

No. 1-13-3925

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

STATE FARM MUTUAL INSURANCE)	Appeal from the Circuit Court
COMPANY)	of Cook County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12 M1 11531
)	
JESUS OCAMPO and KAREN OCAMPO)	
)	Honorable Anita Rivkin-Carothers,
Defendants.)	Judge Presiding
)	
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STEVE GROSSI, as counsel for Karen Ocampo,)	
)	
Appellant.)	

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

Held: Trial court abused its discretion in granting sanctions on its own initiative pursuant to Illinois Supreme Court Rule 137 for defense counsel’s filing of a motion for costs for codefendant when the two codefendants filed a single appearance and paid a single appearance fee and the action continued to trial against the remaining defendant. No clear authority supported either granting or denying the motion and there was no evidence appellant intended to harass the opposing party or cause undue delay.

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¶ 1 Plaintiff State Farm Mutual Insurance Company filed the underlying subrogation lawsuit against defendants Jesus Ocampo (Jesus) and Karen Ocampo (Karen). Defense counsel Steve Grossi (appellant) filed a single appearance on behalf of both Jesus and Karen. Karen was dismissed prior to trial upon motion by plaintiff and, following the jury trial verdict against Jesus, appellant sought recovery of costs for Karen. The trial court found this motion was not well grounded in fact or law or good faith argument for modification of existing law and was only interposed to harass or cause unnecessary delay and imposed sanctions against appellant pursuant to Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)).

¶ 2 Appellant appeals that determination, arguing that section 5-118 of the Illinois Code of Civil Procedure (735 ILCS 5/5-118 (West 2012)) supports his motion and argument for costs and the trial court erred in imposing sanctions pursuant to Rule 137. For the following reasons, we reverse the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On March 19, 2012, plaintiff filed the underlying subrogation lawsuit against Jesus and Karen seeking reimbursement for payments of \$2,910.80 paid out to its insured for property damage sustained on August 13, 2011, in a motor vehicle accident caused by Jesus' negligence. On June 1, 2012, as counsel for defendants, Parrillo, Weiss & O'Halloran entered an appearance on behalf of both Jesus and Karen, paying a single appearance fee. The case proceeded to a jury trial on August 7, 2013.

¶ 5 On August 7, 2013, prior to trial, plaintiff moved to dismiss Karen, the owner of the vehicle involved in the accident, to simplify and expedite the trial as Jesus was the driver and had insurance coverage. There was no objection by defendants' counsel. The matter proceeded to trial

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with Jesus as the sole defendant. The jury entered a verdict in favor of plaintiff and against Jesus in the amount of \$2,910.80 plus costs.

¶ 6 Two orders were prepared for the trial court. The first reflected the jury verdict and judgment for plaintiff against Jesus. The second order reflected dismissal with prejudice in favor of Karen. Appellant moved for language in the second order that costs be included in favor of Karen pursuant to section 5-118; however, the trial court refused to assess costs or add language concerning costs to the order deeming it inappropriate because only one appearance fee was paid for both Karen and Jesus. The court further refused to grant leave to counsel to file a motion, indicating that counsel could file any motion he deemed appropriate.

¶ 7 On August 8, 2013, appellant filed a two paragraph motion on behalf of Karen seeking statutory costs in favor of Karen as she was dismissed with prejudice, "[p]ursuant to the plain language of 735 ILCS 5/5-118: 'Upon the action being dismissed, or the defendant dismissing the same for want of prosecution, the defendant shall recover against the plaintiff full costs.'" The parties briefed the matter and presented argument at the hearing.¹ Following the hearing, the trial court entered a written order on September 4, 2013, denying the motion for costs. The court held that section 5-118 applies to "actions" and the ordinary and understood meaning of that term is a lawsuit. The court further reasoned that dismissal of a party, and not the lawsuit, does not entitle one to costs under the statute. Moreover, with the single appearance filed on behalf of both defendants, there could be no claim for costs as the cost of defendant Jesus was indivisible

¹ A transcript of proceedings has not been provided in this case; however appellant prepared a bystander's report that was reviewed and amended with additional information from the trial court, which plaintiff affirmed and adopted.

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to that of defending Karen. However, the court added that “[h]ad Defendant Karen O’Campo [*sic*] paid a separate appearance and jury demand, her claim for court costs would have a legitimate basis... that is not the case here.”

