2015 IL App (1st) 143777-U

FIFTH DIVISION
December 23, 2015

No. 1-14-3777



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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| | ) | Appeal from the |
| TAJUANA TANG, | ) | Circuit Court of |
| | ) | Cook County |
| Petitioner-Appellee, | ) | |
| | ) | |
| v. | ) | No. 03 D 50074 |
| | ) | |
| BRIAN WILLIS, | ) | |
| | ) | Honorable |
| Respondent-Appellant | ) | James Kaplan, |
| | ) | Judge Presiding. |

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PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Palmer concurred in the judgment.

**ORDER**

¶ 1 *Held*: Affirming judgment of circuit court of Cook County imposing Rule 137 sanctions against party and attorney based on failure to make reasonable inquiry into the facts supporting legal claim.

¶ 2 Brian Willis (Willis) and TaJuana Tang (Tang)[1] are the parents of a 16-year-old daughter.

[1] Ms. Tang's name is spelled as "TaJuana Tang," "Ta Juana Tang," and "Tajuana Tang" in the record on appeal.

Through his attorney Paraisia R. Winston (Winston),[2] Willis filed a petition to modify his child support obligation, asserting that he had overpaid with respect to a child support arrearage. Contending that Willis "continues to be in arrears," Tang moved to dismiss his petition and sought sanctions against Willis and Winston (the appellants)[3] pursuant to Rule 137 of the Illinois Supreme Court Rules (the Rules). Ill. S. Ct. R. 137 (eff. July 1, 2013). The circuit court of Cook County granted the motion to dismiss and imposed sanctions against the appellants in the amount of $1,465.50. The appellants seek reversal of the Rule 137 sanctions.

¶ 3 For the reasons discussed herein, we conclude that the circuit court did not abuse its discretion in its award of Rule 137 sanctions and thus affirm the judgment.

¶ 4 I. BACKGROUND[4]

¶ 5 The Illinois Department of Public Aid and Tang filed a "Complaint to Determine the Existence of the Father and Child Relationship" against Willis in January, 2003. The court entered a default "Order of Parentage" in May, 2003, providing that Willis is the child's natural father. The order stated that "[c]urrent [s]upport, medical and retroactive support is reserved and continued for hearing."

¶ 6 After a hearing during which Willis was present, the court entered a five-page order on July 21, 2003, finding that Willis owed retroactive child support from February 24, 2003 – the date Willis was served with the complaint – to July 20, 2003, in the amount of $2,020.84. Willis was ordered to pay "twice each month on the 15th & 30th" the amount of $210.00 for the "Current

[2] Ms. Winston's name appears on the appellate briefs as "Paraisia R. Winston Gray."
[3] Tang argues that "Winston has failed to perfect an appeal *** because she has not identified and designated herself as an appellant" in the notice of appeal, and thus our review should be limited solely to Willis. However, as discussed herein, we view both Willis and Winston as the appellants.
[4] This background discussion provides a non-exhaustive overview of the key child support issues and related matters relevant to the instant appeal. Unless otherwise noted, we do not address herein the various pleadings and orders regarding visitation.

Child Support Payment or Unallocated Support Payment" and $20.00 for the "Arrearage/Retroactive Payment." The order further stated that "[i]f the obligor becomes delinquent in the payment of support after the entry of this Order for Support, the obligor must pay, in addition to the current support obligation, the sum of *** $46.00 S/M[5] for delinquent child support per the payment frequency ordered above for child support *** until the delinquency is paid in full." The court also ordered, in part, that "retroactive support from date of birth to date of service is reserved and continued for a hearing."

¶ 7 In an order entered on December 15, 2003,[6] the court found that the retroactive child support from the child's date of birth (November 7, 1999) to the date Willis was served with Tang's complaint (February 24, 2003) was $13,500.00. The court entered a judgment in the amount of "$15,520.84 as of 7/20/03," representing $2,020.84 (for the period from February 24, 2003 to July 20, 2003) plus $13,500.00. The amount of the "Arrearage/Retroactive Payment" was increased to $40.00, to be paid twice each month. The $46.00 amount from the prior order was increased to $50.00.

¶ 8 In July 2007, Tang filed a motion for modification of child support, contending that "the financial resources, health care and educational needs of the child have changed significantly." Tang requested, among other things, that the court mandate payment by Willis of various school-related fees, expenses for extracurricular activities, and health insurance premiums for the minor child. She further requested that Willis "be found in contempt for failing to pay" certain child support.

¶ 9 After a hearing where both Tang and Willis were present, the court entered an order on

[5] We surmise, although need not decide, that "S/M" means "semi-monthly."
[6] The December 15, 2003, order corrected an order entered on November 5, 2003, that appears to have contained calculation errors.

August 10, 2007, providing, in part, that Willis "continue to pay support, arrears payments and delinquency of $600.00 mo[.] until satisfied under last income withholding notice and order and to pay additional amount for other costs of child per this Order."[7] The order also provided for an additional $145.00 monthly payment beginning on September 1, 2007.

¶ 10 In October 2009, Willis filed a *pro se* appearance and a motion to reduce his child support payment, asserting that his "income has been significantly reduced" and he "cannot afford the current child support payments." The court entered an order on October 22, 2009, granting Willis's application to proceed as an indigent person "[p]ursuant to Supreme Court Rule 298 and 735 ILCS 5/5-105."

