

STATE OF MICHIGAN
COURT OF APPEALS

In re ROSA LOUISE PARKS TRUST.

ROSA AND RAYMOND PARKS INSTITUTE
FOR SELF-DEVELOPMENT and ELAINE
STEELE,

Petitioner-Appellants,

V

JOHN M. CHASE, JR. and MELVIN D.
JEFFERSON,

Respondent-Appellees,

and

FREDDIE G. BURTON, JR.,

Appellee.

In re ROSA LOUISE PARKS TRUST.

ROSA AND RAYMOND PARKS INSTITUTE
FOR SELF-DEVELOPMENT and ELAINE
STEELE,

Appellants,

V

JOHN M. CHASE, JR. and MELVIN D.
JEFFERSON,

Appellees.

UNPUBLISHED
February 20, 2014

No. 310948
Wayne Probate Court
LC No. 2006-707697-TV

No. 311647
Wayne Probate Court
LC No. 2006-707697-TV

In re ROSA LOUISE PARKS TRUST.

JOHN M. CHASE, JR. and MELVIN D.
JEFFERSON,

Appellees,

V

ROSA AND RAYMOND PARKS INSTITUTE
FOR SELF-DEVELOPMENT and ELAINE
STEELE,

Appellants.

No. 312822
Wayne Probate Court
LC No. 2006-707697-TV

Before: FORT HOOD, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

These consolidated appeals¹ challenge decisions rendered by the probate court addressing matters raised in the estate proceedings of legendary civil rights activist Rosa Parks. We affirm the probate court's rulings, but conclude on our own initiative, MCR 7.216(C)(1), that the appeals were vexatious. Accordingly, we remand for a determination of actual and punitive damages, including reasonable attorney fees. MCR 7.216(C)(2).

I. Basic Facts and Procedural History

This case has been the subject of two prior appeals. In the first appeal, *In re Estate of Rosa Louise Parks*, unpublished per curiam opinion of the Court of Appeals, issued March 19, 2009 (Docket Nos. 281203, 281204, 281437, 281438), this Court affirmed the probate court

¹ In Docket No. 310948, Elaine Steele and the Rosa & Raymond Parks Institute for Self-Development (the Institute) appeal the probate court order dismissing the petition alleging conspiracy and breach of duty raised against John Chase, Jr., Melvin D. Jefferson, and Judge Freddie G. Burton, Jr., the probate judge presiding over the estate proceeding. In Docket No. 311647, Steele and the Institute appeal the probate court order denying their motion to set aside the prior judgment of \$120,075.86. In Docket No. 312822, Steele and the Institute appeal the order approving accountings by Chase and Jefferson and the fees of Anthea Papista. The appeals were consolidated to "advance the efficient administration of the appellate process." *In re Rosa Louise Parks Trust*, unpublished order of the Court of Appeals entered October 24, 2012 (Docket Nos. 310948; 311647; 312822). For ease of reference, the term "appellants" refers to Steele and the Institute, and the term "appellees" refers to Chase and Jefferson.

orders allowing the accounting by appellees and approving the marketing agreement. The predominant challenge in that consolidated appeal was the request by appellees for attorney fees. This Court held that the probate court did not abuse its discretion by awarding the attorney fees. *Id.* at slip op pp 7-14. It is significant to note that, in that appeal, this Court held that appellees' attorney fees were warranted because of their efforts to preserve the estate's assets such that the value of the estate increased dramatically, possibly by tenfold. *Id.* at slip op pp 11-12. An application for leave to appeal this decision was not filed with our Supreme Court.

