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FIFTH DIVISION
December 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROMAN TIMATYOS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 07 M1 301220
)	
LISA AUSTIN,)	Honorable
)	Cassandra Lewis,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Epstein and Justice McBride concurred in the judgment.

ORDER

¶ 1 **HELD:** The trial court did not abuse its discretion when it denied plaintiff attorney's fees under Supreme Court Rule 137, and determined plaintiff was not entitled to recover the \$200 mandatory arbitration award rejection fee imposed under Supreme Court Rule 93(a) as a taxable cost. Because the record before us is insufficient, we also cannot say the trial court erred in determining plaintiff was only entitled to post-judgment interest up until August 10, 2010, the date defendant tendered a check to plaintiff for the payment of the judgment.

¶ 2 Plaintiff Roman Timatyos filed a personal injury action

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against defendant Lisa Austin. Plaintiff was awarded \$14,191.74 in damages in a jury verdict entered on July 20, 2010. Plaintiff then filed a post-trial motion, which sought attorney's fees under Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)), payment for accrued interest on the judgment amount, witness fees and costs associated with rejecting the mandatory arbitration award. Defendant filed a post-trial motion to strike plaintiff's Rule 137 motion for attorney's fees and bar plaintiff from recovering any interest on the judgment, from claiming the mandatory arbitration fees as a cost and from recovering witness fees associated with an out-of-state witness' travel expenses. The trial court denied plaintiff's Rule 137 motion for attorney's fees with prejudice. The court determined defendant was obligated to pay interest on the judgment from July 20, 2010, the date the judgment was entered, to August 10, 2010, the date defendant tendered a check in an attempt to satisfy the judgment. The court also denied recovery of the arbitration award rejection fee as a cost on the judgment. The court allowed witness fees for the out of state witness at sheriff's mileage rates. Plaintiff appeals. For the reason that follow, we affirm the trial court's order.

¶ 3 BACKGROUND

¶ 4 Plaintiff filed a personal injury action against defendant,

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alleging the parties were involved in a motorvehicle traffic collision at an intersection in Chicago after defendant negligently ran a red light. Defendant filed a counterclaim, alleging plaintiff was the person who negligently ran a red light.

¶ 5 Prior to trial, plaintiff served a Supreme Court Rule 216 request for admission of fact on defendant, which requested defendant to admit or deny she made a statement to an investigating police officer at the scene of the collision that "she might have run the red light." Defendant admitted having a conversation with a police officer at the scene, but denied making the statement. Defendant also turned over to plaintiff's counsel prior to trial a transcribed interview of a third party witness, Eric Johnson, who was present and directly behind defendant's vehicle at the time of the accident. The interview transcript indicates Johnson told an investigator from State Farm Insurance, defendant's insurance company, that he saw defendant run the red light at the intersection prior to the collision.

¶ 6 At trial, Chicago Police Officer Maurizio Cazares testified plaintiff stated "she might have run the red light" during his investigation of the accident. Louis Williams, a third party witness from Sturgeon Bay, Wisconsin, also testified regarding the circumstances of the accident. The jury found in plaintiff's

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favor and rejected defendant's counterclaim. The jury returned a verdict in the amount of \$14,191.74 in damages on July 20, 2010, which reflected a 30% contributory negligence finding on plaintiff's part. No issues are raised with regards to the jury's verdict.

¶ 7 Plaintiff provided defendant with a list of his itemized court costs on July 27, 2010, which included the \$200 mandatory arbitration fee plaintiff was required to pay after rejecting the arbitration award and proceeding to trial. On August 10, 2010, defendant tendered two checks as satisfaction for the judgment: one check in the amount of the judgment, \$14,191.74; and another check for \$500 in court costs, excluding the requested \$200 mandatory arbitration fee. Plaintiff rejected the tendered checks based on the fact that the checks were not certified and did not include payment for the accrued interest on the judgment and witness fees. Defendant contends plaintiff had not requested interest be paid on the judgment prior to rejecting the tendered checks.

¶ 8 On August 10, 2010, plaintiff filed a motion for attorney's fees under Rule 137, arguing defendant filed a counterclaim against plaintiff based on his alleged negligence in running a red light while knowing such allegations were false. Defendant filed a motion to bar plaintiff from recovering interest on the

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judgment, from claiming the mandatory arbitration fee as a "cost," and from collecting any witness fees for Williams' travel expenses. Defendant also requested the trial court strike plaintiff's Rule 137 motion for attorney's fees.

