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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> MARRIAGE OF MARIA PAPPAS,)	
)	Appeal from the Circuit Court
Petitioner,)	of Cook County.
)	
and)	No. 13 D 00583
)	
SAM PAPPAS,)	The Honorable
)	Mary S. Trew,
Defendant-Appellee)	Judge Presiding.
)	
(Michael Bousis and Eleni Bousis,)	
Nonparty Discovery Respondents-Appellants).)	

JUSTICE GORDON delivered the judgment of the circuit court.
Presiding Justice Palmer and Justice McBride concurred in the judgment

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in denying appellants' motion for sanctions pursuant to Supreme Court Rule 137 without an evidentiary hearing because there was sufficient evidence in the record to show that the subpoenas issued for deposition and discovery were objectively reasonable.

¶ 2 On January 22, 2013, Maria and Sam Pappas began dissolution of marriage proceedings. During these proceedings, Michelle Beattie, one of Sam's two attorneys, issued

subpoenas for depositions and documents to Michael Bousis and Eleni Bousis. Michael was, allegedly, having an ongoing affair with Maria, and Eleni, Michael's mother, allegedly knew of and aided the affair. Michael and Eleni filed a motion to quash the subpoenas, which was granted in part on April 16, 2014. On June 1, 2014, Sam's other attorney sent an acquaintance a series of profane text messages in which she recounted her dislike of Michael and her desire for Michael's children to learn of his affair. On June 2, 2014, the circuit court entered a judgment for dissolution of marriage. On June 19, 2014, Michael and Eleni filed a motion for sanctions pursuant to Supreme Court Rule 137, alleging that the text messages from the attorney revealed that the subpoenas signed and filed by attorney Beattie were frivolous, improper, and designed to harass Michael. The circuit court denied this motion. Michael and Eleni appeal the circuit court's decision to deny sanctions.

¶ 3 On appeal, appellants' only claim is that the circuit court erred in denying their motion for sanctions without an evidentiary hearing. For the following reasons, we affirm.

¶ 4 **BACKGROUND**

¶ 5 On January 22, 2013, Maria filed a petition for dissolution of her marriage to Sam Pappas, citing irreconcilable differences. Maria sought joint custody of the couple's two minor children. On January 31, 2013, Sam filed a counterpetition for dissolution of marriage, in which he alleged that Maria had committed adultery and requested sole custody of their children.

¶ 6 On July 11, 2013, Sam filed an "emergency motion for entry of order regarding parenting time and parameters for international travel with minor children and other relief" in which he claimed that Maria was traveling to Greece with the couple's children and that Sam had information that she would be spending time in Greece with her paramour, Michael

Bousis. Sam sought to have contact with his children throughout the trip and to prevent the couple's children from spending time with Michael. Attached to the motion was a proposed agreed order that Maria, on the trip to Greece, would allow Sam at least one telephone call a day with the couple's children, would have a family member watch the children when she was not with them, and would bar Michael from having contact with the children.¹

¶ 7 On August 5, 2013, Maria filed a petition for interim and prospective attorney fees and costs. In the petition, she claimed to have insufficient funds to pay her attorney. On September 17, 2013, Sam filed a response to this petition in which he claimed that Maria was capable of working, had a past history of employment during their marriage, and that she had spent over \$10,000 on a trip to Greece. Sam further claimed that Maria may also have income from Michael, whom Sam alleged helped pay for the Greece trip, and that Michael was helping Maria financially, either directly or indirectly through his mother, Eleni Bousis. Attached to the response was a receipt for the plane tickets Maria purchased for the Greece trip, showing that the tickets cost \$4,630.

¶ 8 On December 16, 2013, Michael filed a motion to quash certain subpoenas for documents and deposition. Attached to the motion was a subpoena sent on November 29, 2013, and signed by attorney Michelle Beattie, one of Sam's two attorneys. The subpoena sought from Michael, in part, (1) documents and records relating to funds received for services rendered, as gifts, or as loans from Maria; (2) documents relating to travel activities with Maria; (3) documents relating to funds expended by Maria on Michael; (4) any debts owed to or owed from Maria; and (5) any documents showing interactions between Michael and Sam and Maria's children. On January 29, 2014, Eleni also filed a motion to quash

¹ The record does not show a resolution to this motion.

subpoenas. Attached to her motion was a subpoena, again sent on November 29, 2013, and signed by attorney Beattie. The subpoena requested any information regarding correspondence between Michael and Maria, as well as any documents relating to funds or debts given to Eleni from Maria or given from Eleni to Maria.

¶ 9 On February 18, 2014, Sam filed a response to Michael's and Eleni's motions to quash. In the response, Sam claimed that Eleni had helped reconnect and support Maria and Michael, who had been engaged prior to Sam and Maria's marriage and only ended their relationship because of Eleni's interference. Sam claimed that Eleni gave money to Maria, which Eleni received from Michael, in order to support Maria. Finally, Sam claimed that Eleni and Michael were in Greece at the same time as Maria.