After the case was returned to the probate court, additional issues arose and were appealed to this Court. *Chase v Raymond & Rosa Parks Institute for Self-Dev*, unpublished per curiam opinion of the Court of Appeals, issued April 19, 2011 (Docket Nos. 293897, 293899, 296294, 296295). Although this Court affirmed the probate court's rulings, our Supreme Court, in lieu of granting the application for leave to appeal, reversed our judgment, concluding that there was no breach of the settlement's confidentiality provision. *Chase v Raymond & Rosa Parks Institute for Self-Dev*, 490 Mich 975; 806 NW2d 528 (2011). On remand, the probate court was instructed to implement paragraph one of the settlement agreement within thirty days of the date of the order. *Id.*

By letter dated January 13, 2012, the probate court wrote to our Supreme Court, requesting guidance on how to proceed in light of the earlier probate rulings and the first appellate court decision by the Court of Appeals left undisturbed by the Supreme Court order. On January 27, 2012, our Supreme Court ordered in relevant part:

Despite the concerns of the probate court, that court's prior rulings resolving past disagreements between the court and Elaine Steele, the Institute, and their counsel, are undisturbed by this Court's December 29, 2011 Order, except insofar as they are inconsistent with this Court's Order, and thus pose no obstacle to implementing Paragraph 1 of the Settlement Agreement. The prior decision of the Court of Appeals affirming the court's 2007 decision to overrule the objections of Elaine Steele and the Institute to the fee requests of the fiduciaries then serving, and the renewal of their letters of authority, likewise poses no obstacle to implementation of this Court's Order. Finally, this Court's Order in no way hinders the probate court's ability to address, on its own motion or the motion of any party, as appropriate, any matters other than those specifically addressed and disposed of in that Order, including those cited by the court in its letter. [*Chase v Raymond & Rosa Parks Institute for Self-Dev*, ___ Mich ___; 807 NW2d 306 (2012).]

On February 1, 2012, the probate court signed an order that reinstated Steele and Shakoor as successor co-personal representatives, removed appellees as co-personal representatives, and ordered them to file a final accounting within 30 days.

On February 10, 2012, in the probate court, appellants filed a motion to implement the Supreme Court order dated December 29, 2011, and to unseal opinions and orders. In this motion, appellants contended that the order by the Supreme Court meant that "all rulings which were based on its finding of breach of confidentiality" by appellants must be set aside, which included orders dated August 10, 2009, and January 13, 2010. Appellants further alleged that all

orders and opinions must be unsealed. On March 16, 2012, the Kemp Klein law firm filed objections to the motion to set aside the January 2010 order providing for a \$120,075.86 judgment for administrative costs.

On April 26, 2012, the probate court entered an order and detailed written opinion denying the request to set aside the order dated January 13, 2010, providing for a prior lien judgment in the amount of \$120,075.86. After appellants did not receive their requested relief, they filed a “petition concerning conspiracy and breach of duty” by appellees and Judge Freddie G. Burton, Jr., on May 15, 2012. In this petition, appellants asserted that although the Rosa Parks’ Trust nominated Steele and former judge Adam A. Shakoor to serve as trustees after her death, Judge Burton replaced them with appellees who were “long-time probate court cronies.”² This petition filed by appellants raised the issue of a conspiracy between appellees and Judge Burton to deplete the estate of its assets and “unjustly and unlawfully direct these and other assets to the possession, control and ownership of [appellees].” In support of their position that appellees conspired with Judge Burton, appellants cited the “exorbitant” fees that had been charged by appellees and the probate court order denying the request to set aside a judgment of \$120,075.86.

The petition raised five counts: (1) breach of fiduciary duty by appellees, (2) declaratory judgment that appellees breached their fiduciary duties, (3) civil conspiracy by Judge Burton and appellees to deprive the estate of value and misappropriate property rights, (4) declaratory judgment that the three men engaged in a conspiracy as set forth in count three of the petition, and (5) forfeiture of all compensation by appellees because they disclosed confidential information in violation of the settlement agreement.

Also on May 15, 2012, appellants filed a motion to disqualify Judge Burton. The motion alleged that Judge Burton entered a series of erroneous and abusive rulings forfeiting their property rights. Despite the Supreme Court order that Judge Burton set aside his erroneous rulings, he refused to do so. Judge Burton’s “abuse of office” caused them to file a petition alleging civil conspiracy between Judge Burton and his “cronies.” The motion alleged that Judge Burton must be disqualified because he had a personal bias and prejudice against appellants, he had personal knowledge of disputed evidentiary facts, he was likely to be a material witness in the conspiracy proceedings, and he could not preside in a matter in which he was named as a civil conspirator. With the motion, counsel for appellants submitted an affidavit indicating that he had read the motion and the content was true.