¶ 11 After a hearing where both Tang and Willis were present, the court entered an order on January 8, 2010, that, among other things, temporarily granted Willis's motion. His "[c]urrent" child support payment was reduced to $183.66 and his arrearage/retroactive payment was $40.00, to be paid "every other week." His delinquency obligation was adjusted to $44.73, to be paid biweekly.[8]

¶ 12 In a *pro se* motion entitled, "Motion by Brian K. Willis for Violated Reduce [*sic*] Child Support Cort [*sic*] Order," filed September 7, 2010, Willis stated, "The motion that was court ordered was violated and the payments exceed the 10% baseline obligated[.]" Willis did not appear to prosecute his motion; the motion was stricken with leave to reinstate.

¶ 13 In a *pro se* motion entitled, "Motion by Brian K. Willis For Enforce [*sic*] Mandatory

[7] We assume, although need not decide, that the $600.00 amount represents two payments per month of $300.00, representing the "[c]urrent" obligation of $210.00, plus the $40.00 arrearage/retroactive payment, plus the $50.00 for delinquency subsequent to the entry of the support order.

[8] The order provided that "[t]his cause is continued for permanent support to 2-25-2010"; however, the record does not appear to include any additional order regarding "permanent support."

Visitation," filed on April 20, 2012, Willis stated, in part, "My mandatory visitations are constantly interupted [*sic*] and I would like all delinquency charges to be dropped." An order entered on May 23, 2012, provides that "[t]he court provided Respondent with a certified copy of the agreed visitation order entered by this court on July 21, 2003."[9]

¶ 14 On September 25, 2013, Willis, through his attorney Winston from the Law Offices of Ellen E. Douglass, filed "Respondent's Petition to Modify Child Support."[10] The motion provided, in pertinent part, as follows:

> "2. On or about July 21, 2003, Respondent was ordered to pay child support in the amount of $210.00 twice each month on the 15th and 30th until the minor's 18th birthday, or November 7, 2017. The amount was adjusted every three years to be in accord with the 20 percent statutory payment.
>
> 3. That the Court's order of July 21, 2013 [*sic*], also ordered the Respondent to pay an arrearage of $2,020.84 in increments of $20.00 twice each month on the 15th and 30th until the arrearage was paid in full.
>
> 4. That according to the Petitioner's calculation, the arrearage should have been paid in full on or about September 30, 2007.
>
> 5. That as of September 2013, the Respondent is still paying an arrearage in addition to his child support payment. To date the Respondent has paid $4880.00 towards the original arrearage which was only $2020.84, an amount more than double what he owed.
>
> 6. Further, the arrearage deduction is also compounded by an extra

[9] The record on appeal includes a two-page agreed order regarding visitation entered on July 21, 2003, and signed by Tang and Willis.

[10] Willis, through Winston, also filed a petition for rule to show cause, alleging that Tang violated court orders regarding visitation and access to school records.

> erroneous deduction. In addition to his regular child support deduction, he has two other deductions monthly, one for $40.00 and another for $44.73 related to this matter. Upon information and belief, the second deduction is an error as it is an adjustment for income of the original $40.00 arrearage payment. A recent copy of the Respondent's paycheck stub is attached hereto as Exhibit A.
>
> 7. That given that the arrearage has been paid in full and that these deductions to continue [*sic*] to substantially impair Respondent's income, the Respondent requests that his support order to modified [*sic*] to stop the arrearage deduction and that he is issued a child support credit for the amount overpaid.
>
> WHEREFORE, Respondent prays that this Court find that a substantial change in circumstances has occurred that would warrant a modification of his July 21, 2003 child support order and enter an order:
>
> Issuing a new Uniform Order of Support requiring the Respondent to pay Petitioner an amount reasonable to care and support of the child taking into account his overpayment and income; and granting any other relief this Court deems necessary."

Four pages are appended to the motion. The first three pages are pages one, three, and two of the July 21, 2003 order.[11] The fourth page is a paystub for Willis from a period during May, 2013.

¶ 15 On October 16, 2013, attorney Erika J. Raskopf filed an appearance on behalf of Tang.

¶ 16 In an order entitled "Account Adjustment Review" entered on October 17, 2013, the circuit court accepted a hearing officer's recommendation that the "matter is continued to [January 2, 2014]" for "Healthcare and Family Services (HFS) *** to do a complete account

[11] The three pages of the July 21, 2003, order were not appended to Willis's petition in sequential order.

review and present it to this Court[.]" A subsequent order continued the matter to February 27, 2014.

¶ 17 On November 12, 2013, Tang, through her attorney, filed a "Motion to Dismiss Petition to Modify Child Support and For Sanctions." Tang argued that Willis's petition "should be dismissed because it is insufficient as a matter of law where it is brought pursuant to Section 610(a) of the Illinois Marriage and Dissolution of Marriage [Act] which governs modification of custody and where the Petition fails to allege or show a substantial change in circumstances warranting a modification of child support." Tang further contended, in part, that "the partial Order attached by the Respondent is only three pages of the five page order entered on July 21, 2003 and it was not the only support order entered in this cause." After detailing and appending multiple child support orders, Tang calculated that Willis "was supposed to have paid the amount of $49,113.65 for current support, $11,282.62 for the arrearage/retroactive amount and $3,948.37 for extracurricular expenses, through November 1, 2013," for a total of $64,344.64. "In preparation for this litigation," Tang stated that she "obtained a print-out from the State Disbursement Unit of the Child Support Summary Payment History for support payments made by [Willis] as of August 20, 2013." According the report, Willis "made total support payments of $55,352.11" and thus "continues to be in arrears."

