

No. 1-09-2062

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SECOND DIVISION
January 25, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LEO STOLLER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant)	Cook County
)	
v.)	No. 07 L 5697
)	
VILLAGE OF ELMWOOD PARK, et al.,)	Honorable
)	Charles R. Winkler,
Defendants-Appellees.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Karnezis concurred in the judgment.

ORDER

Held: The plaintiff did not sign an agreed order of dismissal under duress where the evidence in the record does not establish duress or coercion. Because the plaintiff testified that he signed the order freely and voluntarily, and that he was not coerced into signing it, the trial court did not err in denying the plaintiff's motion to vacate the judgment.

The instant appeal is one of many stemming from the divorce of Leo Stoller, the appellant, and Nancy Reich, one of the appellees. Here, Stoller appeals the trial court's July 22, 2009, entry of an agreed order of dismissal signed by Stoller on July 15, 2009. Stoller also appeals the trial court's August 6,

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2009, denial of his motion to reconsider the July 22, 2009, order. Stoller raises three arguments on appeal: (1) whether the trial court erred in granting the July 22, 2009, agreed dismissal order, which he alleges was procured by undue influence, fraud, and coercion; (2) whether the trial court erred by finding in its August 6, 2009, order that there was no undue influence upon Stoller when he signed the agreed order of dismissal; and (3) whether the agreed order of dismissal was valid and enforceable when Stoller's release from incarceration was predicated on his execution of the agreement.

Although Stoller characterizes the underlying case as a "malicious prosecution, false arrest and false imprisonment proceeding filed by Appellant on June 2, 2007," we have not been able to discern the nature of the case brought under docket number 07 L 5697 from the documents contained in the record. The record contains no complaint or answer filed below. While the record does contain trial court orders disposing of motions to dismiss various counts of Stoller's complaint, it does not contain the motions themselves. Because we are limited to the record that an appellant presents us on appeal, we can only consider the arguments and evidence before us – nothing more.

For the following reasons, we affirm.

JURISDICTION

The trial court entered a final judgment on August 6, 2009. Stoller filed his notice of appeal on August 7, 2009. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. February 1, 1994); R. 303 (eff. May 30, 2008).

BACKGROUND

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Sometime prior to July 2009, Leo Stoller filed this case in the circuit court against 14 defendants. However, the record does not reveal the nature of the case, nor does it reveal what actions, if any, the parties took with respect to the case prior to July 2009. We learn from the parties' motions that Stoller signed two copies of an agreed order of dismissal dismissing this case with prejudice on July 15, 2009, during a prove-up hearing in Stoller's divorce proceeding before the Honorable Carole Bellows. Thereafter, the dismissal order was entered on July 22, 2009, by the Honorable Daniel Pierce, from which Stoller appeals. It states as follows:

"AGREED DISMISSAL ORDER

THIS CAUSE COMING on to be heard by agreement of the parties, all parties having notice and the Court being fully advised in the premises and having jurisdiction both over the subject matter and the parties:

IT IS HEREBY ORDERED:

- 1) That this matter, bearing Case No.: 07 L 005697 is hereby
DISMISSED WITH PREJUDICE as to each Defendant.
- 2) Each party shall pay their own fees and costs.

AGREED:

/s/ Leo Stoller, Pro Se

/s/ Joshua Abern, Esq.

/s/ Wendy R. Morgan, Esq."

The record also contains a second Agreed Dismissal Order entered on July 22, 2009, by Judge Pierce, which is substantially the same as the order quoted above. The only difference between the two

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orders lies in who signed them. Stoller and one Lawrence Andolino signed the second order. Otherwise, the language is the same.

