

No. 1-12-0116

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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ROBERT RUTLEDGE,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	08 L 00790
v.	)	
SKOKIE PARK DISTRICT,	)	The Honorable
	)	Daniel J. Lynch,
	)	Lee Preston, and
Defendant-Appellant.	)	Raymond W. Mitchell,
	)	Judges Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Fitzgerald Smith and Epstein concurred in the judgment.

ORDER

HELD: In an action for retaliatory discharge due to a workers' compensation claim, the defendant employer repeatedly sought sanctions against the plaintiff employee and his counsel under both Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994))

and Supreme Court Rule 219 (Ill. S. Ct. R. 219 (eff. July 1, 2002)) for allegedly false answers in response to requests to admit, false testimony at plaintiff's deposition and at trial, filing and maintaining the action, and in stating that plaintiff was ready for trial when counsel knew there was a scheduling conflict. The circuit court did not abuse its discretion in denying the motion for sanctions under Rule 137 based on allegedly false testimony at plaintiff's deposition or at the trial, as testimony is not sanctionable under Rule 137 but can be considered as evidence of whether plaintiff filed an action without reasonable grounds in fact or law. The court did not abuse its discretion in denying the motions for sanctions under Rule 137 based on the complaint because the action was not frivolous or without reasonable cause or reasonable inquiry into the facts to support plaintiff's claim. In addition, Rule 137 sanctions were properly denied on the basis of preparing a court order rescheduling trial because a court order is not a "paper" under Rule 137 and thus not an appropriate basis for sanctions under Rule 137. The circuit court also did not abuse its discretion in denying the District's motions for sanctions under Rule 219 based on plaintiff's alleged false answers in response to requests to admit where plaintiff's later testimony at the second trial explained that plaintiff refreshed his memory of the incident by talking to other employees. The court further did not abuse its discretion in denying the motions for sanctions under Rule 219 based on plaintiff's counsel's answering ready for trial when there was allegedly a known conflict where the record revealed counsel sent the employer's counsel a letter explaining he attempted to move the date on the conflicting matter but was unsuccessful, and in seeking to reschedule trial in this case, plaintiff's attorneys did not violate any order of the court.

¶ 1

## BACKGROUND

¶ 2 The instant appeal arises from the denial of motions for sanctions in a retaliatory discharge action based on plaintiff's alleged wrongful termination. Defendant, Skokie Park District (District) terminated plaintiff, Robert Rutledge, on February 25, 2008 from his employment with the District due to an incident that occurred on February 21, 2008, when plaintiff allegedly uttered profanities over the District's radio system. At the time of his termination, plaintiff was already on a final warning from the District for prior misconduct that had resulted in a series of disciplinary write-ups. Plaintiff had also previously submitted a claim for workers' compensation and at the time of the incident plaintiff had also submitted a request for an adjustment of the claim. The District's reasons for terminating plaintiff were set forth in a

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memo issued to plaintiff on February 28, 2008, after an investigation of the incident.

¶ 3 On July 19, 2008, plaintiff filed this suit against the District, alleging that the reasons for his termination were pretextual and that he was actually terminated in retaliation for filing a workers' compensation claim. The case was tried twice because the first trial resulted in a hung jury. At both trials, plaintiff admitted he swore during the incident. The District claims that plaintiff's statements pre-trial during his discovery deposition and in his discovery responses that he did not swear were thus false and sanctionable.

¶ 4 In plaintiff's answers to the District's requests to admit, plaintiff stated the following:

"31. When questioned by Defendant about the Radio Communication Incident, Plaintiff denied participation in the offensive language heard over the radio.

Response: Denies; further states he said he did not recall what he said.

32. When questioned by Defendant if he was ranting and raving and swearing during the Radio Communication Incident, Plaintiff responded 'Not to my recollection.'

Response: Admits."

¶ 5 The District includes excerpts of plaintiff's deposition testimony on September 23, 2009. However, the testimony cited by the District must be placed in the relevant context of his further answers to questions from defense counsel. Plaintiff testified in the following manner, in relevant part:

"Q. \*\*\* Did you use the word mother fucking [sic] on February 21, 2008?

A. No.

\* \* \*

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Q. Is it your testimony that you now recall what you said during the radio communication incident?

A. No.

\* \* \*

Q. Let's clarify because I don't want to take your testimony out of context. I want it to be clear. When you were interviewed by the Skokie Park District after the radio communication incident, did you tell them that you did not recall what you had said?

A. Yes, I said that to my recollection.

Q. To your recollection, you did not recall?

A. Right.

Q. Okay. As you sit here today, do you now recall what you said during the radio communication incident?

A. No.

Q. Since you don't recall what you said during the radio communication incident, how do you know that you didn't say the three words at the end of the request to admit number 25?

A. When they asked me if I recalled what I said, they were asking me, like, verbatim. Verbatim, no. Due to the fact that I don't know when that mic was keyed. So I don't know when they were talking about –

Q. Okay. Do you have any recollection whatsoever of what happened when

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you and Chris Scholpp were in the car?

A. I really didn't say anything. He was going off and was going on and on about his disliking of having to do the job.

Q. Okay. Now, can you remember the specifics of what he said?

A. No, I don't. I just remember a lot of swear words and stuff and that was when I said to him, to appease him as I said before, maybe we should look for another job. And that's all I remember.

