FOURTH DIVISION
August 27, 2015

No. 1-13-2839

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

SHARON SWARSENSKY BILOW, Plaintiff / Appellant—Cross-Appellee, v. MUCH SHELIST FREED DENENBERG AMENT & RUBENSTEIN, P.C., and its predecessors, Defendant / Appellee—Cross-Appellant.	Appeal from the Circuit Court of Cook County, Illinois. Nos. 12L6383 and 00L6282 The Honorable Daniel Pierce and Margaret Brennan, Judges Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 Held: Where cause was dismissed for want of prosecution after 9 years of inactivity, but the dismissal was then vacated and cause proceeded, plaintiff's lack of diligence for such an extreme amount of time, coupled with her failure to provide a reasonable explanation of the delay, requires us to find that the circuit court abused its discretion when it vacated the original vacatur of the DWP and allowed this case to proceed; denial of motion for Rule 137 sanctions affirmed. Vacatur of the DWP is reversed. Affirmed in part; reversed in part.

¶ 2 Plaintiff/Appellant—Cross-Appellee Sharon Swarsensky Bilow is an attorney previously employed by defendant/Appellee—Cross-Appellant Much Shelist Freed Denenberg Ament & Rubenstein, P.C. (the firm) law firm. Plaintiff's employment was terminated in 1999, and plaintiff filed a lawsuit in June 2000 against the firm regarding the termination and allegedly unpaid wages. Various actions took place on the lawsuit up until 2002, after which the lawsuit sat dormant until March 2011, when the circuit court dismissed it for want of prosecution (DWP). Plaintiff then filed a motion to vacate the DWP, which the circuit court granted. The parties began, again, to litigate this cause. Eventually, the circuit court dismissed one count of the lawsuit, and granted summary judgment in favor of the firm on all remaining counts. Plaintiff appeals these rulings. The firm cross-appeals, challenging the denial of its motion for Supreme Court Rule 137 sanctions. For the following reasons, we affirm in part and reverse in part.

¶ 3 I. BACKGROUND

¶ 4 This lawsuit was commenced by plaintiff against her former law firm after it terminated her employment. The firm is comprised of 60 to 70 attorneys and concentrates its practice on business transaction and business litigation matters. Plaintiff started working for the firm as an associate in 1982. Three years later, plaintiff was promoted to income partner. She remained an income partner until her termination from employment in 1998.

¶ 5 Plaintiff was a member of the firm's litigation department. In 1992, plaintiff was assigned to work on a complex class action case filed in the United States District Court in Indianapolis, Indiana. This case, *Brouwer v. Rochwarger*, was taken on a contingency fee basis. Bilow requested and was provided an associate attorney to help her.

¶ 6 By the end of 1997, plaintiff had billed nearly 6,000 hours to the *Brouwer* case, which comprised almost the entirety of her billable hours, and the associate assigned to assist her had billed over 5,300 hours. According to firm partner Shelist, the value of attorney time expended on the case was approximately $3 million, and the firm had recovered less than $800,000 of these fees through settlements with various defendants. Shelist attested, "it was appearing increasingly likely to the members of the Management Committee that the Firm would not recoup all the time it had invested in the case."

¶ 7 The management committee of the firm held a meeting to discuss the expenditures and the likelihood of recovery in early 1998. At the meeting, Michael Freed, an equity partner who headed the litigation department at the firm, assured the committee that Bilow and local Indianapolis counsel could adequately litigate the case on their own. The trial was scheduled to begin in May 1998. The committee decided Bilow and local Indianapolis counsel would litigate the case themselves in Indianapolis, but that there would be attorneys available to provide assistance from the Chicago office. The committee informed Bilow of this decision in a memo on February 26, 1998.

¶ 8 On February 27, 1998, plaintiff sent a memo to partner Anthony Valiulis in which she expressed that "it may not be possible" for her to try the *Brouwer* case on her own with local Indianapolis counsel due to personal issues regarding the overnight care of her children. In the memo, plaintiff stated that her husband, Paul, could take his one-month vacation for the scheduled *Brouwer* trial, but that, if the trial were continued or lasted over one month, he would not have any more vacation time left to offer. She then stated:

> "If Paul is not on vacation and the trial does go ahead, I will be able to fly to Indianapolis and come back to Chicago every day. The flight schedule to

Indianapolis, however, is such that it is impossible to arrive each morning before the trial begins. When this issue arose before, you told me that you would stay in Indianapolis for the duration of the trial. Although I believe that [local Indianapolis counsel] Hugh is able to do a good opening statement, I do not believe that he is able to properly question witnesses. Accordingly, it will be necessary for someone other than me or Hugh to try the case as well."