On July 16, 2009, the day after he signed the agreed dismissal order and six days before the trial court entered the order, Stoller filed a verified motion to vacate and/or disregard the agreed dismissal order, alleging that the order was produced by coercion and undue influence. In his motion, Stoller asserts that at the time of the July 15, 2009, prove-up hearing, he had been incarcerated for a period of 37 days in the Cook County Jail on a civil contempt charge for failure to comply with an order of protection entered in his divorce case.¹ Stoller further alleged that he was coerced into signing an unconscionable marital settlement agreement and the agreed order of dismissal on July 15, 2009, and that he believed that, apart from signing the documents, there was no other way for him to end his incarceration. In support of this assertion, Stoller pointed to the fact that he signed the letters “u.d.” after his name in order to demonstrate that he was signing the documents under duress. Stoller’s motion contains the following statement, which meets the requirements for verification pursuant to 735 ILCS 5/1-109 (West 2008): “Under penalties as provided by law pursuant to Section 1-109 of the Civil Code of Procedure, the undersigned certifies that the statements set forth in this insterment [sic] are true and correct except as to matters there in [sic] stated to be on information and belief and as to such matter matters [sic] the undersigned certifies as aforesaid that he verily believes the same to be true /s/ Leo

¹We upheld the trial court’s entry of this order of protection, which prohibited Stoller from making internet postings about his wife, his children, their attorneys, and others connected with the divorce case, in *Reich v. Stoller*, No. 09-0846 & 1-09-0956 (cons.) (Nov. 30, 2010) (unpublished order under Supreme Court Rule 23).

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Stoller.”

On July 15, 2009, Judge Bellows had entered a release order stating that “Respondent has purged himself of contempt by making efforts to remove blog and internet materials under his control.” The order conditioned Stoller’s release on his continuing efforts to remove from and keep off of the internet all of the postings prohibited by the order of protection.

On August 6, 2009, Wendy Morgan, the attorney representing Ms. Reich in the divorce proceeding and herself one of the named defendants in the instant case, filed a combined motion to dismiss Stoller’s motion to vacate pursuant to 735 ICL§ 5/2-619.1 (West 2008). In Count I of her motion, made pursuant to section 2-619(a)(9), Ms. Morgan asserted that Stoller had signed the agreed dismissal order freely and voluntarily and without any coercion of any kind. She asserted that he was represented by counsel during the July 15, 2009, prove-up hearing and that Stoller had testified under oath that he was satisfied with that representation. In addition, Ms. Morgan quoted from the report of proceedings of the prove-up hearing, which she attached to her combined motion, presenting Stoller’s testimony that he signed the order as a free and voluntary act, free of any coercion. Ms. Morgan further asserted that “It is also clear that [Stoller] completely and totally” perjured himself on July 15, 2009, when he testified that he was not under any duress or coercion or that he intentionally made false statements in his Motion to Vacate in an attempt to further undermine the integrity of this Honorable Court.” (Emphasis in original.) In Count II, Ms. Morgan claimed that Stoller’s motion to vacate was insufficient as a matter of law because it failed to comply with the requirements of 735 ILC§ 5/2-1401 (West 2008).

The attached report of proceedings from the prove-up hearing before Judge Bellows contained

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the following excerpt from Ms. Morgan's questioning of Stoller while he was under oath:

“Q: And you signed this [marital settlement] agreement?

A: Yes.

Q: Did you do that as a free and voluntary act, correct?

A: Yes, I did.

Q: And did you – were you – did anybody coerce you in any way?

A: No.

Q: And were you under any coercion of any kind?

A: No.

Q: Isn't it a fact, Mr. Stoller, that nobody made any promises to you in exchange for you entering this agreement, and that you signed this agreement as an independent – with respect to this divorce independently; is that correct?

A: That's correct.

Q: And no one made any promises that – to gain any advantage from you from any – for any or from any civil or criminal case; is that correct? Is that correct, Mr. Stoller?

A: That's correct.

Q: Now, Mr. Stoller, you also signed two additional orders to dismiss two

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other cases; is that correct?

A: That's correct.

Q: And you have – you are agreeing to dismiss with prejudice Case No. 07 L 005697; is that correct?

A: That's correct.

Q: And then we're going to do that right after we're done proving this case up; is that correct?

A: I don't know when you're going to do it.

Q: Is that agreeable to you, Mr. Stoller?

A: You can file that whenever you want.

Q: Okay. And you have signed this as a free and voluntary act; is that correct?

A: That's correct.

Q: And nobody coerced you; is that correct?

A: That's correct.

Q: And you understood what you were doing; is that correct?

