

No. 1-11-2645

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

EDWARD A. WILLIAMS,)	Appeal from
)	the Circuit Court
Plaintiff-Appellant,)	of Cook County
)	
v.)	No. 09 M1 138339
)	
ANDREA M. PINCHAM-BENTON, M.D.,)	Honorable
)	Diane M. Shelley,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying plaintiff's request for sanctions against defendant pursuant to Illinois Supreme Court Rule 137 for filing a counterclaim against plaintiff.

¶ 2 The sole issue presented in this appeal is whether the trial court abused its discretion by failing to grant plaintiff's motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb.

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1, 1994) against defendant and her counsel for filing a counterclaim in the above-captioned case.

For the reasons that follow, we affirm the trial court's decision.

¶ 3

I. Background

¶ 4 On May 9, 2009, plaintiff, Edward A. Williams, filed a complaint against defendant, Andrea M. Pincham-Benton to recover \$8,619.07 in fees due to him for professional accounting services he performed on defendant's behalf. On December 16, 2009, defendant filed a counterclaim against plaintiff alleging professional negligence by plaintiff in his representation of defendant concerning defendant's failure to file tax returns or pay income taxes to the IRS for certain years. The counterclaim alleged that plaintiff missed a deadline to provide certain information to the IRS, resulting in the IRS asserting a \$51,621 tax assessment against defendant. The counterclaim sought as damages \$13,587 in accounting fees that she paid to another accountant, Burton Kaplan, who convinced the IRS to eliminate the tax assessment. It is this counterclaim which is the subject of plaintiff's Rule 137 motion for sanctions. Plaintiff never moved to dismiss the counterclaim. Instead, he filed an answer to the counterclaim denying that he committed any professional negligence.

¶ 5 On February 17, 2011, a jury trial began on both the claim and counterclaim. The jury returned a verdict in favor of the plaintiff on his claim against defendant. The jury also returned a verdict on the defendant's counterclaim finding in favor of the defendant for \$8,619.07 but reduced it by approximately 45% because of defendant's contributory negligence, resulting in a verdict of \$4,660 on the counterclaim.

¶ 6 On March 18, 2011, the plaintiff filed a motion for judgment notwithstanding the verdict

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seeking to overturn the jury's verdict on the counterclaim. On April 25, 2011, the trial court granted the plaintiff's motion and vacated the jury's verdict on the counterclaim finding that defendant failed to prove all of the necessary elements of her counterclaim of professional negligence against the plaintiff.

¶ 7 On May 25, 2011, the plaintiff filed a motion for sanctions against defendant and her attorneys in connection with the counterclaim they filed back in 2009. After full briefing and oral argument was held, the trial court denied plaintiff's motion for sanctions.

¶ 8 Plaintiff filed a timely appeal.

¶ 9 II. Analysis

¶ 10 On appeal, the only issue raised by plaintiff is whether the trial court erred in denying his motion for sanctions pursuant to Rule 137. Plaintiff argues that sanctions should have been imposed because defendant's counterclaim lacked any basis in fact or law and defendant's counsel failed to make a reasonable inquiry as to its basis before filing the counterclaim.

¶ 11 a. Standard of Review

¶ 12 Plaintiff argues that a *de novo* standard of review should apply in this case, but fails to cite to any case where the reviewing court applied anything but the abuse of discretion standard when reviewing a trial court's ruling on a party's request for Rule 137 sanctions. In fact, plaintiff cites to the *Burrows* case which observed that "[t]he law is well settled that the appellate court should give considerable deference to the [lower] court's decision to impose sanctions and that decision will not be reversed absent an abuse of discretion." *Burrows v. Pick*, 306 Ill. App. 3d 1048, 1051 (1999). This is even true when, as here, no evidentiary hearing on the motion was conducted. *Shea, Rogal*

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& Associates v. Leslie Volkswagon, Inc., 250 Ill. App. 3d 149, 153 (1993) (denial of sanctions without an evidentiary hearing is reviewed under the abuse of discretion standard). Therefore, we agree with the defendant that the trial court's ruling denying plaintiff's motion for sanctions under Rule 137 should not be reversed absent an abuse of discretion. *Dowd & Dowd, Ltd. v. Gleason*. 181 Ill. 2d 460, 487 (1998).

¶ 13 The abuse of discretion standard "is the most deferential standard of review — next to no review at all." *In re D.T.*, 212 Ill. 2d 347, 356 (2004). An abuse of discretion only occurs when no reasonable person would agree with the trial court's decision. *Benjamin v. McKinnon*, 379 Ill. App. 3d 1013, 1022 (2008).

