

No. 1-13-2558

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

DAVID A. NOVOSELSKY, Individually, and)	Appeal from the
d/b/a NOVOSELSKY LAW OFFICES,)	Circuit Court of
)	Cook County
Plaintiff-Appellant/Cross-Appellee,)	
)	
v.)	No. 11 L 8316
)	
MARSHALL SPIEGEL,)	
)	
Defendant-Appellee/Cross-Appellant)	
)	
(Joseph Gentleman and Donald Johnson,)	Honorable
)	Joan Powell,
Defendants).)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* On plaintiff's appeal of the order dismissing his amended complaint for malicious prosecution, we affirmed, finding he failed to adequately plead special injury. We also affirmed the order denying plaintiff's petition for adjudication of criminal contempt, finding no clear abuse of discretion. On defendant's cross-appeal of the order denying his first motion for sanctions, we affirmed, finding he forfeited review by failing to make a cogent argument in support thereof. We also affirmed the order denying defendant's second motion for sanctions, finding he forfeited review by failing to cite any relevant authority in support thereof.

¶ 2 Plaintiff, David A. Novoselsky, appeals the orders dismissing his claim of malicious prosecution against defendant, Marshall Spiegel, for failure to state a cause of action and denying his petition for adjudication of criminal contempt against Mr. Spiegel's attorney, John Xydakis. Mr. Spiegel cross-appeals the orders denying his two motions for sanctions against Mr. Novoselsky under Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2005)). We affirm on the appeal and the cross-appeal¹.

¶ 3 On or about June 25, 1999, Mr. Spiegel gave Mr. Novoselsky a \$7,500 retainer to represent him in a case against Arnstein & Lehr, LLP (the Arnstein & Lehr case). Mr. Novoselsky sent Mr. Spiegel a document setting forth the terms of their agreement, namely, that Mr. Novoselsky would charge Mr. Spiegel \$250 per hour, that after the first two hours Mr. Novoselsky would advise Mr. Spiegel whether he would proceed with the case, and that if he did not proceed with the case he would refund Mr. Spiegel \$7,000.

¶ 4 On or about February 4, 2000, Mr. Novoselsky withdrew as counsel for Mr. Spiegel in the Arnstein & Lehr case, sent Mr. Spiegel a document entitled: "Bill for services rendered," indicating Mr. Novoselsky had rendered 21.75 hours of service at \$250 per hour, and sent Mr. Spiegel a check for \$1,530.50 as a refund for the unused funds from Mr. Spiegel's retainer. On or about February 7, 2000, Mr. Spiegel cashed the refund check.

¶ 5 On February 1, 2011, Mr. Spiegel filed a case against Mr. Novoselsky (the breach of contract case) alleging that Mr. Novoselsky breached their agreement in the Arnstein & Lehr case by failing to provide an accounting of the time spent thereon and failing to return the entirety of the retainer less the \$500 for the first two hours worked. Mr. Novoselsky moved to dismiss based on the six-year statute of repose for legal malpractice actions. On August 1, 2011,

¹ This case was previously assigned to another division but was assigned to this panel on April 4, 2016.

the circuit court granted Mr. Novoselsky's motion and dismissed the breach of contract case with prejudice.

¶ 6 On August 9, 2011, Mr. Novoselsky filed a complaint alleging malicious prosecution against Mr. Spiegel² for his filing of the breach of contract case against Mr. Novoselsky. Mr. Novoselsky alleged that the breach of contract case was "frivolous" and that its purpose was "malicious as it was [Mr. Spiegel's] intent to use those pleadings as a form of extortion as evidenced by a series of like cases filed with equally-contrived and fabricated complaints filed in the courts of Illinois and the federal courts by [Mr. Spiegel's] counsel." Mr. Novoselsky alleged he was damaged from the filing of the "frivolous" breach of contract complaint because "he was forced to pay costs and incurred legal fees to defend himself, to obtain advice of other counsel, and he suffered the adverse reflection upon him and his standing in the legal community of Cook County caused by this suit and the manner in which it was misused by [Mr. Spiegel]." Mr. Novoselsky further alleged he had sustained special injury "by virtue of the repetitive filing of cases of a like nature by counsel for [Mr. Spiegel], with the knowledge and later ratification by [Mr. Spiegel], all of which was intended to attack [Mr. Novoselsky] and diminish his standing in the legal community, as well as to cause intentional emotional distress."