A: I did.

Q: Okay. And you – and you intend to have this order entered; is that correct? You intend that this order be entered, correct?

A: Pardon me?

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Q: You agree and intend that this order be entered with Judge Winkler;

is that correct?

A: Do I agree that it's going to be entered? I believe that that is what

you're going to do, yes, and –

Q: You agree with that; is that correct?

A: I signed that in the courtroom today.

Q: And you agree that the order will be entered before Judge Winkler; is

that correct?

A: Yes, I do.”

The record on appeal contains no other report of proceedings. In particular, it contains no report of proceedings from July 22, 2009, when the agreed order of dismissal was entered. Nor does it contain a report of proceedings from August 6, 2009, when the trial court entered the second order at issue on appeal in this case.

On August 6, 2009, the Honorable Charles Winkler denied Stoller's motion to reconsider. The handwritten order provides as follows:

“ORDER

This matter on Plaintiff's Motion to Vacate the Dismissal Order

entered 7/22/09, all parties having notice and the court being fully

advised in the premises,

THE COURT HEREBY FINDS:

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(1) That Plaintiff failed to properly file the Motion to

Vacate and failed to pay the appropriate filing fee

(2) The Plaintiff's Motion to Vacate is not properly

before this Court

(3) That there was no undue influence upon Plaintiff

before this Court in signing the order signed on

7/15/09 dismissing this case

IT IS HEREBY ORDERED:

(1) The Dismissal Orders Dismissing [sic] this matter with

prejudice as to all defendants on 7/22/09 shall stand

(2) Plaintiff's oral motion to reconsider is Denied"

Stoller then filed this timely appeal.

ANALYSIS

Stoller raises three arguments on appeal. First, he argues that the trial court erred when it entered an agreed dismissal order in the instant case on July 22, 2009, because the order was procured by undue influence, fraud, and coercion. Second, Stoller maintains that the trial court also erred when it found in its written order dated August 6, 2009, that Stoller was not under any undue influence in signing the agreed order of dismissal. Finally, Stoller argues that agreed dismissal order is not a valid and enforceable agreement because his release from incarceration was predicated on his signing of the agreement. We are not persuaded that the agreed dismissal order is *per se* invalid, nor are we

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persuaded that the trial court erred in entering the agreed order of dismissal or denying Stoller's motion to reconsider.

We consider Stoller's third argument first, because it serves as the foundation for his other arguments. Stoller argues that because he was incarcerated for contempt for failure to comply with what he deems an unconstitutional order of protection without any means of removing the citation, he was under duress when he signed the agreed order of dismissal at issue in this case as well as the marital settlement agreement on July 15, 2009. Stoller alleges that he signed these two documents because he believed that doing so was his only means of procuring his release from incarceration and thus, because his signatures were induced by fraud, coercion, and undue influence, the agreed order of dismissal is *per se* invalid. We review a trial court's grant of a motion to dismiss *de novo*. *Karas v. Strevell*, 227 Ill. 2d 440, 451 (2008).

It is well established in Illinois that duress can consist of undue influence, oppression, or taking undue advantage of the stress of another so that the person is deprived of a meaningful choice. In *re Marriage of Tabassum*, 337 Ill. App. 3d 761, 775 (2007). Indeed, duress and coercion are essentially synonymous. In *re Marriage of Tabassum*, 337 Ill. App. 3d at 775; *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 341 Ill. App. 3d 438, 446 (2003). But in order for acts or threats to constitute duress, they must first be legally or morally wrongful. In *re Marriage of Tabassum*, 337 Ill. App. 3d at 775. Whether such acts or threats amount to duress is determined by an objective, rather than a subjective, test. *Id.* Our supreme court has held that "it is not duress to institute or threaten to institute civil suits, or for a person to declare that he intends to use the courts to insist upon what he believes to be his legal

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rights, at least where the threatened action is made in the honest belief that a good cause of action exists, and does not involve some actual or threatened abuse of process.” *Kaplan v. Kaplan*, 25 Ill. 2d 181, 187 (1962). While courts typically do not review consent decrees, such as an agreed order of dismissal, courts will vacate such decrees on the motion of a party upon a showing of coercion or duress in the making of the agreement. *Thompson v. IFA, Inc.*, 181 Ill. App. 3d 293, 296 (1989).

