No. 2—10—0317
Order filed February 1, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MONIQUE McGRATH,	)	Appeal from the Circuit Court of Lake County.
Petitioner-Appellee,	)	
and	)	No. 06—D—1334
GARY McGRATH,	)	Honorable Jorge L. Ortiz,
Respondent-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgement of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

Held: The trial court did not err in summarily dismissing respondent's section 2—1401 petition where a post-decree agreement had already resolved some of respondent's claims, and remaining claims that petitioner hid or dissipated marital assets were belied by court filings.

The trial court did not err in imposing Rule 137 sanctions where respondent's claims in his petition were shown to be false by other court filings.

We reject petitioner's request to impose Rule 375(b) sanctions. Although we conclude that respondent's argument that a hearing is required for each section 2—1401 petition is unavailing, the argument is not entirely without merit.

Respondent, Gary McGrath, appeals from the trial court's order granting petitioner's, Monique McGrath's, motion to strike and dismiss Gary's section 2—1401 petition (735 ILCS 5/2—1401 (West 2008)), wherein he argued that the parties' marital settlement agreement was unconscionable. Gary also appeals from the trial court's order granting Monique's motion for sanctions under Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). We affirm.

I. BACKGROUND

The parties married on May 24, 1980. During the marriage, the parties had three children: (1) Brennan (born in 1982); (2) Matthew (1984); and (3) Samantha (1992). On March 14, 2008, the trial court entered a judgment dissolving the marriage and incorporating the parties' marital settlement agreement (MSA). The MSA provides, in part, that the parties share joint custody of Samantha and that Samantha's primary residence be with Gary. The parties agreed that, in light of Gary's superior earning capacity, Monique's waiver of maintenance, and other financial provisions, Gary had sufficient income and assets to provide for Samantha's support. Thus, a deviation from the child support guidelines was deemed appropriate and Monique was not required to pay Gary child support. The agreement also provided that each party represented that they fully disclosed all income and assets from all sources.

The assets of the marital estate were divided as follows. Monique received: (1) the Long Grove marital residence (unencumbered by any debt); (2) $118,903.75 in various savings vehicles; (3) $300,000 in non-taxable payments from Gary to be paid in monthly installments over five years (secured by an interest in Arlington Heights commercial property); (4) $82,789 in various savings vehicles titled in her name; (5) a 2008 Honda Accord vehicle; and (6) the personal property in the marital residence.

Gary received: (1) the Lincolnshire townhouse; (2) the Arlington Heights commercial property (encumbered by a $375,000 First Midwest Bank mortgage)[1]; (3) the Suburban Press, Inc., business; (4) $239,171 in various savings vehicles; (5) a 2004 Hummer H2 vehicle; (6) a 2002 Cruiser Express boat; and (7) the personal property in the Lincolnshire townhouse.

On March 2, 2009, Gary petitioned to vacate the MSA (735 ILCS 5/2—1401 (West 2008)), arguing that, due to the parties' economic circumstances and Monique's failure to fully disclose assets, the agreement was unconscionable. 750 ILCS 5/502(f) (West 2008). Gary specifically alleged that, due to the economic downturn, he was unsuccessful in attempts to refinance and raise capital to operate his business and to pay for living expenses. He further alleged that he lost $35,000 due to Monique's unreasonable (*i.e.*, 85-day) delay in signing required documents so that he could refinance and remove Monique's name from loans secured by the commercial property. Gary alleged that his attorneys presented to him the MSA and instructed him to sign it and that he was pressured to do so; he further alleged that he believed at the time that the MSA provided as his accountants had instructed his attorneys, but that, in fact, the agreement did not contain the promised language. Further, Gary alleged that Samantha, the parties' minor daughter, had recently incurred

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[1]Under the MSA, Monique was to quitclaim any interest in the property. Gary was to, within 90 days, release Monique from any encumbrances on the property or refinance the mortgage and release Monique from the mortgage and all loans and any equipment owned by the Suburban Press business. Further, upon Gary's release or refinancing, Gary was to provide Monique an assignment of beneficial interest or a memorandum of judgment to secure Monique's interest in the $300,000 payments. Gary was prohibited from borrowing more than $600,000 against the property until Monique received all payments pursuant to the MSA.

over $130,000 in medical expenses and that current expenses for her treatment exceeded $4,200 per month (in addition to $5,000 per semester for private school). He asserted that it was unconscionable for these debts to be allocated to him because he had no funds to pay them and to operate his business; due to the economic downturn, his net income substantially decreased (in 2008 and 2009).

