

2012 IL App (2d) 120033-U
No. 2-12-0033
Order filed September 13, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

SHIRLEY PETERSEN,)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,)	
)	
v.	)	No. 09-L-1020
)	
DARIEN PARK DISTRICT,	)	Honorable
	)	Hollis L. Webster,
Defendant-Appellant.	)	Judge, Presiding.

PEGGY SALIAN,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,)	
)	
v.	)	No. 09-L-1021
)	
DARIEN PARK DISTRICT,	)	Honorable
	)	Hollis L. Webster,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Schostok concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion when it denied defendant's motion for sanctions. The trial court properly applied an objective standard in evaluating the

actions of plaintiffs, and its decision was informed and based on valid reasoning. We affirmed the judgment of the trial court.

¶ 1 On October 22, 2011, defendant, Darien Park District, filed a motion for sanctions and attorney fees pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). On December 14, 2011, following a hearing, the trial court denied defendant's motion, and defendant timely appealed. We affirm.

¶ 2 The underlying litigation leading to this appeal involved a suit filed by plaintiffs, Shirley Petersen and Peggy Salian, on November 16, 2009, seeking damages for personal injuries sustained from tripping and falling in defendant's Community Center building. As amended, plaintiffs' complaint alleged that on November 6, 2008, the date of Petersen's fall, the floors in the Community Center were improperly cleaned and were tacky or sticky, having coefficients of friction that were too high. The complaint further alleged that defendant knew the floors were defective and unreasonably dangerous, but continued owning, operating, managing, and maintaining the floors without warning the Community Center's patrons. In support of their allegations that defendant's actions constituted willful and wanton conduct, plaintiffs identified nine nonparty witnesses who had allegedly tripped or fallen in the same area of the Community Center before November 6, 2008. Plaintiffs further alleged that each of these nine witnesses reported their incidents to Community Center staff and that each believed defendant ignored their reports.

¶ 3 On December 15, 2009, defendant filed a motion to dismiss plaintiff's first amended complaint, arguing that the complaint contained insufficient factual allegations to state a cause of action for willful and wanton conduct as a matter of law. See 735 ILCS 5/2-619.1 (West 2008). Plaintiffs' response to defendant's motion to dismiss included nine affidavits from the nonparty witnesses identified in plaintiffs' complaint. With the exception of each affiant's name, the content

of the affidavits was identical. The affiants stated that they had tripped in the Community Center due to its unusually sticky or tacky floors. Each affiant claimed to have reported their trips or falls to the front desk of the Community Center before November 6, 2008, informing Community Center employees that the floors were dangerous and expressing their concerns that others would also trip and injure themselves. The trial court denied defendant's motion to dismiss the amended complaint, finding that the nine witness affidavits helped plaintiffs plead facts sufficient to state their claim.

¶ 4 As the parties commenced with written discovery, defendant served plaintiffs with interrogatories and requests for admission of facts. Among other things, plaintiffs were asked to admit that they had no knowledge of the required or existing coefficient of friction of the Community Center's floors at the time of their respective falls. Plaintiffs denied these requests, further answering that the coefficient of friction was higher than what they had experienced on other floors and that, while they may not have known the exact coefficient of friction, their counsel and any consultants might have such knowledge.

¶ 5 Defendant also deposed the nine non-party affiants. These depositions took place between November 30, 2010, and May 12, 2011. The depositions reflected that none of the affiants could precisely remember the dates that they had reported the floor's condition to the Community Center's staff. The depositions further reflected that none of the affiants could testify under oath to having reported the floor's condition before November 6, 2008, the date of Petersen's fall.

¶ 6 On June 30, 2011, defendant moved for summary judgment, and the trial court conducted a hearing on September 22, 2011. Based on inconsistent statements between the affidavits and depositions, the trial court found that plaintiffs failed to produce evidence of a defective condition,

much less evidence of willful and wanton conduct. In granting summary judgment in favor of defendant, the trial court found that, as a matter of law, there was no genuine issue of material fact.