The person asserting duress bears the burden of establishing, by clear and convincing evidence, that he lacked the quality of mind and meaningful choice essential to making the agreement. *In re Marriage of Tabassum*, 337 Ill. App. 3d at 775; *In re Marriage of Hamm-Smith*, 261 Ill. App. 3d 209, 215 (1994). Stoller has failed to meet this burden.

A November 2009 order of protection entered by Judge Bellows in the divorce proceeding ordered that Stoller remove from the internet various postings that he had uploaded depicting his wife, his children, his wife’s attorney, and other people involved in his divorce case. See *Reich v. Stoller*, No. 09-0846 & 1-09-0956 (cons.) (Nov. 30, 2010) (unpublished order under Supreme Court Rule 23). As a preliminary matter, we note that Stoller had challenged the constitutionality of this order of protection in another appeal before this court, and we upheld the order in *Reich v. Stoller*, No. 09-0846 & 1-09-0956 (cons.) (Nov. 30, 2010) (unpublished order under Supreme Court Rule 23). After Stoller repeatedly failed to comply with this order, on June 8, 2009, the trial court found him in contempt and ordered his incarceration in the Cook County Department of Corrections until he did comply with the order.

As our supreme court has provided, seeking a contempt citation against an opposing party who violates a court order does not generally constitute duress. See *Kaplan*, 25 Ill. 2d at 187. Rather, in

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order for that conduct to constitute duress, it must be shown that the party seeking the contempt citation was abusing or threatening to abuse the judicial process in doing so. *Id.* Stoller has made no such showing.

Stoller maintains that signing the agreed order of dismissal in the instant case and the marital settlement agreement in his divorce case was the only way that he could get out of jail. That is, Stoller contends that Ms. Reich used the contempt order as a means of coercing him both to agree to what he deems an unfair divorce settlement that gave “ ‘everything’ [in] his entire marital estate” to Ms. Reich and to dismiss the instant case against Ms. Reich, her attorney Ms. Morgan, and the 12 other defendants. The record does not support this contention. With regards to the marital settlement agreement, the record does not support Stoller’s allegation that Ms. Reich unfairly received the entire marital estate. To the contrary, the testimony presented at the prove-up hearing established that Ms. Reich received three pieces of real property which she had either purchased prior to her marriage with non-marital funds or inherited prior to the marriage; all three pieces of real estate were non-marital property. In addition, Stoller was granted any and all retirement funds that he had accumulated during the course of the marriage and was not required to make any spousal support payments under the agreement. Stoller testified at the prove-up hearing that the settlement was in line with what he had expected to receive in the divorce. He also testified that he did not believe the agreement to be unconscionable. Most importantly, as noted above, Stoller testified that no one coerced him into signing the settlement agreement and that no one had offered him anything in exchange for signing that agreement.

In addition, Stoller has offered no support for his allegation that Ms. Reich abused the judicial

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process when she sought the contempt citation after Stoller failed to comply with the court's order of protection. See Kaplan, 25 Ill. 2d at 187. Accordingly, we give no credence to Stoller's argument here that he was coerced into signing a marital settlement agreement or that the agreement was unfair or unconscionable.

Stoller's rehashing of the terms of his divorce settlement appears to be an attempt to bolster his claim on appeal that the entire proceeding on July 15, 2009, when he signed both the marital settlement agreement and the agreed order of dismissal, was a venue for fraud, coercion, and undue influence against him by his ex-wife and her attorney. Specifically, Stoller maintains that he could not abate his civil contempt citation and accompanying order of incarceration unless he agreed to dismiss the instant case. Ms. Reich responds that this contention is blatantly untrue: Stoller could have escaped the contempt citation at any time by complying with the trial court's order of protection – by removing the offending postings from the internet. In his reply brief, Stoller argues that he did not have “the keys to his own jail cell” because he could not access the internet while incarcerated. But, in his Emergency Motion to Abate Commitment, which he has attached to his reply brief, Stoller admits that he gave all of his internet pass codes to his attorney and authorized him to remove the postings identified in the trial court's June 8, 2009, order of commitment. Thus, Stoller's argument that he could do nothing while incarcerated to remove the contempt citation is inaccurate at best; his authorized agent, his attorney, had the power to remove the offending posts on his behalf.