As to his fraud allegations, Gary alleged that, after the March 2008 dissolution, he learned that, sometime during their marriage, Monique had fraudulently concealed marital assets by hiding bank accounts and dissipating accounts. Specifically, he alleged that: (1) a First Midwest Bank certificate of deposit (account ending in 0157) the value of which Monique had disclosed as $20,000 was actually worth over $110,000[2]; (2) a 401(k) plan account listed as worth over $131,000 was actually worth only $75,000 at distribution time; Gary used it to pay his daughter's medical bills; (3) an ING annuity account ending in 339—OW and valued at $67,498 was worth only $62,000 upon distribution; (4) a Pan American life insurance policy valued at $35,000 was worth only $12,000 upon distribution; (5) Monique failed to disclose several bank accounts, including First Midwest Bank accounts for $14,739 and a First Midwest Bank checking account (ending in 2999) reflecting over $16,000 in deposits and over $11,000 in withdrawals[3]; (6) Monique took a $5,000 payment from her father intended for Suburban Press and converted it or kept it as a certificate of deposit in her name; and (7) Monique dissipated or hid $39,539 from an insurance claim in July 2007. Gary

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[2]Gary attached as an exhibit a copy of a certificate of deposit receipt for an account entitled the "Monique M. McGrath Revocable Trust" with a January 23, 2006, issuance date and a April 23, 2007, initial maturity date.

[3]Gary attached as an exhibit a copy of the first page of a January 18, 2007, bank statement.

argued that Monique received an unfair portion of the marital estate and that forcing Gary to pay her $4,166 per month (plus a final payment of $54,206 on the 60th month) was unconscionable.

In an affidavit, Gary stated that he signed the MSA, believing that it contained what he was told it contained. Thereafter, Gary discovered there was a $600,000 cap on the loan amount from First Midwest Bank; the cap prevented him from obtaining a 30-year loan. Gary had expected to receive $200,000 after expenses and to reduce his monthly payments from $16,000 per month to $6,000 per month (by extending the loan repayment period from 5 to 30 years). Gary further stated that he re-applied for the loan in December 2008, but his application was denied. He asserted that the MSA was unconscionable because he could not obtain financing to run his business and he is experiencing severe financial problems as a result and due to his daughter's medical expenses. Gary stated that the MSA was also unconscionable because Monique had about $250,000 in various investments, bank accounts, and life insurance policies that she never disclosed and hid and that Gary's attorneys never discovered through issuing subpoenas.

On April 8, 2009, Monique moved to strike and dismiss Gary's petition under a combined motion pursuant to section 2—619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2—619.1 (West 2008)), seeking relief under sections 2—615 and 2—619 of the Code. She alleged that, in September 2008, Gary petitioned to rescind or modify the MSA and that the parties subsequently resolved Gary's petition in the form of a post-decree agreement dated October 6, 2008. Monique alleged that Gary's 2009 section 2—1401 petition made virtually the same allegations as his 2008 petition to rescind. Monique attached both documents to her motion. Those documents stated as follows.

In Gary's petition to rescind,[4] Gary alleged that, pursuant to the MSA, he was to provide Monique (within 90 days after the dissolution judgment) releases from the mortgage and equipment loans on the commercial property. He was prohibited from borrowing more than $600,000 against the commercial property until such time as Monique had received all payments due to her pursuant to the MSA. Gary argued that the $600,000 limitation was unnecessary to protect Monique's interest because he had already agreed that his obligation to provide Monique with $300,000 would not be discharged in bankruptcy; thus, his obligation was guaranteed. Gary further alleged that Monique unreasonably delayed signing required documents for Gary to refinance loans; that he had incurred over $130,000 in medical expenses for Samantha's illness; and that Monique had fraudulently concealed marital assets and dissipated bank accounts. The accounts/monies he referenced were: (1) First Midwest Bank accounts ending in 2999 and 0157; (2) a 401(k) plan; (3) an ING annuity account ending in 339—OW; (4) a Pan American life insurance policy; and (5) monies from an insurance claim.