Q. So you don't remember whether you said swear words?

A. No.

Q. I want to talk to you about this radio. Before we go there, let's just close this out. Have you now told me everything that you can recall?

A. Yes."

¶ 6 Prior to the first trial, on October 7, 2009, the District moved for summary judgment, arguing that it had cause to terminate plaintiff because the District had been told by other employees that plaintiff swore, plaintiff had previous multiple performance write-ups, plaintiff had engaged in "perceived dishonesty," and that these causes were not pretextual because plaintiff's workers' compensation claim had been filed one and one-half years before his termination. In his brief opposing summary judgment, plaintiff argued he did not violate any provisions of the guidelines for employee conduct and stated that he "could not remember who said what" during the incident. On March 18, 2010, the circuit court, Judge Lee Preston presiding, entered an order denying the summary judgment motion on two grounds. First, the

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court found that the fact that the termination occurred 11 days after plaintiff filed his request for adjustment of his workers' compensation claim demonstrated a question of fact as to whether plaintiff's termination was causally connected to and in retaliation for the workers' compensation claim. Second, the court also found that the fact that Scholpp was not terminated was "significant" and that a "trier of fact could reasonably infer that Plaintiff received a more severe punishment because he had received worker's [sic] compensation benefits and had recently applied to adjust those benefits."

¶ 7 The District moved to reconsider the court's ruling on June 16, 2010, arguing that evidence of temporal proximity is insufficient to avoid summary judgment on a claim for retaliatory discharge, and that plaintiff and Scholpp were not similarly situated because Schlopp admitted his participation in the radio incident and apologized for it and did not have any prior disciplinary write-ups. The District argued that it viewed plaintiff's refusal to admit his participation in the incident as dishonest. On September 1, 2010, Judge Preston entered an order denying the District's motion to reconsider, finding that, "[d]espite defendant's contentions, the court's ruling was based primarily upon the fact that the issue of motive or intent is a question of material fact and one which is not normally subject to summary judgment." The court further found that summary judgment was inappropriate because plaintiff had "sufficiently established a factual basis which would arguably entitle him to judgment." The court further found in its order that "[t]he close proximity in time [to the workers' compensation adjustment application] combined with the fact that Mr. Schlopp, a participant in the radio incident, was merely suspended raises a genuine issue of material fact regarding defendant's motive." Further, the

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court found, "a reasonable trier of fact could reasonably determine that plaintiff was terminated based on his application for an adjustment in his benefits and not because he was being 'dishonest.' "

¶ 8 The first trial was tried before Judge Preston. Plaintiff's attorney made the following remarks during opening statements, after first describing that plaintiff filed a workers' compensation claim and the District received it on February 21, 2008:

"Now, interestingly enough, on the same day, February 21st, 2008, he and a fellow employee named Chris Scholpp are involved in an incident where they're in a truck, they're upset at one of the bosses. The internal mike – they have this system where everybody can hear everybody else – the internal mike [sic] is keyed. They don't know it's keyed. They're livid. They're swearing. It's heard by a bunch of people"

¶ 9 Plaintiff testified in the following manner on direct examination:

"Q. And were some swear words used?

A. I'm sure there were.

Q. Were some swear words used by Mr. Scholpp?

A. Yes.

Q. And do you think some swear words might have been used by yourself?

A. I'm sure there were.

\* \* \*

Q. Bob, so both you and Mr. Scholpp were angry about this situation?

A. Yes.

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Q. And you're not denying that some four letter words were said?

A. No, I'm not.

¶ 10 On cross-examination by the District, plaintiff testified in the following manner:

"Q. Mr. Rutledge, I want your testimony this afternoon to be very clear. I want to make sure everybody understands it. Is it your testimony do you now admit in court today that you swore during the radio incident?

A. Yes.

Q. You used what you would call four letter words [sic]?

A. Yes.

Q. You used the word 'jagoff'?

A. I may have.

Q. Do you remember?

A. No, I don't.

Q. Did you use the word 'motherfucker'?

A. I may have.

Q. Do you remember?

A. That one I would say I probably used, yes.

Q. Did you use the word 'fucker'?

A. Yes.

Q. And did you say 'fuck him' at any time during that radio incident?

A. That I don't know."

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¶ 11 On redirect examination, plaintiff responded with the following statements in response to his counsel's questions:

"Q. Do you remember each and every word that you said?

A. Not each and every word. But thinking back, I probably used the F word a few times.

Q. In fact, did you tell us on Friday that you didn't remember when the mic was on and when the mic was off?

A. Correct.

Q. Did that effect [sic] your ability to remember what exactly was said by whom at what time?

A. Absolutely."

¶ 12 At the close of plaintiff's case in chief and again at the close of the District's case in chief, the District orally moved for a directed verdict and for sanctions. The District filed a written motion for directed verdict and for sanctions on September 21, 2010, seeking sanctions under Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)) for plaintiff's false testimony. The District also sought sanctions pursuant to Illinois Supreme Court Rule 219 (Ill. S. Ct. R. 219 (eff. July 1, 2002)), for plaintiff's allegedly false answers in response to the District's requests for admission and false testimony at plaintiff's deposition. The District argued that "[p]laintiff has knowingly given false testimony on a critical issue in the case, i.e., whether he engaged in profanity." The court orally denied the motion at the close of plaintiff's case, and denied it again in an oral ruling when the District renewed its motion at the close of all the

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evidence. The first trial resulted in a deadlocked jury, and the case was set for retrial.

