

No. 1-14-0191

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 JUDICIAL DISTRICT

<i>In re</i> PRINCE M., a Minor,)	Appeal from the
)	Circuit Court of
Minor-Appellee,)	
)	Cook County.
(Danette H.B.,)	
)	
Petitioner-Appellee,)	No. 07 D5 50098
)	
v.)	
)	
Anthony M.,)	Honorable
)	LaQuietta Hardy-Campbell,
Respondent-Appellant.))	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in awarding attorney fees and costs as a sanction where Anthony made unfounded allegations of abuse aimed to harass Danette and delay proceedings.

¶ 2 Respondent Anthony M. appeals the trial court's award of sanctions and attorney fees in favor of petitioner Danette H.B., arguing that the trial court erred in granting Danette's motion for sanctions as well as in assessing attorney fees and sanctions against Anthony.

¶ 3 Since the subject of the instant appeal relates only to the award of sanctions and fees, we need not detail the circumstances of the underlying custody case. We will discuss the facts only as necessary for the issues raised on appeal. For a more detailed discussion of these facts, see *In re Prince M.*, 2014 IL App (1st) 132086-U.

¶ 4 Danette and Anthony had a relationship which led to Prince M.'s birth on June 6, 2006. Anthony filed a voluntary acknowledgement of paternity for Prince. Danette and Anthony were never married and did not reside together, but Anthony paid voluntary child support and provided financial assistance to Danette for household expenses for a period of time. Although Danette had custody of Prince, Anthony visited Prince often. In October 2007, Danette filed a petition to establish a child support obligation and asked that Anthony be ordered to provide health insurance for Prince.

¶ 5 In October 2008, Anthony filed a motion for sole custody of Prince, alleging that Danette was interfering with his ability to visit and bond with Prince, and that she was raising Prince in an inappropriate environment. Anthony requested temporary custody of Prince and requested that, after a home study was completed, permanent custody should be awarded to Anthony. During the pendency of the custody litigation, Anthony made allegations that Danette was abusing Prince.

¶ 6 In July 2012, Danette filed a petition for sanctions pursuant to Supreme Court 137 (Ill. S. Ct. R. 137 (eff. Jan. 4, 2013)), section 226 of the Illinois Domestic Violence Act of 1986 (Domestic Violence Act) (750 ILCS 60/226 (West 2012)), and section 508 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/508 (West 2012)).

¶ 7 Danette alleged in her petition that in January 2011, the trial court granted temporary custody to Anthony. This custody award was precipitated by Anthony making "a series of

inflammatory allegations of child abuse," including "repeated and frequent reports of child abuse and/or corporal punishment to [the trial court], the Illinois Department of Child and Family Services [(DCFS)] and court-ordered service providers. According to Anthony, the minor child stated that Danette had been hitting him."

¶ 8 The motion further alleged that after multiple evaluations by service providers, all reports indicated that Danette and Prince "were closely bonded, the minor child was well-cared for." Anthony's two reports of Danette to DCFS were "unfounded." The motion states that the litigation had been ongoing for five years at that point, since Prince was a year old. The motion detailed the findings of the 604(b) evaluation by Dr. Star, which confirmed that Danette never physically abused Prince. Danette argued that "[w]ithout the inflammatory allegations of abuse by Anthony, there would have been no legal basis for the modification of custody."

¶ 9 Danette requested the trial court to set the matter for hearing, vacate the January 2011 temporary custody order, and restore the status quo by granting Danette custody of Prince. Danette further requested that the court order Anthony to pay her attorney fees, supervised visitations fees, the fee for the 604(b) evaluation, any costs related to the transfer of custody back to Danette, including therapists and parenting coordinators, and fees incurred by the Public Guardian.

¶ 10 In support of her petition, Danette attached a letter dated December 20, 2010, from Cheri Tobolski, a therapist who worked with Prince, Danette, and Anthony. Tobolski explained that, at the time of the letter, she had conducted three sessions with Prince and Danette; parts of the sessions were individually with Prince and parts were with Prince and Danette together. Anthony had brought Prince in for one session at that time. Tobolski concluded that "[Prince] appears to be attached to both parents and interacts positively with both of them. Each parent

has expressed love and concern for their child. Prince is a very likeable, bright young child who is playful, friendly and well adaptive to his living circumstances."