The October 6, 2008, post-decree agreement provides that the parties agreed that, in lieu of monthly payments by Gary to Monique (*i.e.*, $4,166 for 59 months and a final $54,206 payment), Gary would refinance the Arlington Heights real property (that he was awarded in the MSA) and pay Monique $235,000 through the refinancing. This payment was to relieve Gary of any (including the

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[4]Gary concedes that, other than as exhibits attached to Monique's motion to strike and dismiss, the record on appeal does not include the petition to rescind, notice of motion, or appearance. He provides no explanation for their absence, asserting only that he withdrew the motion date without prejudice. Also, Gary states that, in September 2008, he retained a substitute attorney who filed the petition to rescind.

aforementioned monthly) payments due Monique, and Monique agreed to provide the release to the title company contemporaneously with the refinancing in order for the refinancing to be completed. The post-decree agreement further provided that the document did not change any other terms of the divorce decree and that it was to remain in effect until November 1, 2008, after which, if Monique had not received the $235,000, the agreement would be null and void.[5]

Monique further alleged in her motion to strike and dismiss Gary's 2—1401 petition that she agreed in the post-decree agreement to accept over $52,000 less than what was provided in the MSA and that, in exchange, Gary refinanced the Arlington Heights commercial property, which he now owns free and clear from any claim or interest by Monique. Monique alleged that Gary's 2—1401 petition made virtually the same allegations as his petition to rescind, which he did not reference in the petition. Likewise, Gary did not mention the post-decree agreement. Monique argued as to the section 2—615 aspect of her motion that Gary's petition must be stricken and dismissed because it was devoid of factual support for his claims and because certain issues were moot because they were resolved in the post-decree agreement. Addressing the First Midwest Bank certificate of deposit, Monique asserted that it was awarded to her in the dissolution judgment and that the copy of the statement Gary attached to his petition was dated two years prior to the judgment. She also complained that the insurance claim was paid eight months before entry of the judgment and that the statement Gary attached to his petition was dated one year prior to the judgment and did not constitute evidence of dissipation. Finally, Monique asserted as to Gary's claim that he had no funds

[5]Gary asserts that he paid off Monique's lien on the commercial property pursuant to the post-decree agreement (drafted by Monique's attorneys). Gary signed the agreement, but claims that his substitute attorney was not notified of it.

to pay Samantha's private school or medical costs that such claim was not the proper subject of a section 2—1401 petition.

Monique also asserted as to the section 2—619(a)(9) aspect of her motion that Gary's petition was barred by an affirmative matter that defeated the claim for relief, namely, the post-decree agreement. She asserted that: (1) Gary failed to disclose his previously-filed petition to rescind and that the parties reached an agreement memorialized in the post-decree agreement; and (2) Gary failed to advise the court that he had already refinanced the Arlington Heights commercial property and paid Monique the lump sum payment due her under the judgment (reduced by $52,502), and that Gary owns the property free from any claim or interest by Monique.

Gary filed a response to Monique's motion to dismiss, arguing that he was unable to refinance his commercial loan, that Monique hid or dissipated marital assets, and that he had incurred significant medical expenses. He attached no affidavits or other documents to his response.

On May 1, 2009, Monique moved for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994), asserting that Gary's 2—1401 petition to vacate was specious, not grounded in law or fact, and, thus, sanctionable. She attached to her motion: (1) a copy of Gary's January 12, 2007, subpoena to First Midwest Bank requesting records of all accounts held for himself, Monique, and Suburban Press; (2) Gary's response to a document request, listing, *inter alia*, First Midwest Bank accounts ending in 0157 and 2999; (3) Gary's response to interrogatories, listing various investments, including the foregoing accounts; and (4) a copy of an August 31, 2007, trial court order

directing that $10,000 (of $31,586[6]) in homeowners' insurance proceeds be disbursed to Monique to commence repairs of water damage to the marital residence.[7]

On June 25, 2009, following argument, the trial court denied Monique's motion to strike and dismiss, finding that a section 2–1401 motion is not subject to a motion to dismiss[8] and granted Monique time to move for summary judgment. Monique filed her summary judgment motion on July 13, 2009, essentially raising the same arguments contained in her motion to strike and dismiss Gary's 2—1401 petition. Monique attached to her motion her own affidavit, in which she stated as follows. The petition to rescind was withdrawn in exchange for the post-decree agreement. Under the post-decree agreement, Monique agreed to accept a lump-sum payment of $235,000 to be paid by November 1, 2008, in lieu of $300,000 paid out over five years as set forth in the MSA. Thus, she agreed to an amount $52,502 less than what was contained in the MSA. Gary owns the property free from any claim or interest by Monique. The First Midwest Bank certificate of deposit account ending in 0157 was awarded to Monique under the MSA, and the account ending in 2999 was Monique's checking account that she opened after the parties' separation. "The account was closed as of the statement ending February 16, *2007*, and Gary was provided this information during the pre-decree discovery process." (Emphasis in original.) The funds Monique received from the

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[6]The order was issued in response to a petition Monique filed seeking to compel Gary to endorse insurance checks for repairs to the marital residence. Monique attached a copy of her petition to her motion for sanctions.