In addition, Stoller's testimony during the prove-up hearing belies his argument that he was forced or coerced into signing the agreed dismissal order. As noted above, Stoller testified under oath that he

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was not forced or coerced in any way when he signed that order. Stoller's verified motion to vacate the agreed dismissal order directly contradicts his sworn testimony given at the prove-up hearing. In his motion, Stoller asserted that, despite his testimony to the contrary, he had in fact signed the dismissal order under duress, believing that this action was the only means available to him of ending his incarceration. These two positions are mutually incompatible. As Ms. Reich points out in her brief, Stoller has lied to the court. Either he lied while testifying at the prove-up hearing or he lied in his verified motion to vacate an agreed dismissal order.

As discussed above, Stoller bears the burden of proving by clear and convincing evidence that he signed the agreed order of dismissal under duress. In *re Marriage of Tabassum*, 337 Ill. App. 3d at 775; In *re Marriage of Hamm-Smith*, 261 Ill. App. 3d at 215. The record establishes that Stoller has been untruthful in either his testimony or pleadings before the trial court. We find that Stoller has not met his burden of proof. Accordingly, we cannot find that Stoller signed the agreed order of dismissal under duress.

Now we turn to Stoller's remaining arguments: that the trial court erred in finding that Stoller was not under any undue influence when he signed the agreed order of dismissal and that it erred in upholding the dismissal order. Stoller filed his motion to reconsider the trial court's entry of the agreed order of dismissal and to vacate the judgment pursuant to 735 ILCS 5/2-1203 (West 2008). A party files a motion to vacate a judgment in order to alert the trial court to errors it has made and to afford an opportunity for their correction. *Mryszuk v. Hoyos*, 228 Ill. App. 3d 860, 863 (1992). We review a trial court's decision whether to grant a post-trial motion to vacate a judgment for abuse of discretion. *Mryszuk*,

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228 Ill. App. 3d at 863.

If Stoller had signed the agreed dismissal order under undue influence or duress, then the trial court would have erred in denying Stoller's motion to reconsider. However, as discussed above, we found no evidence in the record of duress. Additionally, we find no evidence in the record of undue influence. Nor has Stoller pointed to any evidence in the record supporting his argument that the trial court abused its discretion.

No report of proceedings prepared pursuant to Supreme Court Rule 323 (Ill. S. Ct. R. 323 (eff. December 13, 2005)) was included with the record on appeal in the instant case. Neither a Bystander's Report nor an Agreed Statement of Facts was submitted as part of the record on appeal either. See Ill. S. Ct. R. 321 (eff. February 1, 1994). Indeed, the only report of proceedings contained in the record consists of the transcript of the July 15, 2009, prove-up hearing that Ms. Morgan attached in support of her combined motion to dismiss Stoller's motion to vacate. Thus, we cannot consider what was said during oral argument at the hearings before the trial court on July 22, 2009, and August, 6, 2009, when it entered the orders at issue in this case. We only know that the trial court had been "advised in the premises" before it explicitly found that Stoller was not under any undue influence when he signed the agreed order of dismissal and entered its order denying Stoller's motion to reconsider.

The appellant bears the burden of presenting a sufficiently complete record on appeal to support his claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Where the record does not include a report of proceedings, particularly where, as here, the trial court states that it was advised on the premises, we will indulge in every reasonable presumption in favor of the order from which appellant

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appeals. *Altaf v. Hanover Square Condominium Association No. 1*, 188 Ill. App. 3d 533, 539 (1989). Thus, we will resolve any doubts arising from the record against the appellant and presume that the trial court's ruling conformed with the law and was supported by the evidence presented below. *Altaf*, 188 Ill. App. 3d at 539; see also *Foutch*, 99 Ill. 2d at 392. Here, because of the deficiency of the record, we cannot say that the trial court abused its discretion in entering its July 22 and August 6, 2009, orders. We therefore find that Stoller signed the agreed order of his own free will and not under duress or undue influence.