¶ 18 Tang also sought sanctions against Willis and Winston. The motion provided, in part:

> "It is clear from a calculation of the support in this cause pursuant to the support orders and a review from the State Disbursement Unit of the Respondent's total payments that the Respondent has not made an overpayment as he alleged – due inquiry by the Respondent's attorney would have established this – such due inquiry would have contemplated a review of the Court file and payments made to

> the State Disbursement Unit. Because the statements contained in the Petition are not true and the attorney for Respondent failed to make due inquiry as required by Rule 137, both Respondent and his attorney should have sanctions imposed."

¶ 19 On June 26, 2014, Willis, through his attorney Winston, filed a response to the motion to dismiss. The response provided, among other things, that the State "produced the accounting" on February 27, 2014. The accounting showed that Willis owed $24,123.31 as of January 31, 2014. According to Willis, "[c]onsistent with all other statements made to counsel and before the Court," he "sought to withdraw his Petition to Modify Support based on the fact that an arrearage was still owed." Willis stated that Tang's counsel "objected to the withdrawal, stating that her motion to dismiss included a request for sanctions." Willis contended, in part, that the "fact that [he] was wrong about his retro support being paid in full is irrelevant and does not make his pleading frivolous." He sought to withdraw his petition to modify child support and asked that the court deny Tang's request for Rule 137 sanctions.

¶ 20 After hearing arguments, the court entered an order on July 2, 2014, granting Tang's motion to dismiss; she was provided 21 days to file a fee petition. On July 25, 2014, Tang filed a petition seeking attorney fees and costs in the amount of $2,031.44 in connection with "her defense of the Respondent's Petition to Modify Child Support."

¶ 21 On August 1, 2014, Willis, through his attorney Winston, filed a motion to reconsider the court's order entered on July 2, 2014, "granting Petitioner's motion to dismiss and allowing sanctions under Rule 137." Willis stated that "at the initial presentment date" for the petition to modify child support, "the Hearing Officer determined that the pleading contained defects in the relief sought." "Noting the varying amounts asserted, and the conflicting orders for support in the court file," Willis continued, "the Hearing Officer construed the pleading as a request for an

Account Adjustment Review ('the Accounting')." Willis contended that his attorney "purported at that time in open court, if an arrearage was shown on the Accounting that the pleading would be withdrawn, as no further relief would be necessary." According to Willis, when the accounting presented on February 27, 2014, showed an arrearage, his attorney sought to withdraw the petition, but Tang's counsel objected because her motion to dismiss included a request for sanctions. Willis argued that he "had a good faith basis for filing the petition for modification, based on the orders he was provided and gave to his counsel. More than 10 years had elapsed since [Willis] was ordered to pay an arrearage, such that it was reasonable to request that the arrearage payment be stopped, and any overpayment credited back to him." He asserted that "[a]t no time was the pleading brought to harass [Tang] or for any other improper purpose." Willis further contended that the court erred in that it "did not conduct an evidentiary hearing and did not provide any specific findings in its July 2, 2014 order."

¶ 22 In her response to the motion to reconsider, Tang asserted that "the granting of sanctions is appropriate in this case because the Respondent filed a pleading that was not based in fact and it was filed by Counsel for the Respondent without due inquiry, as is required by Rule 137 and which Ms. Winston acknowledged when she signed the Petition and filed it with the Court." Tang asserted that "there was no due inquiry and the Petition was not based in fact – on July 2, 2014, Ms. Winston acknowledged she filed a defective pleading – that defective pleading was served by Attorney Winston on the Petitioner and cause [*sic*] the Petitioner to retain counsel and to incur fees." Tang further noted that "[b]y letter dated November 2, 2013, Counsel for the Petitioner alerted Ms. Winston of the problem with her client's Petition seeking modification based on the alleged overpayment and suggested that Ms. Winston and the Respondent consider withdrawing the Petition." According to Tang, "the Respondent and Ms. Winston refused to do

so, and instead suggested that the Petitioner should withdraw her Motion to Dismiss and request for sanctions, since that Motion would be moot if any overpayment were shown." A copy of the November 2, 2013, letter was appended to Tang's response to the motion to reconsider.

¶ 23 On September 5, 2014, the court conducted a hearing on the Willis's motion to reconsider. Winston argued, among other things, that she was "not required to rely on opposing counsel's assertions that an arrearage exists." According to Tang's counsel, "[t]he issue is that *** when counsel filed her petition, it was defective and it was not based in due inquiry, and it was not well grounded in fact regardless of what happened afterwards." The court, addressing Winston, stated, in part:

> "[Y]ou want to put the blame on the hearing officer for you not doing what you were supposed to do. All he did was say even if this motion is defective, we still have to get to the bottom of it. We need an AAR [account adjustment review]. And that's what he ordered, but you had an obligation to come in and ask for leave of court to modify your defective pleading. You never did it. They went ahead and had people come in and bill their client and do all of these things based on your defective motion, and when you were presented with a letter with all of it, did you then go and check anything out? No, you waited for the AAR to come back."

