

No. 1-09-2216

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIRST DIVISION  
June 13, 2011

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

IN RE THE MARRIAGE OF:	)	Appeal from the
CHERYL DESJARDINS,	)	Circuit Court of
	)	Cook County.
Petitioner,	)	
	)	
and	)	
	)	
ROBERT DESJARDINS,	)	
	)	
Respondent.	)	
_____	)	
	)	
ROSAIRE M. NOTTAGE d/b/a	)	
NOTTAGE AND WARD,	)	
	)	
Plaintiff/Appellee,	)	
	)	
v.	)	Nos. 03 D 1389 &
	)	07 M1 177241
CHERYL DESJARDINS,	)	
	)	
Defendant.	)	
_____	)	

No. 1-09-2216

GRUND & LEAVITT, P.C.,	)	Honorable
	)	Jeanne Cleveland
Additional Party Respondent/	)	Bernstein,
Appellant.	)	Judge Presiding.

---

PRESIDING JUSTICE HALL delivered the judgment of the court.  
Justices Lampkin and Rochford concurred in the judgment.

**O R D E R**

HELD: Respondent/appellant law firm waived issue as to whether trial court erred as a matter of law in imposing sanctions against it under Supreme Court Rule 137 (155 Ill. 2d R. 137), for filing a false pleading regarding a jury demand.

The law firm of Grund & Leavitt, P.C., (Grund), appeals from a judgment imposing \$20,000 in sanctions against it for violating Supreme Court Rule 137 (155 Ill. 2d R. 137), which allows sanctions for filing false or inadequately investigated pleadings. The primary issue on appeal is whether the trial court abused its discretion in imposing the sanctions against Grund for allegedly filing a false pleading regarding a jury demand. For the reasons that follow, we affirm.

This case has its genesis in a dissolution of marriage action between Cheryl Desjardins and Robert Desjardins. On February 10, 2003, Cheryl filed a petition for dissolution of marriage in case no. 03 D 1389. At that time, she was represented by the law firm of Davis Friedman, LLP. On December

No. 1-09-2216

15, 2004, the domestic relations court allowed Davis Friedman, LLP to withdraw its appearance on behalf of Cheryl.

Rosaire M. Nottage, doing business as the law firm of Nottage and Ward (Nottage), represented Cheryl in the divorce proceedings from December 15, 2004, to December 2, 2005, after which she was allowed to withdraw as Cheryl's counsel. On January 9, 2006, Nottage filed a petition for "setting final fees and costs" against Cheryl for the fees and costs it incurred during its representation of her in the divorce proceedings.

On May 2, 2007, Nottage withdrew the petition and thereafter initiated a breach of contract action against Cheryl in the municipal court (case no. 07 M1 177241) for the unpaid attorneys fees and costs. On September 10, 2007, Grund filed its appearance on behalf of Cheryl in the breach of contract action in municipal court.

On its appearance form, Grund checked the box that read "General Appearance." Grund also paid the fee for a general appearance. The box for "Jury Demand" was left unchecked and no payment was made for the jury demand fee. In addition, the notice of filing that accompanied the appearance form did not indicate the filing of a jury demand.

No. 1-09-2216

The breach of contract action in the municipal court was initially assigned to Judge Anthony L. Burrell, in a non-jury courtroom. In November 2007, Judge William D. Maddux granted Cheryl's motion to consolidate the breach of contract action into the divorce proceedings.

The consolidated case was transferred to Judge Marya Nega in domestic relations. On June 10, 2008, Judge Nega entered separate orders; one order setting the breach of contract action for trial on August 8, 2008, and the other order setting the divorce proceeding for trial on November 18, 2008.

On August 8, 2008, Judge Nega denied Cheryl's oral motion to continue the breach of contract matter until the trial date set for the divorce proceeding. The judge then transferred the breach of contract matter to Judge John O. Steele for a hearing, *instanter*. Cheryl filed a motion for substitution of judge as a matter of right, which was granted.

Later that same day, August 8, 2008, the case was assigned to Judge Jeanne Cleveland Bernstein in domestic relations. Following the arguments on Cheryl's oral motion for a continuance, Judge Bernstein denied the motion and ordered the parties to proceed to trial on the breach of contract matter that

No. 1-09-2216

same day.

Grund refused to proceed with the trial, arguing, among other things, that Judge Nega had improperly unconsolidated the breach of contract action and the divorce proceedings. Grund left the courtroom; Cheryl was not present in the courtroom. Nottage remained in the courtroom and proceeded to a bench trial before Judge Bernstein. The judge awarded judgment in favor of Nottage and against Cheryl for attorneys fees and costs in the amount of \$58,752.61.