¶ 8 Therefore, the court found that the motion: (1) was not "based on knowledge, information, and belief formed after reasonable inquiry;" (2) "does not appear to be well grounded in fact and is [not] warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law;" and '(3) "does not appear to be interposed for any proper purpose, but rather for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation." Accordingly, the court concluded that the motion was filed in violation of Rule 137. Citing to the "safe harbor" period from the federal rules of civil procedure the court granted appellant the opportunity to withdraw his motion or correct the pleadings such that they conform with the rules.

¶ 9 Appellant did not withdraw and correct his motion for costs, but filed a "reply in support of motion for costs" on September 25, 2013. Appellant argued that the trial court's interpretation of section 5-118 and the term "action" conflicted with Illinois case law and was internally inconsistent. Appellant pointed to the trial court's statement that statutory costs could have been recovered by Karen if she had filed her own separate appearance and fee. He argued that this was inconsistent with the court's analysis and definition of the term "action." Furthermore, appellant asserted that there was no "' indivisible costs' exception" to section 5-118.

¶ 10 Following a response memorandum filed by plaintiff, the court conducted another hearing on the matter. Plaintiff argued that the plain meaning of section 5-118 foreclosed recovery of a shared appearance fee when one party is dismissed. Appellant asserted that the

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statute does not preclude such recovery and, in his own experience, courts have split in similar cases with some granting full costs and some a *pro rata* share of costs while some courts have denied the motion for costs. Appellant maintains that "if there had been any case law or statutory authority cited by either the trial court or plaintiff's counsel that demonstrated his position was incorrect, then he would have withdrawn the motion."

¶ 11 The trial court entered an 11-page order on November 15, 2013, affirming the finding of sanctions pursuant to Rule 137 based on the same grounds as the prior order. The court noted that appellant's "continued support of this motion for court costs violates Rule 137," but also stated that "[h]owever lacking attorney Grossi's performance may have been in this case, the court does not believe he subjectively acted in bad faith, based on, for example his misapplication of the single case and the single court rule, on which he relies for his untenable position." The court repeatedly based the final conclusion on the same grounds as the first order, "that the motion for costs was filed without reasonable inquiry and interposed for an improper purpose, such as to harass or to cause needless increase in the cost of litigation." The court calculated damages to be \$1,500 for reasonable attorney fees incurred in defending the frivolous motion. Following an evidentiary hearing upon motion by appellant, the trial court sustained the November 15, 2013, order for sanctions in a final order dated December 6, 2013. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Supreme Court Rule 137 is penal in nature, aimed at penalizing claimants whose pleadings and papers are unsupported by law or fact and are vexatious or harassing to the parties and court. *In re the Marriage of Oleksy*, 337 Ill. App. 3d 946, 949 (2003). Under Rule 137, all

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pleadings must be supported by a reasonable inquiry that they are grounded in fact and law and not be intended to harass the opposing party or cause undue delay. Ill. S. Ct. R. 137 (eff. July 1, 2013). Upon a finding that a party violated an objective standard of reasonableness, the trial court may sanction the party or its representative. *Id.*

¶ 14 In imposing sanctions under Rule 137, the trial court must set forth a factual basis that the party's action was unreasonable and beyond merely zealous and unsuccessful. *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020 (2004). The standard of what was reasonable at the time of filing is an objective standard and an attorney's honest belief that his or her case is well grounded in fact or law is insufficient. *Baker v. Daniel S. Berger, Ltd.*, 323 Ill. App. 3d 956, 963 (2001). Sanctions may include an order to pay reasonable expenses, including attorney fees. *Sanchez, supra* at 1020.

¶ 15 Appellate review of such an order is based on three factors: (1) whether the trial court's ruling is an informed one; (2) whether the ruling was based on valid reasons; and (3) whether the ruling followed logically from the court's stated reasons. *Id.* at 1020-21. We will not overturn such a determination absent an abuse of discretion by the court. *Oleksy*, 337 Ill. App. 3d at 948. Accordingly, we grant considerable deference to the findings of the trial court. *Mina v. Board of Education for Homewood-Flossmoor, Community High School Dist. 233*, 348 Ill. App. 3d 264, 279 (2004). However, we may only affirm the imposition of sanctions on the grounds specified by the trial court. *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 68 (2011).

¶ 16 We note that our supreme court has exclusive and plenary jurisdiction over matters of attorney discipline. *Id.* at 1020. The supreme court also has supervisory authority over the lower courts and is empowered to render supervisory orders to resolve exceptional issues. Ill. S. Ct. R.