¶ 13 After the first trial, the District filed a renewed motion for summary judgment and for sanctions under both Rule 137 and Rule 219, again claiming that plaintiff knowingly gave false answers in response to the requests to admit and testified falsely at his deposition. The District argued the case should not be retried. Judge Preston had been reassigned, and the case came before Judge Raymond W. Mitchell. In an order entered May 27, 2011, after considering the parties' written submissions and oral arguments, Judge Mitchell denied the District's renewed motion for summary judgment and sanctions. The order further stated that the "trial date stands for June 20, 2011 at 9:15 a.m."

¶ 14 Due to a conflict plaintiff's counsel had, the trial was rescheduled. An order was entered on June 20, 2011 by Judge Mitchell, continuing the matter to set a new trial date on July 6, 2011. On July 6, 2011, the District filed a motion for dismissal with prejudice and for fees and costs as sanctions under Rule 219(c) and Rule 137, based on plaintiff's counsel answering ready for trial when counsel allegedly knew for a month that there was a conflict with a trial in another matter. There is no transcript of the hearing on the motion in the record, but the District attached to its motion a letter from plaintiff's counsel dated June 22, 2011, wherein plaintiff's counsel explained that he attempted to reschedule the trial date in the other matter but the court in that case refused. The circuit court denied the District's motion for sanctions based on the rescheduling.

¶ 15 The District then filed a motion to dismiss with prejudice and for fees and costs, alleging that plaintiff's attorneys had failed to give the District timely notice of a scheduling conflict for trial. The District argued that it unnecessarily incurred substantial expenses in attorneys' fees and

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preparing witnesses for trial when plaintiff's counsel knew in advance of the trial date that he had a conflict and had to try another case on the same date. The District requested dismissal with prejudice and an award of attorneys' fees and costs as a sanction under Supreme Court Rule 219(c) (Ill. S. Ct. R. 219(c) (eff. July 1, 2002)). The District also sought a sanction of attorneys' fees and costs under Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)). Judge Mitchell denied that motion in a written order entered July 8, 2011, finding that "[o]n the record before the Court, sanctions are not warranted."

¶ 16 The case was retried in a bench trial before Judge Daniel J. Lynch. At the second trial, plaintiff's counsel remarked in opening statements that plaintiff had engaged in talk "that was not very nice" including "four letter words [sic]" and that "obviously the people at the park district were not happy about that." During his testimony, plaintiff again acknowledged he swore during the incident: "I'm not denying that – you know, I was right there with him swearing and everything." On cross-examination, plaintiff admitted the following:

"Q. Is it your testimony today that you swore during the radio incident?

A. Yes.

\* \* \*

Q. When you were in the cab of the truck, I'm not asking you when you were walking, when you were in the cab of the truck, you used what you would call four lettered words, true?

A. Yes."

¶ 17 During closing arguments at the second trial, plaintiff's attorney referred to the occurrence

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as "the infamous radio swearing incident" and remarked that plaintiff and Scholpp "were caught red-handed."

¶ 18 At the second trial, plaintiff testified that his memory of the incident was prompted in part by conversations with people at the District:

"Q. You didn't remember swearing when you were interviewed the day after that incident, but you remember it now years later, is that your testimony?"

A. Well, yeah. Actually, for one reason I remember it now is because since that trial I've spoken with people at the park district and they kind of like talked to me about what happened. So to sit here and say right now that I didn't swear would be a lie."

¶ 19 After plaintiff rested, the District filed a motion for a "directed verdict" [sic] and for sanctions on December 6, 2011, again seeking sanctions under Supreme Court Rule 137 and Supreme Court Rule 219, based on plaintiff's prior "false testimony" on the issue of "whether he engaged in profanity." The court denied the motion for a directed finding and did not rule on the issue of sanctions at that point. At the close of all the evidence, the District renewed its motion for a directed finding, which the court again denied. The court heard argument from the parties and found in favor of the District on the issue of liability. The District then argued its pending motion for sanctions. The court denied the motion for sanctions in an oral ruling, followed by the entry of a final order on December 6, 2011, entering judgment in favor of the District but denying the motion for sanctions. The District appealed the denial of sanctions in the final order of December 6, 2011, and also from the previous denials of the District's motions for sanctions under Judge Preston and Judge Mitchell.

¶ 20

ANALYSIS

¶ 21 The District argues that the three circuit court judges who denied its repeated motions for sanctions under Rule 137 and Rule 219 all abused their discretion. The District also makes certain arguments regarding the prior denial of its motions for summary judgment, arguing that plaintiff failed to establish certain elements of his claim and the District would have been granted summary judgment had plaintiff been truthful. However, after the second trial, the court entered judgment in favor of the District, thus rendering any argument regarding summary judgment moot, as the District has already received judgment in its favor.