Additionally, on May 15, 2012, appellants filed objections to the third, fourth, fifth, and sixth combined fiduciary accounts, arguing that they were untimely, and could not be resolved until the probate court’s decision regarding the breach of fiduciary duty and conspiracy petition.

² These allegations were raised in the lower court and on appeal. An appellate brief must contain a statement of all material facts, both favorable and unfavorable, presented fairly without argument or bias. MCR 7.212(C)(6). A brief that does not conform to the requirements of the court rule may be stricken. MCR 7.212(I). Although appellants’ brief does not conform to the requirements of this rule, we nonetheless address the merits of the issues.

On May 23, 2012, the probate court notified the parties that the motion to disqualify was taken under advisement, and the petition concerning conspiracy and breach of duty was adjourned without date pending a decision on the motion to disqualify.

Despite this notice, on June 1, 2012, counsel for appellants submitted a proposed default judgment and a subpoena for deposition of Judge Burton with a first set of interrogatories. In response to this filing, the probate court ordered that no pleadings would be accepted pending a decision on the motion to disqualify. Ultimately, the probate court denied the motion to disqualify and dismissed the conspiracy petition. The probate court granted appellees' motion for summary disposition with regard to some, but not all, of appellants' challenges to the accountings. After two days of hearings, the probate court entered orders regarding the accountings and the fees of Papista. From the above-mentioned orders, these appeals followed.

II. Jurisdiction and Due Process

Appellants first allege that the probate court erred by dismissing the “surcharge”³ petition without providing any notice, a hearing, or any other proceeding. Within the discussion of this issue, appellants further assert that the probate court had exclusive and concurrent jurisdiction over this petition. We disagree. Whether the lower court failed to follow proper procedure presents a question of law subject to review de novo. *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2001). Questions surrounding subject-matter jurisdiction present questions of law and are reviewed de novo. *In re Lager Estate (On Remand)*, 286 Mich App 158, 162; 779 NW2d 310 (2009). The plaintiff bears the burden of demonstrating subject-matter jurisdiction. *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997).

Circuit courts are courts of general jurisdiction vested with original jurisdiction over all civil claims and remedies unless exclusive jurisdiction is given by constitution or statute to some other court. *Manning v Amerman*, 229 Mich App 608, 610-611; 582 NW2d 539 (1998). Probate courts are courts of limited jurisdiction that derive all of its power from statutes. *Id.* at 611; *In re Wirsing*, 456 Mich 467, 472; 573 NW2d 51 (1998). “The jurisdiction of the probate court must be determined solely by reference to the statutes.” *In re Mayfield*, 198 Mich App 226, 230-231; 497 NW2d 578 (1993). To determine jurisdiction, this Court looks beyond the plaintiff’s choice of labels to examine the true nature of the plaintiff’s claims. *Manning*, 229 Mich App at 613. A party’s choice of label for a cause of action is not dispositive. We are not bound by the choice of label because to do so would exalt form over substance. *Johnston v City of Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989). A party cannot avoid the dismissal of a cause of action based on artful pleading. *Maiden v Rozwood*, 461 Mich 109, 135; 597 NW2d 817 (1999). The gravamen of a plaintiff’s action is determined by examining the entire claim. *Id.*

“The ‘power to review’ thus granted is the power to hear and determine. It is the language of jurisdiction.” *Peplinski v Michigan Employment Security Comm*, 359 Mich 665, 668; 103 NW2d 454 (1960). Generally, subject-matter jurisdiction is defined as a court’s power

³ In the probate court, appellants referred to the filing as a conspiracy petition. On appeal, they refer to it as a surcharge petition.

to hear and determine a cause or matter. *In re Lager Estate (On Remand)*, 286 Mich App at 162. More specifically, subject-matter jurisdiction is the deciding body's authority to try a case of the kind or character pending before it, regardless of the particular facts of the case. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 204; 631 NW2d 733 (2001). Subject-matter jurisdiction cannot be waived and can be raised at any time by any party or the court. *MJC/Lotus Group v Brownstown Twp*, 293 Mich App 1, 7-8; 809 NW2d 605 (2011) rev'd in part on other grounds *Mich Props, LLC v Meridian Twp*, 491 Mich 518; 817 NW2d 548 (2012). A trial court must dismiss an action for lack of subject-matter jurisdiction, and a party cannot be estopped from raising the issue. *In re Acquisition of Land for the Central Indus Park Project*, 177 Mich App 11, 17; 441 NW2d 27 (1989).