¶ 7 On October 22, 2011, defendant filed a Rule 137 motion for sanctions and attorney fees. In its motion, defendant alleged that it was forced to “expend valuable tax dollars” because plaintiffs’ counsel did not perform a reasonable inquiry into the underlying facts supporting the claim of defendant’s willful and wanton conduct. In support of its allegation, defendant argued that plaintiffs’ counsel violated Rule 137 by typing the identical affidavits before conducting a proper investigation into the facts known by the witnesses. Defendant further argued that plaintiffs signed interrogatory answers listing the nine affiants as having knowledge of prior accidents and the allegedly defective condition of the Community Center’s floors. Finally, defendant argued that sanctions and attorney fees were appropriate because plaintiffs improperly responded to defendant’s request to admit facts. Defendant admitted that the trial court had broad discretion in determining the appropriateness of sanctions, but argued that it did not have discretion to ignore “sanctionable pleadings or conduct.”

¶ 8 After conducting a hearing on December 14, 2011, the trial court denied defendant’s motion for sanctions. Although the trial court admonished plaintiffs’ counsel’s method of preparing and obtaining the affidavits, it found that plaintiffs’ counsel had conducted a “good faith investigation into the facts prior to filing the amended complaint.” In doing so, the trial court stated that it was applying an objective standard to the facts and based its decision, in part, on its finding that the affidavits were properly notarized and legitimately obtained. Defendant filed a timely notice of appeal.

¶ 9 Defendant contends that the trial court abused its discretion in denying defendant’s motion for sanctions. In support of this contention, defendant argues that the trial court applied a subjective

standard instead of an objective standard when it considered plaintiffs' actions. Defendant relies on the inconsistencies between the affidavits and depositions of the nine nonparty witnesses as evidence of plaintiff's failure to perform a reasonable inquiry into the facts supporting their cause of action. Defendant asserts that, given these inconsistencies, it was not objectively reasonable for plaintiffs to allege that defendant was guilty of willful and wanton conduct. Defendant further asserts that it was not objectively reasonable for plaintiffs' counsel to use the affidavits as the basis for their opposition to defendant's motion to dismiss or for plaintiffs to sign interrogatory answers identifying the nine affiants as having knowledge of prior falls, accidents, and complaints. Finally, defendant asserts that it was improper for plaintiffs to deny knowledge of the coefficient of friction of the Community Center's floors.

¶ 10 Plaintiffs counter that their cause of action was appropriate, arguing that their counsel personally interviewed each of the witnesses before the suit was filed and verified that the witnesses understood the affidavits. Plaintiffs further counter that an appropriate cause of action was established by arguing that a notary separately met with each witness and again verified that they understood and agreed with the content of the affidavits. We agree with the trial court's findings.

¶ 11 Illinois Supreme Court Rule 137 permits the trial court to award sanctions when a pleading has no basis in fact or law. *Benson v. Stafford*, 407 Ill. App. 3d 902, 928-29 (2010). The purpose of Rule 137 is to prevent the filing of false and frivolous lawsuits. *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020 (2004). The trial court's determination of whether to impose sanctions under Rule 137 is entitled to great weight on appeal and will not be disturbed on review absent an abuse of discretion. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). "When reviewing a decision on a motion for sanctions, the primary consideration is whether the trial court's decision

was informed, based on valid reasoning, and follows logically from the facts.” *Id.* (quoting *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 244 (2000)). An abuse of discretion occurs when no reasonable person could have taken the view adopted by the trial court. *Sterdjevich v. RMK Mgmt. Corp.*, 343 Ill. App. 3d 1, 19 (2003).