¶ 9 The court denied plaintiff's Rule 137 motion with prejudice. The court determined defendant was only obligated to pay interest from the date judgment was entered to August 10, 2010, the date defendant tendered a check to plaintiff in an attempt to satisfy the judgment. The court denied the mandatory arbitration fee as a "cost" on the judgment but allowed plaintiff to collect witness fees for Williams' travel expenses, which were set at sheriff's mileage rates. Plaintiff appeals.

¶ 10 ANALYSIS

¶ 11 I. Attorney's Fees

¶ 12 Plaintiff contends the trial court abused its discretion in denying his post-trial Rule 137 motion for attorney's fees. Specifically, plaintiff contends the fact that defendant refused to admit during discovery that she made a statement to Officer Cazares that "she might have run a red light," mixed with the fact that defendant filed a counterclaim in "bad faith" by falsely charging plaintiff with negligence in causing the collision by running the red light, clearly indicates defendant violated Rule 137 by unnecessarily delaying and needlessly

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increasing the costs of litigation.

¶ 13 Supreme Court Rule 137 provides, in pertinent part, that:

"The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)

¶ 14 Rule 137 also provides that if a pleading or motion is signed in violation of the rule, the court may award the "reasonable expenses incurred because of the pleading, motion, or other paper, including a reasonable attorney fee." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

¶ 15 However, Rule 137 is not intended to serve as a means by which trial courts should punish litigants whose arguments

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ultimately do not succeed; instead, the rule serves as a tool courts may employ to prevent future abuse or discipline past abuse of the judicial process. *Dunn v. Patterson*, 395 Ill. App. 3d 914, 923-24 (2009). The test is whether a party's pleadings in question meet an objective standard of reasonableness. *Id.* We will not disturb a trial court's ruling on a Rule 137 motion absent an abuse of discretion. *Id.*

¶ 16 Here, we cannot say the trial court abused its discretion in denying plaintiff's Rule 137 motion for attorney's fees. While plaintiff seems to suggest defendant's counterclaim for property damage was based solely on the allegedly false accusation that plaintiff ran a red light, we note defendant also alleged in her counterclaim that plaintiff failed to keep his car under control, failed to keep a proper lookout for other vehicles, drove his car in excess of the speed limit, failed to reduce speed in order to avoid the accident and was otherwise careless and negligent. As defendant properly notes, the jury ultimately found plaintiff was 30% contributorily negligent for the collision based on the evidence presented. In light of the fact that the jury ultimately agreed plaintiff was at least partially responsible for the accident, we simply cannot say defendant's counterclaim for property damage was objectively unreasonable and violated Rule 137.

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¶ 17 Moreover, while we recognize defendant denied in her answer to plaintiff's interrogatory that she told Officer Cazares "she might have run the red light" during a conversation with the officer following the accident, we note nothing in the record suggests her denial was intended solely to unnecessarily delay the proceedings or needlessly increase the cost of litigation. Although Officer Cazares ultimately testified that defendant did make such a statement to him during his investigation of the accident, nothing in the record before us indicates defendant herself changed course and admitted at trial that she made such a statement. Simply put, nothing in the record concretely suggests defendant denied making the statement in her response to plaintiff's interrogatory in bad faith.

¶ 18 Accordingly, we find the trial court did not abuse its discretion in denying plaintiff's Rule 137 motion for attorney's fees.

¶ 19 II. Mandatory Arbitration Fee

¶ 20 Plaintiff contends the trial court erred by denying his request to recover the \$200 mandatory arbitration award rejection fee as a taxable cost.

¶ 21 Illinois Supreme Court Rule 93(a) provides that:

"Within 30 days after the filing of an award

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with the clerk of the circuit court, and upon payment to the clerk of the court of the sum of \$200 for awards of \$30,000 or less ***, any party who was present at the arbitration hearing, either in person or by counsel, may file with the clerk a written notice of rejection of the award and request to proceed to trial ***." Ill. S. Ct. R. 93(a) (eff. Jan. 1, 1997).

¶ 22 While the rule itself is silent regarding whether the \$200 rejection fee is recoverable as a taxable cost, paragraph (a) of the committee comments notes:

"The Committee is unable to reach a consensus on the question of recommending a specific rule on whether or not the \$200 fee should be recoverable as a taxable cost. Pennsylvania, as does New York and Ohio, provides by rule that the costs assessed on the rejecting party shall apply to the cost of arbitrators fees and shall not be taxed as costs or be recoverable in any proceeding. The sum of \$200 is the same amount imposed by Philadelphia County's rule on a party

requesting trial after an award. Other jurisdictions, on the other hand, provide that such fee is recoverable and may be taxed as costs. If clarity in this regard requires a definitive rule, it is the Committee's preference that the rule be stated similarly to that of Pennsylvania; to wit, the sum so paid to the clerk shall not be taxed as costs or recoverable in any proceeding." Ill. S. Ct. R. 93, Committee Comments (adopted May 20, 1987).

