

2013 IL App (1st) 13-2139-U
No. 1-13-2139

FIRST DIVISION
FILED: June 9, 2014

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 DISTRICT

ERICA CHIPPI,)	Appeal from the Circuit Court
)	of Cook County.
)	
Plaintiff and)	
Counterdefendant-Appellee,)	
)	
v.)	No. 12 M1 100116
)	
CAREN YUSEM,)	
)	
)	Honorable
Defendant and)	Leon Wool,
Counterplaintiff-Appellant.)	Judge Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Connors and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in refusing to award sanctions under Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994), where there was no evidence that the complaint contained misrepresentations interposed to harass the defendant or cause needless litigation; there was no basis to reverse the court's denial of attorney fees under the Residential Landlord and Tenant Ordinance (Chicago Municipal Code § 5-12-010 *et seq.*), where the counterplaintiff failed to provide a record or legal authority to substantiate her claim of error.

¶ 2 The plaintiff and counterdefendant, Erica Chippi (Chippi), filed an action seeking damages for violations of the Residential Landlord and Tenant Ordinance (RLTO) and section 9-207 of the Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-207 (West 2010)), and for assault and emotional distress, arising from the wrongful termination of a sublease by the defendant and counterplaintiff, Caren Yusem (Yusem). Yusem counterclaimed, alleging breach of the sublease agreement and other violations of the RLTO. Chippi's claim was ultimately dismissed for want of prosecution, and Yusem filed a motion for sanctions under Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994), and a motion for attorney fees under the RLTO. The trial court denied both motions, and Yusem now appeals. We affirm.

¶ 3 Chippi brought her action on January 4, 2012, alleging as follows. On October 12, 2011, she entered into an oral, month-to-month sublease agreement with Yusem, under which she agreed to rent a room on the lower floor of Yusem's residence located at 166 W. Burton Place. Yusem was also living in the space, which she rented from the owner of the building, and charged Chippi \$750 per month as rent under the sublease. When Chippi moved into the premises on October 15, 2011, Yusem collected a pro-rated amount of rent for the month, insisting upon payment in cash. In addition, Yusem allegedly never tendered Chippi a copy or summary of the RLTO. As a basis for the claim that the subleased room was covered by the RLTO, the complaint alleged only that the building is in the City of Chicago and that it "is not owner-occupied."

¶ 4 As of November 10, 2011, the parties allegedly had not yet settled on a method or date for the monthly rental payment, so Chippi emailed Yusem asking if she could pay rent around the 15th of each month. Yusem responded unequivocally yes.

¶ 5 Chippi alleged that, on December 9, 2011, she contracted pneumonia, which caused her to miss work from December 9 through 28, 2011. She claimed that she was "bed-ridden during that time and unable to come to work or leave her bedroom," and that Yusem had knowledge of the severity of her illness from numerous emails and text messages that the two had exchanged during that period. Chippi contended that she notified Yusem that she was unable to collect her December paycheck due to her illness. She also alleged that she paid December's rent on December 21, 2011, and that Yusem accepted the December 21 payment and made no objection to the fact that the check was submitted on that date.

¶ 6 Chippi further stated that, on December 28, 2011, she "returned from Michigan," where she had been "staying with family to regain her health." On December 29, she received a text message from Yusem wanting to meet "to talk." Later that evening, Yusem sent Chippi another text message, stating that the sublease arrangement was not working for her family and demanding that Chippi move out by the following morning, or Yusem would change the locks. Around 10:30 p.m., when the parties had still not met for a talk, Yusem contacted the police in an attempt to have Chippi removed from the premises. The officers came to the premises and had a discussion with Yusem and Chippi, informing Yusem that she could not legally evict a tenant "on a whim."

¶ 7 On December 30, 2011, Yusem again approached Chippi wanting to talk, but Chippi informed her that she was leaving for work and had no interest in a discussion. A physical struggle ensued between the two women, after which Yusem again contacted the police, who came to the premises and reiterated that Yusem was required by law to provide Chippi with notice before evicting her.

¶ 8 Chippi claimed that, between December 29, 2011, and January 2, 2012, Yusem sent her multiple messages and documents demanding that she vacate the premises by January 3, and that on January 2, Yusem blocked her access to the only source of heat in the dwelling. Accordingly, based upon this conduct, Chippi asserted that Yusem had attempted to evict her illegally under the Act and the RLTO, and that she was entitled to damages in the amount of \$1,500, representing two months' rent, plus punitive damages and attorney fees under the RLTO. Chippi similarly alleged a claim for assault based upon Yusem's conduct in demanding that she leave the premises, and a claim for emotional distress, based upon the fact that Yusem subjected her to such retaliatory behavior knowing that she was seriously ill with pneumonia. The trial court later dismissed the emotional distress claim without prejudice, but Chippi failed to replead the claim.