[7]The court order further reflects that all but $10,000 of the insurance proceeds was to be held in escrow until further order of the court.

[8]This finding is incorrect. See *People v. Vincent*, 226 Ill. 2d 1, 14-18 (2007).

insurance claim were the subject of her petition, filed August 31, 2007, for temporary relief to compel Gary to endorse insurance checks for repairs to the marital residence.

On July 13, 2009, Monique moved to reconsider the denial of her motion to dismiss. Following argument, the trial court, on August 28, 2009, dismissed with prejudice Gary's 2—1401 petition to vacate (and thus granted Monique's motion to reconsider). The court found that the following affirmative matter barred Gary's petition: the post-decree agreement; Gary's responses to the notice to produce; answers to interrogatories; pleadings; and court orders.

Gary moved, on September 28, 2009, to reconsider the dismissal of his 2—1401 petition, arguing that a 2—1401 petition to vacate a marital settlement agreement because it is unconscionable may not be dismissed and that he was entitled to a hearing. He attached to his motion an amended 2—1401 petition, along with new exhibits, and requested that the court allow him to file the amended petition and grant him leave to conduct discovery.[9]

On October 7, 2009, a hearing was held on Monique's May 1, 2009, motion for sanctions and Gary presented his September 28, 2009, motion to reconsider. The court noted that Gary did not file a written response to Monique's sanctions motion. In granting Monique's motion, the court found that: (1) Gary's 2—1401 petition was a false and frivolous pleading and that Gary's conduct was an egregious abuse of the court; (2) if Gary had reviewed the court file, he would have known that his petition allegations were false; (3) Monique's attorney fees and costs incurred in defending against the petition were reasonable and necessary (for the reasons she set forth in her motion for sanctions); and (4) the accounts Gary alleged Monique had concealed were disclosed in his response to the notice to produce and the matrimonial interrogatory answers. The court ordered that, within 60 days,

[9]Gary asserts that the court denied his request to file the amended 2—1401 petition.

Gary pay Monique $11,578.75 as a sanction and for her attorney fees and costs. A hearing on Gary's motion to reconsider was continued.

On November 6, 2009, Gary filed a motion to reconsider the trial court's October 7, 2009, sanctions order. On December 4, 2009, following argument, the court denied Gary's September 28, 2009, motion to reconsider (the dismissal of his 2—1401 petition), finding that Gary failed to present any new evidence, changes in the law, or errors in the court's application of the law.

On December 14, 2009, Monique petitioned for a rule to show cause, arguing that Gary had refused to comply with the court's October 7, 2009, order. 750 ILCS 5/501 (West 2008). Also on that date, she petitioned for attorney fees and costs, seeking $2,196.75. 750 ILCS 5/508(B) (West 2008).

On February 5, 2010, the court issued a contempt order against Gary and sentenced him to six months in the Lake County jail, but stayed the sentence until February 26, 2010. Also on February 5, 2010, following argument, the court denied Gary's November 6, 2009, motion to reconsider the court's October 7, 2009, sanctions order. It found that: (1) there was no change in the law and no newly-discovered evidence; (2) the court did not err in applying the law; and (3) Gary's allegations in his motion to vacate were false and that there was a failure to make reasonable inquiry of the court record and a failure to review the court file.

On February 26, 2010, a hearing was held on Monique's petition for attorney fees and costs and for status on Gary's purge of the contempt finding. The court discharged the rule to show cause, and, upon finding that the fees and costs incurred in the preparation and litigation of the petition for rule to show cause and in defense of Gary's motions to reconsider were fair and reasonable and that

the motions needlessly increased the costs of the litigation, the court entered a $3,770.17 judgment against Gary and in favor of Monique for the attorney fees and costs. Gary appeals.

II. ANALYSIS

Preliminarily, we address Monique's argument that Gary's statement of facts in his appellant's brief contains falsehoods and allegations unsupported by the record and that Gary frequently fails to cite to the record on appeal. Supreme Court Rule 341(h)(6) (210 Ill.2d R. 341(h)(6)) provides that the statement of facts shall contain the facts necessary to an understanding of the case, stated accurately and fairly, without argument or comment, and with appropriate reference to the pages of the record. We agree with Monique that portions of Gary's statement of facts are in violation of the rule. Rather than strike the entire statement of facts, however, we will disregard the portions that violate the rule and admonish Gary's counsel to comply with the supreme court rules in the future. *Village of Roselle v. Commonwealth Edison Co.*, 368 Ill. App. 3d 1097, 1103 (2006).

