

No. 1-13-3928

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

RANDY FRANKS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
v.)	
)	No. 07 M1 120421
SHELDON BRODER,)	
)	
Defendant-Appellee.)	Honorable
)	Sidney A. Jones, III
)	Judge Presiding.

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

ORDER

Held: The circuit court did not err in granting defendant's postjudgment petition for attorney fees following successful defense of appeal where this court held that the parties' commercial lease agreement contained a fee-shifting clause and defendant was involved in the litigation through no fault of his own. Law-of-the-case did not foreclose defendant from petitioning for attorney fees as appellate court order was silent as to defendant's request for fees. Defendant's failure to file a counterclaim was not fatal to petition for attorney fees because nothing in lease required such an action and municipal ordinance argued by plaintiff was not applicable. Circuit court did not abuse its discretion in awarding attorney fees because defendant provided evidence and information about services rendered.

¶ 1 This is the second appeal by plaintiff Randy Franks before this court in this matter. See

Franks v. Broder, 2013 IL App (1st) 113311-U (June 25, 2013) (Unpublished order pursuant to

Supreme Court Rule 23) (*Franks I*). In that order, this court affirmed the circuit court's decision to grant defendant, Sheldon Broder, judgment *n.o.v.* on plaintiff's conversion and wrongful eviction claims and award of attorney fees under a fee-shifting clause of the commercial lease between the parties as defendant became involved in the litigation through no fault of his own. Following denial of a motion to clarify in this court, defendant filed a postjudgment petition for attorney fees in the circuit court for work performed in defending the first appeal. On November 22, 2013, the circuit court awarded defendant \$42,115.09 in attorney fees for the defense of the first appeal.

¶ 2 Plaintiff argues in this appeal that the circuit court erred in awarding attorney fees because this court twice denied defendant's request for attorney fees and, as the law of the case, the circuit court was without authority to deviate from those rulings. Plaintiff also asserts that the circuit court erred because defendant did not file a counterclaim. Finally, plaintiff asserts that defense counsel failed to properly support the fee petition with contemporaneous, detailed time records and the award must be reversed. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff originally filed a complaint alleging claims of breach of contract, conversion, and wrongful eviction against defendant related to a written commercial lease agreement for a property between the parties. In the breach of contract count, plaintiff alleged that defendant breached the lease by failing to return his security deposit or provide an itemized list of deductions taken from the security deposit. In the conversion count, plaintiff alleged that defendant removed his personal property from the premises without his consent or the authority of law and damaged the property. In the wrongful eviction count, plaintiff alleged that defendant violated the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* (West 2006)) when he entered the premises and removed

plaintiff's personal property thereby assuming a duty to reasonably protect plaintiff's personal property when he did so and breached that duty and acted in reckless disregard of plaintiff's rights such that punitive damages were warranted.

¶ 5 Upon the conclusion of a jury trial, the jury returned a verdict in favor of defendant on the breach of contract claim and in favor of plaintiff on the conversion and wrongful eviction claims. The jury awarded plaintiff \$6,000.00 in compensatory damages on the conversion claim and \$5,000.00 in punitive damages on the wrongful eviction claim. The jury also answered two special interrogatories finding that plaintiff did not abandon the premises and that defendant removed plaintiff's personal property without his consent.

¶ 6 Defendant filed a posttrial motion pursuant to section 2-1202 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1202 (West 2010)), asking the court to set aside the jury's verdict and enter a directed verdict in defendant's favor on the conversion and wrongful eviction counts and to set aside the punitive damages award. Defendant also filed a petition for attorney fees, asserting that he was entitled to attorney fees pursuant to a fee-shifting clause in the parties' lease. Plaintiff filed a motion requesting the imposition of sanctions against defendant and defense counsel, asserting that they filed bad-faith motions to disqualify counsel for plaintiff, forced a jury trial despite having admitted all the material facts regarding plaintiff's allegations, and filed, then later dropped, a meritless counterclaim for the sole purpose of increasing the costs of litigation. The court denied plaintiff's motions for sanctions, granted judgment *n.o.v.* in favor of defendant on the conversion and wrongful eviction counts, and awarded defendant \$42,471.47 in attorney fees, plus costs.