¶ 22 The District argues that "[t]he fact that the Skokie Park District ultimately had judgment entered in its favor is inadequate, especially where summary judgment would have been entered had Plaintiff answered discovery truthfully in the first place." Yet, the trial court's ruling denying summary judgment was based on its finding that there was a genuine issue of material fact whether plaintiff's workers' compensation claim was the real reason plaintiff was terminated. The court's ruling did not rest on whether plaintiff lied or told the truth about whether he swore.

¶ 23 Also, even if plaintiff admitted he swore, this would not eliminate the element of causation for the claim of retaliatory discharge because the reason, even if true, could still have been used as a pretext for termination due to the workers' compensation claim. To defeat causality, the reason for the discharge must be both valid and nonpretextual. *Marin v. American Meat Packing Co.*, 204 Ill. App. 3d 302, 307 (1990) (citing *Slover v. Brown*, 140 Ill. App. 3d 618, 621 (1986)). "A pretext ha[s] been defined as 'a purpose or motive alleged or an appearance assumed in order to cloak the real intention or state of affairs.' " *Marin*, 204 Ill. App. 3d at 307

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(quoting *Wayne v. Exxon Coal USA, Inc.*, 157 Ill. App. 3d 514, 518 (1987)). Here, even if the stated reason for plaintiff's termination undisputedly occurred, the reason could still have been pretextual. Even if it was undisputed at every stage of the litigation that plaintiff admitted he swore during the incident, the facts remain that his co-worker – who engaged in the same conduct – was not fired and that plaintiff had submitted a claim for an adjustment to his workers' compensation claim. There is no basis for concluding that the District would have been granted summary judgment, as the issue regarding whether plaintiff's workers' compensation claim was the real reason for plaintiff's termination remained disputed. As such, we address only the District's sanctions arguments.

¶ 24 On appeal, the District does not differentiate which actions or statements by plaintiff or plaintiff's counsel were sanctionable under Rule 137 and which actions or statements were sanctionable under Rule 219, arguing generally that the following actions by plaintiff and his counsel were grounds for sanctions under both rules: (1) providing a false response in response to requests to admit; (2) testifying falsely at his deposition; (3) changing his testimony at trial; (4) filing and maintaining the instant action; and (5) answering ready for trial and drafting an order for trial assignment when counsel knew of a scheduling conflict. We first analyze the denial of sanctions under Rule 137.

¶ 25 I. Sanctions Under Rule 137

¶ 26 We must initially clarify the scope of Rule 137, since the District seeks sanctions under this rule for all of the alleged wrongful conduct by plaintiff and plaintiff's counsel. By its terms, Rule 137 governs pleadings, motions and other papers, and provides that signature by an attorney

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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." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). The filing of the complaint falls within the purview of Rule 137, but the alleged false answers in response to requests to admit, false testimony at a deposition and at trial (to the extent the sanctions sought are based only on the testimony), and the drafting of an order for assignment to the trial more appropriately are governed by Rule 219. Regarding plaintiff's conduct during discovery, where sanctions are to be imposed for discovery abuses, the sanctions are more properly imposed pursuant to the provisions dealing with discovery rather than Rule 137. *Wadden v. Village of Woodridge*, 193 Ill. App. 3d 231, 242 (1990) (citing former section 2-611). Illinois Supreme Court Rule 219 governs sanctions relating to discovery, and subsection 219(b) specifically governs refusals in response to requests to admit. See Ill. S. Ct. R. 219(b) (eff. July 1, 2002). Rule 219(c) also governs failure to comply with court orders. See Ill. S. Ct. R. 219(c) (eff. July 1, 2002). Thus, we analyze whether plaintiff's complaint violated Rule 137 and we review the remainder of the District's contentions under Rule 219 in the next section.

¶ 27 We preface our analysis here by noting that sanctions under Rule 137 are limited to egregious circumstances, and we can only reverse a trial court's decision on sanctions if there was an abuse of discretion by the trial court. "[U]nder Rule 137, sanctions may be granted under two different circumstances: (1) when a pleading, motion, or other paper is not 'well grounded in

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fact' or is not 'warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law,' or (2) when it is interposed 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) (quoting 155 Ill. 2d R. 137). The District's argument is that plaintiff lied about whether he swore and that the entire suit was baseless. 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).

¶ 28 "The purpose of Rule 137 is to prevent parties from abusing the judicial process by imposing sanctions on litigants who file vexatious and harassing actions based upon unsupported allegations of fact or law." *In re Marriage of Johnson*, 2011 IL App (1st) 102826, 27 (quoting *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217 (2007)). Since Rule 137 is penal in nature, it will be strictly construed. (citing *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998)). "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).