Addressing Tang's counsel, the court stated:

> "I believe that from whatever -- from the information, the amount of time you spent gathering the information for your November letter, the time you spent on the November letter, any court appearances or pleadings that you did incur as a result of gathering data for your November letter, anything that occurred from that

> point in time, gathering of your data to the date of your argument in court *** [s]hould be of sanction and should be allowed to -- and the sanction must be based on only those matters for child support, and there should be nothing in your hourly billing that I'm ordering here that has anything to do with the child support, but anything that was incurred prior to the gathering of data for the November letter is not allowed. Anything that was incurred as a result of the data gathering and anything that occurred in regard to the letter or pleadings or court appearances is allowed."

The matter was continued for a hearing on Tang's petition for attorney fees.

¶ 24 On November 6, 2014, Willis filed an objection to Tang's fee petition, arguing, in part, that: (a) "the fees are totally out of proportion with the work performed with respect to the child support issue only"; (b) "counsel prolonged this matter by insisting that the court allow multiple continuances, even after Respondent sought to withdraw the child support motion"; (c) "Respondent's counsel acted diligently in waiting for the already ordered account adjustment review and not simply relying on counsel for the Petitioner's calculations, which were found not to be accurate." (Emphasis in original.)

¶ 25 On November 13, 2014, after a hearing, the court entered an order – seemingly prepared by Winston[12] – finding as follows:

> "1. That the Respondent's initial pleading, Motion to Modify Child

[12] The bottom of the order lists the contact information for Winston, indicating that she prepared the order. However, the appellant's brief states that a "more detailed explanation" of the pre-filing investigation was "put on the record [on] the date of [the] hearing," and was "somehow *** omitted from the Court's order entered on November 13, 2014." This comment suggests that Winston did not prepare the order, at least not in its final form. To the extent that Winston drafted the order, "there is a question whether [she] can now appeal any defect in that order." *Spiegel v. Hollywood Towers Condominium Ass'n*, 283 Ill. App. 3d 992, 1002 (1996).

Support, was fair.

2. That the Court finds that it was unfair not to amend or strike the pleading after the Petitioner's counsel's letter of November 2013 that was detailed and showed an arrearage existed; and caused this case to go on unnecessarily and resulted in fees.

3. By Respondent's counsel's admission, she reviewed the Clerk of Court's website, this Court finds that is not enough."

The court denied Willis's motion to reconsider and ordered that "Rule 137 Sanctions are imposed against Respondent and Respondent's counsel after the date of the November 2013 letter from Petitioner's counsel, an amount of $1,465.50." The order included a Rule 304(a) finding. Ill. S. Ct. R. 304(a) (eff. June 4, 2008). A notice of appeal was filed on December 10, 2014.

¶ 26 II. ANALYSIS

¶ 27 A. Notice of Appeal

¶ 28 As a threshold matter, Tang contends that "Winston has failed to perfect an appeal of the imposition of sanctions by the trial court against her because she has not identified and designated herself as an appellant." Tang asserts that "[t]his defect is not one of form, but of substance where Brian Willis, the Respondent-Appellant cannot appeal the actions of his attorney and the Plaintiff-Appellee has relied on gaining fees, not only from the Respondent, but also from Counsel for the Respondent (especially where Respondent-Appellant has repeatedly informed and argued to this Court the impropriety of sanctions against a Rule 298 litigant)." According to Tang, "[t]he imposition of the Rule 137 sanctions against Attorney Paraisia R. Winston should be upheld and affirmed where Attorney Winston has not perfected an appeal of said sanctions in her own behalf."

¶ 29 In *Nussbaum v. Kennedy*, 267 Ill. App. 3d 325, 326 (1994), cited by Tang, a single plaintiff sued three defendants in the trial court; the jury ruled in favor of the defendants. In his notice of appeal, the plaintiff omitted any references to two of the three defendants. *Id.* at 327. The appellate court concluded that the plaintiff's notice of appeal failed to perfect the court's jurisdiction over the two unnamed defendants. *Id.* at 328. The court observed that the "substantial defects" in the notice of appeal had prejudiced the unnamed defendants. *Id.* For example, the clerk of the court sent the docketing statement and other documents only to counsel for the plaintiff and named defendant, and counsel for the named defendant did not serve the unnamed defendants with copies of his brief. *Id.* The court also noted that neither the plaintiff nor the named defendant requested leave to amend the notice of appeal; also, neither unnamed defendant "acceded in this court's jurisdiction by participating in this case, through the filing of briefs or appearing at oral argument." *Id.*

¶ 30 In the notice of appeal in the instant case, Brian Willis is identified as the appellant, and Paraisia R. Winston is identified as the appellant's attorney. Winston signed the notice of appeal. The "[r]elief sought from Reviewing Court" is "review of court's order of 11/13/14 imposing Supreme Court Rule 137 sanctions against Brian Willis, Respondent/Appellant, and his attorney." Although the reply brief stated that Willis's "misstep in not naming his attorney as an Appellant is a technical error," we agree that any error "did not deprive [Tang] of sufficient notice." As the *Nussbaum* court stated, "[t]he purpose of a notice of appeal is to inform the prevailing party in the trial court that his opponent seeks review by a higher court." *Id.* at 328. The notice of appeal herein expressly requests review of the sanctions against both Willis "and his attorney." Furthermore, unlike in *Nussbaum* – in which the notice failed to identify appellees – the failure to expressly designate Winston as an appellant has not negatively affected Tang's

participation in the appeal in any significant manner.