MCL 700.1302 provides for exclusive subject-matter jurisdiction for the probate court and states that the probate court has exclusive jurisdiction over matters related to the settlement of a decedent's estate or trust, including matters related to the appointment, removal, and fees of a trustee, MCL 700.1302(a), (b). Additionally, MCL 700.1303 provides for concurrent legal and equitable jurisdiction of the probate court, including claims by or against a fiduciary or trustee, MCL 700.1303(h).

Although appellants contend that the probate court erred by dismissing the conspiracy petition, a review of that document reveals that it raises claims of civil conspiracy and breach of fiduciary duty against appellees and Judge Burton, the presiding judge. A civil conspiracy "is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a purpose not unlawful by criminal or unlawful means." *Fenestra Inc v Gulf American Land Corp*, 377 Mich 565, 593; 141 NW2d 36 (1966). "The conspiracy standing alone without the commission of acts causing damage would not be actionable." *Id.* at 594. Accordingly, the foundation of a civil conspiracy is the resulting damage, not the conspiracy itself. *Id.* "A fiduciary relationship arises when one reposes faith, confidence, and trust in another's judgment and advice." *Fassihi v Sommers, Schwartz, Silver, Schwartz & Tyler, PC*, 107 Mich App 509, 515; 309 NW2d 645 (1981). "Where a confidence has been betrayed by the party in the position of influence, this betrayal is actionable, and the origin of the confidence is immaterial." *Id.*

Contrary to appellants' position, we conclude that appellants failed to meet their burden of demonstrating subject-matter jurisdiction, *Phinney*, 222 Mich App 521, and the probate court appropriately dismissed the conspiracy petition for lack of subject-matter jurisdiction. Appellants' contention that this petition relates to the settlement of a deceased individual's estate and the internal affairs of a trust is without merit. First, the parties entered into a settlement agreement, and therefore, the estate case in principal was resolved. The gravamen of the conspiracy petition does not involve resolution of estate and trust matters, but rather, raise civil claims of conspiracy and breach of fiduciary duty. Specifically, appellants cited the "exorbitant" fees charged by the appellees and the probate court's order denying their request to set aside the judgment of \$120,075.86.⁴ The allegations in the conspiracy petition broadly challenge the fees

⁴ The validity of the action taken in the probate court by appellants is questionable. When a party disagrees with the rulings of the court, a claim of appeal may be filed or a writ of

charged by appellees, a matter resolved in appellees' favor in *In re Estate of Rosa Louise Parks*, unpublished per curiam opinion of the Court of Appeals, issued March 19, 2009 (Docket Nos. 281203, 281204, 281437, 281438) slip op pp 7-14, and no application for leave to appeal to our Supreme Court was filed by appellants. "[A]s a general rule, an appellate court's determination on an issue in a case binds lower tribunals on remand and the appellate court in subsequent appeals." *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). Thus, the foundation for the claim of civil conspiracy and breach of fiduciary duty arises from a previously litigated issue to which appellants never filed a claim of appeal. Because the fees were upheld by our Court, this ruling remains binding on the probate court.

Appellants further contend that they were deprived of notice and a hearing. In civil cases, due process generally requires notice of the nature of the proceedings, a meaningful time and manner to be heard, and an impartial decision-maker. *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). The opportunity to be heard does not warrant a full trial-like hearing. *Id.* In the present case, the trial court ruled that it did not have subject-matter jurisdiction. Subject-matter jurisdiction may be raised at any time by the court and cannot be waived, *MJC/Lotus Group*, 293 Mich App at 7-8, and the court must dismiss an action for lack of subject-matter jurisdiction, *In re Acquisition of Land for the Central Indus Park Project*, 177 Mich App at 17. The question of subject-matter jurisdiction presents a question of law. *In re Lager Estate (On Remand)*, 286 Mich App at 162. The probate court's jurisdiction is established by statute, and the probate court cannot act over a case in which it does not have subject-matter jurisdiction. *In re Wirsing*, 456 Mich at 472. Here, appellants were afforded the opportunity to submit that the conspiracy petition fell within the jurisdiction of the probate court. Because this issue presented a question of law requiring examination of the statutory jurisdiction of the probate court, the probate court did not err by failing to conduct an evidentiary hearing on this issue. This claim of error is without merit.