¶ 7 On January 5, 2012, Mr. Novoselsky filed a first amended complaint, realleging the malicious prosecution count and adding a declaratory judgment count that is not at issue on appeal.

¶ 8 On February 9, 2012, Mr. Novoselsky filed a motion to serve Mr. Spiegel by special order of court pursuant to Illinois Supreme Court Rule 104(c) (eff. Jan. 4, 2013) and section 2-

² Mr. Novoselsky also named Joseph Gentleman and Donald Johnson as defendants; both Mr. Gentleman and Mr. Johnson have since been dismissed from the case and are not parties on appeal.

203.1 of the Code of Civil Procedure (735 ILCS 5/2-203.1 (West 2012)). On February 23, 2012, the circuit court granted Mr. Novoselsky's motion and ordered that personal service upon Mr. Spiegel could be accomplished by regular and certified mail. On March 30, 2012, Mr. Novoselsky served Mr. Spiegel with an alias summons and a copy of the amended complaint by mailing the same to Mr. Spiegel via regular mail and certified mail.

¶ 9 Mr. Spiegel filed a motion quash the service of process, which the circuit court denied on August 1, 2012.

¶ 10 On September 10, 2012, Mr. Spiegel filed a section 2-615 motion to dismiss alleging that Mr. Novoselsky's amended complaint for malicious prosecution failed to state a cause of action. Mr. Spiegel also sought Rule 137 sanctions, alleging that the malicious prosecution case was not well grounded in fact or law and was interposed for the improper purpose of intimidating potential ARDC witnesses from testifying against Mr. Novoselsky.

¶ 11 On October 1, 2012, Mr. Novoselsky filed a motion to strike Mr. Spiegel's section 2-615 motion, arguing that it referenced facts outside the amended complaint (*i.e.*, ARDC charges against him, as well as court cases in which he has been sanctioned) that constitute improper personal attacks.

¶ 12 On December 18, 2012, Mr. Spiegel filed a second motion for Rule 137 sanctions against Mr. Novoselsky. The background for Mr. Spiegel's second motion for Rule 137 sanctions involves two earlier pleadings, one filed by Mr. Spiegel and one subsequently filed by Mr. Novoselsky. In the pleading filed by Mr. Spiegel (titled "response to motion for leave to file surreply"), he recounted the facts of this case and alleged that it is one of a series of cases in which Mr. Novoselsky has "fleeced" his clients, citing in support a Seventh Circuit Court of Appeals case (*Armainsson v. Rockford Health Physicians*, No. 1-10-2062 (2011) (unpublished

order under Supreme Court Rule 23)), critical of Mr. Novoselsky's conduct as counsel. Mr. Novoselsky then filed a reply stating that the *Armainsson* case had settled and he had committed no improper conduct in that case. In his second motion for sanctions, Mr. Spiegel contended that the *Armainsson* case had not settled and that Mr. Novoselsky's "false claim" in his reply that the case had settled was sanctionable under Rule 137.

¶ 13 On January 8, 2013, the circuit court granted Mr. Spiegel's section 2-615 motion to dismiss Mr. Novoselsky's amended complaint for malicious prosecution and for a declaratory judgment, denied Mr. Spiegel's first motion for Rule 137 sanctions, and set Mr. Spiegel's second motion for sanctions for a hearing on January 25, 2013.

¶ 14 On January 25, 2013, the circuit court denied Mr. Spiegel's second motion for Rule 137 sanctions and ordered that no further motions relating to Mr. Spiegel's second motion for sanctions shall be filed without leave of court.

¶ 15 On February 7, 2013, Mr. Spiegel filed a motion to reconsider the January 8, 2013, order denying his first motion for Rule 137 sanctions.

¶ 16 On February 26, 2013, Mr. Spiegel filed for leave to file a motion to reconsider the January 25, 2013, order denying his second motion for Rule 137 sanctions.

¶ 17 On March 7, 2013, the circuit court denied Mr. Spiegel's motion to reconsider the January 8, 2013, order denying his first motion for Rule 137 sanctions, and denied Mr. Spiegel's motion for leave to file a motion to reconsider the January 25, 2013, order denying his second motion for Rule 137 sanctions.