¶ 29 Regarding the allegedly false testimony by plaintiff at his deposition and at trial, "[t]estimonial inconsistencies, in and of themselves, are not a sufficient basis for recovery under [Rule 137]. *In re Estate of Wernick*, 127 Ill. 2d 61, 82 (1989) (stating this principal for the same rule under the prior statutory section). In *Dayan v. McDonald's Corp.*, 126 Ill. App. 3d 11 (1984), this court held that the presentation of fabricated testimony and concealment of evidence

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was "compelling proof that a litigant knew or should have known his allegations or denials were untrue." *Dayan*, 126 Ill. App. 3d at 21. The Illinois Supreme Court has held that consideration of contradictory or false testimony and documents is appropriate in determining whether to impose sanctions under Rule 137. *In re Estate of Wernick*, 127 Ill. 2d 61, 82 (1989). However, the sanctions are not for the testimony itself. Rather, the testimony is only considered as evidence whether the litigant knew the pleading or paper was false. *In re Estate of Wernick*, 127 Ill. 2d at 82. "Furthermore, the determination of the trial judge must be afforded great deference, for he was able to observe the demeanor of the testifying witnesses and assess their credibility." *Id.* Thus, we look to plaintiff's testimony only in order to determine whether the allegations in his complaint were false.

¶ 30 Plaintiff testified at his deposition: "When they asked me if I recalled what I said, they were asking me, like, verbatim. Verbatim, no. Due to the fact that I don't know when that mic was keyed. So I don't know when they were talking about." Thus, plaintiff explained his responses to the District. At his deposition, plaintiff again admitted he swore. At the first trial, as the testimony set forth above reveals, plaintiff yet again he admitted he swore. Then, again, at the second trial, plaintiff admitted he swore during the incident. Nothing contradicted plaintiff's earlier statement that he told the District when questioned that he could not recall if he swore.

¶ 31 At the second trial, plaintiff testified that his memory of his responses to the District after the incident was prompted in part by conversations with people at the District:

"Q. You didn't remember swearing when you were interviewed the day after that incident, but you remember it now years later, is that your testimony?"

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A. Well, yeah. Actually, for one reason I remember it now is because since that trial I've spoken with people at the park district and they kind of like talked to me about what happened. So to sit here and say right now that I didn't swear would be a lie."

¶ 32 Thus, the record reveals that plaintiff explained that he had his recollection of the incident refreshed by talking with other District employees after the incident. This testimony does not prove that plaintiff's prior statements that he did not remember whether he told the District he swore were false.

¶ 33 Moreover, plaintiff did not make any allegations regarding the swearing incident in his complaint. Rather, plaintiff alleged that he was terminated because of his workers' compensation claim. As we explained earlier, even if plaintiff swore, his contention was that the incident was not severe enough to terminate him and that the real reason for his discharge was his workers' compensation claim. Plaintiff's testimony does not prove that his allegations of retaliatory discharge were false. Rather, at best, it served to undermine plaintiff's credibility, which resulted in judgment in favor of the District.

¶ 34 As such, the District's citations are distinguishable. In *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015 (2004), the witness statements that each of the witnesses previously had tripped and complained to the city about a sidewalk were directly contrary to the deposition testimony of two of the witnesses, who testified that they had never reported the alleged sidewalk defects to the city. *Sanchez*, 352 Ill. App. 3d at 1022.

¶ 35 *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067 (1995), involved a completely baseless reduction of a workers' compensation lien to zero without any

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authority under existing law and is not applicable to the facts of this case, as plaintiff's counsel here did not urge any argument that was without basis in law. The dispute in the instant case was factual regarding whether plaintiff swore or not; plaintiff's claim of retaliatory discharge due to a pending workers' compensation claim had basis in law. See *Kelsay v. Motorola*, 74 Ill. 2d 172 (1978) (establishing a claim for retaliatory discharge based on termination due to workers' compensation claims).

¶ 36 In *Sterdjevich v. RMK Management Corp.*, 343 Ill. App. 3d 1 (2003), the plaintiff had alleged in his amended complaint that he entered into the lease with defendant Rescorp Realty, Inc., who breached the lease, but admitted in his deposition that he entered into a lease with defendant NHP Management Corporation (NHP) and was aware he entered into the lease with NHP and kept a copy of the lease. *Sterdjevich*, 343 Ill. App. 3d at 20. Plaintiff further alleged he was unlawfully charged for utilities and asserted a breach of a provision that was not a part of the lease and a reasonable inquiry would have revealed this fact. *Sterdjevich*, 343 Ill. App. 3d at 20-21. Thus, the material allegations for breach of the lease agreement and violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2 (West 1996)) were false. *Sterdjevich*, 343 Ill. App. 3d at 21. In the instant case, plaintiff's claim of retaliatory discharge was based on the fact that plaintiff had a pending workers' compensation claim at the time the District terminated him. This material allegation was not false. Plaintiff made no allegations regarding the swearing incident in his complaint.

¶ 37 Further, *Casanova v. American Airlines*, 616 F. 3d 695 (7th Cir. 2010), is a federal decision and did not address the issue of sanctions or apply Illinois Supreme Court Rule 137 or

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Rule 219. The federal court in *Casanova* held that the employer was entitled to judgment as a matter of law where the employee plaintiff admitting lying about his workers' compensation claim and being insubordinate in his refusal to answer questions by his employer about the claim, and could not identify any other employee who behaved in a similar manner and was not fired. *Casanova*, 616 F. 3d at 698. The District here is appealing only the sanctions orders and not the judgment, as judgment was entered in its favor. Thus, *Casanova* is inapplicable.