A. Section 2—1401 Petition

Turning to the merits of this appeal, Gary argues first that the trial court abused its discretion in dismissing his 2—1401 petition to vacate the MSA, in which he argued that the agreement was unconscionable. Gary asserts that the court should have held an evidentiary hearing on his petition to determine whether the MSA was unconscionable. We reject Gary's argument.

Section 2—1401 provides a procedure by which a judgment may be vacated after 30 days of its entry. 735 ILCS 5/2—1401(a) (West 2008). To be entitled to relief under section 2—1401, the petitioner must affirmatively set forth specific allegations supporting: (1) a meritorious cause of action; and (2) due diligence in presenting both the action and the section 2—1401 petition for relief.

Salazar v. Wiley Sanders Trucking Co., 216 Ill. App. 3d 863, 870 (1991). The petitioner must prove by a preponderance of the evidence his or her right to the relief sought. *Id.* at 870. Section 2—1401 relief is appropriate where a settlement agreement is unconscionable or was entered into because of duress, coercion, or fraud. *In re Marriage of Hoppe*, 220 Ill. App. 3d 271, 285 (1991). However, "section 2—1401 is not to be utilized in order to protect a litigant from the consequences of his own mistakes or his counsel's negligence." *Gayton v. Levi*, 146 Ill. App. 3d 142, 148 (1986).

Contrary to Gary's assertion that such rulings are reviewable for an abuse of discretion, the *dismissal* of a 2—1401 petition is subject to *de novo* review. *People v. Vincent*, 226 Ill. 2d 1, 14, 18 (2007). We note that Monique brought her motion under section 2—619.1 of the Code as a combined motion seeking relief under sections 2—615 and 2—619 of the Code. A section 2—615 motion challenging a 2—1401 petition admits all well-pleaded facts and attacks only the legal sufficiency of the petition. *Ostendorf v. International Harvester Co.*, 89 Ill. 2d 273, 279-80 (1982). A section 2—619 motion admits the legal sufficiency of the pleading and takes as true all well-pleaded facts and reasonable inferences therefrom, but raises defects, defenses, or other affirmative matters outside the pleading that defeat the claim. *Stahelin v. Forest Preserve District of Du Page County*, 376 Ill. App. 3d 765, 770-71 (2007); *Fitch v. McDermott, Will & Emery, LLP*, 401 Ill. App. 3d 1006, 1010-11 (2010). Where a motion to dismiss is made pursuant to section 2—619 on grounds not appearing on the face of the pleading attacked, the motion must be supported by affidavit. *Hoppe*, 220 Ill. App. 3d at 284. "Thus, when a party responds to a 2—1401 petition on the merits, he [or she] must raise arguments challenging the relief sought and must file an affidavit opposing the factual assertions made by the petitioner." *Id.* When ruling on either motion, the court must construe the pleadings and supporting documents in the light most favorable to the nonmoving

party. *Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). We review *de novo* motions to dismiss under sections 2—615 and 2—619 of the Code. *Fischer v. Senior Living Properties, L.L.C.*, 329 Ill. App. 3d 551, 553 (2002).

Section 502(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) provides:

> "(b) The terms of the agreement, except those providing for the support, custody and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable." 750 ILCS 5/502(b) (West 2008).

> "The inquiry into unconscionability requires two distinct considerations: (1) the conditions under which the agreement was made; and (2) the economic circumstances of the parties resulting from the agreement. [Citation.] In determining whether the parties' relative economic positions are unconscionable, courts employ commercial concepts of unconscionability: an absence of a meaningful choice on the part of one of the parties combined with terms unreasonably favorable to the other party. [Citation.] Unconscionable terms are also defined as improvident, totally one-sided and oppressive." *In re Marriage of Smith*, 164 Ill. App. 3d 1011, 1017 (1987).

In support of his argument that the trial court erred in dismissing his petition and that he was entitled to a hearing, Gary relies on *In re Marriage of McNeil*, 367 Ill. App. 3d 676 (2006), and *In re Marriage of Burch*, 205 Ill. App. 3d 1082 (1990).