¶ 9 According to Shelist's affidavit, he and firm partner Michael Hyman then met with plaintiff to "discuss the reasons for our decision [to have her try the case along with local Indianapolis counsel], impress upon her that she was to follow the Committee's directive as set forth in Valiulis' memorandum, and to assure ourselves that she would be available to try the case with [local Indianapolis counsel] in Indianapolis in May 1998." At the meeting, plaintiff informed them:

> "[b]ecause she did not have anyone to take care of her children at night, she would fly in and out of Indianapolis every day, although she most likely would arrive at the trial late every day as a result. Hyman and I rejected this idea out of hand and told her it was not a proper way to conduct a trial. I suggested to her that she hire a nanny, a college student or a married couple to take care of her children, but she insisted that it was literally 'impossible' to find a person who was either available or sufficiently reliable to do this. I told her that perhaps her husband could take his vacation at the time of the trial, but discussions on this were also fruitless. [Plaintiff] insisted that she did not think it was fair that her husband should have to take his vacation at that time because the trial could be postponed and the vacation would thereby be 'wasted', as it had in the past. She

> also maintained that even if he did take his vacation at that time it would not solve the problem."

¶ 10 Shelist attested that nothing was resolved at the meeting, and plaintiff "indignantly" insisted that "the only way to do it was her way and 'if you don't like it, you can fire me.' " Per the decision of the management committee, Shelist created a memorandum of the meeting and put it in plaintiff's personnel file in April 1998.

¶ 11 Immediately after the meeting at which plaintiff expressed her unhappiness with the *Brouwer* staffing decision, the firm conducted a non-anonymous survey of its partners. In response to a request to list her "three most significant concerns about the firm," plaintiff complained about her compensation, and then stated that "there is a ruling class at the firm and a ruled class and all the women in the firm are in the ruled class."

¶ 12 According to Shelist, the management committee worked on fiscal year-end matters in May 1998, and determined there would not be "enough senior level work in the Firm's corporate and hourly litigation departments to keep all the senior level attorneys in those departments busy." The committee decided to terminate a senior level attorney in each of those departments. The attorney terminated from the corporate law department was a male income partner who concentrated on corporate transaction and securities work. When considering who to terminate from the litigation area, "[plaintiff's] name came under active consideration because the members of the Committee felt that they could not confidently rely on her to continue handling the *Brouwer* [litigation] on the Firm's behalf. * * * We also reasoned that if [plaintiff] did not have the *Brouwer* trial to occupy her, there would not be much else for her to do without taking work away from someone else." Shelist met with plaintiff in June 1998 to terminate her employment, informing her "that she was being terminated because there was insufficient work in the hourly litigation department to keep all the senior litigators busy, and that since she had not been willing to try the *Brouwer* case in Indianapolis as we had requested, the Firm had decided to select her for layoff.[1]

¶ 13 Around the same time as the foregoing was transpiring, in March 1998, plaintiff noticed her paycheck was less than expected. At that time, plaintiff was an income partner and had worked for the firm for over 16 years. She notified her supervisor, firm partner Valiulis, who notified Steven Schwartz, a firm partner on the accounting and management committees. Eventually, it was explained by the firm that the underpayment was due to some changes in the way the firm paid for family insurance benefits.[2] However, during the number of weeks it took for the firm to provide this answer to plaintiff, plaintiff apparently became increasingly irritated. In April 1998, plaintiff sent a memo to the firm's management committee in which she stated:

> "It has been approximately six weeks since the firm has acknowledged that my salary has never been 'grossed up' for the medical insurance deducted from my salary. Given the criminal liability attached to this failure to pay, which dates

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[1] The actual employment termination took some time, apparently due to severance package negotiations, as well as issues about the so-called gross-up pay. We need not go into detail about this in this decision, as the details are not necessary to our disposition of the case.

[2] In its brief on appeal, the firm explains that this was the "gross-up pay." Gross-up pay "refers to a practice Defendant announced at a partners meeting in 1989 under which Defendant adjusted partners' salaries upward by a flat amount (*i.e.*, the 'gross-up') as reflected on each biweekly paycheck. The add-on was designed in part to compensate for the fact that Defendant was no longer paying the partners' premiums for dependent coverage under Defendant's group health insurance plan. That practice was modified in 1992 at another partner's [*sic*] meeting to eliminate the gross-up for certain partners."

back to 1986 and continues to the present, I do not understand the firm's apparent nonchalance. No one has even discussed the status of the matter with me.

Please let me know when I can expect to receive an accounting."

¶ 14 According to plaintiff's deposition testimony, named partner Shelist had a meeting with plaintiff in May 1998 at which he told her "you are a smart lawyer who chooses your words carefully and I do not like the language in your memo." In Shelist's affidavit, which is a part of the record on appeal, Shelist describes his reaction to this memo and its reference to "criminal liability" as, "I simply assumed that [plaintiff] was trying to get our attention in a rather undiplomatic way."

¶ 15 Schwartz provided an affidavit which is included in the record on appeal. In it, Schwartz explains firm attorney compensation, including insurance benefits. He explains that, at all times relevant to this appeal, the firm made available to all of its partners group health insurance programs providing individual and dependent coverage. Partner participants could elect coverage under a PPO plan or an HMO plan. Under these plans, the firm provided individual medical coverage at no cost to the subscribing partner, but the dependent coverage was the responsibility of each individual subscribing partner. In 1989, the firm announced at a general partner meeting that it was increasing every partner's salary by a flat amount, which was "designed in part to reflect that the partners had to pay for dependent coverage under the Firm's group health insurance plan, although the increase was less than the cost of the insurance." This was the "gross-up."