¶ 31 Tang cites cases involving Rule 137 sanctions against both attorneys and their clients in which the notice of appeal or the parties' appellate practice differed from the instant case. In *Edwards v. Estate of Harrison*, 235 Ill. App. 3d 213 (1992), the client filed a notice of appeal; the attorney and client filed separate briefs, each on his or her own behalf, and had separate counsel on appeal. Discussing *Swanson v. Cater*, 258 Ill. App. 3d 157 (1994), Tang asserts that an attorney "filed an appeal on behalf of the plaintiff and in his own behalf and identified and named both the plaintiff and himself as appellants in the appeal." Although we agree that the notice of appeal herein was deficient (see Ill. S. Ct. R 303(b) (eff. Jun. 4, 2008)), "[w]here the deficiency is one of form rather than substance, and the appellee is not prejudiced, the failure to comply strictly with the form of notice is not fatal." *Nussbaum*, 267 Ill. App. 3d at 328. See, *e.g.*, *In re Estate of Weeks*, 409 Ill. App. 3d 1101, 1109 (2001) ("[p]etitioners' failure to name themselves as appellants in the notice of appeal, while technically deficient, did not deprive intervenor of the notice to which she was entitled").

¶ 32 "[A] notice should be considered as a whole and will be deemed sufficient to confer jurisdiction on an appellate court when it fairly and adequately sets out the judgment complained of and the relief sought, thus advising the successful litigants of the nature of the appeal." *Nussbaum*, 267 Ill. App. 3d at 328; *In re D.R.*, 354 Ill. App. 3d 468, 471 (2004) (stating that a notice of appeal is to be liberally construed). Reviewing the notice of appeal as a whole, we consider both Willis and Winston as the appellants herein.[13]

¶ 33 B. Rule 341

[13] Although the appellant's brief and the reply brief on appeal refer solely to Willis as the appellant, the arguments advanced and the relief requested therein concern both Willis and Winston.

¶ 34 Tang further contends that "Respondent-Appellant's Brief does not comply with Illinois Supreme Court Rule 341 and certain portions of the Brief should be stricken and/or disregarded." Rule 341(h)(6) provides, in part, that the appellant's brief shall contain a "Statement of Facts, which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal[.]" Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Tang observes that portions of the statement of facts in the appellant's brief fail to include references to the record on appeal or fail to state the facts "accurately and fairly without argument or comment," in violation of Rule 341(h)(6). Tang also contends that a sentence contained in the "Nature of the Case" section of the brief – regarding Willis's indigent status and Winston's *pro bono* representation – "should be stricken where said statement is not germane to the nature of the case as required by Illinois Supreme Court Rule 341(h)(2)." However, "[w]here violations of supreme court rules are not so flagrant as to hinder or preclude review, the striking of a brief in whole or in part may be unwarranted. [Citation.]" *Hurlbert v. Brewer*, 386 Ill. App. 3d 1096, 1101 (2008). In the instant case, the appellants' violations of the supreme court rules do not hinder our review. Accordingly, we will not strike portions of the brief but will disregard any fact or claim not supported by the record. *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636, ¶ 8; *Hurlbert*, 386 Ill. App. 3d at 1101.

¶ 35 C. Whether Imposition of Rule 137 Sanctions Constituted Abuse of Discretion

¶ 36 The appellants contend that the "[c]ourt abused its discretion in finding that Supreme Court Rule 137 Sanctions were appropriate against counsel and her client where a pleading was signed after reasonable inquiry, brought in good faith and not for an improper purpose." Tang responds that neither Willis nor Winston made a reasonable inquiry into the alleged

overpayment.

¶ 37 Rule 137 provides, in pertinent part, as follows:

> "(a) Signature requirement/certification. Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. *** The signature of an attorney or party constitutes a certificate by him that he had read the pleading, motion or other document; that to the best of his knowledge, information or 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 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 (eff. July 1, 2013).

"The primary purpose of the rule is to discourage attorneys and parties from filing frivolous or false matters and asserting claims without any basis in law or fact, by penalizing those who engage in such wrongful conduct." *Cook ex rel. Cook v. AAA Life Ins. Co.*, 2014 IL App (1st) 123700, ¶ 63. "The rule is designed to discourage frivolous filings, not to punish parties for making losing arguments." *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 15 The

decision whether to impose Rule 137 sanctions is a matter within the sound discretion of the circuit court and should not be disturbed absent an abuse of discretion. *Sterdjevich v. RMK Management Corp*., 343 Ill. App. 3d 1, 19 (2003). A trial court abuses its discretion when no reasonable person could have taken the view it adopted. *Id.*

¶ 38 Under Rule 137, "both client and counsel must make a reasonable inquiry into the facts to support a legal claim or defense before filing motions and other legal papers with the court." *Schinkel v. Board of Fire and Police Comm'n of Village of Algonquin,* 262 Ill. App. 3d 310, 323 (1994). "In determining what constitutes a Rule 137 violation, courts use an objective standard of what was reasonable under the circumstances existing at the time the alleged violation was made." *Id*. "An objective standard of reasonableness based upon the entirety of the circumstances must be applied." *Rankin ex rel. Heidlebaugh v. Heidlebaugh*, 321 Ill. App. 3d 255, 267 (2001).