In *McNeil*, the appellate court held that a marital settlement agreement was improperly, or at least prematurely, entered and it remanded the cause for the purpose of addressing whether the

agreement was unconscionable and in the children's best interests. *McNeil*, 367 Ill. App. 3d at 686 (reversing trial court's order finding the respondent in contempt for failing to comply with the order). In that case, the dissolution judgment incorporating a marital settlement agreement was entered in 1993. In 2002, the petitioner petitioned for rule to show cause, alleging that the respondent had failed to comply with the agreement's terms requiring him to make various payments. The petitioner subsequently petitioned to amend the dissolution judgment. Prior to a hearing on the return of the rule to show cause, the parties reached a settlement resolving all pending issues. A prove-up hearing was held, and the agreement's terms were read into the record. Also, both the petitioner and the respondent testified at the hearing. Subsequently, the parties appeared before the court for entry of an agreed order modifying the dissolution judgment. That same day, the respondent moved to reject or modify the agreed order, arguing that its terms were unconscionable and not in the children's best interests. After noting that the parties had at a prior hearing represented that they agreed to the agreement's terms, the trial court entered the settlement order modifying the dissolution judgment; no memorandum opinion denying the respondent's motion was entered.

On appeal, the respondent argued that the trial court erred in denying him an opportunity to be heard on the unconscionability issue before entering the order incorporating the parties' settlement into the dissolution judgment. The Second District noted that section 502(b) of the Act anticipates that a trial court will consider, upon a party's motion, the unconscionability of a settlement agreement. *McNeil*, 367 Ill. App. 3d at 682. The court held that the trial court abused its discretion in denying the respondent's motion without considering the unconscionability and best interests issues when it entered the settlement agreement order without addressing the merits of the respondent's arguments. *Id.* The court noted that the respondent had attached exhibits to his

unconscionability motion, including a financial statement, alleging that the agreement's financial terms were so oppressive that he was unable to comply. *Id.* at 683-84. The *McNeil* court was further troubled by the fact that the trial court held no hearing to permit the respondent to present evidence to establish the truthfulness of his assertions and by the fact that the trial court did not discuss with the respondent during the hearing wherein it entered the order incorporating the settlement agreement the agreement's financial ramifications. *Id.* at 684. Also, the trial court made no explicit finding that the agreement was not unconscionable. *Id.* at 685.

In *Burch*, at a prove-up on a dissolution petition, the trial court found that an oral agreement had been reached concerning the property distribution. Subsequently, prior to the entry of a dissolution judgment, the petitioner moved to vacate the oral prove-up (*i.e.*, to set aside the oral property settlement) on the ground that the property settlement agreement was unconscionable. At a hearing on the petitioner's motion, the petitioner asked the court to allow further discovery based on newly-discovered information relating to his allegations. The trial court denied the motion, stating that it had reviewed the agreement and found that it was not unconscionable.

The First District held that the trial court abused its discretion in denying the motion without an evidentiary hearing. *Burch*, 205 Ill. App. 3d at 1096. In doing so, the court noted that "[d]ocumentary information in support [of the petitioner's claim] was submitted to the trial court for its perusal, which in and of itself was sufficient to require the court to hold an evidentiary hearing to establish the truth of the allegation." *Id.* at 1089. However, it also noted that the respondent offered no evidence to support her assertion that the property in question was purchased with non-marital funds. The court held that the trial court erred in refusing to consider certain evidence (information and documents concerning an alleged fraudulent transfer) in support of the petitioner's

allegations pertaining to unconscionability and held that the evidence sufficiently alleged circumstances entitling the petitioner to an evidentiary hearing. *Id.* at 1092. Finally, the court noted that it was of no import that the petitioner's motion to vacate was made prior to the entry of judgment. *Id.* at 1095-96. "Although the case at bar involves a motion to vacate an oral prove up and a hearing on the motion, rather than a post-judgment petition and hearing, pursuant to section 2—1401 of the Code of Civil Procedure, the same legal and public policy principles logically apply." *Id.*

We conclude that *McNeil* and *Burch* are distinguishable because, in both cases, no responsive documentary evidence was presented in opposition to the motions at issue. In *McNeil*, no responsive pleading was even filed. In *Burch*, the respondent (*i.e.*, the party opposing the motion) did not present documentary evidence opposing the motion to vacate; she merely denied the petitioner's claims. *Burch*, 205 Ill. App. 3d at 1087, 1089. Here, in contrast, to support her claim that the parties had resolved all the issues Gary raised in his 2—1401 petition, Monique attached to her motion to dismiss the October 6, 2008, post-decree agreement.

Assuming, as we must, that Monique admitted all well-pleaded allegations in Gary's 2—1401 petition, we nevertheless conclude that the trial court did not err in dismissing Gary's petition without an evidentiary hearing. The court held a hearing on Monique's motion to strike and dismiss Gary's petition. It found that certain affirmative matter defeated Gary's petition, including the post-decree agreement, Gary's responses to the notice to produce, his answers to interrogatories, certain pleadings, and court orders. The record supports these findings. Gary's key complaints concerning the MSA's unconscionability were that he was unable to refinance his commercial loan,

that Monique hid or dissipated marital assets, and that he was required to pay significant medical expenses.