¶ 18 On April 5, 2013, Mr. Novoselsky filed a petition for adjudication of criminal contempt and other relief against Mr. Spiegel's attorney, John X. Xydakis, for allegedly false statements Mr. Xydakis made in court on March 7, 2013, during the hearing on Mr. Spiegel's motion for

leave to file a motion to reconsider the order denying his second motion for Rule 137 sanctions. At the March 7, 2013, hearing, Mr. Xydakis stated that a second Seventh Circuit case, *Malaker v. Cincinnati Insurance Co.*, 2011 WL 1337095, had been critical of Mr. Novoselsky's performance as counsel for refusing to file a brief and that the case had been dismissed for want of prosecution, and that Mr. Novoselsky had since tried to justify his performance in *Malaker* by falsely asserting that the case had settled. In his criminal contempt petition, Mr. Novoselsky contended that the *Malaker* case *had* settled, and that Mr. Xydakis knew it had settled when he made the statement in court to the contrary on March 7, 2013. Mr. Novoselsky argued that Mr. Xydakis should be held in direct criminal contempt and reported to the ARDC and the State's Attorney's office for falsely stating to the court on March 7, 2013, that the *Malaker* case had not settled.

¶ 19 On April 8, 2013, Mr. Novoselsky filed a motion for Rule 137 sanctions against Mr. Spiegel and Mr. Xydakis regarding a February 26, 2013, pleading filed by Mr. Xydakis on behalf of Mr. Spiegel that allegedly made false statements regarding Mr. Novoselsky's performance in *Malaker*.

¶ 20 On May 16, 2013, Mr. Spiegel filed a pleading entitled "objections to jurisdiction" arguing that the trial court lacked jurisdiction to consider Mr. Novoselsky's criminal contempt petition and sanctions motion because they were not timely filed. Mr. Spiegel also argued that the court lacked jurisdiction over the criminal contempt petition because Mr. Novoselsky never served Mr. Xydakis with a summons or arrest warrant. (We will more fully discuss these arguments later in this order.)

¶ 21 On May 30, 2013, Mr. Novoselsky filed a second motion for Rule 137 sanctions against Mr. Spiegel and Mr. Xydakis, arguing that the "objections to jurisdiction" contained inappropriate, personal attacks against him.

¶ 22 On July 16, 2013, the circuit court dismissed Mr. Novoselsky's criminal contempt petition and both of his Rule 137 sanctions motions for lack of jurisdiction, and also found that even if it had jurisdiction, it would deny the contempt petition and both sanctions motions. (Hereinafter, we refer to the July 16, 2013, order as "dismissing/denying" the criminal contempt petition and sanctions motions.).

¶ 23 Mr. Novoselsky filed a notice of appeal on August 8, 2013, from: (1) the January 8, 2013, order dismissing his amended complaint for malicious prosecution and for a declaratory judgment; and (2) the July 16, 2013, order dismissing/denying his criminal contempt petition and both Rule 137 sanctions motions.³

¶ 24 Mr. Spiegel filed a cross-appeal on August 16, 2013, from: (1) the January 8, 2013, order denying his first motion for Rule 137 sanctions; (2) the January 25, 2013, order denying his second motion for Rule 137 sanctions; (3) the March 7, 2013, order denying his motion to reconsider the denial of his first motion for Rule 137 sanctions; and (4) the March 7, 2013, order denying him leave to file a motion to reconsider the denial of his second motion for Rule 137 sanctions.

¶ 25 I. Mr. Novoselsky's Appeal of the January 8, 2013
Order Dismissing His Amended Complaint for Malicious Prosecution

³ Mr. Novoselsky makes no argument on appeal regarding the dismissal of his two Rule 137 sanctions motions and the declaratory judgment count.

¶ 26 Initially, Mr. Spiegel argues that the circuit court lacked personal jurisdiction over him because he was not properly served with summons and that the court should have granted his motion to quash.

¶ 27 If a party is not properly served with summons, the court has no personal jurisdiction over that party and any judgment entered against that party is void. *White v. Ratcliffe*, 285 Ill. App. 3d 758, 763 (1996). Because the question whether a court had personal jurisdiction is a question of law, our review is *de novo*. *Id.* at 764.

¶ 28 Section 2-203(a) of the Code of Civil Procedure states:

"Except as otherwise expressly provided, service of summons upon an individual defendant shall be made (1) by leaving a copy of the summons with the defendant personally, [or] (2) by leaving a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards."
735 ILCS 5/2-203(a) (West 2012).