On August 18, 2008, Grund filed on Cheryl's behalf, a "Motion to Vacate Orders Entered on August 8, 2008 and for Other relief." In the motion, Grund argued, among other things, that Cheryl was denied her constitutional right to a jury trial.

On October 2, 2008, following a hearing on Cheryl's motion to vacate, and in reliance upon Grund's arguments that it had properly perfected its jury demand in the breach of contract matter, Judge Bernstein vacated her prior judgment awarding attorneys fees and costs in favor of Nottage and then transferred the breach of contract matter back to the municipal court for a jury trial.

On October 22, 2008, Nottage filed a motion asking Judge

No. 1-09-2216

Bernstein to reconsider her October 2nd ruling. Nottage also requested the judge to impose sanctions against Cheryl and Grund pursuant to Supreme Court Rule 137. Nottage requested the sanctions based on its contention that contrary to the arguments Grund made in its motion to vacate, Grund had never actually filed a jury demand in the breach of contract action.

Nottage argued that neither Cheryl nor Grund had ever made or perfected a jury demand or paid the requisite fee for a jury demand. Nottage further argued that prior to their motion to vacate, neither Cheryl nor Grund had ever raised the issue of a jury demand.

On December 31, 2008, Grund filed a response to Nottage's motion to reconsider. Attached to the response as Exhibit 1 was a purported copy of the appearance and jury demand Grund claimed it filed in the breach of contract action in the municipal court on September 10, 2007. Grund alleged that Exhibit 1 was a copy of the same original appearance and jury demand Nottage had attached to its motion to reconsider as Exhibit C.

Review of the record shows that contrary to Grund's allegations, Exhibit 1 was actually an altered version of the original appearance. The original appearance was date-stamped

No. 1-09-2216

September 10, 2007, and there was a check-mark in box for general appearance. However, there was no check-mark in the box requesting a jury demand and there was no notation showing payment of jury fees.

In contrast, the altered appearance document not only included the original date-stamp of September 10, 2007, but it also included an additional date-stamp of December 11, 2008. The altered document also included a check-mark in the box requesting a jury demand and it bore a file stamp from the clerk's office with the notation "Twelve Jurors Jury."

Review of the record also shows that Grund did not pay the required jury fee until December 11, 2008, some four months after the case was set for trial on the matter and sixty days after the case had been decided. Grund had paid the jury fee without notice to Nottage and without prior leave of court.

On January 13, 2009, Judge Bernstein conducted a hearing on Nottage's motion for reconsideration. The judge concluded that Grund's allegations concerning the jury demand were false. The judge stated in part:

"there was not a valid jury demand. There wasn't a request to do one, and there was not a payment of the fees

No. 1-09-2216

\*\*\* [a]nd the fact that you rushed in three weeks ago and paid a jury demand without leave of court, does not bootstrap your jury demand.

Your pleadings were false; your representations were false at that time. Now, when you realized that they were false, you ran in and tried to bootstrap them up. Whatever you did in December, you did not have leave of court. You do not have a jury demand at this time. You did not have it at that trial."

The judge further stated:

"I think I was lied to. I think I was misled. I'm a little disturbed about it. \*\*\* Exhibit 1 is not what you represented it to be. It was an altered form. It was not the one that was filed in September."

Judge Bernstein vacated her order of October 2, 2008, she reinstated the attorneys' fees awarded to Nottage, and she granted 137 sanctions against Grund, with leave for Nottage to prove up the sanctions.

On March 13, 2009, Judge Bernstein conducted a hearing on Grund's motion requesting the judge to reconsider her ruling imposing sanctions. In denying the motion and upholding the



No. 1-09-2216

sanctions, the judge stated in part:

"The sanctions are because you came in and you misrepresented the facts and I vacated my order and I attempted to send it back to municipal so you could have your constitutional right to a jury that you hadn't perfected your jury demand on, unbeknownst to me, that's what I'm sanctioning you on. \*\*\* There were certain representations before this Court that caused this Court to respond in a way that I wouldn't have had the truth been told."

Judge Bernstein ultimately ordered sanctions in the amount of \$20,000 against Grund, payable to Nottage. This appeal followed.

#### ANALYSIS

Grund first contends the trial court erred as a matter of law in sanctioning it under Rule 137, because this rule does not permit the sanctioning of a law firm. We do not reach this issue since we have determined that Grund has waived the issue for appellate review. See *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536, 662 N.E.2d 1248 (1996) ("[i]t is well settled that issues not raised in the trial court are deemed waived and may

No. 1-09-2216

not be raised for the first time on appeal").

"Rule 137 dictates that litigants and attorneys have an affirmative duty to conduct an inquiry of facts and the law prior to filing an action, pleading, or other paper." *North Shore Sign Company, Inc. v. Signature Design Group, Inc.*, 237 Ill. App. 3d 782, 789, 604 N.E.2d 1157 (1992), citing *Couri v. Korn*, 202 Ill. App. 3d 848, 855, 560 N.E.2d 379 (1990).