¶ 7 In *Franks I*, plaintiff argued that the court erred by granting judgment *n.o.v.* in favor of

defendant on the conversion and wrongful eviction claims, awarding defendant attorney fees, failing to rule on plaintiff's posttrial motion to amend the jury verdict, and denying plaintiff's motion for sanctions. This court rejected plaintiff's arguments and affirmed the judgment of the circuit court. With respect to attorney fees, we considered the fee-shifting clause of the lease between the parties. The "costs and fees" provision of the parties' lease provides that:

"Lessee shall pay upon demand all Lessor's costs, charges and expenses, including fees of attorneys, agents and others retained by Lessor, incurred in enforcing any of the obligations of Lessee under this lease or in any litigation, negotiation or transaction in which Lessor shall, without Lessor's fault, become involved through or on account of this lease."

¶ 8 Considering this language and the fact that a claim for attorney fees, whether made pursuant to contract or statute, may be filed after entry of judgment (*Brown & Kerr, Inc. v. American Stores Properties, Inc.*, 306 Ill. App. 3d 1023, 1028 (1999)) this court found defendant's request for attorney fees timely and allowed under the lease terms. *Franks I*, 2013 IL App (1st) 113311-U at ¶ 18. Noting that the circuit court ruled in favor of defendant and this court had affirmed that judgment, it was proved that defendant had entered the litigation through no fault of his own and the plain language of the lease allowed for attorney fees. *Id.* at ¶¶ 20-22. This court did not address defendant's request for attorney fees related to postjudgment work and punitive damages and denied defendant's motion to clarify the order.

¶ 9 Defendant filed a postjudgment petition for attorney fees in the circuit court and attached an affidavit of counsel concerning the work completed. After counsel was allowed to file an amended schedule with additional descriptions of work performed, the circuit court granted

defendant's petition and awarded \$42,115.09 in attorney fees for defense of plaintiff's appeal in *Franks I* and in bringing the fee petition. This appeal followed.

¶ 10

II. ANALYSIS

¶ 11

A. *Franks I* and the Law-of-the-Case Doctrine

¶ 12 Plaintiff argues that the trial court erred in granting defendant's petition for attorney fees because the law-of-the-case doctrine precluded such an award. The law-of-the-case doctrine limits relitigation of issues previously decided in a case, either explicitly or implicitly. *Krautsack v. Anderson*, 223 Ill. 2d 541, 552 (2006). A court's unreversed decision on an issue then controls for all subsequent stages of the suit, including remand and appeal. *Miller v. Lockport Realty Group, Inc.*, 377 Ill. App. 3d 369, 374 (2007).

¶ 13 Plaintiff asserts that "it is clear from this Court's order" in *Franks I* that defendant's request for attorney fees for the defense of *Franks I* was both explicitly and implicitly denied by this court because the order is silent as to defendant's request and this court subsequently denied defendant's motion to clarify the order and remand the matter for further proceedings. Plaintiff asserts that this is the law-of-the-case now. Therefore, plaintiff argues, the circuit court was without authority to award fees in contravention of this court's order.

¶ 14 This court's order in *Franks I* did not address defendant's request for attorney fees, made briefly at the end of his appellee's brief and this court denied defendant's motion to clarify.

However, plaintiff's reading of this is too expansive and would nullify the actual findings that this court made in resolution of plaintiff's appeal. As addressed above, this court affirmed the circuit court's interpretation of the fee-shifting clause and explicitly found that defendant was entitled to seek attorney fees for any litigation he was required to defend through no fault of his own.

¶ 15 *Franks I* was not the proper avenue for defendant to seek attorney fees for defending that appeal. This court addressed the issues properly presented by plaintiff in his appeal. At that point, defendant is correct that the proper course to take in seeking fees would be a postjudgment petition in the circuit court pursuant to Supreme Court Rule 369(b). Ill. S. Ct. R. 369(b) (eff. July 1, 1982). This court has noted that "[t]he amount of fees should be determined on the basis of the facts in evidence, rather than upon speculation." *Losurdo Bros. v. Arkin Distributing Co.*, 125 Ill. App. 3d 267, 276 (1984). This evidence and final determination "are more properly determined upon a petition and evidentiary hearing in the trial court." *Id.* at 277. Based on our order in *Franks I*, this is precisely what defendant should have done, and did, if he intended to seek attorney fees for defense of the appeal. In this appeal, this claim is again presented and it is again left to defendant to decide after the mandate is issued that if he desires to pursue a postjudgment petition for fees, he may prepare and present that petition and evidence to the circuit court.