¶ 16 In 1992, at another general partner meeting, the firm announced that the salary adjustment would no longer be maintained for partners who only had individual coverage under the PPO plan, or those whose spouse's employer provided fully-paid dependent coverage, or those who elected insurance coverage under the HMO plan.[3] Shwartz averred: "[t]o cushion the impact on those who would no longer be receiving the gross-up, partners were informed that the elimination of the gross-up would be phased out over the next two years. Bilow was one of those whose gross-up pay was thereafter phased out and discontinued."

¶ 17 In November 1998, plaintiff filed discrimination charges with the EEOC, claiming that the firm eliminated her gross-up as a direct result of sex discrimination, that she was terminated in retaliation for complaining about the loss of the gross-up, that the firm required her to try the *Brouwer* as a result of sex discrimination, and that she was terminated in retaliation for objecting to the *Brouwer* staffing decision. *Bilow v. Much Shelist Freed Denenberg Ament & Rubenstein, P.C.*, 277 F. 3d 882, 890 (2001). She also brought a complaint in federal court alleging violations of ERISA, Title VII, and Illinois state law. *Id.* By this complaint, plaintiff alleged the firm violated ERISA by: not providing her with a summary plan description of the gross-up program, failing to notify her of a material change in her benefits, withholding benefits to which she was entitled under the gross-up plan, and firing her in retaliation for complaints about conduct she believed to be in violation of ERISA. *Id.* She also alleged Title VII violations in that: the firms discriminated against her on the basis of sex in assuming that, because of her gender, her husband's employer provided family health insurance, and that the firm discriminated against her based on gender when it required her to try the *Brouwer* by herself. *Id.* Additionally, she alleged retaliatory discharge

[3] Plaintiff explains in her declaration, included in the record on appeal, that she was on maternity leave during the 1992 meeting and did not know the firm had announced it would no longer provide her with the wage gross-up.

for her complaints regarding the discriminatory administration of the gross-up program and for the comments she made in the partner survey. *Id.* She also brought claims based on salary and bonus payments under state law. *Bilow*, 277 F. 3d at 890. The District Court dismissed several claims and declined to exercise supplemental jurisdiction over the state law claims. *Id.* The United States Court of Appeals, Seventh Circuit, affirmed. *Bilow*, 277 F. 3d at 896.

¶ 18 In June 2000, plaintiff filed the complaint in the case at bar against the firm alleging retaliatory discharge (Count I); wage claims under the Illinois Wage Payment and Collection Act (820 ILCS 115/1, *et seq*. (2000)) regarding the wage gross-up payments (Count II); breach of an oral contract regarding the wage gross-up payments (Count III); wage claims regarding allegedly earned but unpaid bonuses (Counts IV and V); and breach of contract and promissory estoppels claims regarding allegedly unpaid salary for the final two weeks of July 1998 (Counts VI and VII).

¶ 19 As the case proceeded through motion practice, matters apparently became increasingly tense. Plaintiff filed a motion to compel discovery. The firm filed a response to the motion to compel, and plaintiff filed a reply. According to plaintiff's declaration, included in the record on appeal, in June 2002 plaintiff received notification that Judge Flynn in the circuit court of Cook County would hold a status hearing on or about June 24, 2002. When plaintiff arrived for the status hearing, Judge Flynn was not in the courtroom. Plaintiff was informed that Judge Flynn's teenage son had passed away. She left the courtroom and then waited—for years—for the court to rule on her motion to compel. She explains:

> "When after three or four months had elapsed and Judge Flynn had not ruled on my motion to compel, I considered what, if anything, I should do. Given

the recent and tragic death of Judge Flynn's son, I believed it would be not only inappropriate, but also cruel to petition him for a ruling. *** As time went on, I concluded that it still would not be advisable to petition Judge Flynn for a ruling."

¶ 20 So, she explains, she decided to wait. She explains that her diligence while waiting included "checking her mail every day" in case she received notice of any activity in her case, as well as going to the Daley Center every nine months to "examine the entries on the computerized docket in my case." Every nine months, then, she went to the Daley Center and reviewed the her case docket, asked the clerks at the information desk to also review the docket in her case, and asked the information desk clerks if they "had any suggestions as to what should be done." Plaintiff did this every nine months for a period of nine years, and no information desk clerk "ever had any idea what should be done." According to plaintiff's declaration, at some point during this nine-year period, "it appeared that Judge Flynn had left the Law Division and my case would be assigned to a new judge." She took no action during this time or after to follow up on her case to see that it was appropriately reassigned to the new judge, but instead "relied on the administrative machinery in the Circuit Court to either transfer my case to a new judge or to place it on the trial call."

¶ 21 Eventually, explains plaintiff, her case came up on the trial call in March of 2011. The case was dismissed for want of prosecution. She then filed a motion to vacate the dismissal, with no explanation as to why it should be vacated. Although neither a transcript nor a bystander's report of the hearing appears in the record on appeal, Judge Maddox apparently held a hearing on the matter, after which he vacated the dismissal and transferred the case to Judge Pierce on April 15, 2011. The firm then filed a motion to reconsider the April 15, 2011, order vacating the dismissal for want of prosecution or, in the alternative, for the court to issue a Supreme Court Rule 308 certification to permit an immediate appeal from the April 15 order. In July 2011, the court denied the motion.