¶ 39 The appellants contend that, prior to filing the petition to modify child support, Winston's "inquiry was a review of the file stamped order presented by Mr. Willis showing that only a $2,000.00 arrearage was imposed in 2003, reviewing a series of Mr. Willis' paycheck stubs that show he paid his regular support and an additional amount on the arrearage for a period of no less than 10 years, and a reviewing the [*sic*] electronic docket online." The circuit court's November 13, 2014, order provided, in part, that "[b]y Respondent's counsel's admission, she reviewed the Clerk of Court's website, this Court finds that is not enough."

¶ 40 Based on our review of the record on appeal, we conclude that the circuit court did not abuse its discretion in finding Winston's pre-filing inquiry to be inadequate.[14] The copy of the

[14] We note that the record on appeal contains no transcript, report of proceedings or bystander's report regarding the hearing on July 2, 2014, wherein the court granted Tang's motion to dismiss Willis's petition to modify child support. Any doubts arising from the incompleteness of the

five-page order entered on July 21, 2003, that was appended to the petition for modification of child support – and formed the basis for the requested relief – was missing the last two pages, including the page with the judge's signature. The bottom of each page of the July 21, 2003 order was marked "Page 1 of 5," "Page 2 of 5," etc.; a review of the order should have revealed the missing pages. One of the missing pages provided, in part, "retroactive support from date of birth to date of service is reserved and continued for a hearing." A subsequent order provided that the amount of the judgment was $15,520.84 as of July 20, 2003 – an amount significantly in excess of the $2,020.84 arrearage referenced in the petition to modify child support. A cursory review of the court's online docket should have revealed that multiple orders regarding child support were entered after the July 21, 2003, order, thus prompting further investigation by Winston prior to the filing of the petition.

¶ 41 The appellants contend on appeal that the court's oral findings during the hearing on the motion for reconsideration were inconsistent with its November 13, 2014 order imposing sanctions against both Winston *and Willis*. Specifically, during the September 5, 2014 hearing on the motion for reconsideration, the court – addressing Winston – stated, "I don't find it sanctionable what your client did because he paid his support and he paid retro and he thought he had lived up to his obligation." We are untroubled by the alleged inconsistency. As an initial matter, we observe that the November 13, 2014 order specifically stated that the court "consider[ed] the transcript of the 9/5/14 hearing." Furthermore, Rule 137 provides that "[i]f a pleading, motion, or other document is signed in violation of this rule, the court *** may impose upon the person who signed it, a represented party, or both, an appropriate sanction." Ill. S. Ct. R. 137 (eff. July 1, 2013). The plain language of Rule 137 provides for sanctions against an

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record would be resolved against the appellants. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); Ill. S. Ct. R. 323 (eff. Dec. 13, 2005).

attorney or party or both, regardless of the source of the sanctionable conduct. *Id.* See, *e.g.*, *Spiegel*, 283 Ill. App. 3d at 1001 (noting that "Illinois courts have sanctioned parties for argument made by counsel, notwithstanding the fact that those arguments were purely 'legal' in nature").

¶ 42 In any event, we may affirm a circuit court's judgment on any basis contained in the record. *Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 62. Although the appellants contend on appeal that Willis "had a good faith basis for filing the petition for modification, based on the orders he was provided and gave to his counsel," such assertion is not supported by the record. Contrary to the suggestions of the appellants, Willis participated in court proceedings at various times throughout the decade between the July 21, 2003, court order and his 2013 petition to modify child support. For example, an order entered on August 10, 2007, indicates that Willis was present for the proceedings; the order required, in part, that Willis "continue to pay support, arrears payments and delinquency" of $600.00 per month. Willis later filed a *pro se* motion to reduce his child support payment, arguing that his "income has been significantly reduced" and he "cannot afford the current child support payments." While Willis's petition to modify child support, filed by Winston in 2013, states that "the arrearage should have been paid in full on or around September 30, 2007," Willis was present for a proceeding in 2010 where his continuing arrearage was confirmed. Even assuming *arguendo* the statements regarding Willis's "overpayment" in his petition to modify child support were made in good faith, "[g]ood faith alone is not a defense to sanctionable conduct." *Rankin*, 321 Ill. App. 3d at 267; *Sterdjevich*, 343 Ill. App. 3d at 19 ("It is not sufficient that the plaintiff 'honestly believed' that the allegations raised were grounded in fact or law." [Citation]).

¶ 43 The appellants further contend that "[a]t no time was the pleading brought to harass the

Petitioner or for any other improper purpose." Tang's counsel did not challenge this contention, instead arguing to the circuit court that "[w]hen you file a petition as an attorney under Rule 137, you are certifying to the Court, to the parties, that it is well grounded in fact and it is based on due inquiry and it is not imposed for any improper purpose, such as *** needless delay or increased costs in litigation. It's all three things. It's not one or the other." The plain language of Rule 137 is consistent with Tang's counsel's contentions. Ill. S. Ct. R. 137 (eff. July 1, 2013).

¶ 44 The appellants also argue that when Tang's attorney sent the letter to Winston in November 2013, "[t]he parties were between court appearances, and the accounting had already been ordered and was scheduled to be presented at the January date." According to the appellants, "Mr. Willis or his attorney had no duty to fully rely on opposing counsel's assertions when the issue had already been presented to the Court and a decision was forthcoming." The appellants further contend that "[i]t should be heavily noted that both Attorney Raskopf's projections stated in court and written calculations were **incorrect**." (Emphasis in original.) Tang responds that "[a]fter being provided with copies of the Orders and calculations, it was not reasonable for Attorney Winston and her client to continue to rely on an incomplete Order, especially where the Respondent was personally present for entry of that Order on July 21, 2003, and the Order specifically referenced additional amounts due for retroactive support and a continued hearing on that issue."