III. Disqualification of Probate Judge

Next, appellants argue that the probate court erred by denying their motion for disqualification because the probate judge was a party and a witness to the surcharge action, and therefore, was required to disqualify himself to vitiate a conflict of interest, not dismiss the action.⁵ We disagree. "When this Court reviews a motion to disqualify a judge, the trial court's findings of fact are reviewed for an abuse of discretion; however the applicability of the facts to relevant law is reviewed *de novo*." *Armstrong v Ypsilanti Twp*, 248 Mich App 573, 596; 640 superintending control requested to challenge the practices of an inferior court. See *In re Credit Acceptance Corp*, 273 Mich App 594, 598; 733 NW2d 65 (2007). Moreover, counsel for appellants chose to file a "petition" in the probate action, not a complaint. Despite the filing of the petition, counsel for appellants proceeded to seek entry of a default against appellees and Judge Burton.

⁵ Appellees contend that this Court does not have jurisdiction of this issue because the court rules, MCR 5.801, provide that the appeal of this type of ruling proceeds to the circuit court. However, appellants' claim of appeal was premised on the dismissal of the conspiracy petition, and on appeal, are free to raise issues related to other orders in the case. *Dean v Tucker*, 182 Mich App 27, 31; 451 NW2d 571 (1990).

NW2d 321 (2001). The probate court rules provide that in the absence of a probate rule, the civil rules control. MCR 5.001(A). MCR 2.003 of the civil rules govern disqualification. Disqualification of a judge is warranted when the judge has personal knowledge of disputed evidentiary facts involving the proceeding, MCR 2.003(C)(1)(c) or where the judge is a party to the proceeding, MCR 2.003(C)(1)(g). The moving party bears the burden of proving that the trial judge should be disqualified. *Michigan Ass'n of Police v City of Pontiac*, 177 Mich App 752, 757-758; 442 NW2d 773 (1989). “A trial judge is presumed unbiased, and the party asserting otherwise has the heavy burden of overcoming the presumption.” *Mitchell v Mitchell*, 296 Mich App 513, 523; 823 NW2d 153 (2012). Adverse rulings by a trial judge against a party, even if later determined to be erroneous, do not constitute a sufficient basis to require disqualification or reassignment. *In re Contempt of Henry*, 282 Mich App 656, 680; 765 NW2d 44 (2009). Aggravation, frustration, hostility, or critical remarks generally do not establish disqualifying bias. *In re MKK*, 286 Mich App 546, 566-567; 781 NW2d 132 (2009); *In re Contempt of Henry*, 282 Mich App at 680-681.

A party may not obtain disqualification of a judge by deliberately filing litigation against the judge. In *People v Bero*, 168 Mich App 545, 549; 425 NW2d 138 (1988), the defendant alleged that he was deprived of a fair trial because of a long-standing conflict between his defense counsel and the trial court. This Court examined the issue as whether the trial court erred in denying defendant’s motion to disqualify. This Court rejected the assertion that the filing of twenty-five motions to disqualify (in a four-year period) and the filing of a grievance against the trial court with the Judicial Tenure Commission required the trial judge to disqualify himself. *Id.* at 551-552. This Court noted that the mere filing of a complaint as a basis for disqualification would promote filing of frivolous complaints or grievances in order to obtain a more favorable trial court:

[W]e disagree that the mere filing of a party’s or attorney’s complaint is sufficient to require automatic disqualification. To hold otherwise would allow an attorney to judge shop by filing even frivolous grievances. We note that the Judicial Tenure Commission’s proceedings are confidential as to the judge until a complaint is filed by the commission, the judge is privately censured, or the investigation is dismissed. MCR 9.207. Hence, we believe that disqualification is not required until the judge is privately censured or a complaint is filed by the Judicial Tenure Commission itself. [*Id.* at 552.]