¶ 29 However, section 2-203.1 states:

"If service upon an individual defendant is impractical under items (1) and (2) of subsection (a) of Section 2-203, the plaintiff may move, without notice, that the court enter an order directing a comparable method of service. The motion shall be accompanied with an affidavit stating the nature and extent of the investigation made to determine the whereabouts of the defendant and the reasons why service is impractical under items (1) and (2) of subsection (a) of Section 2-203, including a specific statement showing that a diligent inquiry as to the location of the individual defendant was made and reasonable efforts to make service have been unsuccessful. The court may order

service to be made in any manner consistent with due process." 735 ILCS 5/2-203.1 (West 2012).

¶ 30 Mr. Spiegel contends he was not served in accordance with section 2-203.1 because the affidavit was insufficient. The affidavit, which is contained in the record on appeal, was sworn to by Todd Martinson, a private detective. Mr. Martinson attested that he had attempted to serve the alias summons and complaint on Mr. Spiegel at his address, Unit 2 of a multi-unit condo building, at the following dates and times: January 6, 2012, at 6:30 p.m.; January 10, 2012, from 8:15 a.m. to 9 a.m.; January 15, 2012, at 2:15 p.m.; January 22, 2012, at 8:35 p.m.; January 29, 2012, from 5:45 p.m. to 8:15 p.m.; January 30, 2012, from 7:45 a.m. to 10 a.m.; January 30, 2012, from 4:30 p.m. to 6 p.m.; and February 3, 2012, from 7:45 a.m. to 9 a.m.

¶ 31 Mr. Martinson attested that, on the January 29, 2012, attempt, from 5:45 p.m. to 8:15 p.m., he waited outside Mr. Spiegel's building, but did not observe him. Before leaving, Mr. Martinson attempted to contact Mr. Spiegel via the building phone and his cell phone, but upon doing this, someone shut off the lights in Unit 2 and closed the blinds. On the January 30, 2012, attempt, from 7:45 a.m. to 10 a.m., Mr. Martinson waited outside Mr. Spiegel's building. At 8:50 a.m., a car registered to Mr. Spiegel left the underground parking garage. Mr. Martinson approached the car, and it "left erratically." Mr. Martinson waited outside Mr. Spiegel's building until 10 a.m., but he did not return. On the January 30, 2012, attempt, from 4:30 p.m. to 6 p.m., Mr. Martinson waited outside Mr. Spiegel's building, but did not observe him. Before leaving, Mr. Martinson attempted to contact Mr. Spiegel *via* the building phone and his cell phone but, upon doing this, someone shut off the lights in Unit 2 and closed the blinds. On the February 3, 2012, attempt, from 7:45 a.m. to 9 a.m., Mr. Martinson waited outside Mr. Spiegel's building but did not observe him.

¶ 32 Mr. Martinson attested that, in addition to the eight attempts and over five hours of surveillance listed above, he also had made seven unsuccessful attempts to serve Mr. Spiegel from September 9, 2011, to October 4, 2011. Mr. Martinson stated that service of process upon Mr. Spiegel is not practical by normal means, and that alternative service under section 2-203.1 is necessary.

¶ 33 Mr. Martinson's affidavit was sufficient to show the nature and extent of his investigation into Mr. Spiegel's whereabouts, as well as the reasons why leaving service of summons with Mr. Spiegel personally or with a person at his abode was impractical. Mr. Martinson's affidavit also contained the required statement showing that a diligent inquiry as to Mr. Spiegel's location was made and reasonable efforts to make service at that location were unsuccessful. Accordingly, Mr. Martinson's affidavit was sufficient to effect alternative service under section 2-203.1.

¶ 34 Mr. Spiegel argues that even if the affidavit was sufficient, his service by ordinary mail was not; he contends certified or registered mail should have been used to effectuate service. However, the record on appeal contains the affidavit of Vanessa Banks, a legal assistant employed by Mr. Novoselsky, in which she attested that on March 30, 2012, she caused an alias summons and first amended complaint to be mailed to Mr. Spiegel "via regular U.S. mail *and Certified Mail*." (Emphasis added.) Mr. Spiegel filed no counter-affidavits.

¶ 35 We find that Mr. Spiegel was properly served under section 2-203.1 and that the circuit court did not err in denying his motion to quash.