¶ 23 This court has noted that "while the comments of the Illinois Supreme Court Rules Committee are not binding, we do take note of the comments, and, in instances where, in our view, the Committee comments have merit, we are inclined to adopt them." *Allstate Insurance Co. v. Avelares*, 295 Ill. App. 3d 950, 954 (1998). In our view, the committee's comments have merit and should receive deference in this case. Accordingly, we adopt the position that the \$200 rejection fee should not be taxed as a cost or be recoverable in any proceeding. See Ill. S. Ct. R. 93, Committee Comments (adopted May 20, 1987); *Avelares*, 295 Ill. App. 3d at 954.

¶ 24 Accordingly, we find the trial court did not err in denying

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plaintiff's recovery of the \$200 fee as a taxable cost.

¶ 25 III. Interest

¶ 26 Defendant contends the trial court erred in determining post-judgment interest would only be awarded from the date the judgment was entered up until August 10, 2010, the date defendant tendered a check to plaintiff in an attempt to satisfy the judgment without including postjudgment interest.

¶ 27 Section 2-1303 of the Code of Civil Procedure (735 ILCS 5/2-1303 (West 2010)) provides, in pertinent part, that:

"Judgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied ****.
When judgment is entered upon any award, report or verdict, interest shall be computed at the above rate, from the time when made or rendered to the time of entering judgment upon the same, and included in the judgment. Interest shall be computed and charged only on the unsatisfied portion of the judgment as it exists from time to time."

The section also provides:

"The judgment debtor may by tender of payment

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of judgment, costs and interest accrued to the date of tender, stop the further accrual of interest on such judgment notwithstanding the prosecution of an appeal, or other steps to reverse, vacate or modify the judgment."

735 ILCS 5/2-1303 (West 2010).

¶ 28 Generally, the decision to allow statutory interest lies within the sound discretion of circuit court and will not be disturbed absent an abuse of that discretion. *Niemeyer v. Wendy's Intern., Inc.*, 336 Ill. App. 3d 112, 115 (2002). However, imposition of statutory interest at the rate of 9% from the date the final judgment was entered is mandatory under section 2-1303. *Id; Longo v. Globe Auto Recycling, Inc.*, 318 Ill. App. 3d 1028, 1038 (2001) ("Courts have held that the legislature did not vest the trial court with discretion in assessing interest under section 2-1303 of the Code. [Citing cases]. Rather, imposition of statutory interest at the rate of 9% from the date the final judgment was entered is mandatory.").

¶ 29 Courts have held "[n]othing less than full, formal tender in compliance with the statute will operate to stop the accrual of interest on the judgment." *Halloran v. Dickerson*, 287 Ill. App. 3d 857, 863 (1997) (citing *Thomas v. Missouri-Illinois R.R. Co.*, 30 Ill. App. 3d 40, 42 (1975)).

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¶ 30 Initially, we note the record does not contain either a report of proceedings or a bystander's report from the hearing conducted on defendant's motion to bar plaintiff from collecting interest on the judgment. Nor does the trial court's order itself explain why the court found it necessary to stop the accrual of postjudgment statutory interest on August 10, 2010.

¶ 31 Plaintiff, as the appellant, bore the burden of presenting a sufficiently complete record of the proceedings at trial in order to support his claim of error, and any doubts that may arise from the incompleteness of the record must be resolved against him on appeal. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). In the absence of a sufficient record, we must presume the trial court's order was in conformity with the law and had a sufficient factual basis. *Id.* Without a transcript of the hearing on defendant's motion to bar interest on the judgment, there is no basis for holding the trial court abused its discretion in determining plaintiff was only entitled to statutory interest up until August 10, 2010, the date defendant tendered a check in an attempt to satisfy the judgment. *Id.* Accordingly, we will not disturb the trial court's findings.

¶ 32 CONCLUSION

¶ 33 We affirm the trial court's denial of plaintiff's Rule 137 motion and the denial of plaintiff's motion to recover the \$200

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mandatory arbitration award rejection fee as a taxable cost.

Based on the incompleteness of the record before us, we also affirm the trial court's finding that plaintiff was only entitled to post-judgment interest under section 2-1303 up until August 10, 2010, when defendant tendered a check in an attempt to satisfy the judgment.

¶ 34 Affirmed.