As to the commercial loan, Monique asserted in her motion to dismiss that the October 6, 2008, post-decree agreement, which Gary had failed to disclose in his petition, resolved the issues Gary raised in his petition. Gary had complained in his petition to rescind (which prompted the post-decree agreement) that he was prohibited from borrowing more than $600,000 against the commercial property until he had made all payments to Monique under the MSA and that Monique had unreasonably delayed in signing required documents so that Gary could refinance certain loans. Under the post-decree agreement, however, the parties agreed that Monique would, in lieu of monthly payments totaling $300,000, accept $235,000 through a refinancing. In exchange, Monique agreed to provide a release to the title company so that the refinancing could be completed. There is no dispute that Gary paid Monique the $235,000, and Gary does not claim in any document in the record that Monique never executed any release.[10] He complains only that he has not been able to refinance. Any impediments to Gary's refinancing prospects, therefore, are not due to Monique's action or inaction. Monique has fulfilled her obligation under the MSA and post-decree agreement.

[10]In his response to Monique's motion to dismiss, Gary states that he "obtained an equity line of credit to payoff [*sic*] [Monique] and to remove her lien and cap from the property and to be able to obtain a refinanced loan in excess of $600,000. Instead of paying [Monique] $4,166.00 per month, [Gary] pays a monthly payment to payoff [*sic*] the equity loan. [Gary] only paid off [Monique] so that her lien and cap was removed and he would be able to refinance and obtain a repayment plan that was accomplished with substantially lower monthly payments."

We next address Gary's allegations concerning Monique's alleged dissipation or hiding of accounts. First, Gary specifically alleged that Monique disclosed a First Midwest Bank certificate of deposit account ending in 0157 with a value of $20,000, but with an actual value of over $110,000. He attached a copy of a receipt for the account. He conceded in a later filing (*i.e.*, his response to Monique's motion to dismiss, that the account ending in 0157 was awarded to Monique in the MSA.

Next, Gary alleged that various accounts were valued at significantly higher amounts than they were worth upon actual distribution, including: (1) a 401(k) plan listed as worth over $131,000 that was actually worth only $75,000 upon distribution; (2) an ING annuity account ending in 339—OW and valued at $67,498 that was worth only $62,000 upon distribution; and (3) a Pan American life insurance policy valued at $35,000 that was worth only $12,000 upon distribution. Gary failed to point out that the foregoing were *his* accounts and, thus, without more, have no bearing on his argument that Monique hid or dissipated such accounts.

Gary also alleged in his petition that Monique failed to disclose several bank accounts, but specified only a First Midwest Bank checking account ending in 2999. He attached to his petition the first page of a bank statement for this account. Monique noted below that she opened this checking account after the parties separated, and she closed the account as of the statement ending February 16, 2007, one year prior to the dissolution judgment. She asserted that Gary was aware of the status of this account as evidenced by: (1) a subpoena he issued to the bank requesting documentation on all account in his or Monique's name (to which the bank complied); (2) the fact that Gary listed the account in his response to a request to produce and in answers to interrogatories (both of which Monique attached to her various filings below); and (3) an August 31, 2006, court

order (a copy of which Monique attached to her filings below) that directed Monique to provide an accounting of the funds in that account. The documents Monique attached to her motion clearly refute Gary's claim that she hid the checking account.

Gary's final fraud allegation was that, in July 2007, Monique dissipated or hid $39,539 from an insurance claim. An August 31, 2007, court order Monique attached to one of her trial court filings shows that the court directed that $10,000 of the insurance proceeds be disbursed to Monique to repair water damage to the marital residence and that the remaining proceeds be held in escrow until further order of the court. Thus, Gary's claim in his 2009 2—1401 petition that insurance proceeds of which he was aware in 2007, *one year* before the dissolution judgment, were hidden or dissipated clearly has no merit.

Gary's final claim that the MSA should be modified because he was required to pay significant medical expenses was also meritless because, as Monique noted below, any request for modification of a child support obligation or similar provision is not the proper subject of a section 2—1401 petition. See 750 ILCS 5/510 (West 2008) (addressing modification and termination of provisions for maintenance, support, educational expenses, and property disposition).

In summary, the trial court did not err in dismissing Gary's 2—1401 petition. The case law upon which he relies does not hold that an evidentiary hearing is required in each case where a petition is filed, and the court did not err in assessing Monique's motion to dismiss.