¶ 22 The case proceeded. Back in 2002, the firm had filed a combined motion to dismiss and for summary judgment. After further briefing in 2011 and 2012, on May 8, 2012, the court granted the firm's motion to dismiss Count I of plaintiff's complaint for retaliatory discharge, noting that it was doing so pursuant to *McGrath v. CCC Information Services*, 314 Ill. App. 3d 431 (2000), and denied the firm's motion for summary judgment on the remaining counts. In December 2012, following a bench trial, the court entered judgment in favor of the firm on Counts IV and V.[4] At the court's direction, the parties then attempted to negotiate a settlement as to the compensation claims (Counts II, II, VI, and VII). These negotiations were not successful. The court held a status hearing in April 2013 at which it gave the parties leave to file cross-motions for summary judgment on the four remaining counts in plaintiff's complaint. The parties did so. Defendant moved the court to order sanctions against plaintiff under Supreme Court Rule 137.

¶ 23 On August 6, 2013, the court granted the firm's motion for summary judgment against plaintiff on counts II, III, VI, and VII, and denied plaintiff's motion for summary judgment. The court entered final judgment for defendant. The court also denied the firm's motion for sanctions against plaintiff.

¶ 24 Plaintiff appeals. The firm cross-appeals the denial of its motion for Rule 137 sanctions.

¶ 25 II. ANALYSIS

¶ 26 i. The Appeal

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[4] Plaintiff does not appeal from the judgment as to these counts.

¶ 27 Plaintiff appeals[5] from both the May 8, 2012, order of the circuit court dismissing count I (retaliatory discharge), and the August 6, 2013, order of the circuit court granting summary judgment in favor of the firm as to counts II (wage claim as to the gross-up pay); III (breach of oral contract as to the wage gross-up payments); VI ((breach of contract claim for payment of plaintiff's final two weeks of salary); and VI (promissory estoppels claim for plaintiff's final two weeks of salary) of plaintiff's complaint, and entering final judgment for the firm.

¶ 28 A large portion of plaintiff's opening brief as well as her reply brief relate to the firm's involvement with *McGrath v. CCC Information Services*, 314 Ill. App. 3d 431 (2000), a separate retaliatory discharge case it was trying at the time of plaintiff's termination and resulting fallout. In addition to arguing that *McGrath* is wrongly decided, plaintiff argues, in essence, that in its representation of *McGrath*, the firm and one of its partners had a conflict of interest, deliberately ignored their professional and ethical obligations to their plaintiff client, and "threw" that case for the purpose of creating legal precedent helpful in their defense in the cases brought by plaintiff.

¶ 29 Defendant law firm first responds that the error, in fact, occurred when the circuit court vacated the dismissal for want of prosecution (DWP) and allowed this case to continue after

[5] We note here that plaintiff-appellant's reply brief is 71 pages in length. This reply brief is clearly not in compliance with Supreme Court Rule 341(b), which limits reply briefs to 20 pages. We remind plaintiff that the rules of procedure concerning appellate briefs are rules, not mere suggestions. See *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). While we have every right to strike plaintiff's brief (see *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38), for the sake of completeness, we choose, in our discretion, to review this appeal on the full set of briefs. See *In re Estate of Jackson*, 354 Ill. App. 3d 616, 620 (2004).

nearly nine full years of inactivity. The firm argues that plaintiff failed in her duty to prosecute her case with reasonable diligence, to "follow and advance the progress of her case irrespective of actions or inactions by Defendant or the court." It continues that, "unlike many other plaintiffs whose cases have been DWP'd, here Plaintiff was not merely being inadvertently delinquent. Rather, she confessed to **deliberately** doing nothing **for 9 years**. As she candidly stated in paragraph 22 or her sworn Declaration,

> '…I decided [for nine years] to wait for an order from Judge Flynn, or an order from another circuit judge, or from the Clerk's office.' " [Emphasis in original.]

¶ 30 The firm also argues that it was prejudiced by this lack of diligence on the part of plaintiff where, during the nine years of inactivity, "key" players in this litigation have left the firm, and where "the mere passage of time adversely affects the memories of those who might otherwise offer important testimony." Additionally, the firm contends the circuit court erred in granting the motion to vacate the DWP where it should have considered the firm's "meritorious" equitable defenses such as laches and resulting prejudice to the opponent of the motion in addition to the "extreme" passage of time caused by plaintiff's failure to prosecute. We agree with the firm.