¶ 10 On March 10, 2014, the circuit court entered a custody and joint parenting judgment for Sam and Maria. On April 16, 2014, the circuit court granted the motions to quash the subpoenas in part by striking the broader requests such as "all correspondence between you and Maria." The circuit court did order Michael and Eleni to respond to several of the requests seeking documentation related to debts owed and funds expended by Maria or given to Maria. The record does not show if they complied with this order. On June 2, 2014, the circuit court entered a judgment for the dissolution of marriage.

¶ 11 On June 19, 2014, Michael and Eleni filed a Supreme Court Rule 137 motion for sanctions, seeking sanctions against Sam and both of his attorneys. Attached to the motion was a picture of four text messages sent by one of his attorneys² to an acquaintance on June 1, 2014, at 2 a.m. The text messages were profane, and denigrated Michael and Eleni. The text messages appear to be directed to the acquaintance because he defended Michael and

² The attorney who sent the text messages was not attorney Beattie, who had signed the subpoenas issued to Michael and Eleni.

Eleni in a discussion with a person named "D." One of the text messages read "Ps [sic] tell Eleni and mike [sic] that I'll see them in circuit court, and make sure his sons see what a gambling fat cheating joke he is and will always be." The motion claimed that these texts demonstrated that the reason the subpoenas were issued to Michael and Eleni was to embarrass Michael about the affair.

¶ 12

On October 6, 2014, the circuit court denied the motion, finding:

"13. Essentially, Supreme Court Rule 137 requires that an attorney take responsibility for her filings. It requires a reasonable inquiry. However, the inquiry required by the rule must be reasonable under the circumstances that exist at the time the pleading is signed, not applied retroactively with the benefit of hindsight. *Couri v. Korn*, 202 Ill. App. 3d 848 (1990).

14. With respect to the issue of [the attorney who sent the text messages,] who did not even sign the subpoenas in question (as required by the rule), she cannot be held responsible under the very terms of the rule.

15. The issue, then, is whether attorney Beattie (and her client Sam Pappas) who did sign the subpoenas conducted a reasonable (at the time) inquiry which formed the basis of her knowledge, information, and belief, that the subpoenas she signed were well-grounded in fact and warranted by existing law. This circuit court finds that she did. The fact that something may have occurred several months later regarding [the other attorney] does not retroactively apply to the reasonableness standard at the time the subpoenas were signed by Beattie. The text rant to a third party by [the other attorney] occurred at least six months after the subpoenas were issued by Beattie.

16. This is further supported by the fact that the subpoenas were fully litigated *and limited* pursuant to a motion to quash filed by Michael and Eleni." (Emphasis in original.)

¶ 13 Michael and Eleni filed this timely appeal.

¶ 14 ANALYSIS

¶ 15 Appellants' only claim on appeal is that the circuit court erred in not holding an evidentiary hearing on their motion to impose sanctions pursuant to Supreme Court Rule 137.

¶ 16 Illinois Supreme Court Rule 137 allows the circuit court to award sanctions against parties who filed frivolous pleadings when a pleading has no basis in fact or law. Ill. S. Ct. R. 137 (eff. Jan. 4, 2013). An attorney's signature on a pleading, motion or other paper indicates "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." Ill. S. Ct. R. 137 (eff. Jan. 4, 2013). "Rule 137 is intended to prevent counsel from making assertions of fact or law without support ***." *Lewy v. Koeckritz International Inc.*, 211 Ill. App. 3d 330, 334 (1991).

¶ 17 The standard for evaluating a party's conduct under Rule 137 is one of reasonableness under the circumstances existing at the time the pleading or other papers was filed. *In re Marriage of Schneider*, 298 Ill. App. 3d 103, 697 (1998); *Pritzker v. Drake Tower Apartments, Inc.*, 283 Ill. App. 3d 587, 670 (1996). That standard is an objective one such that an attorney's honest belief that the claim is well grounded in fact and law is irrelevant. *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067, 1074-75 (1995). In determining whether sanctions are warranted in a particular case, the

court must ascertain what was reasonable at the time, and the court should not engage in hindsight. *Lewy*, 211 Ill. App. 3d at 334. The determination of whether to impose sanctions under Rule 137 rests with the sound discretion of the trial court; the decision to impose or deny sanctions is entitled to great weight on appeal and will not be disturbed on review absent an abuse of discretion. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). "A circuit court exceeds its discretion only where no reasonable person would take the view adopted by it." *Spiegel v. Hollywood Towers Condominium Ass'n*, 283 Ill. App. 3d 992, 1001 (1996) (citing *Lewy*, 211 Ill. App. 3d at 334-35). "When reviewing a decision on a motion for sanctions, the primary consideration is whether the trial court's decision was informed, based on valid reasoning, and follows logically from the facts." *Sterdjevich v. RMK Management Corp.*, 343 Ill. App. 3d 1, 19 (2003) (quoting *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 244 (2000)).

¶ 18 Appellants cite to *Century Road Builders, Inc. v. City of Palos Heights*, 283 Ill. App. 3d 527 (1996), to support their position that an evidentiary hearing *must* be held any time a party seeks sanctions based on a claim that pleadings or other papers were filed for an improper purpose. However, in *Century Road Builders*, the appellate court held that "[t]he predicate to such deference [to the circuit court] is that the circuit court must base its determination upon evidence taken at a hearing *or matters of record which justify foregoing an evidentiary hearing.*" (Emphasis added.) *Century Road Builders, Inc.* 283 Ill. App. 3d at 531 (citing *In re Estate of Smith*, 201 Ill. App. 3d 1005, 1009 (1990)).