¶ 11 Danette also attached the 604(b) evaluation. In the 604(b) evaluation, Dr. Star found that "it seem[ed] unlikely that she regularly abused [Prince] or that she abused him at all." Dr. Star further stated, "[Danette] may have used corporal punishment in that she struck [Prince] in the past, but neither hospital reports nor DCFS records presented any strong claim of the physical abuse of this child. Unfortunately what does emerge as probable is that [Anthony] has and continues to undermine [Prince]'s relationship with his mother by coaching him to say things about her and by molding negative feelings toward her."

¶ 12 In April 2013, Danette filed her third petition for interim attorney fees. Danette stated that she previously filed a supplemental petition for interim attorney fees in the amount of \$60,000, which remained pending. Danette's third petition requested an additional \$20,000, in attorney fees.

¶ 13 Following a long and protracted custody dispute, including a nine-day trial, the trial court awarded sole custody of the minor Prince to Danette on June 4, 2013. The trial court specifically found that the "key to this case hinges on the credibility of the witnesses and Anthony's testimony can only be described as completely incredible, from beginning to end." The court concluded that over several years "Anthony [had] proven that he is incapable of fostering a relationship between [Danette] and [Prince]. The evidence showed that [Anthony] engaged in a calculated ruse to thwart [Danette] of her right to be a parent." Anthony's appeal of the custody decision was affirmed in a separate decision. See *In re Prince M.*, 2014 IL App (1st) 132086-U.

¶ 14 The June 4, 2013, custody decision ordered Anthony to pay 50% of Danette's legal fees, 100% of supervised visitation fees, 100% of the fees for the evaluation pursuant to section

604(b) of the Marriage Act (750 ILCS 5/604(b) (West 2012)), any additional fees and costs related to the evaluation, any balance of fees incurred by the child representative appointed in the case, and all collateral costs of all therapists and parenting coordinators necessary for the transfer of custody to Danette.

¶ 15 The trial court conducted a hearing over July 9 and 10, 2013, on the matter of Danette's attorney fees and costs. Anthony failed to include a transcript of the hearing in the record on appeal. The order entered on July 10, 2013, states that the matter was before the court on petition for interim attorney fees and costs. The court found that Danette incurred \$70,000, in attorney fees that were reasonable and necessary; that Anthony "has the financial ability to contribute toward [Danette's] interim attorneys' fees, and said contribution is necessary in this cause; and Danette has the financial ability to pay a portion of her attorney fees.

¶ 16 The trial court ordered that Anthony pay 50% of Danette's attorney fees in the amount of \$35,000. Anthony was ordered to make a lump sum payment of \$10,000, toward interim attorney fees within 24 hours. Danette's attorneys would take a judgment on the remaining \$25,000. Anthony was further ordered to pay an additional lump sum of \$10,000, for contribution towards Danette's interim attorneys with 14 days, by July 24, 2013, "so as to level the playing field, and enable [Danette] to retain new counsel, for the ongoing litigation."

¶ 17 Anthony filed a motion to reconsider and/or vacate the temporary order of July 10, 2013. The parties filed memorandums of law on Anthony's motion. In his memorandum, Anthony argued that the award of attorney fees was an improper contribution award because Danette failed to follow procedural requirements under the Marriage Act. Danette responded in her memorandum that the award of attorney fees was proper because she properly complied with section 508 of the Marriage Act (750 ILCS 5/508 (West 2012)).

¶ 18 On December 18, 2013, the trial court issued a written opinion on Anthony's emergency motion to reconsider and/or vacate the temporary order of July 10, 2013. The court observed that the two issues pending were (1) whether the June 4, 2013, order was final and appealable, and if so, (2) whether Danette's failure to file a final fee petition within the time prescribed by court order or by statute precludes the award of fees on July 10, 2013. The trial court held that only the custody judgment in the June 4 order was final and appealable pursuant to Supreme Court Rule 304(b)(6) (Ill. S. Ct. R. 304(b)(6) (eff. Feb. 26, 2010)). The court found that the sanction award was not final because the total cost of fees to Danette's attorney, the Public Guardian, therapists, and other social service providers was not known at that time. The court noted that it did not believe that Anthony was prejudiced in any way "by the lack of clarification" in the order "since he has not challenged the amount he was ordered to pay the Public Guardian or the therapists involved in the case."