¶ 31 A DWP is "a type of involuntary dismissal which our courts have always had the inherent power to enter (*O'Reilly v. Gerber* (1981), 95 Ill. App. 3d 947, *citing Sanitary District v. Chapin* (1907) 226 Ill. 499), is not an adjudication on the merits, does not prejudice the case of the party against whom it is entered, and does not bar a subsequent suit on the same issues (*Aranda v. Hobart Manufacturing Corp*. (1977), 66 Ill. 2d 616)." *Kraus v. Metropolitan Two Illinois Center*, 146 Ill. App. 3d 210, 212 (1986); *In re Marriage of Hanlon*, 83 Ill. App. 3d 629, 632 (1980) (courts have the inherent power to dismiss actions for want of prosecution); see also *BankFinancial, FSB v. Tandon*, 2013 IL App (1st) 113152, ¶ 29 (order dismissing certain counts for want of prosecution was not a final judgment because it did not terminate the litigation between the parties on the merits).

¶ 32 By way of background, a DWP is an interlocutory order for the year after a court enters it. *Illinois Bone & Joint Institute v. Kime*, 396 Ill. App. 3d 881, 884 (2009). If a plaintiff's action is dismissed for want of prosecution, the plaintiff may refile the action within the greater of one year of the entry of the order or the remaining limitations period (735 ILCS 5/13-217 (West 1994))[6] or move to vacate the dismissal, as plaintiff did here. A determination that there has been a lack of diligent prosecution warranting dismissal rests within the sound discretion of the trial court. *In re Marriage of Hanlon*, 83 Ill. App. 3d at 632. A trial court abuses its discretion if its ruling is "arbitrary, fanciful, or unreasonable" such that "no reasonable man would take the view adopted by the trial court." *People v. Donoho*, 204 Ill. 2d 159, 182 (2003).

¶ 33 A case should not be DWP'd unless the plaintiff is "guilty of inexcusable delay." *Polowick v. Meredith Const. Col*, 29 Ill. App. 3d 1092, 1097 (1975). "The circumstances justifying the dismissal of an action are governed by the facts peculiar to each specific case." *Ali v. Jones*, 239 Ill. App. 3d 844, 849 (1993) (citing *Bender v. Schallerer*, 9 Ill. App. 3d 951,

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[6] The version of section 13-217 of the Code now on the books no longer provides for refilling after a dismissal for want of prosecution, but our supreme court has held that the amendments changing this statute were unconstitutional. *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997). Accordingly, the version of section 13-217 currently in effect is the preamended version, which allows for the refilling of actions dismissed for want of prosecution. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 469 n. 1 (1998); *Jain v. Johnson*, 398 Ill. App. 3d 135, 137, 144 (2010).

953 (1973)). This power to dismiss for want of prosecution is "necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the progress of trial calendars." *Bender*, 9 Ill. App. 3d at 953.

¶ 34 Initially, we address plaintiff's contention that the firm has waived this argument by failing to appeal the vacatur of the DWP from the court below. We note that the firm did, in fact, challenge the vacatur of the DWP below. Specifically, the court entered the DWP, plaintiff moved to vacate the DWP, and then the court granted the motion to vacate the DWP on April 15, 2011. At that point, the firm filed an 8-page motion titled "Defendant's Motion for Reconsideration or, in the Alternative, for Rule 308 Certification" in which it petitioned the court to vacate the vacatur of the DWP or, in the alternative, to issue a Rule 308 certification permitting an immediate appeal from that order "based on the unique and possibly unprecedented circumstances" of the case. The trial court denied the motion. Plaintiff points out that the firm also appealed to our supreme court, requesting a supervisory order in that it "direct Judge Maddux to certify under Supreme Court Rule 308 a question for appeal regarding the April 15, 2011 order and order the Appellate Court to accept the appeal." Our supreme court denied the motion for a supervisory order without opinion. *Much Shelist Freed Denenberg Ament & Rubenstein, P.C., etc. v. Hon. William D. Maddux, Judge of the Circuit Court of Cook County, et. al.* (No. 112770).

¶ 35 Once the trial court denied the motion to reconsider and denied the firm the Rule 308 certification, the firm was unable to appeal. Except as specifically provided by the Illinois Supreme Court Rules, this court only has jurisdiction to review final judgments, orders, or decrees. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994) *et seq.*; *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). "A judgment or order is final for purposes of appeal if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and, if affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." *Brentine v. Daimler-Chrysler Corp.*, 356 Ill. App. 3d 760, 765 (2005). The vacatur of the DWP did not "dispose of the rights of the parties," but instead left the cause open to further litigation. That litigation occurred and plaintiff lost; her argument that we have no jurisdiction to hear this case because the firm failed to appeal from a non-final order is unavailing.

¶ 36 As the firm notes, "when an appeal is taken, the appellee can defend the judgment below on any ground appearing of record." *The Vendo Company v. Stoner*, 58 Ill. 2d 289, 307 (1974). The function of this court is to "determine whether the trial court reached the proper result." *City of Chicago v. Holland*, 206 Ill. 2d 480, 492 (2003).