The predominant reason offered for the disqualification of Judge Burton was the filing of the conspiracy petition against him. Appellants did not meet their burden of proof in demonstrating that the probate judge should be disqualified. *Michigan Ass'n of Police*, 177 Mich App at 757-758. Appellants rely on the mere filing of the conspiracy petition naming the probate judge as the reason for disqualification. Blanket assertions were made that the probate judge engaged in actions with his “cronies” to deplete the assets of the estate. However, other than insinuations, there was no record support of a conflict of interest or inappropriate conduct. Rather, the record only contains evidence that the probate judge rendered decisions that were adverse to appellants’ requests. This does not justify disqualification. *In re MKK*, 286 Mich App at 566-567; *In re Contempt of Henry*, 282 Mich App at 680-681

More importantly, case law provides that disqualification is unwarranted where a complaint or grievance has been filed against the sitting judge. *Bero*, 168 Mich App at 552. A party would file a frivolous complaint or grievance against a sitting judge in order to engage in judge shopping. *Id.* The probate judge concluded that he could continue to preside over the matter. We cannot conclude that the probate court's decision constituted an abuse of discretion. *Armstrong*, 248 Mich App at 596. Rather in light of the sparse record and blanket assertions, appellants' counsel deliberately filed an inappropriate petition before the probate judge in an attempt to force his disqualification. A party will not benefit from such inappropriate forum shopping. *Bero*, 168 Mich App at 552. This issue does not entitle appellants to appellate relief.

IV. Validity of Prior Judgment

Appellants assert that the probate court erred in retaining the \$120,075.86 judgment following the remand from the Supreme Court. We disagree. Whether the lower court failed to follow proper procedure presents a question of law subject to review de novo. *In re CR*, 250 Mich App at 200. Generally, "an appellate court's determination of an issue in a case binds lower tribunals on remand and the appellate court in subsequent appeals." *Grievance Administrator*, 462 Mich at 260. On remand, the trial court may not take any action that is inconsistent with the judgment of the appellate court. *Sumner v General Motors Corp*, 245 Mich App 653, 662; 633 NW2d 1 (2001).

In *K & K Constr, Inc v DEQ*, 267 Mich App 523, 544-545; 705 NW2d 365 (2005), this Court addressed the lower court's authority following remand:

"The power of the lower court on remand is to take such action as law and justice may require so long as it is not inconsistent with the judgment of the appellate court." When an appellate court remands a case without instructions, a lower court has the "same power as if it made the ruling itself." However, when an appellate court gives clear instructions in its remand order, it is improper for a lower court to exceed the scope of the order. "It is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court." [*Id.* (citations omitted.)]

A review of the first Supreme Court order reveals that it reversed the decision of the Court of Appeals with regard to the affirmance of the finding that appellants' counsel breached the settlement agreement's confidentiality provision. Our Supreme Court then instructed the probate court to implement paragraph 1 of the settlement agreement, changing the trustees back to Steele and Shakoor. The order contained no additional instructions. *Chase v Raymond & Rosa Parks Institute for Self-Development*, 490 Mich at 975.

Although the first Supreme Court order merely provided that the Court of Appeals was reversed regarding the ruling addressing the breach of the confidentiality provision, it did not specifically address appellants' challenge to due process with regard to the entry of a \$120,075.86 judgment entered in January 2010. Judge Burton sent a letter to our Supreme Court requesting guidance with regard to how to proceed. In a second order, our Supreme Court stated:

Despite the concerns of the probate court, that court's prior rulings resolving past disagreements between the court and Elaine Steele, the Institute, and their counsel, are undisturbed by this Court's December 29, 2011 Order, except insofar as they are inconsistent with this Court's Order, and thus pose no obstacle to implementing Paragraph 1 of the Settlement Agreement. The prior decision of the Court of Appeals affirming the court's 2007 decision to overrule the objections of Elaine Steele and the Institute to the fee requests of the fiduciaries then serving, and the renewal of their letters of authority, likewise poses no obstacle to implementation of this Court's Order. Finally, this Court's Order in no way hinders the probate court's ability to address, on its own motion or the motion of any party, as appropriate, any matters other than those specifically addressed and disposed of in that Order, including those cited by the court in its letter. [*Chase v Raymond & Rosa Parks Institute for Self-Development*, 807 NW2d 311 (2012).]