¶ 36 Mr. Spiegel next contends we lack appellate jurisdiction over Mr. Novoselsky's appeal from the January 8, 2013, order, dismissing his amended complaint for malicious prosecution because it was not timely filed.

¶ 37 We consider the procedural timeline of this case. On January 8, 2013, the circuit court dismissed Mr. Novoselsky's amended complaint for malicious prosecution with prejudice, denied Mr. Spiegel's first motion for Rule 137 sanctions, and set Mr. Spiegel's second motion for sanctions for a hearing on January 25, 2013. On January 25, 2013, the circuit court denied Mr. Spiegel's second motion for Rule 137 sanctions and ordered that no further motions related to Mr. Spiegel's second motion for sanctions shall be filed without leave of court. The circuit court's January 25 order constituted a final judgment disposing of all claims, thus starting the 30-day time frame for filing a notice of appeal. See Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015); *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 339 (2001).

¶ 38 However, on February 7, 2013, Mr. Spiegel filed a motion to reconsider the January 8, 2013, order, thereby tolling the time for filing the notice of appeal until the disposal of the motion. See *Kyles v. Maryville Academy*, 359 Ill. App. 3d 423, 432 (2005). On February 26, 2013, Mr. Spiegel filed for leave to file a motion to reconsider the January 25, 2013, order denying his second motion for Rule 137 sanctions. On March 7, 2013, the circuit court denied Mr. Spiegel's motion to reconsider the January 8, 2013, order denying his first motion for sanctions, and denied him leave to file a motion to reconsider the denial of his second motion for sanctions. The March 7, 2013, denials of Mr. Spiegel's postjudgment motions restarted the 30-day time period in which a notice of appeal must be filed. *Id.*

¶ 39 However, on April 8, 2013, within 30 days of the March 7, 2013, denials of Mr. Spiegel's postjudgment motions, Mr. Novoselsky timely filed his own motion for Rule 137 sanctions. See Ill. S. Ct. R. 137(b) (eff. July 1, 2013) (providing that a sanctions motion must be brought within 30 days of the ruling on a postjudgment motion). Mr. Novoselsky's Rule 137 motion for sanctions again tolled the time for filing the notice of appeal until disposal of his motion. *Brown*,

¶ 41 A section 2-615 motion to dismiss challenges the legal sufficiency of the complaint by alleging defects on its face. *HBLC, Inc. v. Egan*, 2016 IL App (1st) 143922, ¶ 25. The critical inquiry is whether the allegations in the complaint are sufficient to state a cause of action upon which relief may be granted. *Id.* In making this determination, we take all well-pleaded facts in the complaint, and all reasonable inferences therefrom, as true, and construe the allegations in the complaint in the light most favorable to Mr. Novoselsky. *Id.* Our review of an order granting a section 2-615 motion to dismiss is *de novo*. *Id.*

¶ 42 Mr. Novoselsky initially argues that Mr. Spiegel's section 2-615 motion to dismiss improperly relied on matters outside the face of his amended complaint (*i.e.*, ARDC charges against him as well as court cases in which he has been sanctioned), and should have been stricken. Review of Mr. Spiegel's section 2-615 motion, which is made part of the record on appeal, reveals that it contains a preliminary statement and attachments that reference certain

- 12 -

facts (the ARDC charges and outside cases) outside the four corners of the amended complaint. However, when arguing for dismissal, the section 2-615 motion refers only to the factual allegations of the amended complaint and whether they state a cause of action for malicious prosecution. In the hearing on the motion, the circuit court specifically stated it was "only going to deal with anything that's related to this case," *i.e.*, it was only considering the facts pleaded in the amended complaint and whether they stated a cause of action for malicious prosecution. In subsequently granting the section 2-615 dismissal motion, the circuit court made no reference to any facts outside the amended complaint. On this record, we find no prejudice to Mr. Novoselsky in the circuit court's failure to strike Mr. Spiegel's section 2-615 motion for relying on matters outside the face of the amended complaint.