¶ 19 The trial court also addressed Anthony's argument that the award for attorney fees was not a sanction, but an order for contribution because the trial court did not conduct a hearing on the sanctions or make any specific findings as to sanctions. The court observed that Danette's petition for sanctions described "in great detail how [Anthony] made baseless allegations that [Danette] was abusing the parties' minor child which he used to obtain temporary custody and prolong the parties' litigation." The court pointed out that Danette reaffirmed and realleged these allegations in her motion to restore the status quo, which was the focus of the trial, and "the same allegations that were present in the Petition for Sanctions were being litigated pursuant to the Motion to Restore the Status Quo." The court concluded that it was "unnecessary" and "redundant" to have a separate hearing on the petition for sanctions. The court noted that the trial record would show that it heard arguments from both sides regarding sanctions.

"After nine days of trial, in which the Court heard testimony from both parties and several witnesses, it was properly able to determine whether [Anthony] had violated Rule 137. The Court does acknowledge that it was required to set forth its reasons with specificity for granting sanctions and that the Custody Judgment entered on June 4, 2013 failed to clearly set forth said reasons. However, it does not believe [Anthony] was prejudiced by this since the Custody Judgment clearly identifies the reasons that the Court found [Anthony] to lack credibility and specifically states that he should be sanctioned."

¶ 20 The trial court also held that Danette was not required to file a final fee and/or contribution petition for attorney fees because the underlying claim for sanctions was not finalized in the June 4 order.

"The Court further notes that [Anthony's] attempt to deny [Danette's] attorney's fees when they had properly filed three interim petitions which were continued many times pursuant to [Anthony's] actions as disingenuous and further proof of how [Anthony] has continuously used the legal system to harass and prolong this litigation."

¶ 21 The trial court denied Anthony's motion to reconsider and/or vacate the temporary order of July 10, 2013. The court further ordered that the July 10 order was "hereby amended to include the following language: [Anthony] shall pay 50% of [Danette's] attorney's fees, which is equal to \$35,000.00, *as sanctions pursuant to the order entered on June 4, 2013.*" (Emphasis in

original.) The court also included language under Rule 304(a) that there was no just reason or cause as to why enforcement or appeal should be stayed.

¶ 22 This appeal followed.

¶ 23 On appeal, Anthony argues that (1) the trial court "committed judicial error" by granting Danette's Rule 137 motion for sanctions because the motion failed to identify any pleading or motion filed in violation of Rule 137; and (2) the interim fee order of July 10, 2013, (July 10 order) and sanctions order of December 18, 2013 (December 18 order), are improper because both were entered after the June 4, 2013, custody judgment (June 4 order) and the amendment of the interim fee order in the sanctions order materially altered Anthony's rights.

¶ 24 We point out that Anthony has failed to include transcripts of the hearing conducted on Danette's interim fee petitions on July 9 and 10, 2013, as well as the hearing on December 18, 2013. Anthony, as the appellant, bears the burden of providing a sufficiently complete record to support his claim or claims of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Moreover, any doubt arising from the incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392.

¶ 25 We also note that Anthony's brief on appeal failed to include a statement of the standard of review as required under Supreme Court Rule 341(h)(3) (Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013)) ("The appellant must include a concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the issue in the argument or under a separate heading placed before the discussion in the argument"). "[A] trial court's decision to award or deny fees will be reversed only if the trial court abused its discretion." *In re*

Marriage of Schneider, 214 Ill. 2d 152, 174 (2005). "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *Id.* at 173.

¶ 26 Supreme Court Rule 137 provides, in relevant part:

"The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. ***
If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee." Ill. S. Ct. R. 137(a) (eff. July 1, 2013).

¶ 27 "The purpose of Rule 137 is to prevent parties from abusing the judicial process by imposing sanctions on litigants who file vexatious and harassing actions based upon unsupported allegations of fact or law." *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217 (2007). "The party seeking to have sanctions imposed by the court must demonstrate that the

opposing litigant made untrue and false allegations without reasonable cause." *Id.* Since Rule 137 is penal in nature, it will be strictly construed. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). "Courts should use an objective standard in determining what was reasonable under the circumstances as they existed at the time of filing." *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020 (2004). "An appellate court should base its review of the trial court's decision on three factors: (1) whether the court's ruling was an informed one; (2) whether the ruling was based on valid reasons which fit the case; and (3) whether the ruling followed logically from the stated reasons to the particular circumstances of the case." *Id.*