¶ 38 All of the judges who heard the District's motions for sanctions denied them. In denying the District's final motion for sanctions at the conclusion of the second trial on December 6, 2011, Judge Lynch found the following:

"It's been testified to and suggested to the Court that in and of itself it was an independent basis to discharge certainly Mr. Rutledge and arguably the other employee, Mr. Scholpp. [Plaintiff] came away from the process with the impression that because of the contemporaneous filing of his claim for an adjustment that that was the real motivation underlying the discharge, that this was just an accidental transmission over the radio during a frustrated moment in time and my coworker got two days and I lost my career.

The doesn't sound like an illegitimate basis for someone to come to a court system to ferret out the truth that arguably was known and he established it was known to persons at the time they were making this investigation and determining whether to discharge him.

\* \* \*

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He was – I think the word he used was irate or words to that effect about having to go out into the cold weather, and, you know, given that and the final status he is was on [sic], perhaps his memory wasn't very good initially.

But I find that it's incredible that he wasn't truthful about the extent of his conduct. He minimized it almost completely and threw his partner under the – not the bus but the park district truck, I suppose.

So it's for those reasons that I don't believe this is an appropriate case for the sort of sanctions you're seeking. I cannot find that this was meritless and without grounds or a basis to bring it into a courtroom.

It might have been a very weak case and it must have been the sort of case that attorneys told Mr. Rutledge he didn't have a leg to stand on in court, but a very, very weak case is not the same as a frivolous case."

¶ 39 We find no abuse of discretion in the court's denials of the District's repeated motions for sanctions under Rule 137. Nothing set forth by the District established that plaintiff's complaint was not well-grounded in fact or the law.

¶ 40 The District also argues, as a separate basis for sanctions under both Rule 137 and Rule 219, that plaintiff's counsel falsely answered ready for trial when he knew he had a conflict with another matter. The District argues it is entitled to sanctions under Rule 137 because plaintiff's counsel prepared the order transferring the case from Judge Mitchell to Room 2005 for "immediate assignment to trial," and that this order is a "paper" under Rule 137. The District also argues that "although Rutledge's counsel did not sign the earlier May 27, 2011 order stating

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'Trial date of June 20, 2011 at 9:15 am to stand,' they reviewed and approved it."

¶ 41 In its brief on appeal, the District recites Rule 137 and Rule 271 regarding the preparation of orders, but it cites no authority for the proposition that Rule 137 sanctions can be awarded based on an attorney's preparation of an order that is entered by the court. The District's argument thus contravenes Supreme Court Rule 341(h)(7), which requires that the appellant's brief contain citation of authorities regarding the contention argued. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). The supreme court rules governing the content and format of briefs are mandatory. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. "A failure to cite relevant authority violates Rule 341 and can cause a party to forfeit consideration of the issue." *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. In failing to cite relevant authority supporting its argument, the District has forfeited this contention.

¶ 42 In any event we would reject the District's argument on this point. This court has previously specifically held that a court order, even if drafted by an attorney, is not a "paper" under Rule 137. See *In re Marriage of Oleksy*, 337 Ill. App. 3d 946, 949 (2003) (holding that an order signed by a trial judge, even though drafted by an attorney, was not a proper basis for Rule 137 sanctions because it was not a " 'paper' of a party") . "A court order, whoever drafted it, remains the ruling of a judge. It is not a 'paper' of a party." *In re Marriage of Oleksy*, 337 Ill. App. 3d at 949. The circuit court did not abuse its discretion in refusing to award sanctions against plaintiff on the basis of Rule 137.

¶ 43 Thus, the circuit court did not err in denying each of the District's motions for sanctions under Rule 137 on all the grounds alleged.

¶ 44

## II. Sanctions Under Rule 219

¶ 45 In arguing that the court abused its discretion in denying its motions for sanctions pursuant to Illinois Supreme Court Rule 219, the District again does not differentiate the grounds for such sanctions under Rule 219. The District argued below the same grounds for sanctions under Rule 219 as its grounds for sanctions under Rule 137: (1) providing a false response in response to requests to admit; (2) testifying falsely at his deposition; (3) changing his testimony at trial; (4) filing and maintaining the instant action; and (5) answering ready for trial and drafting an order for trial assignment when counsel knew of a scheduling conflict.

¶ 46 Illinois Supreme Court Rule 219 provides for sanctions in the following instances: (a) refusal to answer or comply with a request for production; (b) refusal to admit in response to a request to admit; (c) failure to comply with order or rules; (d) abuse of discovery procedures; (e) voluntary dismissals and prior litigation. Ill. S. Ct. R. 219 (eff. July 1, 2002).

¶ 47 Regarding the requests to admit, section 219(b) states in relevant part:

"(b) Expenses on Refusal to Admit. If a party, after being served with a request to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter of fact, the requesting party may apply to the court for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making the proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made." Ill. S. Ct. R. 219(b)

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(eff. July 1, 2002).