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383 (eff. March 14, 2014). This power does not extend to advisory opinions or deciding an issue not based on the facts simply to provide guidance. *CGE Ford Heights v. Miller*, 306 Ill. App. 3d 431, 441 (2001).

¶ 17 We agree with appellant that the trial court's stated grounds for imposition of Rule 137 sanctions were insufficient and sanctions in this case were unwarranted. While the trial court did provide specific analysis and reasoning for its imposition of sanctions, we do not find that the ruling followed logically from these reasons. The trial court imposed sanctions *sua sponte* in this case in order to deter similar conduct in the future. But considering the facts of this case, this was an overreach where simple a denial of the motion would have sufficed.

¶ 18 Unfortunately, the tenor of the parties' submissions evidences either animosity (e.g., appellant's repeatedly labeling the trial court's interpretation of section 5-118 an "absurdity" on appeal) or simply poor word choices. Despite this, and while the standard of reasonableness is objective, the trial court specifically found that appellant did not file the motion for costs in bad faith. For his part, appellant asserted that he would have withdrawn the motion if any case law or statutory authority was presented that specifically refuted his theory for recovery. Accordingly, it is difficult to understand the seemingly charged tenor of the case and the jump into sanctions. In any event, contrary to the strength each side applies to its interpretation of section 5-118 and the alleged clarity of authority, the dearth of authority cited by either the trial court or appellant belies the strength of the arguments they make and an objective review of appellant's motion and the logic of the trial court requires reversal.

¶ 19 Appellant's motion was merely two paragraphs in length and relied solely on section 5-118 for authority. The trial court noted that appellant filed the motion within 24 hours of

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judgment in the case and provided no case law or explanation in support of the motion.

Furthermore, appellant failed to provide any explanation as to how section 5-118 applied to the underlying motion or any authority for returning a single appearance fee paid on behalf of multiple defendants.

¶ 20 The trial court resorted solely to the plain meaning rule and dictionary definitions to define the term "action" because the statute does not define that term. The court concluded that “the plain and ordinary meaning of the term ‘action’ is a lawsuit” and section 5-118 required dismissal of the lawsuit in order to obtain costs. Therefore, because the lawsuit continued, Karen could not recover costs. Next, the court stated that Karen's claim for costs would have a legitimate basis if Karen had filed a separate appearance and jury demand. However, Karen did not file a separate appearance fee and the court concluded that the cost of defending Karen was indivisible from the cost of defending Jesus and the motion was without merit.

¶ 21 Under this analysis, it does not strike us as logical to conclude that the motion was so unreasonable or so unsupported and ungrounded to warrant sanctions. In fact, the trial court noted there was no case law to support the counter understanding. Furthermore, contrary to its conclusion that "action" meant lawsuit for purposes of section 5-118, the court noted that if Karen had filed a separate appearance, the motion would be meritorious. Following the original order finding that appellant violated Rule 137 and after appellant filed a memorandum in support of his motion, the trial court reiterated its holding and added that there is no basis in the statute, case law, or local rules to support the claim that fees were divisible.

¶ 22 Appellant's brief two paragraph motion did not assist the trial court in determining whether Karen should be awarded costs. Unfortunately, defendant's subsequent arguments were

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also devoid of authority and thorough analysis. However, appellant appropriately argued that there is no clear authority to support either position, no authority stating that costs are indivisible, and that he had experience with trial courts granting and dismissing similar motions and would withdraw the motion if such authority was produced.

¶ 23 While the court denied the imposition of costs at the conclusion of trial, it invited appellant to file any motion he deemed necessary. Without clear authority to support the trial court or appellant, it was objectively reasonable for appellant to claim that the plain meaning of section 5-118 supported the claim for costs upon Karen's dismissal from the case and to seek costs via written motion. Therefore, it does not logically follow from the trial court's reasoning that the motion was totally unsupported by fact or law and only intended to harass the opposing party or cause undue delay such that sanctions, on the court's own initiative, were warranted. At this point, instead of simply denying the motion for costs, this case stopped being the simple legal dispute it should have been and the parties and the court spent as much time and effort on the issue of sanctions as the underlying subrogation claim. Accordingly, we hold that Rule 137 sanctions were not proper in this case and the order imposing sanctions must be reversed.

¶ 24 III. CONCLUSION

¶ 25 Accordingly, we reverse the judgment of the Circuit Court of Cook County imposing sanctions against appellant.

¶ 26 Reversed.