¶ 9 Yusem filed a verified answer and a two-count counterclaim. In her verified answer, Yusem admitted that she accepted Chippi's rent payment for December and that she made no objection to the fact that this rent was submitted on December 21, 2011. Count I of Yusem's counterclaim sought damages for Chippi's alleged breach of the oral sublease by her failure to pay rent for January 2012, despite the fact that she remained in the unit until about January 12. Yusem requested damages "in excess of \$375," plus costs. Count II asserted various violations under section 5-12-040 of the RLTO, based upon the condition of the premises following Chippi's departure, and Chippi's interference with Yusem's quiet enjoyment of her dwelling. Accordingly, Yusem sought damages under the RLTO in excess of \$1000, plus reasonable costs and attorney fees. The counterclaim raised no issue regarding any alleged nonpayment of rent, other than for the two-week period in January 2012.

¶ 10 In her deposition, Chippi acknowledged that she was with her family in Michigan during a portion of the period when she allegedly was sick, from December 22 through December 28,

2011. However, she continued to maintain that she was seriously ill and could barely get out of bed beginning December 9, and lasting throughout the month. According to Chippi, when she tendered her December rent check to Yusem, she had attached a written note apologizing that she did not pay earlier, but explaining that she had been absent from work due to her illness and was unable to pick up her December paycheck to cover the rent. When asked by Yusem's counsel the date of the December rent check, Chippi testified that she could not remember and would have to see the check itself. When counsel then inquired whether it was December 30, Chippi stated that she would "have to see that, but it's probably around that time." Chippi admitted that she had turned the keys to the unit over to Yusem near the first week after January 1, 2012, but that she had not paid any further rent on the premises after December.

¶ 11 On March 7, 2013, Chippi's counsel filed a motion to withdraw on the basis that his law firm was dissolving. When Chippi later failed to appear at a pretrial conference, the court dismissed her complaint for want of prosecution. Chippi subsequently entered an appearance and moved to vacate the dismissal, which was opposed by Yusem.

¶ 12 Yusem then filed the Rule 137 motion and motion for attorney fees at issue in this appeal. In the Rule 137 motion, Yusem alleged that Chippi falsely verified material facts in her complaint resulting in a needless and substantial increase in Yusem's cost of litigation. Specifically, the sole basis for the motion was the allegation in which Chippi claimed to be bedridden, suffering from pneumonia, and unable to work from December 9 through the end of the month, when, according to Yusem, she later admitted that she was "perfectly able to leave her bedroom as she took an eight hour road trip to Michigan" on December 22. Yusem argued that these facts were material because the parties had agreed that rent would be paid "around the 15th of the month," but Chippi failed to pay until December 30, 2012.

¶ 13 On June 3, 2013, a hearing was held, at which Chippi failed to appear, in which the court considered Yusem's motion for sanctions, her alleged damages, and other pending matters. The court entered an order (1) striking Chippi's motion to vacate the default judgment; (2) entering judgment in favor of Yusem on her counterclaim, in the amount of \$1,000; (3) denying Yusem's motion for sanctions; and (4) denying Yusem's petition for attorney fees, finding that "the RLTO is inapplicable to the sublease at issue." The defendant now appeals from the portions of the order denying Rule 137 sanctions and her request for attorney fees under the RLTO.

¶ 14 Yusem first maintains that the court erred in denying her motion for sanctions because Chippi, an attorney, signed her complaint "knowing full well that she was not bed-ridden" and that, "on the contrary, she had taken an eight hour road trip for a holiday week in Michigan." Yusem asserts that these statements were material because, while Chippi admits that the rent was due around the 15th of each month, she also admits that she failed to pay the rent until December 30, more than two weeks late. She further contends that, in her action for a mere \$1,600 in damages, Chippi filed "18 different documents of record."

¶ 15 Supreme Court Rule 137 provides for sanctions against a party or her attorney who signs a "pleading, motion, or other document" that is not well grounded in fact or warranted by existing law, but is interposed "to harass or to cause *** needless increase in the cost of litigation." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). Rule 137 is penal in nature and therefore must be strictly construed. *Rankin ex rel. Heidlebaugh v. Heidlebaugh*, 321 Ill. App. 3d 255, 260, 747 N.E.2d 483 (2001). The purpose of the rule is to prevent parties from abusing the judicial process by filing vexatious and harassing actions based upon unsupported allegations of fact or law. *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217, 882 N.E.2d 607 (2007). The standard for evaluating a party's conduct under the rule is one of reasonableness under the