¶ 48 "Rule 219(b) provides relief, including reasonable attorney fees, for a party who is forced to prove the truth of a matter of fact which is denied by the opposing party in response to a Request to Admit." *Case v. Forloine*, 266 Ill. App. 3d 120, 129 (1993). Rule 219(c) then authorizes a trial court to impose a sanction, including dismissal of the cause of action, upon any party who unreasonably refuses to comply with any provisions of this court's discovery rules or any order entered pursuant to these rules. Ill. S. Ct. R. 219(c) (eff. July 1, 2002). "Supreme Court Rule 219 permits the court to impose sanctions for denial of a request to admit, '[u]nless the court finds that there were good reasons for the denial.'" *New Randolph Halsted Currency Exchange, Inc. v. Regent Title Insurance Agency, LLC*, 405 Ill. App. 3d 923, 930 (2011) (quoting 210 Ill. 2d R. 219(b)). "The sanctions authorized under Rule 219 are intended to combat abuses of the discovery system and to maintain the integrity of our court system." *Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 54 (quoting *Smith v. P.A.C.E.*, 323 Ill. App. 3d 1067, 1075 (2001)). "Under Rule 219, the trial court must choose a sanction that will promote discovery, not impose punishment on a litigant." *Dolan*, 2012 IL App (1st) 111505 at ¶ 54 (citing *Wilkins v. T. Enterprises, Inc.*, 177 Ill. App. 3d 514, 517 (1988)). "A just order of sanctions under Rule 219(c) is one which, to the degree possible, insures both discovery and a trial on the merits." *Dolan*, 2012 IL App (1st) 111505 at ¶ 44 (citing *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 123 (1998)). "The imposition of sanctions under Rule 219 is committed to the sound discretion of the circuit court, and its determination will not be reversed absent a clear abuse of that discretion." *Dolan*, 2012 IL App (1st) 111505 at ¶ 54 (citing

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*Redelmann v. K.A. Steel Chemicals, Inc.*, 377 Ill. App. 3d 971, 976 (2007), *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 67 (1995)).

¶ 49 The District cites to the factors in determining an appropriate sanction under Rule 219 for discovery violations. The factors used to determine if a trial court abused its discretion in determining appropriate sanction for discovery violation include the following: surprise to adverse party, prejudice to adverse party, diligence of adverse party, and good faith of offending party; no one factor is determinative. *Cronin v. Kottke Associates, LLC*, 2012 IL App (1st) 111632, ¶ 63. There must first be a finding of a discovery violation. See Ill. S. Ct. R. 219(c) (eff. July 1, 2002). In this case there was no finding of a discovery violation and no sanctions were imposed. The question was whether the court abused its discretion in not imposing sanctions in the first place. Here, we find no abuse of discretion in the circuit court's refusal, by three different judges hearing the matter, to impose sanctions against plaintiff under Rule 219.

¶ 50 As to plaintiff's prior denial of the District's requests to admit, the District argued the following answers in response to the District's requests to admit were false:

"31. When questioned by Defendant about the Radio Communication Incident, Plaintiff denied participation in the offensive language heard over the radio.

Response: Denies; further states he said he did not recall what he said.

32. When questioned by Defendant if he was ranting and raving and swearing during the Radio Communication Incident, Plaintiff responded 'Not to my recollection.'

Response: Admits."

¶ 51 We find these answers are not directly false statements that were completely controverted

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at trial as the District contends. The answer to request to admit number 31 indicates plaintiff denied denying participation in the offensive language, and the double negative indicates admission in participation in the offensive language. Plaintiff further qualified his response by stating "he said he did not recall what he said." This statement refers to the subject matter and time and place in the request to admit — "When questioned by Defendant about the Radio Communication Incident." The answer that plaintiff "said he did not recall what he said" clearly referred to when he was questioned by the District about the incident. The question posed in the request to admit was limited to that instance in time when the District questioned him after the incident, and thus plaintiff's response was limited to that instance when the District questioned him after the incident.

¶ 52 Plaintiff's response to request to admit number 32 was also limited to the time he was questioned by the District about the incident and what plaintiff's response was at that time. Plaintiff's response was that he admitted he told the District at that time when questioned if he was swearing during the radio incident, "Not to my recollection." Plaintiff admitted that: (1) this was what he said to the District; (2) at that time when he was questioned by the District. These answers were not unqualified denials and statements that he did not swear during the incident; rather, they are admissions that when he was questioned he told the District he could not recall whether he swore. In fact, as plaintiff points out, in response to Request to Admit number 18 plaintiff admitted that he and Scholpp had a conversation which included "numerous swear words and offensive comments."

¶ 53 Plaintiff's later trial testimony did not refute plaintiff's admissions that when he was

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questioned by the District he told the District at that time that he could not recall what he said.

At trial, plaintiff did not testify to the contrary that in fact when he was questioned by the District he admitted to the District that he swore. At the second trial, plaintiff admitted he swore and testified that his memory of the incident was prompted in part by conversations with people at the District:

"Q. You didn't remember swearing when you were interviewed the day after that incident, but you remember it now years later, is that your testimony?"

A. Well, yeah. Actually, for one reason I remember it now is because since that trial I've spoken with people at the park district and they kind of like talked to me about what happened. So to sit here and say right now that I didn't swear would be a lie."

¶ 54 Plaintiff explained his recollection of the incident, and the requests to admit themselves were limited to what plaintiff said to the District at the time of the incident. We see no basis for an award of sanctions on these facts, especially where Rule 219 is intended to combat abuses of the discovery system but allow trial on the merits. We find no abuse of the discovery system by plaintiff in this case.

