

2012 IL App (2d) 111224-U
No. 2-11-1224
Order filed September 5, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

PATRICK T. LYNCH, CHARLENE ENGEL)	Appeal from the Circuit Court
LYNCH and JON POLANSKY,)	of Du Page County.
)	
Plaintiffs-Appellees,)	
)	
v.)	No. 10-CH-7102
)	
MARY J. KOZELUH,)	Honorable
)	Bonnie M. Wheaton,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

Held: The trial court properly dismissed defendant's petition for Rule 137 sanctions, as her petition did not specify which of plaintiffs' allegations were untrue, how plaintiffs should have known they were untrue, or how much defendant spent as a result.

¶ 1 Defendant, Mary J. Kozeluh, appeals the trial court's order dismissing her petition for sanctions against plaintiffs, Patrick T. Lynch, Charlene Engel Lynch, and Jon Polansky, who had filed and then voluntarily dismissed a 14-count complaint against her. The petition for fees alleged only broad conclusory statements. Thus, it lacked the required specificity, and the trial court did not err in dismissing it. Accordingly, we affirm.

¶ 2

I. BACKGROUND

¶ 3 On December 16, 2010, plaintiffs filed a 38-page complaint in equity alleging 14 counts related to allegations that defendant and her former husband defrauded them as part of a Ponzi scheme and that defendant still had proceeds from the scheme. The complaint was factually detailed, with numerous specific factual allegations. Defendant generally denied the allegations.

¶ 4 On May 23, 2011, Polansky moved to voluntarily dismiss the complaint. On June 20, 2011, the motion was granted, and the attorney for Polansky was allowed to withdraw. On June 23, 2011, the Lynches also filed a motion to voluntarily dismiss the complaint, but sought to reinstate Polansky's attorney to represent them. The motion did not state the reasons for the dismissal, but asserted factual allegations that defendant still owed them money from the alleged Ponzi scheme. The motion was granted, the action was dismissed without prejudice, and plaintiffs' attorney was reinstated.

¶ 5 On July 28, 2011, defendant filed a petition for sanctions under Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). The petition did not provide detailed allegations. Instead, it broadly alleged that plaintiffs made untrue allegations in their complaint, though it listed the paragraph numbers in which that allegedly occurred. Instead of providing specific facts or challenging specific facts in the complaint, the petition stated a list of general items such as statements that defendant did not owe a duty to plaintiffs, was not an agent of her former husband, did not conspire with her former husband, and did not promise anything to plaintiffs. The petition alleged that defendant incurred substantial attorney fees, but did not provide any information about the amount of those fees or the amount of work defendant's attorney performed.

¶ 6 Plaintiffs moved to strike the petition, arguing that it failed to provide facts to establish that the allegations in the complaint were untrue or were made with knowledge of any falsity. Defendant responded that the petition was sufficient. The court granted the motion, stating that it could not grant the petition on the basis of the record. The court found that no just reason existed to delay appeal of the order. Defendant appeals.

¶ 7 II. ANALYSIS

¶ 8 Defendant contends that the trial court erred in dismissing her petition for sanctions, arguing that it sufficiently alleged that plaintiffs' complaint was not well grounded in fact.

¶ 9 Rule 137 provides:

“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 not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. 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 to 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.” Ill.

S. Ct. R. 137 (eff. Feb. 1, 1994).

¶ 10 Whether to grant Rule 137 sanctions is within the trial court’s discretion, and we will not reverse its decision absent an abuse of discretion. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 579 (2000). However, a dismissal of a Rule 137 claim is reviewed *de novo*. *Heckinger v. Welsh*, 339 Ill. App. 3d 189, 191 (2003). Under Rule 137, sanctions may be granted when: (1) a pleading, motion, or other paper is not well grounded in fact or is not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; or (2) it is made for purposes such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *People v. Stefanski*, 377 Ill. App. 3d 548, 551 (2007).

¶ 11 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); *Edward Yavitz Eye Center, Ltd. v. Allen*, 241 Ill. App. 3d 562, 569 (1993). 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). “Because of Rule 137’s penal nature, courts must construe it strictly, must make sure the proposing party has proven each element of the alleged violation with specificity, and should 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 conduct an investigation of 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.

¶ 12 “It is well settled that ‘[a] motion for sanctions must meet minimum requirements of specificity so that a responding party has an opportunity to challenge and defend against the allegations made and so that fees and costs may be fairly apportioned.’ ” *Whitmer v. Munson*, 335 Ill. App. 3d 501, 512-13 (2002) (quoting *Cmarko v. Fisher*, 208 Ill. App. 3d 440, 445 (1990)). Thus, “[w]hen relief under Rule 137 is sought, the petition must meet certain specificity requirements. It must identify: (1) the offending pleading, motion, or other paper; (2) which statements in the document were false; and (3) the fees and costs that directly resulted from the untrue allegations.” *In re Marriage of Adler*, 271 Ill. App. 3d 469, 476 (1995). “Such specificity is necessary to afford the responding party an opportunity to challenge and defend the allegations alleged to be untrue and to enable the trial court to make a determination of the reasonable expenses incurred as a consequence thereof.” *Id.*

¶ 13 Here, the court did not err in dismissing the petition. Defendant failed to assert specific facts in order to properly allege that plaintiffs’ complaint was not well grounded in fact or law when it was filed. All of the allegations were broad conclusory statements that provided no information as to which specific facts in the complaint were untrue, how plaintiffs knew they were untrue, or could have discovered that they were untrue through a reasonable inquiry before they filed their complaint. Defendant also did not tie any untrue statements to any fees. Indeed, defendant failed to allege any specific amount of fees. Given the complexity and factual detail of the complaint, the broad allegations of the petition for sanctions lacked the required specificity.

¶ 14

III. CONCLUSION

¶ 15 The trial court did err in dismissing the petition. Accordingly, the judgment of the circuit court of Du Page County is affirmed.

¶ 16 Affirmed.