¶ 45 The appellants cite *Walsh v. Capital Engineering and Mfg. Co.*, 312 Ill. App. 3d 910, 916 (2000), for the proposition that "Rule 137 does not require counsel to amend or withdraw a paper or pleading if he discovers, after signing, that it is unfounded. An attorney need not revise the pleadings to conform with newly discovered information." The appellant's reliance on *Walsh* is misplaced for a number of reasons. In *Walsh*, unlike in the instant case, the "defendants [did] not

challenge the adequacy of plaintiff's initial inquiry on appeal." *Id.* at 915. The plaintiff's attorney in *Walsh* learned that the plaintiff's expert "no longer supported the factual accusations of impropriety asserted" in select paragraphs of the complaint. *Id.* In this case, the correspondence and copies of orders provided by Tang's counsel called into question the *entirety* of Willis's petition. We also note that the *Walsh* court remanded the cause "for a determination of appropriate sanctions" because the plaintiff's attorney was "obliged to be forthcoming with both counsel and the court about his expert's current negative opinion" regarding certain allegations in the complaint, "which he was not." *Id*. at 916, 919. In the instant case, there is no indication in the record that Winston was "forthcoming" with opposing counsel or the court regarding inaccuracies in the petition to modify child support. Upon discovery of important discrepancies, inconsistencies, or gaps in the information provided (*Edwards*, 235 Ill. App. 3d at 221) by Willis, Winston had a responsibility to investigate further, which she failed to do.

¶ 46 Furthermore, Illinois cases decided after *Walsh*, including a recent decision of our supreme court, have confirmed that "[i]mplicit in [Rule 137] is a requirement that an attorney promptly dismiss a lawsuit once it becomes evident that it is unfounded." (Internal quotation marks omitted.) *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 13. A violation of this continuing duty of inquiry is sanctionable. *Rankin*, 321 Ill. App. 3d 255, 267 (2001).[15] Regardless of whether Winston was required to investigate further, to disclose inaccuracies to opposing counsel or the court, to amend Willis's petition and/or to withdraw it, she failed to do

[15] Tang's counsel sent correspondence asking Winston to withdraw Willis's petition on November 2, 2013, approximately ten days prior to filing Tang's motion to dismiss. Although not necessary for our analysis, we observe that Tang's counsel provided Winston with the opportunity to take action before sanctions were pursued. See Jennifer L. Friedland, *Attorney Sanctions: When Are Supreme Court Rule 137 Motions Appropriate?*, 21 DCBA Brief 20 (January 2009) (suggesting that a "courtesy" letter prior to the filing of sanctions motion "should prompt the attorney to consider the consequences of her actions and, if need be, dismiss the case").

any of the foregoing. The fact that the account adjustment review ultimately showed an even greater arrearage than that estimated by Tang's counsel is not the issue; counsel's letter and the enclosures therewith triggered additional obligations, which were not satisfied by Willis or Winston.

¶ 47 We recognize that "because Rule 137 is penal in nature, it is narrowly construed." *Lake Environmental*, 2015 IL 118110 at ¶ 12. However, in the instant case, the circuit court's imposition of sanctions against Willis and Winston did not constitute an abuse of discretion.

¶ 48 D. The Award and the Amount of Attorney Fees

¶ 49 The appellants contend that the circuit court "abused its discretion when it awarded monetary sanctions against a party proceeding pursuant to Supreme Court Rule 298 and his *pro bono* counsel, and when it failed to consider the petition for attorneys fees in light of reasonable objections."

¶ 50 The appellants state that "Mr. Willis proceeded in this matter under Supreme Court Rule 298, without the payment of fees, costs, and charges, pursuant to the order granted on October 22, 2009." Rule 298 "sets out the requirements for an application to sue or defend as a poor person." *Rodriguez v. Hushka*, 325 Ill. App. 3d 329, 334 (2001); Ill. S. Ct. R. 298 (eff. Nov. 1, 2003). The rule "make[s] clear the intention of the Supreme Court to provide poor people equal access to the courts by waiving various fees." *Rodriguez*, 325 Ill. App. 3d at 334. As to attorney Winston, the appellants contend that she represented Willis on "a pro bono basis" as a "volunteer attorney." Assuming *arguendo* that the record on appeal supports such contention,[16] Winston's *pro bono* representation and Willis's indigent status do not preclude the imposition of Rule 137

[16] Tang argues the "[t]here is no Appearance filed by Ms. Winston on the Respondent-Appellant's behalf and no pro bono certification by Ms. Winston and/or her organization as required by Illinois Supreme Court Rule 298 and/or 735 ILCS 5/5-105; 5/5-105.5."

sanctions. Although the appellants state, in a conclusory fashion, that "a financial award against Mr. Willis and Attorney Winston is prejudicial and against public policy," they provide no authority in support of their proposition. While we are sympathetic to both the struggles of indigent clients and the efforts of *pro bono* attorneys, neither is afforded special treatment under Rule 137 or excused from its requirements.