B. Sanctions

Next, Gary argues that the trial court abused its discretion in granting Monique's motions for Rule 137 sanctions, arguing that there was no showing that any of Gary's filings below advanced wholly unreasonable legal theories, contained false statements, or were filed for an improper

purpose. For the following reasons, we conclude that the trial court did not err in imposing sanctions.

The trial court's decision on a question of Rule 137 sanctions is entitled to great weight and may not be disturbed absent an abuse of discretion. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 579 (2000). A trial court abuses its discretion when its ruling is arbitrary, fanciful, or unreasonable. *In re Marriage of Lindman*, 356 Ill. App. 3d 462, 467 (2005).

Rule 137 provides, in relevant part:

> "Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. *** 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. *** If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee.

Where a sanction is imposed under this rule, the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

The purpose of Rule 137 is to prevent the filing of false and frivolous lawsuits. *Peterson v. Randhava*, 313 Ill. App. 3d 1, 7 (2000). The standard for evaluating a party's conduct under Rule 137 is one of reasonableness under the circumstances existing at the time of the filing. *Toland v. Davis*, 295 Ill. App. 3d 652, 656 (1998). If a reasonable inquiry into the facts to support the filing has not been made to ensure that the facts stated are well grounded, the party, the party's attorney, or both are subject to an appropriate sanction that may include an order to pay the other party's attorney fees and costs. *Chicago Title & Trust Co. v. Anderson,* 177 Ill. App. 3d 615, 621 (1988). Rule 137 is penal and court must strictly construe it, ensure that the proposing party has proven each element of the alleged violation with specificity, and reserve sanctions for the most egregious cases. *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1032 (2006). A court should not impose sanctions on a party for failing to investigate the facts and law when the party presents objectively reasonable arguments for his or her position, regardless of whether those arguments are unpersuasive or incorrect. *Id.* at 1034.

Gary argues first that, if his petition was an egregious abuse of the court, the trial court would not have (initially) denied Monique's motion to strike and dismiss (on June 25, 2009). This argument is unavailing because the basis for the trial court's ruling was its belief that a motion to dismiss could not be brought against a section 2—1401 petition and that, instead, a motion for summary judgment was the appropriate pleading. The court made no findings as to whether Gary's petition was false and frivolous and did not address the substantive arguments in the petition.

Next, Gary contends that *he* discovered the First Midwest Bank account ending in 2999 and that, if Monique "hid one bank account with minimal balances in a bank where [Monique and Gary] did business, it is prudent to believe that there are other larger accounts at other institutions." This constitutes pure speculation, and we reject it outright.

The trial court did not abuse its discretion in granting Monique's motion for Rule 137 sanctions. The court found that Gary's petition was a false pleading; that, had Gary reviewed the court file, he would have discovered the falsity of his claims; and that the accounts Monique allegedly concealed or dissipated were disclosed in various documents Gary filed with the court. These findings are supported by the record.

We finally address Monique's request that this court impose sanctions pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) and order Gary to pay Monique's reasonable costs associated with defending this appeal, including reasonable attorney fees. Monique asserts that Gary's appeal and repetition of charges that the court's own file show to be false is frivolous, was for the improper purpose of harassing her, and needlessly increased her legal expenses. Specifically, Monique argues that appellate sanctions are warranted because any reasonable inquiry of the court file in this case would have revealed that Gary's interrogatory answers listed the bank accounts that his 2—1401 petition accused Monique of concealing. She further notes that Gary continues on appeal to deny the existence of a fact that is easily verifiable by reviewing the court file.[11] We reject her request.

[11]Gary filed no reply brief and, therefore, offers no response to Monique's request for appellate sanctions.

Supreme Court Rule 375(b) states that, if an appeal is frivolous, not taken in good faith, or taken for an improper purpose such as to harass or to cause unnecessary delay or needlessly increase in the costs of litigation, an appropriate sanction may be imposed upon any party or the party's attorney. An appeal will be deemed frivolous "where it is 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." *Id.* An appeal "will be deemed to have been taken *** for an improper purpose where the primary purpose of the appeal or other action is to delay, harass, or cause needless expense." *Id.* In determining whether an appeal is frivolous, we use an 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). The imposition of appellate sanctions is within the appellate court's discretion. *Dallas v. Cips*, 402 Ill. App. 3d 307, 316 (2010).

Contrary to Monique's assertion, Gary's primary claim in his appeal of the dismissal of his 2—1401 petition is essentially that a hearing must be held on every such petition. Although we determined above that this claim is unavailing, we do not find it so lacking as to warrant sanctions. Accordingly, we reject Monique's request.

III. CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

Affirmed.