¶ 28 A trial court's decision imposing sanctions is entitled to deference and will not be reversed absent an abuse of discretion. *In re Estate of Baker*, 242 Ill. App. 3d 684, 687 (1993). "However, the predicate to such deference is that the trial court make an informed and reasoned decision." *Id.* (citing *In re Estate of Smith*, 201 Ill. App. 3d 1005 (1990)); see also *Berg v. Mid-America Industrial, Inc.*, 293 Ill. App. 3d 731, 736-37 (1997). "A trial court's decision on sanctions must clearly set forth the factual basis for the result reached in order to be afforded deferential treatment." *Id.* at 687-88. The court in *Estate of Baker* held that "a trial court must allow for an evidentiary hearing before imposing sanctions." *Id.* at 688. A hearing would "give the parties involved an opportunity to present any evidence needed to substantiate or rebut the claim for sanctions, and an opportunity to argue their positions." *Id.* at 687.

¶ 29 Here, the trial court conducted a nine day trial on the custody issues, which included Anthony's baseless allegations that Danette abused Prince. The trial court heard extensive evidence relating to Anthony's allegations that Danette abused Prince. Evidence was presented from therapists, DCFS, and Dr. Star's evaluation pursuant to Rule 604(b). As the trial court stated in its opinion, Danette's petition for sanctions alleged the same issues present in the

custody dispute, as raised in her motion to restore the status quo, and the parties presented arguments on petition for sanctions. The trial court further observed that the June 4 order clearly explained the reasons it found Anthony to lack credibility and he should be sanctioned. After conducting a thorough hearing, the trial court's decision to impose sanctions was informed.

¶ 30 Likewise, the trial court's decision to impose sanctions was based on its observations of Anthony's false accusations of abuse as well as his actions to harass Danette and prolong the litigation. The trial court found that Anthony "engaged in a calculated ruse to thwart [Danette] of her right to be a parent." In the June 4 order, the trial court concluded:

"By making specious and spurious allegations about DANETTE's character, making false accusations and statements to providers, and withholding vital information from the Court appointed 604(b) evaluator, ANTHONY has almost ruined multiple lives and wasted the court's resources. Because of ANTHONY'S behavior in this case, the system failed. In the interest of justice ANTHONY'S behavior must be sanctioned."

¶ 31 The trial court's conclusions demonstrate that its decision to impose sanctions was based on valid reasons from facts of this case and the sanctions ruling logically followed these reasons.

¶ 32 We are unpersuaded by Anthony's contention that the imposition of Rule 137 sanctions was improper because the trial court did not reference a specific pleading or other document filed in violation of the rule. Anthony asserts that the trial court sanctioned him for his conduct unrelated to "any pleading, motion or other paper" as specified in Rule 137, which is improper. We disagree that the basis of the sanction order was Anthony's conduct.

¶ 33 While Anthony is correct that Rule 137 does not permit sanctions based on conduct alone, the application can be based on any filings in the trial court aimed to harass, cause unnecessary delay or increase litigation costs. "Because Rule 137 addresses the pleadings, motions and other papers a litigant files, the rule does not provide a sanction against all asserted instances of bad-faith conduct by a litigant or the litigant's attorney during the course of litigation." *Krautsack v. Anderson*, 223 Ill. 2d 541, 562 (2006).

¶ 34 Again, we note that without complete transcripts, we cannot review any evidence or arguments presented to the trial court, including any discussion of documents and papers filed in violation of Rule 137. Absent the transcript of the hearing, we must presume the trial court acted in conformity with law and the order entered had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92. We have previously stated that the record does not contain transcripts from July 9 and 10 hearing as well as December 18. Further, as noted in *In re Prince M.*, 2014 IL App (1st) 132086-U, ¶ 57, the record does not contain a report of proceedings for five of the nine days of the trial on the motion to restore the status quo and petition for sanctions.

¶ 35 Regardless, the record contains many documents caused to be filed in the trial court as a result of Anthony's unfounded allegations of abuse. However, even if these documents were not sufficient to satisfy Rule 137, Danette did not base her petition for sanctions solely on Rule 137. "[W]e may affirm the trial court's order on any basis appearing in the record." *White v. DaimlerChrysler Corp.*, 368 Ill. App. 3d 278, 282 (2006). Danette sought attorney fees as a sanction under section 508(b) of the Marriage Act as well.

¶ 36 Section 508(b) provides:

"If at any time a court finds that a hearing under this Act was precipitated or conducted for any improper purpose, the court shall

allocate fees and costs of all parties for the hearing to the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." 750 ILCS 5/508(b) (West 2012).

