FIFTH DIVISION
April 29, 2016

No. 1-14-1990

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

Greg Merdinger,	)	Appeal from the
	)	Circuit Court
Plaintiff-Appellant,	)	of Cook County
	)	
v.	)	
	)	
The John Buck Company, L.L.C., et al.,	)	No. 12 CH 37780
	)	
Defendants-Appellees	)	
and	)	
	)	
Buck Broadway & Reade., L.L.C.	)	Honorable
	)	Rodolfo Garcia,
Defendant-Appellee	)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.*
Presiding Justice Reyes and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the award of sanctions where the trial court did not abuse its discretion in finding that plaintiff lacked a reasonable basis for naming Anderson

* This case was recently reassigned to Justice Burke.

as a defendant and the amount of sanctions were reasonable and unrebutted; the trial court's orders contained a sufficient factual basis for the imposition of sanctions when viewed in light of the record as a whole.

¶ 2 Plaintiff, Greg Merdinger, filed a complaint for declaratory judgment, unjust enrichment, breach of fiduciary duty, civil conspiracy, and accounting, naming the John Buck Company (JBC), David Anderson, and other parties as defendants. Plaintiff contended that his right to relief against the named defendants was based on their ownership interests in Buck Broadway & Reade, L.L.C. (Company) as detailed in the Company's limited liability agreement (Agreement). Anderson moved for sanctions pursuant to Supreme Court Rule 137 claiming that plaintiff had no reasonable basis for naming him as a defendant in the complaint because he did not have an ownership interest in the Company and was not a signatory to the Agreement. The trial court granted Anderson's motion, dismissed him from the suit with prejudice, and, following an evidentiary hearing, ordered plaintiff to pay Anderson's attorneys' fees of $75,922 as Rule 137 sanctions. On appeal, plaintiff failed to demonstrate that the trial court abused its discretion in granting Anderson's motion for sanctions and awarding him attorneys' fees. Accordingly, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In 2005, plaintiff, defendant JBC, and other parties, entered into a limited liability company agreement forming the Company a Delaware limited liability company. The Company's sole purpose was developing a multi-family residential building in New York, New York (Project). The agreement provided that members of the Company may be required to make additional capital contributions to the Company in addition to their initial capital contributions. The Agreement further provided that if a member failed to contribute to a capital call, his interest would be diluted in accordance with a formula delineated in the Agreement.

¶ 5 In 2010, the Company issued a capital call to plaintiff for $833,333 based on his one-third ownership interest in the Company. Plaintiff funded only $500,000, and did not respond to further capital calls. On July 6, 2011, the Company sent plaintiff a memorandum regarding his outstanding capital call funding requirements. The Company subsequently sent plaintiff a notice that, as a result of his failure to respond to the capital calls, his ownership interest in the Company had been diluted to zero, in accordance with the formula outlined in the Agreement.

¶ 6 On October 9, 2012, plaintiff filed a five-count complaint naming seven members of the Company, JBC, and Anderson as defendants. In his complaint, plaintiff alleged that the Company breached the Agreement by misapplying the dilution formula, that Anderson and the other defendants were unjustly enriched by plaintiff's added value to the Project, that the Company breached its fiduciary duty, and that Anderson and the other defendants engaged in a civil conspiracy to dilute plaintiff's interest in the Company. Plaintiff also sought an accounting from the Company. In his complaint, plaintiff acknowledged that Anderson was not a signatory to the Agreement, but alleged that he was eligible for a "Team Interest" because he was the project manager for the Project, and that the Agreement permitted the Manager of the Company to allocate equity in the Company to those who had not signed the Agreement. He alleged that in his 25 years of experience at JBC and "[b]ased on the historic practice at the John Buck Company, Anderson would have been given an economic interest tied to the success of the Project and a participating interest similar to investors *** in the proceeds of the Project." On October 12, 2012, Crain's Chicago Business published an article titled "Former principal sues John Buck, son, others," which twice mentioned Anderson by name, and described the accusations in plaintiff's complaint.