¶ 43 We proceed to address Mr. Novoselsky's appeal of the order dismissing his malicious prosecution claim. To state a cause of action for malicious prosecution, Mr. Novoselsky must plead: (1) Mr. Spiegel brought the underlying breach of contract action against him maliciously and without probable cause; (2) the breach of contract action was terminated in favor of Mr. Novoselsky; and (3) Mr. Novoselsky suffered "special injury" beyond the usual expense, time and annoyance involved in defending a lawsuit. *Independence Plus, Inc. v. Walter*, 2012 IL App (1st) 111877, ¶ 18. Damages to one's professional reputation do not constitute "special injury" for purposes of a malicious prosecution claim. *Berlin v. Nathan*, 64 Ill. App. 3d 940, 946 (1978). Rather, "special injury" has "usually been identified with an arrest or seizure of property or some constructive taking or interference with the person or property." *Levin v. King*, 271 Ill. App. 3d 728, 730-31 (1995). "Special injury" has also been found in a malicious prosecution action where the defendant filed nine successive lawsuits against the plaintiff, all of which related to the foreclosure of a leasehold estate for unpaid rents, after the first action had been conclusively

determined; the court found that after a party has had his day in court and his right conclusively determined, he may not repeatedly return to court only to harass the same opponent about the same issues. See *Shedd v. Patterson*, 302 Ill. 355, 360-61 (1922). The special injury requirement was also met where the defendant, a large national corporation, improperly induced its members to file 21 lawsuits against the plaintiff over a 17-month period to keep it from engaging in its business of disseminating information regarding religious freedom. See *Cult Awareness Network v. Church of Scientology International*, 177 Ill. 2d 267 (1997).

¶ 44 In his appellant's brief, Mr. Novoselsky devotes a total of one sentence to the "special injury" element of his malicious prosecution claim, stating only "paragraphs 16 and 17 [of his amended complaint] satisfied [the special injury] element by specifying how [Mr. Novoselsky] suffered a special injury as a result of [Mr. Spiegel's] bringing the [breach of contract case] against him."

¶ 45 Paragraph 16 states Mr. Novoselsky was "damaged as a result of the filing of this frivolous [breach of contract] lawsuit as he was forced to pay costs and incurred legal fees to defend himself, to obtain advice of other counsel, and he suffered the adverse reflection upon him and his standing in the legal community of Cook County caused by this suit and the manner in which it was misused by [Mr. Spiegel]." Paragraph 17 states he has "sustained special injury by virtue of the repetitive filing of cases of a like nature by counsel for [Mr. Spiegel], with the knowledge and later ratification by [Mr. Spiegel], all of which was intended to attack [Mr. Novoselsky] and diminish his standing in the legal community, as well as to cause intentional emotional distress. This constitutes special damages as recognized by the various decisions of the Illinois Supreme Court and the Illinois Appellate Court addressing this element of malicious prosecution."

¶ 46 In his appellant's brief, Mr. Novoselsky cites no decisions of the Illinois Supreme Court or Illinois Appellate Court in support of his contention that he has adequately pleaded special injury. Accordingly, Mr. Novoselsky has forfeited review by failing to comply with Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016)), which provides that his appellant's brief "shall contain *** [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."

¶ 47 Further, forfeiture notwithstanding, with respect to paragraph 16, we note our earlier discussion that special injury for purposes of a malicious prosecution claim does not constitute the usual time, expense and annoyance involved in defending a lawsuit, or the damages to one's professional reputation. See *Walter*, 2012 Il App (1st) 111877, ¶ 18; *Nathan*, 64 Ill. App. 3d at 946.

¶ 48 With respect to paragraph 17, we note our earlier discussion that special injury has been found where an individual defendant filed 9 repetitive cases against the plaintiff to harass him, and where a corporate defendant induced its members to file 21 lawsuits against the plaintiff over a 17-month period to keep it from disseminating information regarding religious freedom. See *Shedd*, 302 Ill. at 355; *Church of Scientology*, 177 Ill. 2d at 267. However, Mr. Spiegel here filed only the *single* breach of contact action against Mr. Novoselsky. Mr. Novoselsky contends Mr. Spiegel somehow ratified multiple cases filed by his attorney on behalf of other clients against Mr. Novoselsky, but does not explain *how* Mr. Spiegel could ratify lawsuits filed by an attorney for other clients. Nor does Mr. Novoselsky plead how many cases were filed against him, so we do not know if they approach the 9 cases involved in *Shedd* or the 21 cases involved in *Church of Scientology*. Accordingly, Mr. Novoselsky failed to adequately plead special injury, and we affirm the dismissal of his amended complaint for malicious prosecution.