¶ 16 B. No Counterclaim Filed by Defendant

¶ 17 Plaintiff also argues that defendant's failure to file a counterclaim in this case forecloses his ability to be awarded attorney fees. Plaintiff cites to *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 131231, to support this argument. Plaintiff asserts that *Benford*, also a landlord-tenant dispute involving a fee-shifting clause in the lease, is instructive on this case for the fact that an affirmative defense is distinct from a counterclaim and a counterclaim is necessary to receive an award of attorney fees. *Id.* at ¶¶ 17-18. However, as addressed by defendant, *Benford* is distinguishable on the facts and law from the instant matter and does not support plaintiff's argument.

¶ 18 In *Franks I*, this court concluded that the language of the fee-shifting clause of the lease

supported defendant's request for attorney fees and case law allowed for such a postjudgment petition. Unlike the facts and language involved in *Benford*, the instant lease does not implicate the residential landlord and tenant ordinance of the Chicago Municipal Code (Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991)) requiring a party be a "prevailing plaintiff" to be entitled to attorney fees. *Id.* at ¶16. Rather, defendant may recover all "costs, charges and expenses, including fees of attorneys, agents and others retained by Lessor, incurred in enforcing any of the obligations of Lessee under this lease or in any litigation, negotiation or transaction in which Lessor shall, without Lessor's fault, become involved through or on account of this lease." As addressed above, this court has held that defendant successfully enforced the lease provisions through no fault of his own and is entitled to attorney fees "in any litigation" on the lease and defendant was not required to file a counterclaim in order to seek attorney fees.

¶ 19

C. Sufficiency of Time Records

¶ 20 Next, defendant asserts that counsel's affidavit in support of the fee petition is deficient because it lacks the necessary contemporaneous and detailed time records as announced in *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 984 (1987). In reviewing the amount of attorney fees awarded by the circuit court, our standard of review is deferential and we will reverse only if we find manifest abuse of discretion by the circuit court. *LaHood v. Couri*, 236 Ill. App. 3d 641, 648 (1992). Plaintiff argues that the initial affidavit of defense counsel and lack of detail in the billing records requires a reduction in the attorney fees award because the reconstructed billing entries are suspect by definition and not entitled to as much weight under *Kaiser*.

¶ 21 While defendant's initial filing may have required a reduction in the requested award, from the record we cannot say that the court abused its discretion in fashioning the award. Defense

counsel's amended billing statements and testimony provided details necessary for the circuit court to make a determination on the appropriateness of the requested fees. The circuit court has intimate knowledge of the extended litigation in this case as well as the skill, performance, and credibility of counsel. Unlike the cases cited by plaintiff where there were egregious billing claims of multiple attorneys and with unacceptable bases for billing, the instant matter involved the time of a single attorney with details and exhibits to support her claims of the time required to present her successful defense in the matter. With this first-hand experience, evidence and credible testimony, the court believed counsel's billing statement and properly awarded attorney fees.

¶ 22 As noted by the circuit court in coming to its conclusion on the attorney fee award, the litigation in this matter has been, and continues to be, driven by plaintiff and defendant's necessary actions in response to plaintiff's continued filings. While plaintiff has continued to drive this litigation, we do not see his actions as requiring sanctions or a need to remand this matter. As before, if defendant desires to seek attorney fees in a postjudgment petition pursuant to the fee-shifting clause and this court's prior opinion he may continue to follow the accepted course under the rules of the court and we affirm the judgment of the trial court.

¶ 23 III. CONCLUSION

¶ 24 Accordingly, we affirm the judgment of the Circuit Court of Cook County.

¶ 25 Affirmed.