¶ 19 In the case at bar, the circuit court concluded that the attorney who sent the text messages was not subject to the requirements of Rule 137, as she had not signed the subpoenas. Ill. S. Ct. R. 137 (eff. Jan. 4, 2013) ("The signature of an attorney or party

constitutes a certificate by him that he has read the pleading, motion or other paper; 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 ***."). The circuit court then found that the fact that the attorney sent inappropriate text messages six months after the subpoenas were filed by Beattie, the other attorney, did not retroactively affect the question of whether it was reasonable for Beattie to sign the subpoenas at the time they were signed. The circuit court was correct in so finding, as the court does not engage in hindsight, but must determine if signing the pleadings or other papers at the time it was signed was reasonable. *Lewy*, 211 Ill. App. 3d at 334. An event that occurred over six months after the subpoenas were signed does not necessarily reflect the mindset of the individual signing the subpoenas at the time they were signed. This is especially true when the lawyer involved in the event was not the lawyer who signed the subpoenas.

¶ 20 We turn, then, to whether signing the subpoenas was objectively reasonable at the time they were signed. *Fremarek*, 272 Ill. App. 3d at 1074-75. Appellants contend that, even at the time the subpoenas were signed, they were frivolous and without legal merit. However, we find that the record reflects that the subpoenas were objectively reasonable at the time they were signed.

¶ 21 The majority of the discovery requests in the subpoenas were in relation to funds or debts either owed to Maria by Michael and Eleni or owed by Maria to Michael and Eleni. Neither party disputes that Michael and Maria were engaged in an extramarital affair. Sam had reason to believe, and referenced numerous times, that Eleni had knowledge of this affair and may have been involved in aiding the affair, either by providing funds herself or by acting as a "middleman" to allow Michael to give Maria funds.

¶ 22 Section 503 of the Illinois Marriage and Dissolution of Marriage Act provides that "all property acquired by either spouse after the marriage and before a judgment of dissolution of marriage *** is presumed to be marital property" unless it is "non-marital" property such as a "gift." 750 ILCS 5/503(b)(1) (West 2012); 750 ILCS 5/503(a)(1) (West 2012). Thus, it was reasonable to inquire whether Maria had been receiving funding from Michael or Eleni that was not in the form of a gift. Moreover, Illinois circuit courts are allowed to consider the dissipation of marital property during dissolution proceedings. See 750 ILCS 5/503(d)(2) (West 2012). "A spouse dissipates marital assets when he or she uses marital property for his or her own benefit for a purpose unrelated to the marriage when the marriage is undergoing an irreconcilable breakdown." *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 108 (citing *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 652-53 (2009)). The record reflects that there was evidence that Maria went on an expensive trip to Greece, one that Michael and Eleni may have been a part of. There was also evidence of an ongoing affair between Maria and Michael, during a time when Maria was not working. It is reasonable that during this trip, or during the affair, Maria may have spent marital assets on a purpose unrelated to the marriage. It was therefore objectively reasonable that Beattie would seek documents to determine if Maria had spent marital assets on Michael or Eleni. *In re Marriage of Schneider*, 298 Ill. App. 3d at 697.

¶ 23 Appellants claim that the nonmonetary requests were objectively unreasonable, such as requests for correspondence between Michael and Maria or requests about interactions between Michael and Maria's children. A circuit court is allowed to consider a party's extra-marital relationship as it bears on that party's relationship and interaction with their children. See *In re Marriage of Werner*, 144 Ill. App. 3d 263, 269 (1986) (wife's involvement with a

paramour was relevant to the extent that it affected "her relationship with her children"). " 'Although it is improper for a circuit court to presume harm to a child, based on the parents' allegedly immoral conduct, evidence bearing on the stability of the child's environment is obviously relevant.' " *In re Marriage of Phillips*, 244 Ill. App. 3d 577, 583-84 (1993) (quoting *In re Marriage of Stone*, 164 Ill. App. 3d 1046, 1053 (1987)). At the time the subpoenas were signed, the custody of Sam and Maria's children was still in dispute. Maria's interaction with her extramarital relationship may have had bearing on her relationship with her children, or the children's home environment. For these reasons, it was not unreasonable for Beattie to request information relating to Michael and Maria's relationship and Michael's interactions with Maria's children. *In re Marriage of Schneider*, 298 Ill. App. 3d at 697.

¶ 24 For the reasons stated above, we do not find that the trial circuit court abused its discretion when it denied Michael and Eleni's motion for sanctions, or when it did not hold an evidentiary hearing. *Dowd & Dowd, Ltd.*, 181 Ill. 2d at 487.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, we do not find that the circuit court abused its discretion when it did not hold an evidentiary hearing and denied appellants' motion for sanctions pursuant to Supreme Court Rule 137.

¶ 27 Affirmed.