¶ 12 Because Rule 137 is penal in nature, it must be strictly construed. *Whitmer v. Munson*, 335 Ill. App. 3d 501, 514 (2002). Rule 137 provides that a litigant’s signature on a pleading constitutes a certification that the litigant made a reasonable inquiry into the facts alleged. *Pritzker v. Drake Tower Apartments, Inc.*, 283 Ill. App. 3d 587, 590 (1996). A party requesting the trial court to impose Rule 137 sanctions has the burden of proving that the opposing party made false allegations without reasonable cause. *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217 (2007). Courts are instructed to use an objective standard in evaluating what was reasonable under the circumstances as they existed at the time of filing. *Baker v. Daniel S. Berger, Ltd.*, 323 Ill. App. 3d 956, 963 (2001). It is not sufficient that the signing party “ ‘honestly believed’ his or her case was well grounded in fact or law.” *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067, 1074-75 (1995).

¶ 13 As discussed previously, defendant’s contention that the trial court abused its discretion in denying sanctions rests heavily on its argument that the trial court applied a subjective standard instead of an objective standard. See *Baker*, 323 Ill. App. 3d at 963. Defendant does not cite to case law in support of this argument, but rather asserts that the trial court should have found that plaintiffs’ complaint was not well-grounded in fact. Despite the trial court’s clear articulation of its objective analysis, defendant maintains that the trial court injected a subjective standard in accepting plaintiffs’ counsel’s explanation of how the affidavits were obtained.

¶ 14 In *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 18 (2009), the defendant similarly contended that the trial court incorrectly employed a subjective standard in denying defendant's motion for sanctions. In that case, the defendant's contention was based upon the trial court's reference of the plaintiff's subjective belief. *Id.* The court upheld the trial court's denial of sanctions, holding that the trial court did not apply the wrong standard, but was merely indicating an understanding of the plaintiff's legal theory. *Id.*

¶ 15 At most, the trial court in the present case similarly indicated an understanding of plaintiffs' legal theory. The trial court began by stating that it had "considered all of the information presented in this unusual circumstance and will apply an objective standard." The trial court repeatedly thereafter referenced its application of an objective standard. The trial court agreed with plaintiffs, finding that "there was a good faith investigation into the facts prior to filing the amended complaint" and that the affidavits were "legitimately obtained from witnesses outside the control of plaintiffs' counsel." We are not persuaded by defendant's argument that the trial court nonetheless injected its own subjective belief. The trial court objectively considered the affidavits and found that plaintiffs' conduct was not sanctionable. This finding included an objective consideration of plaintiffs' allegations, plaintiffs' opposition to defendant's motion to dismiss, and plaintiffs' identification of the nine affiants in response to defendant's interrogatories.

¶ 16 Regarding defendant's assertion that sanctions were warranted because plaintiffs denied lacking knowledge of the coefficient of friction of the Community Center's floors, we note that this issue was only briefly raised by defendant in its motion for sanctions and at the subsequent hearing. As such, the trial court did not squarely address plaintiffs' denial of defendant's request to admit facts regarding knowledge of the floor's coefficient of friction. However, this is not fatal to the trial

court's determination. The trial court applied an objective analysis to plaintiffs' actions and found that plaintiffs did not violate Rule 137. The trial court's statement that it had "considered all of the information presented" included a consideration of defendant's request to admit facts.

¶ 17 The trial court also noted the considerable length of time between the affidavits and depositions and referenced its own experience with "lawyers drafting affidavits that are ultimately signed by independent witnesses" who later "change their story." The trial court referenced "an affidavit from the notary who set forth exactly what occurred" when the affidavits were obtained in support of its finding that there was a "good faith investigation" and that the affidavits were "legitimately obtained." Although the trial court indicated that this may not have been an advisable method, it found that, "based upon an objective standard, [the trial court] cannot find that there's been a violation of Supreme Court Rule 137 here."

¶ 18 The trial court's statements in support of its findings indicate that its decision was informed and based on valid reasoning. *Sterdjevich*, 343 Ill. App. 3d at 19. Given the trial court's thorough explanation of its objective analysis and reasoning, we hold that a reasonable person could have taken the view adopted by the trial court. *Id.* Accordingly, we hold that the trial court did not abuse its discretion when it denied defendant's motion for sanctions. See *Dowd & Dowd, Ltd.*, 181 Ill. 2d at 487.

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 20 Affirmed.