¶ 49

III. The July 16, 2013, Order Dismissing/Denying
Mr. Novoselsky's Criminal Contempt Petition

¶ 50 Mr. Novoselsky argues the circuit court erred by dismissing/denying his petition for adjudication of criminal contempt and other relief against Mr. Spiegel's attorney, Mr. Xydakis, for allegedly knowingly making false statements in court on March 7, 2013. As discussed, at the March 7, 2013, hearing, Mr. Xydakis stated that a Seventh Circuit case, *Malaker*, had been critical of Mr. Novoselsky's performance as counsel for refusing to file a brief and that the case had been dismissed for want of prosecution, and that Mr. Novoselsky had since attempted to justify his performance in *Malaker* by falsely asserting that the case had settled. In his criminal contempt petition, Mr. Novoselsky argued that *Malaker* had settled, and that Mr. Xydakis knew it had settled when he made the statement to the contrary on March 7, 2013. Mr. Novoselsky argued that Mr. Xydakis should be held in direct criminal contempt and reported to the ARDC and the State's Attorney's office for falsely stating to the court on March 7, 2013, that the *Malaker* case had not settled.

¶ 51 Mr. Spiegel filed a pleading entitled "objections to jurisdiction," arguing, first, that the circuit court had lost jurisdiction over this case by February 25, 2013, which was 30 days after the court had denied his second motion for sanctions and, therefore, that the court could not consider Mr. Novoselsky's contempt petition. Second, Mr. Spiegel cited *People v. Budzynski*, 333 Ill. App. 3d 433, 438 (2002), for the proposition that the circuit court lacked jurisdiction because criminal contempt is a separate and distinct proceeding in and of itself and is not part of the original case being tried when the contemptuous act occurred, and that since the offense of criminal contempt is an original criminal proceeding, a summons or an arrest warrant should have been served on Mr. Xydakis to obtain jurisdiction.

¶ 52 The circuit court dismissed Mr. Novoselsky's contempt petition for lack of jurisdiction but also stated, in the event it was incorrect about lacking jurisdiction, that it was denying the petition because the underlying basis involved a fight over Mr. Novoselsky's performance in an unrelated, federal court case that had no bearing on the case at bar.

¶ 53 Addressing the jurisdictional issue, we note that the first basis of the "objections to jurisdiction," that the circuit court had lost jurisdiction by February 25, 2013, is incorrect. We addressed this issue earlier in this order.

¶ 54 As to the second basis, we note that *Budzynski* involved a case in which the circuit court's jurisdiction had ended with the expiration of defendant's probation, after which the State filed a petition for a rule to show cause alleging defendant had willfully failed to complete the conditions of his probation and should be held in contempt. *Id.* at 435. After defendant failed to appear at the hearing on the petition, he was arrested and the State filed a petition for adjudication of indirect criminal contempt. *Id.* The circuit court found defendant guilty of indirect criminal contempt. *Id.* at 436. On appeal, the appellate court held that since the circuit court's jurisdiction had ended with the expiration of probation (*id.*), the State should have filed its petition as a new criminal case and personally served defendant to obtain jurisdiction. *Id.* at 439.

¶ 55 By contrast, as discussed earlier in this order, the circuit court here had not lost jurisdiction prior to the filing of the contempt petition; therefore, *Budzynski* is inapposite and does not compel dismissal of the contempt petition.

¶ 56 No other jurisdictional argument being made, we address the circuit court's denial of the contempt petition because the underlying basis involved a fight over Mr. Novoselsky's performance in an unrelated, federal court case that had no bearing on the case at bar. Whether a party is guilty of contempt is a question of fact for the circuit court, and the reviewing court will

not disturb the finding unless it was a clear abuse of discretion. *People v. Penson*, 197 Ill. App. 3d 941, 943-44 (1990).