¶ 37 Moving on to the merits of the vacatur of the DWP, here we find the vacatur of the DWP to be in error. We are unable to imagine how the trial court could reasonably find plaintiff exercised due diligence in presenting her original claim. Although plaintiff filed her claim in June 2000 and continued to pursue her claim through diligent motion practice, hearings, and some discovery, she did absolutely nothing to pursue her case between the scheduled status hearing[7] regarding plaintiff's motion to compel discovery in June 2002 until

[7] It is unclear from the record whether this status hearing was for case management purposes or to rule on the motion to compel, or both. Plaintiff explains in her declaration that Judge Flynn held a case management conference on June 17, 2002. She recalls he "issued an order setting forth the date by which he would rule on my motion to compel." However, plaintiff cannot find a copy of that order. Neither has this court been able to find that order in its review of the disarray that is the record on appeal. Nonetheless, explains plaintiff, a few days after the case management conference, she received a postcard from the circuit court notifying her of a

she received notice of the DWP in March 2011. Plaintiff's explanation of how her activities during these nine years somehow exhibited due diligence in pursuing her cause strains the imagination. First, she describes the scene at the status hearing wherein Judge Flynn was not at the bench due to a family tragedy. She claims she left the court that day and began her long, long wait. She describes the first few months:

> "When after three or four months had elapsed and Judge Flynn had not ruled on my motion to compel, I considered what, if anything, I should do. Given the recent and tragic death of Judge Flynn's son, I believed it would be not only inappropriate, but also cruel to petition him for a ruling. *** As time went on, I concluded that it still would not be advisable to petition Judge Flynn for a ruling."

¶ 38 After that point, plaintiff decided to wait. She says:

> "I decide [*sic*] to wait for an order from Judge Flynn, or an order from another Circuit Court of Cook County judge, or from the Clerk's office. Since I had never failed to receive notice of any orders, I was confident that I would receive notice of any activity in my case in time to take timely action, if necessary, under either section 2-1301 or section 2-1401 of the Illinois Code of Civil Procedure."

So, plaintiff checked her regular mail every day for any notice from the court. In addition, every nine months, she traveled to the Daley Center in Chicago and "examined the entries on

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status hearing in the case before Judge Flynn. It was that status hearing at which plaintiff was notified of Judge Flynn's family emergency and which, according to plaintiff, set off the years of waiting.

the computerized docket in my case." She also asked the information desk clerks at the Daley Center if they had "any suggestions as to what should be done." She says:

> "Each time, they would confer. Sometimes they would call other people. None of them ever had any idea what should be done. I believed it was important to request input from the information desk, because it has been my experience that if one does not follow the procedures that the clerks on the eighth floor believe to be correct, they can refuse to accept a filing."

¶ 39 At some time during this nine-year period of inactivity, plaintiff says, "it appeared that Judge Flynn had left the Law Division and my case would be assigned to a new judge." She took no action during this time or after to follow up on her case, but explains that, instead, she "relied on the administrative machinery in the Circuit Court to either transfer my case to a new judge or to place it on the trial call."

¶ 40 By this court's calculations, then, while plaintiff waited nine years for "something to happen" in her case, she did the following:

1. Checked her U.S. mail daily.
2. Went to the Daley Center approximately 11 times in 9 years to look at the case docket and talk to the clerks.

¶ 41 Plaintiff never made a formal or an informal inquiry with the court. She did not file any motions of any kind in this cause during the course of the nine years.

¶ 42 "Plaintiffs have a nondelagable duty to take all necessary steps to bring their actions to a prompt conclusion." *Minikon v. Escobedo*, 324 Ill. App. 3d 1073, 1080 (2001) (citing *Pendrod v. Sears, Roebuck & Co.*, 150 Ill. App. 3d 125, 129 (1986). While case law certainly makes room for a DWP to be dismissed in the proper circumstances, this was not one of those circumstances. "A dismissal for want of prosecution should be set aside where a satisfactory explanation of the apparent delay has been given, there was not an intentional or willful disregard of directions of the court, and it does not appear that a further postponement of a determination of the controversy on its merits would result in prejudice or hardship to any of the parties." *Polowick*, 29 Ill. App. 3d at 1097 (citing *McLaughlin v. McLaughlin*, 83 Ill. App. 2d 160, 163 (1967)).

¶ 43 In the case at bar, we find plaintiff failed to provide a satisfactory explanation regarding the delay of nearly nine years. That she kept an eye on her mail and traveled occasionally to the Daley Center to check the docket and chat with the clerk manning the information desk does not evince any sort of requisite diligence in pursuing her claim. We reiterate: although plaintiff claims she did not "abandon [her] case," she did nothing to pursue her case for nine full years. Whether the delay was initiated by an administrative oversight or by plaintiff herself, plaintiff had a duty to "take all necessary steps" to bring her case to a prompt conclusion (*Minikon*, 324 Ill. App. 3d at 1080) and to act with reasonable diligence (*In re Marriage of Hanlon*, 83 Ill. App. 3d at 632). That there was a simple discovery motion pending does not absolve plaintiff from her duty to act with diligence. See *Minikon*, 324 Ill. App. 3d at 1080. Plaintiff, a litigator with decades of legal experience, who had significant experience in handling complex legal matters, essentially did nothing but passively monitor her case and talk with clerks staffing an information desk. Plaintiff fails to provide a satisfactory explanation regarding this clear failure to prosecute her case with reasonable diligence.