¶ 51 The appellants also contend, without support, that "[t]he attainment of counsel for the child support matter was not necessary for [Tang]" because she was "represented by the Cook County State's Attorney for all matters related to child support." According to the appellants, "[c]ounsel was arguably only necessary for the visitation issue, which is not the subject of this Rule 137 sanction." Tang's decision to obtain legal representation regarding visitation, child support, or any other issues has no bearing on our review of the award or the amount of Rule 137 sanctions against Willis and Winston.

¶ 52 Citing *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978 (1987), the appellants also challenge the *amount* of fees and costs awarded under Rule 137. In *Kaiser*, a commercial lessor sought costs and attorney fees – as provided in the parties' lease – in excess of $55,000, incurred in connection with a counterclaim against the lessees. *Id.* at 981. The trial court awarded approximately $14,000, and the appellate court affirmed with a minor modification. *Id.* at 990. Reviewing the fee petition, the appellate court concluded that certain descriptions of legal services either were missing or were "too vague and general to have any practical utility." *Id.* at 986. The court also noted that "in the absence of contemporaneous time records we can only conclude" that certain "hours reflected" in an appendix submitted by the lessor "appear to be more a product of conjecture by the attorneys preparing it as to the time *probably* expended on a particular service rather than an accurate computation of the time

*actually* expended thereon." *Id.* at 987.

¶ 53 We agree with Tang that "reliance on [*Kaiser*] is erroneous where *** *Kaiser* was related to attorney's fees in connection with an attorney provision in a contract and the trial court in *Kaiser* determined that the time records in that case were insufficient." See, *e.g.*, *Robertson v. Calcagno*, 333 Ill. App. 3d 1022, 1029 (finding *Kaiser* to be "inapposite" as it "concerned fee-shifting pursuant to [a contract] and did not arise in a Rule 137 context"). The attachments to the fee petition submitted by Tang include significantly greater detail than in *Kaiser* and appear to provide an "accurate computation of the time *actually* expended." (Emphasis in original.) *Kaiser*, 164 Ill. App 3d at 987.

¶ 54 A circuit court's "decision as to the reasonableness of attorney fees will not be reversed absent an abuse of discretion." *Selvy v. Beigel*, 309 Ill. App. 3d 768, 778 (1999). While the appellants suggest that some of the requested fees and costs related to the visitation, not the child support issues, Tang's fee petition sought only $2,031.44 ($2,000 in fees and $31.44 in costs) out of a total $4,608.59 in fees and costs. The billing statements appended to the fee petition appear consistent with the statement of Tang's counsel during the September 5, 2014, hearing on the motion for reconsideration: "I included only those items I did out of court that addressed the child support issue, and I included only those court dates that address the child support. And if one hour of court on a day addressed both the child support and the visitation, I divided it in half." In addition, to the extent any portion of the sanctions amount was based upon costs (as opposed to fees),[17] the appellants cite no support for their assertion that costs are not allowed

[17] The court's order entered on November 13, 2014, imposed "Rule 137 Sanctions ***" in "an amount of $1,465.50." The order does not include any breakdown of such amount into attorney fees versus costs. Although the fee petition was discussed during the September 5, 2014, hearing, the transcript from that hearing indicates that a subsequent hearing regarding the fee petition was scheduled. The appellants have failed to provide a transcript, report of proceedings

except *Kaiser*, which does not address Rule 137.

¶ 55 The appellants further contend that, during the circuit court proceedings, "Attorney Winston stated if the Court were inclined to grant financial sanctions, that the only fees allowable should be until February 27, 2014," the date Winston "sought to withdraw her pleading" after receiving a copy of the account adjustment review. We reject the appellants' argument. "Even if a party withdraws the offensive pleading, he or she is still accountable for the damage done by violating Rule 137." *Heckinger v. Walsh*, 339 Ill. App. 3d 189, 193 (2004). We also note that a "party may also recover fees incurred in prosecuting a motion for sanctions." *Robertson*, 333 Ill. App. 3d at 1028. See also *Embassy/Main Auto Leasing Co. v. C.A.R. Leasing, Inc.*, 155 Ill. App. 3d 427, 435 (1987) (awarding 100% of plaintiff's fees and expenses for its prosecution of section 2-611 (predecessor to Rule 137) petition).

¶ 56 Finally, the appellants accurately observe that "Rule 137 does not require the imposition of attorney's fees where [the] party or party's attorney's conduct is found to be sanctionable." *E.g.*, *Lake Environmental*, 2015 IL 118110, ¶ 15 (Emphasis in original.) ("Rule 137 provides that circuit judges *may* impose sanctions when the rule is violated; they are not required to do so."). "When imposing sanctions, a court has several options, including 'a warm friendly discussion on the record, a hard-nosed reprimand in open court, compulsory legal education, monetary sanctions, or other measures appropriate to the circumstances.' " *Heckinger*, 339 Ill. App. 3d at 192, citing *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866, 878 (5th Cir. 1988). Although the court *could* have imposed different sanctions in the instant case, the court did not abuse its discretion in awarding monetary sanctions against both Winston and Willis in the

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or bystander's report of those proceedings; any doubts arising from the incompleteness of the record would be resolved against the appellants. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); Ill. S. Ct. R. 323 (eff. Dec. 13, 2005).

amount of $1,465.50.

¶ 57 III. CONCLUSION

¶ 58 We affirm the judgment of the circuit court of Cook County imposing Rule 137 sanctions against Willis and Winston in the amount of $1,465.50.

¶ 59 Affirmed.