On remand from the Supreme Court, appellants filed a motion indicating that all prior judgments and orders related to the breach of the confidentiality provision, including the order of January 13, 2010 providing for a \$120,075.86 judgment were essentially reversed. The probate court rejected appellants' request. In denying the requested relief, the probate court examined the orders of the Supreme Court and concluded that the reversal nonetheless left undisturbed matters unrelated to the breach of the confidentiality agreement. Moreover, the probate court examined the prior January 13, 2010 ruling that entered the \$120,075.86 judgment, and noted that the judgment did not relate to any breach of confidentiality agreement, but rather was a lien in favor of the estate to pay claims, tax obligations, and other administrative costs. Simply put, the probate court found that the \$120,075.86 judgment was unrelated to the breach of the confidentiality agreement that was reversed by our Supreme Court. The trial court's factual findings are reviewed under the clearly erroneous standard, and its legal conclusions are reviewed de novo. *In re Receivership of 11910 South Francis Rd*, 492 Mich 208, 222; 821 NW2d 503 (2012).

We cannot conclude that the probate court's holding, that the \$120,075.86 judgment remained valid, was clearly erroneous. *Id.* The probate court noted that it did not relate to the ultimate reversal by the Supreme Court in its order regarding any breach of the confidentiality provision, but was for administrative costs. It is important to note that although appellants contend that appellees charged "exorbitant fees" designed to deplete the estate's assets, this Court ruled to the contrary in the first appeal, a decision that was never appealed to our Supreme Court. In *In re Estate of Rosa Louise Parks*, unpublished per curiam opinion of the Court of Appeals, issued March 19, 2009 (Docket Nos. 281203, 281204, 281437, 281438), slip op 11-12, this Court upheld the award of attorney fees to appellees, noting the value of their services and the dramatic increase in estate value as a result of their efforts.

Moreover, we cannot conclude that the probate court erred as a matter of law in holding that the January 13, 2010 judgment was undisturbed by the Supreme Court remand orders. Indeed, when questioned through a letter by the probate court regarding the actions that may be taken on remand, our Supreme Court stated that the "court's prior rulings resolving past disagreements between the court and Elaine Steele, the Institute, and their counsel, are undisturbed by this Court's December 29, 2011 Order, except insofar as they inconsistent with

this Court's Order, and thus pose no obstacle to implementing Paragraph 1 of the Settlement Agreement." Appellants previously objected to this judgment, and the probate court rejected the arguments, noting that a lien judgment could be held against the estate when there were insufficient assets to pay claims, taxes, and other administrative costs. Therefore, this challenge is without merit.

V. Accounting

Lastly, appellants contend that the probate court erred by dismissing virtually all of their objections to the accounting petitions by appellees premised on res judicata. We disagree. A trial court's ruling on a motion for summary disposition presents a question of law subject to review de novo. *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 486 Mich 311, 317; 783 NW2d 695 (2010). A party must cite authority in support of its position. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000). A party may not merely announce its position and expect this Court to discover and rationalize the basis for the claims. *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Additionally, a party may not leave it to this Court to search for the factual basis offered in support of a position, but must correlate factual assertions to the location in the record. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 388; 689 NW2d 145 (2004). When an appellant fails to challenge the basis of the ruling by the trial court, we need not even consider granting the party the relief requested. *Id.* at 381. "The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

A review of the lower court record reveals that appellants objected to the accountings pending decisions regarding the conspiracy petition and the motion to disqualify and concluded without any discussion that the accountings were "untimely." When the probate court held evidentiary hearings regarding the accountings and the fees of Papista, counsel for appellants once again attempted to disqualify the probate court and call the judge as a witness. After two days of hearings, the probate court ruled on the validity of the accountings and fees. In the brief on appeal, appellants do not delineate which claims were dismissed pursuant to res judicata and analyze the propriety of the dismissal of any claims. In light of these deficiencies, appellants are not entitled to appellate relief. *Mitcham*, 355 Mich at 203; *Derderian*, 263 Mich App at 381.