¶ 57 Direct criminal contempt is contumacious conduct occurring "in the very presence of the judge, making all of the elements of the offense matters within his own personal knowledge." *People v. Harrison*, 403 Ill. 320, 323-24 (1949). Direct contempt is " 'strictly reserved to acts and facts seen and known by the court, and no matter resting upon opinions, conclusions, presumptions or inferences should be considered.' " *People v. Simac*, 161 Ill. 2d 297, 306 (1994) (quoting *People v. Loughran*, 2 Ill. 2d 258, 263 (1954)). When we review a finding of direct criminal contempt following a hearing, we do so by determining whether the evidence was sufficient to support the finding, and whether the judge considered facts outside of his personal knowledge. *Id.* at 306. When the contumacious act involves, as here an allegedly false representation, "it must appear beyond a reasonable doubt from the personal knowledge of the court or by admission from the lips of the defendant in open court and from no other source that the representations were untrue and that defendant knew they were untrue when they were made." *People v. Randall*, 89 Ill. App. 3d 406, 414 (1980). Here, the circuit court was not in the position to resolve the disputed fact regarding Mr. Novoselsky's performance in the unrelated federal case, as that case was not before the circuit court when it was asked to find Mr. Xydakis's comment to be willfully false and contumacious. Accordingly, the circuit court could not have abused its discretion by dismissing/denying the petition for direct criminal contempt, and we affirm on this issue.

¶ 58 IV. The January 8, 2013, Order Denying Mr. Spiegel's First Motion For Sanctions

¶ 59 Mr. Spiegel cross-appeals the January 8, 2013, order denying his first motion for Rule 137 sanctions which alleged that Mr. Novoselsky's malicious prosecution action was not well

grounded in fact or law and was interposed for the improper purpose of intimidating potential ARDC witnesses from testifying against Mr. Novoselsky. On appeal, Mr. Spiegel cites numerous state and federal court cases and ARDC proceedings in which Mr. Novoselsky has been sanctioned or charged with sanctionable conduct, as well as newspaper coverage thereof, arguing that they are relevant to show that Mr. Novoselsky should have been sanctioned here, too, for filing his malicious prosecution action against Mr. Spiegel.

¶ 60 Mr. Spiegel's argument on appeal amounts to a claim that, since Mr. Novoselsky's amended complaint for malicious prosecution fails to state a cause of action, and since Mr. Novoselsky has been sanctioned in other unrelated proceedings, he should be sanctioned here too. However, Rule 137 does not provide for the imposition of sanctions simply because a party has filed a case that was dismissed for failure to state a cause of action or because he was previously sanctioned in other, unrelated cases; rather, Rule 137 allows for the imposition of sanctions where a party has filed a pleading not well grounded in fact, not warranted by existing law or a good-faith argument for the extension of existing law or is interposed for any improper purpose. See Ill. S. Ct. R. 137(a) (eff. July 1, 2013); *Bennett & Kahnweiler, Inc. v. American National Bank and Trust Co.*, 256 Ill. App. 3d 1002, 1006 (1993). Outside of the legal insufficiency of Mr. Novoselsky's claim of malicious prosecution, and his sanctionable conduct in other, unrelated cases, neither of which merits sanctions in *this* case, Mr. Spiegel makes no argument on appeal how Mr. Novoselsky's filing of his amended complaint for malicious prosecution satisfies the Rule 137 standard for the imposition of sanctions. Accordingly, the issue is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 61 V. The January 25, 2013, Order Denying Mr. Spiegel's Second Motion For Sanctions

¶ 62 Mr. Spiegel appeals the January 25, 2013, order denying his second motion for sanctions, the background of which, as discussed earlier, was an argument over whether a Seventh Circuit case Mr. Novoselsky was involved in as counsel, *Armainsson* had settled. The argument began when Mr. Spiegel filed a pleading in the present case claiming that Mr. Novoselsky regularly "fleeces" his clients, and cited *Armainsson*, which was critical of Mr. Novoselsky's conduct as counsel before the Seventh Circuit. Mr. Novoselsky subsequently filed a pleading in the present case stating that *Armainsson* had settled and that he had committed no improper conduct in that case. Mr. Spiegel then filed his second motion for sanctions contending that *Armainsson* had not settled and that Mr. Novoselsky's "false claim" that the case had settled was sanctionable under Rule 137.

¶ 63 On appeal, Mr. Spiegel contends the circuit court should have held an evidentiary hearing on whether *Armainsson* had settled and, assuming the evidence would have shown that the case had never settled, then granted his second motion for sanctions. Mr. Spiegel has cited absolutely no authority for his argument that the circuit court erred by failing to interrupt this case to hold a hearing as to whether an unrelated, federal court case in which Mr. Novoselsky was involved as counsel had settled; the issue is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 64 Mr. Spiegel's motion for Rule 375(b) (Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994)), sanctions against Mr. Novoselsky for allegedly filing a frivolous, harassing appeal is denied.

¶ 65 For the foregoing reasons, we affirm the circuit court.

¶ 66 Affirmed.