¶ 44 We observe here that, while plaintiff believes that nine years is not an unreasonable amount of time to allow a case to languish in the courts with no action whatsoever on the plaintiff's part, she has not provided this court with any case law examples of such long delay. Our research, instead, has provided examples of cases DWPs upheld for much shorter delays, and we have found no cases nearing a delay like the one at bar. For example, *Lamons & Co. v. American Case Iron Pipe Co.*, 312 Ill. App. 573 (1942) (DWP upheld; no proceedings of record for over 3 years); *Elward v. Mancuso Chevrolet, Inc.*, 122 Ill. App. 2d 421 (1970) (DWP upheld; 3 years of inactivity); *In re Marriage of Hanlon*, 83 Ill. App. 3d at 632-33 (DWP reversed where respondent was "quite diligent" in her pursuit of the litigation, filing motions and objections; such activity negated any delay in the litigation which, in any event, was merely over a period of months).

¶ 45 On the specific facts of this case, plaintiff's lack of diligence for such an extreme amount of time, coupled with her failure to provide a reasonable explanation of the delay, requires us to find that the circuit court abused its discretion when it vacated the original vacatur of the DWP and allowed this case to proceed. Accordingly, the April 15, 2011, vacatur of the DWP is hereby reversed.

¶ 46 ii. The Cross-Appeal

¶ 47 Next, the firm cross-appeals from the denial of its motion for sanctions against plaintiff. Specifically, the firm contends the trial court erred in denying the motion where plaintiff should not have "reraised her scurrilous argument" regarding *McGrath.* Specifically, plaintiff argued on numerous occasions that defendant law firm had a conflict of interest because it was counsel in the *McGrath* case during the time it was defending against plaintiff's lawsuit. According to plaintiff, the firm "threw" the *McGrath* case in order to create legal precedent that would give it an advantage in its litigation with plaintiff. Defendant also takes issue with plaintiff's "implicit argument that this court allowed itself to be baited by Defendant's intentionally poor advocacy into reaching the wrong result in the *McGrath* appeal."[8] Plaintiff responds that her arguments regarding defendant's actions in the *McGrath* case do, in fact, have merit.

¶ 48 Under Supreme Court Rule 137, a trial court may impose sanctions against a party for filing a motion or pleading that is not well-grounded in fact, not supported by existing law, lacks a good-faith basis for modification, reversal or extension of the law, or is instituted for an improper purpose, such as harassment. See *Whitmer v. Munson*, 335 Ill. App. 3d 501, 513-14 (2002). The purpose of this rule is to prohibit the abuse of our judicial process by the filing of false or frivolous lawsuits. See *In re Y.A.*, 383 Ill. App. 3d 311, 316 (2008); see also *Whitmer*, 335 Ill. App. 3d at 514. While the rule is not intended to penalize parties who are zealous but simply unsuccessful, it nonetheless is penal in nature and is to be strictly construed. See *Whitmer*, 335 Ill. App. 3d at 514. Therefore, a trial court is to examine a Rule 137 motion using an objective standard and to evaluate whether the opposing party truly used " 'reasonable inquiry' " into the facts it alleged during the litigation, as it is not sufficient that the party " 'honestly believed' " its case was well-grounded in law or fact. *Whitmer*, 335 Ill. App. 3d at 514 (quoting *Pritzker v. Drake Tower Apartments, Inc.*, 283 Ill. App. 3d 587, 590 (1996) (party/attorney's signature on pleading constitutes certification that he has read it and made reasonable inquiry into facts alleged therein (quoting *Fremarek v. John Hancock Mutual Life Ins. Co.*, 272 Ill. App. 3d 1067, 1074-75 (1995))). Rule 137 mandates that a

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[8] We note that cross-appellant firm's brief is sorely lacking in citation to the record. As mentioned previously, the record on appeal is large and quite disorganized. Supreme Court Rule 341(b) requires appropriate citation to the record on appeal. We remind cross-appellant firm that the rules of procedure concerning appellate briefs are rules, not mere suggestions. See *Niewold*, 306 Ill. App. 3d at 737.

party "make reasonable investigation into the facts prior to filing" her pleading. *Walsh v. Capital Engineering & Manufacturing Co.*, 312 Ill. App. 3d 910, 914 (2000). Her signature, and that of her attorney, on the pleading certifies that she has read it and that, "to the best of his knowledge, information, and belief formed after a reasonable inquiry it is well grounded in fact and is warranted by existing law *** and that it is not interposed for any improper purpose." Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994); see *Baker v. Daniel S. Berger, Ltd.*, 323 Ill. App. 3d 956, 963 (2001) (this rule is meant to penalize those parties who plead false or frivolous maters or seek to impose vexatious litigation, without sufficient legal or factual basis). If a party violates this rule, a court may impose an appropriate sanction, such as the payment of the other party's attorney fees and costs. See *Walsh*, 312 Ill. App. 3d at 914; Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994).