circumstances existing at the time the pleading was filed. *In re Marriage of Schneider*, 298 Ill. App. 3d 103, 109, 697 N.E.2d 1161 (1998). The decision of whether to impose sanctions rests within the discretion of the trial court (*Century Nat. Ins. Co. v. Tracy*, 316 Ill. App. 3d 639, 651, 737 N.E.2d 353 (2000)), and is entitled to great deference. *Patton v. Lee*, 406 Ill. App. 3d 195, 199, 940 N.E.2d 802 (2010). We will not disturb the trial court's decision absent an abuse of discretion. *Feret v. Schillerstrom*, 363 Ill. App. 3d 534, 542, 844 N.E.2d 447 (2006).

¶ 16 In her complaint, Chippi alleged that from December 9 through December 28, 2011, she was severely ill with pneumonia, bedridden, and could not go to work to get her paycheck, but that near the end of this period, she went to her family's home in Michigan to regain her health. She reaffirmed this fact in her deposition, where she testified that she and a male friend drove to her family home on December 22, but that she was still in ill-health. Even assuming, *arguendo*, that Chippi did not remain on bed rest while with her family, which we do not necessarily conclude was the case, we fail to see how this fact warrants sanctions against her. Viewed in context, the primary purpose behind Chippi's statement that she was bedridden was to explain why she did not tender December's rent until December 21, 2011, when the parties had loosely agreed that it should be paid on or about the 15th of the month. She alleged this point in her complaint, along with the fact that Yusem accepted the payment on December 21st without any further objection. Yusem herself admitted, in her verified answer and in her deposition, that she received and accepted December's rent from Chippi on December 21, 2011.

¶ 17 We question Yusem's attempt to claim for the first time in her motion for sanctions that the rent was not paid until December 30, 2011. As her sole support for this claim, she refers us to her own assertion in the motion for sanctions and to a suggestion by her counsel in Chippi's deposition, which Chippi never affirmatively admitted. The payment of December's rent was not

made an issue prior to this point, and Yusem's attempt to use it as a basis for sanctions is not well-taken. We also reject her contention regarding the number of documents filed by Chipipi in this case. Yusem does not claim that they were frivolous or without merit, and we do not find them to be excessive under the circumstances here.

¶ 18 Yusem next argues that, in denying her request for attorney fees under the RLTO, the court misinterpreted the ordinance by concluding that it did not apply to the sublease at issue.

¶ 19 It is true that, under section 5-12-180 of the RLTO, any prevailing plaintiff may be awarded attorney fees and costs for actions arising out of "the rights or remedies made available" in the ordinance. Chicago Municipal Code § 5-12-180 (amended November 6, 1991); *Willis v. NAICO Real Estate Property & Management Corp.*, 379 Ill. App. 3d 486, 490, 884 N.E.2d 752 (2008); *Meyer v. Cohen*, 260 Ill. App. 3d 351, 363, 632 N.E.2d 22 (1993). However, it is difficult to conduct a meaningful review of the trial court's determination on this issue, because Yusem has provided neither a transcript nor a bystander's report for the hearing as required under Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). Accordingly, this court will indulge every presumption that the trial court's decision on the matter was amply supported by the law and the facts. *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 246, 872 N.E.2d 1 (2007). Yusem has further failed to cite any authority or make any real argument showing how, contrary to the trial court's ruling, this sublease was subject to the RLTO. It was the defendant's burden in this case to substantiate her claim with concise arguments and citation to applicable authority. A reviewing court is under no obligation to act as an advocate for the appellant or assume the burden of researching his case. *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459, 920 N.E.2d 515 (2009), quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682, 624 N.E.2d 928 (1993); see Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

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¶ 20 A "tenant" under the RLTO is defined as "a person entitled by written or oral agreement, *subtenancy approved by the landlord ****, to occupy a *dwelling unit to the exclusion of others*." (Emphasis added) Chicago Municipal Code § 5-12-030(i). Yusem's testimony indicates that she never informed her landlord that she had entered into an agreement to sublease a portion of her apartment. Further, we are unable to ascertain from the record before us whether Chippi was confined to a portion of the premises that would qualify as a dwelling unit, or, additionally, that she occupied a dwelling unit to the exclusion of others. It is certainly arguable under the facts of this case that Chippi did not constitute a "tenant" within the purview of the RLTO. Accordingly, Yusem has failed to provide a basis to disturb the trial court's finding that the RLTO was inapplicable to the sublease at issue.

¶ 21 For the foregoing reasons, the order of the circuit court denying Yusem's motions for Rule 137 sanctions and attorney fees under the RLTO is affirmed.

¶ 22 Affirmed.