¶ 14 b. Application of Rule 137 to this case

¶ 15 Rule 137 authorizes a trial court to impose sanctions on a party or attorney for "filing a pleading, motion, or other paper that is not well-grounded in fact and warranted by existing law or which has been interposed for any improper purpose." *In re Marraige of Alder*, 271 Ill. App. 3d 469, 476 (1995). "The purpose of Rule 137 is to prevent abuse of the judicial process by penalizing claimants who bring vexatious and harassing actions." *Sundance Homes, Inc. v. County of Du Page*, 195 Ill. 2d 257, 285-86 (2001). "The party requesting the imposition of Rule 137 sanctions bears the burden of proof and must show that the opposing party made untrue and false allegations without reasonable cause for the mere purpose of invoking harassment or undue delay of the proceedings." *Mina v. The Board of Education for Homewood-Flossmoor*, 348 Ill. App. 3d 264, 279 (2004). Furthermore, Rule 137 should be strictly construed because it is punitive in nature. *Sadler v. Ceekmur*, 354 Ill. App. 3d 1029, 1045 (2004). As a reviewing court, we consider whether the trial

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court's ruling was informed, based on valid reasons which fit the case and followed logically from the particular facts of the case to its decision. *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020 (2004).

¶ 16 We note at the onset of this discussion that plaintiff's request for Rule 137 sanctions came after a jury verdict in defendant's favor on the counterclaim. The jury reduced the amount it awarded on the counterclaim by the percentage it found the defendant to be contributorily negligent. The trial court took the rare step of granting plaintiff's motion for judgment notwithstanding the verdict. If defendant's counterclaim was so vexatious, we are puzzled as to why plaintiff did not file a motion to attempt to dispose of the counterclaim prior to discovery and trial on the merits. If, in fact, his motion for sanctions pursuant to Rule 137 was justified, he would be the victim of his own inaction in not moving sooner to dispose of the counterclaim. However, an award of sanctions was not clear-cut or even warranted as demonstrated by the jury verdict and, more importantly, the trial court's ruling on the motion seeking sanctions.

¶ 17 Plaintiff argues on appeal that the defendant failed to conduct a reasonable inquiry before filing her counterclaim. We evaluate the defendant's conduct for reasonableness under the circumstances that existed at the time the counterclaim was filed. *Reyes v. Compass Health Care Plans*, 252 Ill. App. 3d 1072, 1078 (1993). The record reveals that prior to filing the counterclaim, defendant's attorneys consulted with defendant's replacement tax advisor who was a former IRS agent and a CPA with more than thirty years of experience in his field. This accounting expert opined that plaintiff breached the applicable standard of care. In rejecting plaintiff's motion for sanctions, the trial court held this inquiry to be both reasonable and sufficient, without more. On

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appeal, plaintiff argues that defendant and her attorneys could have done more and identifies four allegations in the counterclaim that he claims were false based on the evidence produced at trial. However, plaintiff has not included the trial transcript in the record on appeal, even though it was available. As the appellant, plaintiff has the affirmative duty to provide this court with a complete record to support his claim of error. *Moening v. Union Pacific Railroad Co.*, 2012 IL App (1st) 101866, ¶ 38. Without a transcript provided by the plaintiff, we presume that the trial court's actions were appropriate. Consequently, we similarly hold that an adequate and reasonable investigation was performed by defendant's attorneys prior to filing the counterclaim. Simply put, it was reasonable for defendant's attorneys to accept the statements of an expert in the field which were supported by documentary evidence.

¶ 18 We also reject plaintiff's suggestion that an evidentiary hearing is required before a court rules on a motion seeking sanctions under Rule 137. The pleadings and the entire factual basis for plaintiff's motion in the record were clear. The trial court held oral argument on the motion. The trial court was well within its discretion to dispose of plaintiff's motion without a full-blown evidentiary hearing - a hearing that was not requested by the plaintiff in the lower court. *North Shore Sign Co. v. Signature Design Group, Inc.*, 237 Ill. App. 3d 782, 791 (1992) ("[A] summary disposition of a motion for sanctions may be appropriate in cases where the pleadings, trial evidence and the factual basis in the record are clear."). In any event, it is axiomatic that a request not made in the lower court cannot form the basis of an issue on appeal.

¶ 19 In summary, we conclude that plaintiff has failed to demonstrate that no reasonable person would take the view adopted by the trial court when it denied plaintiff's request to impose sanctions

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on defendant and her attorneys for bringing a counterclaim against plaintiff. *Cretton v. Protestant Memorial Medical Center, Inc.* 371 Ill. App. 3d 841, 866 (2009).

¶ 20

III. Conclusion

¶ 21 For the foregoing reasons, we affirm the trial court's judgment.

¶ 22 Affirmed.