¶ 49 The burden of proof lies with the party seeking to recover under Rule 137 and requires a showing that the opposing party pled statements which he knew or should have known were not true. See *Miner v. Fashion Enterprises, Inc.*, 342 Ill. App. 3d 405, 422 (2003). The party requesting the imposition of Rule 137 sanctions must show that the opposing party made untrue and false allegations without reasonable cause for the mere purpose of invoking harassment or undue delay of the proceedings. See *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 244 (2000). Again, the inquiry is based on reasonableness, which is measured against an objective standard looking at the circumstances existing at the time the pleading was filed. See *Walsh*, 312 Ill. App. 3d at 915 (citing *Toland v. Davis*, 295 Ill. App. 3d 652, 656 (1998) ("imposition of sanctions is not to be based on a subjective after-the-fact analysis or hindsight")); accord *Baker*, 323 Ill. App. 3d at 963, 966. The decision whether to grant Rule 137 sanctions lies with the sound discretion of the trial court, and we will not disturb its decision unless there is an abuse of that discretion. See *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998); see also *Barrett v. Fonorow*, 343 Ill. App. 3d 1184, 1197 (2003) (abuse occurs "only if no reasonable person would take [the trial court's] view" regarding sanctions). Thus, while we are not precluded from finding an abuse where warranted, we must afford the trial court considerable deference in its decision to deny sanctions. See *Technology Innovation Center, Inc.*, 315 Ill. App. 3d at 244. Our " 'primary consideration is whether the trial court's decision was informed, based on valid reasoning, and follows logically from the facts.' " *Whitmer*, 335 Ill. App. 3d at 514 (quoting *Technology Innovation Center, Inc.*, 315 Ill. App. 3d at 244); accord *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217 (2007).

¶ 50 As a threshold matter, we disagree with the firm's representation of the trial court's decision in this matter. In its cross-appellant reply brief, the firm argues that the trial court did not make a ruling on the merits of the sanctions motion and, therefore, we should not afford the trial court's decision any deference on review. We disagree. Rather, we find that, while the trial court declined to issue any sort of memorandum opinion on the matter of sanctions, it did definitively deny the motion and, therefore, its decision merits deference on review. Specifically, the trial court addressed the Rule 137 sanctions at a hearing, stating:

> "[THE COURT:] As to counsel's claim for 137 sanctions because of your repeated arguments concerning the *McGrath* case, which you went on at length today as well, I believe that the Seventh Circuit did, in fact, issue you a bit of a sanction, striking your response brief and all. But at this point in time, this case is over as far as this Court is concerned, and I'm not going to prolong it by issuing an opinion concerning the 137 sanctions.

So summary judgment is granted, and this case is over with prejudice.

[COUNSEL FOR THE FIRM:] Your Honor, what - - and I assume the order should reflect for the reasons you've stated in open court?

THE COURT: Correct.

Q: And with respect to the sanctions motion, what should we provide in that order?

THE COURT: That is denied.

Q: Denied. All right."

¶ 51 The trial court ruled on the motion for sanctions, and, accordingly, we must give its decision deference. See *Technology Innovation Center*, *Inc.*, 315 Ill. App. 3d at 244 (we must afford the trial court considerable deference in its decision to deny sanctions).

¶ 52 The firm has shown us nothing here that merits Rule 137 sanctions. With no citation to the record, the firm argues that "Defendant had confirmed to the Seventh Circuit, and to Plaintiff, that indeed Mr. McGrath had been aware of her case and that he had waived in writing any potential conflict of interest." Again with no citation to the record, the firm says, "that motion was followed closely by the Seventh Circuit's order granting the motion and striking her reply brief." The firm concludes that "[t]hereafter, each time Plaintiff filed a paper in this proceeding asserting her frivolous *McGrath* argument, she knew to a certainty, because the federal court told her, that her argument was neither well-grounded in fact nor warranted by existing law." Then, argues the firm, plaintiff made the argument on appeal after the trial court dismissed Count I on the basis of the *McGrath* decision. The firm believes plaintiff exhaustively argues this issue to harass the firm and to drive up the costs of litigation. Plaintiff responds that the sanctions motion is "nothing more than illegal retaliation" and "bullying."

¶ 53 On review, we are mindful that Rule 137 is penal in nature and must be strictly construed. See Whitmer, 335 Ill. App. 3d at 514. We are also mindful of the deferential standard of review with which we approach our inquiry. See *Dowd & Dowd, Ltd.*, 181 Ill. 2d at 487. While it is true that plaintiff continues to argue the *McGrath* issue, in order to prevail on a Rule 137 motion for sanctions, as the moving party, the firm must show that plaintiff "made untrue and false allegations without reasonable cause for the mere purpose of invoking harassment or undue delay of the proceedings." See *Technology Innovation Center, Inc.*, 315 Ill. App. 3d at 244. On the record before us, cross-appellant firm has failed to do this. Instead, the motion for sanctions and the cross-appeal of the denial of sanctions are replete with base allegations which do not support a motion for sanctions. As noted in part I of this order, we are certainly cognizant that this litigation has drawn on far too long, and we understand cross-appellant firm's hope to terminate this proceeding. Nonetheless, we find no abuse of discretion in the decision of the trial court to deny the motion for sanctions. See *Dowd & Dowd, Ltd.*, 181 Ill. 2d at 487.

¶ 54 III. CONCLUSION

¶ 55 For all of the foregoing reasons, the decision of the circuit court of Cook County is affirmed in part and reversed in part.

¶ 56 Affirmed in part; reversed in part.