¶ 37 Anthony does not argue that the sanction was improper under section 508(b). Based on the record before us on appeal, it is clear that Anthony used the unfounded allegations for an improper purpose, to harass Danette and to prolong the custody dispute. The parties endured many hearings and court-ordered evaluations as a result of these allegations, as detailed in the prior decision by this court. See *In re Prince M.*, 2014 IL App (1st) 132086-U. As previously noted, the trial court found that Anthony "engaged in a calculated ruse to thwart [Danette] of her right to be a parent." Since Anthony pursued these baseless abuse allegations for an improper purpose, we conclude the award of attorney fees as a sanction was merited under section 508(b).

¶ 38 Anthony also contends that the July 10 order setting the amount of attorney fees apportioned to Anthony as well as other fees and costs was improper because the June 4 order was a final judgment. He provides one citation to authority, that an interim fee order is interlocutory in nature because it may be revoked or modified before final judgment. See *In re Marriage of Johnson*, 351 Ill. App. 3d 88, 97-98 (2004). This authority has no bearing on whether the June 4 order constituted a final judgment. Anthony offers no further case law to support his conclusion that the June 4 order was final.

¶ 39 Supreme Court Rule 341(h)(7) requires an appellant to include in its brief an "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July

1, 2008). It is well settled that a contention that is supported by some argument but does not cite any authority does not satisfy the requirements of Supreme Court Rule 341(h)(7), and bare contentions that fail to cite any authority do not merit consideration on appeal. *Wasleff v. Dever*, 194 Ill. App. 3d 147, 155-56 (1990).

¶ 40 Moreover, the trial court expressly found in its December 18 order that the June 4 order was final only as to custody and ripe for appeal for that issue only. Anthony attempted to raise this issue in his appeal of the custody decision, but this court held that we lacked jurisdiction because the June 4 order was not final as to the sanction award.

"However, as the Public Guardian noted, and as Anthony conceded in his reply brief, the circuit court's June 4, 2013 order did not specify the dollar amount that Anthony was ordered to pay. An order is not final if it establishes liability but does not fix the amount. *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501, 515 (2009). When a circuit court has not entered a final order determining the amount of attorney fees and costs, issues relating to such an award are not ripe for review. *Id.*"

In re Prince M., 2014 IL App (1st) 132086-U, ¶ 68.

¶ 41 "The law-of-the-case doctrine prohibits the reconsideration of issues that have been decided by a reviewing court in a prior appeal." *In re Christopher K.*, 217 Ill. 2d 348, 363 (2005). As we previously held, the June 4 order was not final. Accordingly, the trial court did not err in entering the subsequent July 10 and December 18 orders setting the amount of the sanctions.

¶ 42 Finally, Anthony asserts that the sanction award was improper because the trial court did not conduct a separate hearing before determining that he was liable for sanctions. Rather, according to Anthony, the court amended the July 10 order without determining whether Anthony's sanctionable conduct was the basis of the attorney services rendered. Anthony's argument fails for several reasons.

¶ 43 First, as previously noted, the report of proceedings from the July 9 and 10 hearing on interim attorney fee petition is not in the record, which was Anthony's responsibility. Absent the transcript of the hearing, we must presume the trial court acted in conformity with law and the order entered had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92.

¶ 44 Next, Anthony fails to cite any authority that a separate hearing was required. He cites one case for the principle that any amendment to a court order that materially alters the legal effect or rights of a party renders the document void. See *Ruwalt v. W.C. McBride, Inc.*, 388 Ill. 285, 293 (1944). Anthony offers no argument as to how his rights were altered by the trial court amending the July 10 order to reflect that the award of \$35,000 in attorney fees was a sanction. As previously stated, a contention that is supported by some argument but does not cite any authority does not satisfy the requirements of Supreme Court Rule 341(h)(7), and bare contentions that fail to cite any authority do not merit consideration on appeal. *Wasleff*, 194 Ill. App. 3d at 155-56.

¶ 45 Additionally, the trial court specifically noted in the December 18 order that a separate hearing on sanctions was unnecessary and redundant because the allegations involved in Danette's petition for sanctions was realleged in the custody issues and fully argued and presented during the trial. Thus, Anthony's argument that a separate hearing was required fails.

¶ 46 Last, the Guardian asserted in its brief that this court lacks jurisdiction to consider any challenge by Anthony to judgments for costs and fees for the child representative. Since Anthony has not contested these awards on appeal, we need not consider the question of jurisdiction or this issue.

¶ 47 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 48 Affirmed.