Rule 137 requires in relevant part that an attorney or litigant who signs a pleading, motion or other paper certify that he or she has read the document, has made a reasonable inquiry into its basis, and believes that 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 cause unnecessary delay or needless increase in the cost of litigation." 155 Ill. 2d R. 137; *North Shore Sign Company, Inc.*, 237 Ill. App. 3d at 789-90.

The purpose of the rule is not to penalize an unsuccessful party but to deter frivolous pleadings or suits with no basis in law. *Miller v. Bizzell*, 311 Ill. App. 3d 971, 976, 726 N.E.2d 175 (2000). The determination of whether to impose sanctions under

No. 1-09-2216

Rule 137 rests within the sound discretion of the trial court.

Edwards v. City of Henry, 385 Ill. App. 3d 1026, 1034, 924 N.E.2d 978 (2008).

There is a division of opinion as to whether law firms can be subject to sanctions under Rule 137 for the misconduct of their attorneys. See Medical Alliances, LLC v. Health Care Service Corp., 371 Ill. App. 3d 755, 757-58, 863 N.E.2d 1169 (2007) (finding that the plain language of Rule 137 does not permit signing attorney's firm to be sanctioned); compare with Brubakken v. Morrison, 240 Ill. App. 3d 680, 686-87, 608 N.E.2d 471 (1993) (finding that law firm and its associate were jointly and severally liable for associate's conduct); Hernandez v. Williams, 258 Ill. App. 3d 318, 321-22, 632 N.E.2d 49 (1994) (same result as in Brubakken); see generally J. Parness, Sanctioning Firms For Lawyers' Frivolous Filings, 95 Ill. B.J. 490 (2007).

We need not resolve this difference of opinion at this time because we conclude that Grund has waived the issue as to whether law firms can be subject to sanctions under Rule 137 for the misconduct of their attorneys, by failing to raise the issue before the trial court. Haudrich, 169 Ill. 2d 536. However,

No. 1-09-2216

before leaving this matter, we observe that when Judge Bernstein informed counsel that she was imposing Rule 137 sanctions against both Grund and its client Cheryl, counsel for Grund responded, on more than one occasion, that the firm had agreed to indemnify Cheryl in the event she became liable for sanctions; counsel further stated, "[w]e will pay whatever the 137 sanctions might be."

Grund next contends the trial court erred in finding that it had not perfected its jury demand. We disagree.

Section 2-1105(a) of the Illinois Code of Civil Procedure provides that a "defendant desirous of a trial by jury must file a demand therefor not later than the filing of his or her answer. Otherwise, the party waives a jury." 735 ILCS 5/2-1105(a) (2004). "That is, a defendant who desires a jury trial must file a jury demand 'when the answer is due.' " *Laba v. Hahay*, 348 Ill. App. 3d 69, 71, 810 N.E.2d 82 (2004). In this case, Grund filed its answer on December 11, 2007, but it did not file its jury demand or pay the required jury fee until a year later on December 11, 2008. Therefore, Grund never perfected its jury demand. See *People ex rel. Mehoczky v. Kelley*, 137 Ill. App. 3d 1074, 1077, 485 N.E.2d 588 (1985) (explaining that payment of jury fee at

No. 1-09-2216

time of filing the demand was mandatory).

Finally, we reject Grund's good-faith argument. In order to satisfy Rule 137, a litigant or attorney is required to make a "reasonable inquiry" into the facts alleged in a pleading.

*Sterdjevich v. RMK Mgmt. Corp.*, 343 Ill. App. 3d 1, 19, 796

N.E.2d 1146 (2003). Conduct under Rule 137 is assessed

objectively (reasonableness under the circumstances at the time of filing) so that an honest belief in the questioned allegations is no defense. *Sterdjevich*, 343 Ill. App. 3d at 20.

In imposing the Rule 137 sanctions against Grund, Judge Bernstein stated in part:

"Considering the number of times GRUND advocated the false representation, (well beyond the point at which it became clear that the jury demand allegation was false), the pleadings filed by GRUND (not signed by CHERYL), the time and effort put in by NOTTAGE, the costs incurred by NOTTAGE in the printing of the Court transcripts, the delay of Court proceedings and causing the Court to vacate valid orders, the Court finds that Grund and Leavitt, P.C. are in violation of Supreme Court Rule 137, in that they knowingly filed a false claim."

No. 1-09-2216

Upon our review of the record and the relevant pleadings, we believe that Judge Bernstein's findings and conclusions were not an abuse of discretion. Grund's good-faith arguments have no merit.

Accordingly, we affirm the judgment of the circuit court.

Affirmed.