Sanctions

Ms. Morgan, as one of the appellees in this case, has requested that we sanction Stoller for his "improper and defamatory conduct" during this appeal. Rule 375(b) provides that this court may sanction a party for filing a frivolous appeal or undertaking an action not in good faith. Ill. S. Ct. R. 375(b) (eff. February 1, 1994). Thus,

"If, after consideration of an appeal or other action pursued in a reviewing court, it is determined that the appeal or other action itself is frivolous, or that an appeal or other action was not taken in good faith, for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting or defending the appeal or other action is for such purpose, an appropriate sanction may be imposed upon any party or the attorney or attorneys of the party or parties." Ill. S. Ct. R. 375(b) (eff. February 1, 1994).

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Rule 375(b) defines a frivolous appeal as one “not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.” Ill. S. Ct. R. 375(b) (eff. February 1, 1994). In determining whether an appeal is frivolous, we employ the following objective standard: an appeal is frivolous “if it would not have been brought in good faith by a reasonable, prudent attorney.” Penn v. Gerig, 334 Ill. App. 3d 345, 357 (2002), quoting Dreisilker Electric Motors, Inc. v. Rainbow Electric Co., 203 Ill. App. 3d 304, 312 (1990). In addition, “An appeal or other action will be deemed to have been taken or prosecuted for an improper purpose where the primary purpose of the appeal or other action is to delay, harass, or cause needless expense.” Ill. S. Ct. R. 375(b) (eff. February 1, 1994).

After reviewing the record, we believe that this appeal is frivolous and was taken for an improper purpose, namely, to harass and cause needless expense to the appellees, in violation of Supreme Court Rule 375(b). Ill. S. Ct. R. 375(b) (eff. February 1, 1994). As detailed above, all of Stoller’s arguments were either without foundation or unsupported by the necessary record. We do not believe that a reasonable, prudent attorney would have brought this appeal. In addition, Stoller’s briefs appear to be an attempt to re-litigate matters from his long since settled divorce proceeding. His briefs and record are so focused on what occurred during the divorce case that, as discussed above, we could not even discern the nature of the underlying action in the instant appeal. For example, Stoller spends a significant portion of his reply brief accusing Ms. Morgan, who represented his ex-wife during the divorce proceeding, of committing fraud upon the court based upon her actions during that case. As noted above, there are 14 appellees in this case; however, Stoller only mentions two: his ex-wife and her attorney. We have not been

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able to ascertain from the record what role the other 12 appellees played in the instant case. Thus, after carefully reviewing the record, we believe that Stoller filed this appeal to harass the appellees, and in particular to harass Ms. Reich and Ms. Morgan.

We are mindful of prior rulings declaring that sanctions be imposed only in the most egregious of circumstances. *Amadeo v. Gaynor*, 299 Ill. App. 3d 696, 705 (1998). We find that in this case such egregious conduct and circumstances have been shown.

Accordingly, we grant Ms. Morgan's request for sanctions and remand that matter to the circuit court of Cook County to conduct an evidentiary hearing and enter judgment for fair and reasonable attorneys fees in favor of appellee.

For the reasons explained above, we also believe that the other 13 appellees in this case are entitled to sanctions against Stoller. Because the court initiates this sanction, Stoller must have an opportunity to show cause why such a sanction should not be imposed. Ill. S. Ct. R. 375(b) (eff. February 1, 1994); *Sterling Homes, Ltd., v. Rasberry*, 325 Ill. App. 3d 703, 709 (2001). We therefore remand to the circuit court to enter a rule to show cause upon Stoller to show cause, if he has any, why sanctions and attorneys fees should not be imposed under Rule 375(b). See *Sterling Homes*, 325 Ill. App. 3d at 709. The circuit court of Cook County shall conduct an evidentiary hearing on that matter and the entry of judgment for fair and reasonable attorneys' fees to the 13 appellees as a sanction under Rule 375(b), if found to be warranted.

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CONCLUSION

Accordingly, for the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

Affirmed and remanded with directions..