VI. Vexatious Appeals

Pursuant to MCR 7.216(C), this Court may, on its own initiative, award damages when an appeal or proceedings in an appeal are found to be vexatious. *Citizens Ins Co v Secura Ins*, 279 Mich App 69, 78; 755 NW2d 563 (2008). This Court may also award damages when it concludes that "a pleading, motion, argument, brief, document, record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the court." MCR 7.216(C)(1)(b). The assessment of damages includes actual and punitive damages. MCR 7.216(C)(1). The damages may not exceed actual damages and expenses incurred by the opposing party because of the vexatious appeal or lower court proceeding. MCR 7.216(C)(2). The actual damages include reasonable attorney fees and punitive damages. *Id.*

A review of the pleadings filed in the lower court reveal that appellants' counsel received adverse rulings from the probate court. Rather than seek appellate relief, appellants' counsel filed a petition in the probate proceeding alleging conspiracy against the probate judge and appellees and a motion for disqualification of the probate judge. It is important to note that appellants' counsel did not file an original action against these individuals. The probate court notified the parties that the motion for disqualification was taken under advisement, and the conspiracy petition was adjourned without date pending a decision on the disqualification motion. Despite the probate court's instructions, appellants' counsel proceeded to file a proposed default judgment and to submit a subpoena and interrogatories to the probate judge. In light of appellants' failure to file an original action naming appellees and the probate judge as defendants and the probate judge's instructions regarding the hold on the litigation pending a decision on the disqualification, the actions taken by appellants' counsel defy logic. Disqualification is warranted when a judge is "a party to the proceeding." MCR 2.003(C)(1)(g). However, as previously stated, a party may not obtain a judge's disqualification by deliberately filing litigation against the judge. *Bero*, 168 Mich App at 549. A party will not be rewarded for filing a frivolous complaint or grievance in order to engage in judge shopping. *Id.* at 552.

In their brief to this Court, appellants alleged that the probate judge "used his judicial power to bankrupt the estate of Mrs. Parks, award excessive and unearned compensation to court-appointed cronies, misappropriate property from the beneficiaries in a manner indistinguishable from common theft." Again, as noted earlier, this Court previously upheld the attorney fees to appellees, citing the value of their services to dramatically increase the estate value. *In re Estate of Rosa Louise Parks*, unpublished per curiam opinion of the Court of Appeals, issued March 19, 2009 (Docket Nos. 281203, 281204, 281437, 281438), slip op pp 11-12. Appellants failed to present evidence comparing the rates charged by appellees to those of comparable experience and failed to identify any misappropriated property. Indeed, in these appeals, although appellants contested the accountings, a specific argument was never made despite the fact that two days of hearings were conducted. These unsupported allegations and deficiencies lead to the conclusion that vexatious appeals were pursued. Accordingly, we remand for a determination regarding actual and punitive damages, including reasonable attorney fees. MCR 7.216(C)(1), (2). The probate court shall determine what constitutes a reasonable amount of actual attorney fees and costs incurred in the defense of the appeals and whether the award should be entered solely against appellants' counsel. *McNulty v Watry Indus, Inc*, 442 Mich 883, 883-884; 500 NW2d 477 (1993).⁶ An evidentiary hearing may be conducted if deemed appropriate. *Id.* at 884.

⁶ Although the *McNulty* case was decided by order, not opinion, it nonetheless is binding. An order from the Supreme Court constitutes binding precedent when it disposes of an application with a concise statement of applicable facts and the reasons for the decision. *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 369; 817 NW2d 504 (2012).

Affirmed with regard to the probate court's rulings. Remanded for the determination of actual and punitive damages, including reasonable attorney fees, for the vexatious consolidated appeals. Appellees, the prevailing parties, may tax costs. MCR 7.219. We do not retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Henry William Saad

/s/ Stephen L. Borrello