¶ 55 All of the District's motions for sanctions under Rule 219 also argued that plaintiff's deposition testimony was false. Refusal to answer at a deposition falls within the purview of Rule 219(a). See Ill. S. Ct. R. 219(a) (eff. July 1, 2002). However, plaintiff did not refuse to testify. To the extent the District argues that plaintiff's deposition or trial testimony was "false," we have already analyzed this contention appropriately as a factor in determining whether plaintiff's complaint was sanctionable under Rule 137.

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¶ 56 Finally, the District also argues that it is entitled to sanctions under Rule 219(c) because plaintiff's counsel orally informed the court plaintiff was "ready for trial" on June 20, 2011, when he allegedly knew that the case could not be tried on that date due to a conflict with another matter up for trial on the same date. The District argues the circuit court erred in denying sanctions when plaintiff's attorneys' conduct caused the District to "needlessly spend time and money preparing for trial." As we explained above, sanctions under Rule 137 for this alleged conduct is improper, as an order, even if drafted by an attorney, is not a "paper" under Rule 137. Rules 219(c) governs failures to comply with court orders or rules. Ill. S. Ct. R. 219(c) (eff. July 1, 2002). However, here there was no failure by plaintiff or his counsel to comply with court orders or rules.

¶ 57 We note that the District has failed to submit a transcript of the hearing concerning its motion for dismissal and for fees and costs as a sanction under Rule 219(c) and Rule 137 based on plaintiff's counsel's allegedly falsely stating plaintiff was ready for trial when counsel knew of a scheduling conflict. As such, we resolve any doubts that may arise from the incompleteness of the record against the District. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 58 Here, however, we have no doubts regarding the issue, as the record sufficiently demonstrates the underlying facts. The District attached to its motion a copy of a letter from plaintiff's counsel dated June 22, 2011, explaining that he attempted to reschedule the conflicting matter so that the instant case would go to trial, but the court in the other matter would not change that trial date. As a result, plaintiff's counsel then sought to reschedule in this case. There is no evidence anywhere in the record that plaintiff's counsel violated any court order.

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¶ 59 In *Cronin*, 2012 IL App (1st) 111632, ¶ 48, the defendants similarly moved for sanctions based on the plaintiffs' counsel's alleged non-compliance with the trial court's scheduling order and standing order as to trial procedures, in particular, the requirements as to the exchange of exhibits and preparation of a trial memorandum. In considering whether plaintiffs' counsel's conduct was contumacious, this court found that there was not "a blatant and complete disregard of the court's authority." Plaintiffs' counsel sent defendants an e-mail which did not fully comply with the order but did identify groups of exhibits, which were duplicative of the defense's trial exhibits which had already been disclosed and indicated he would further discuss the exhibits. The Defendants' motion for sanctions did not include or attach the plaintiffs' counsel's e-mail, but the court held it "cannot overlook that in this e-mail, plaintiffs' counsel stated that plaintiff' trial exhibits were largely duplicative of defendants' trial exhibits and, for the most part, had been previously disclosed." *Cronin*, 2012 IL App (1st) 111632, ¶ 48.

¶ 60 Similarly, in this case we cannot overlook that plaintiff's counsel sent the District a letter addressing the issue of rescheduling, specifically explaining that the court in the other matter refused to reschedule despite counsel's attempts. We can find no failure to comply with court orders to justify any sanctions under Rule 219(c). The court did not abuse its discretion in denying the District's motion for sanctions on the ground of the rescheduling conflict under Rule 219.

¶ 61

#### CONCLUSION

¶ 62 The circuit court did not abuse its discretion in denying the District's motion for sanctions under Rule 137 based on allegedly false testimony at plaintiff's deposition or at the trial.

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Testimony is not sanctionable under Rule 137 but can be considered as evidence of whether plaintiff filed an action without reasonable grounds in fact or law. The court did not abuse its discretion in denying all motions for sanctions under Rule 137 because the action was not frivolous or without reasonable cause or reasonable inquiry into the facts to support plaintiff's claim. Regardless of whether plaintiff swore or did not swear during the incident, plaintiff's claim for retaliatory discharge was based on the allegation that the District's reason for his termination was pretextual and that he was discharged because of his workers' compensation claim. In addition, Rule 137 sanctions were properly denied on the basis of preparing a court order rescheduling trial because a court order is not a "paper" under Rule 137 and thus not an appropriate basis for sanctions under Rule 137.

¶ 63 The circuit court also did not abuse its discretion in denying the District's motion for sanctions under Rule 219 based on plaintiff's alleged false answers in response to requests to admit where plaintiff's later testimony at the second trial explained that plaintiff refreshed his memory of the incident by talking to other District employees. The court further did not abuse its discretion in denying the District's motion for sanctions under Rule 219 based on plaintiff's counsel's answering ready for trial when counsel allegedly knew there was a conflict. The record revealed counsel attempted to move the date on the conflicting matter but was unsuccessful, and in seeking to reschedule trial in this case, plaintiff's attorneys did not violate any order of the court under Rule 219(c).

¶ 64 Affirmed.

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