, that Ms. Schifanelli

failed to meet her burden to prove the amount actually owed for the legal services she performed for Ms. Tate after accounting for any errors. *See Cherry*, 475 Md. at 632–33; *William F. Klingensmith, Inc.*, 265 Md. at 666–67 (citation omitted). Ms. Schifanelli had an opportunity to address Ms. Tate's concerns about her bill and to revise the bill as appropriate—perhaps, for starters, by removing the charge for the nonexistent contempt hearing—when Ms. Tate first raised those concerns in November 2022, but she declined. We hold that the circuit court didn't err in finding that Ms. Schifanelli failed to prove damages and that it did not err in holding that she failed to prove her breach of contract claim against Ms. Tate.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. CROSS-APPEAL DISMISSED. COSTS TO BE DIVIDED EVENLY.