¶ 7 On November 12, 2012, Anderson's counsel sent a copy of the Agreement to plaintiff

showing that he was not a signatory. On November 30, 2012, and February 7, 2013, Anderson's counsel requested that plaintiff dismiss Anderson from the suit. On March 1, 2013, in response to further requests to dismiss Anderson, plaintiff's counsel left a telephone voicemail for Anderson's counsel, which indicated that plaintiff had not authorized him to dismiss the claims against Anderson, and that such dismissal would be accomplished only if it were done "involuntarily."

¶ 8 On March 20, 2013, Anderson filed a motion for sanctions pursuant to Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)). In his motion, Anderson alleged that plaintiff knew before filing the lawsuit that Anderson was not a member of the Agreement and did not possess any ownership interest in the Company. He further claimed that he repeatedly requested that plaintiff voluntarily dismiss him from the suit, but plaintiff refused to do so. Anderson attached a memorandum to his motion in which he alleged that plaintiff's frivolous filing caused "substantial and foreseeable" damages, which Anderson was entitled to recover via Rule 137 sanctions.

¶ 9 On March 27, 2013, the court denied Anderson's motion finding that it was premature because the case had not yet been resolved. Anderson filed a motion to reconsider that ruling arguing that the motion was timely filed, and citing precedent to that effect. On April 8, 2013, the trial court granted Anderson's motion for reconsideration and ordered him to amend the motion for sanctions to request a dismissal of the complaint on its face. On April 17, 2013, Anderson filed an amended motion for sanctions with a supporting memorandum in accordance with the trial court's instructions.

¶ 10 Anderson subsequently provided an affidavit at plaintiff's request in which he averred that he was not a signatory to the Agreement and had no ownership interest in the Company. He further averred that no part of his compensation was tied to the success or profitability of the

Project, and that he did not have any interest in the Company that "would be affected by any change in Plaintiff's ownership interest." On June 6, 2013, plaintiff filed an amended complaint that continued to name Anderson among the defendants.

¶ 11 On June 6, 2013, plaintiff also filed a response to Anderson's amended motion for sanctions. In his response, plaintiff contended that Anderson rejected his attempts to resolve the dispute through arbitration and that before filing the lawsuit, plaintiff had adequate information to believe that Anderson had an economic interest in the Project. He alleged that based on his prior experience with the Company and JBC, Anderson, as project manager, would have received a "phantom equity" and compensation tied to the Project. He claimed that it would have been "unprecedented" for Anderson's compensation to not have been tied to equity participation in the Project. Plaintiff further contended that Anderson had acknowledged that he was the project manager and that every correspondence he had received from Anderson and the Company was consistent with that information.

¶ 12 On June 20, 2013, Anderson filed a reply memorandum in support of his sanctions motion in which he alleged that plaintiff's response did not effectively address the contentions made in the sanctions motion. Specifically, Anderson contended that plaintiff failed to demonstrate that he and his counsel complied with Rule 137 when they filed the original complaint, and instead his response focused on allegations contained in plaintiff's amended complaint, which was not the basis for the sanctions motion. Anderson finally contended that sanctions were appropriate because neither plaintiff nor his counsel made a sufficient inquiry regarding the claims against him before filing the original complaint.

¶ 13 On November 5, 2013, the trial court granted Anderson's motion and dismissed all claims against him with prejudice. In its written order issued the following day, the court found that

plaintiff lacked grounds for naming Anderson as a defendant in the lawsuit and further directed Anderson to file a motion setting out the sanctions that should be imposed and the basis for imposing them.

¶ 14 On November 26, 2013, Anderson filed a petition for the award of sanctions and attorneys' fees. In his petition, Anderson divided the requested sanctions into three categories: all fees associated with bringing the sanctions motion, Anderson's proportionate, one-ninth share of the fees incurred by all defendants associated with defending the lawsuit, and an additional $300,000 to compensate Anderson for the negative publicity caused by the lawsuit stemming from the article in Crain's Chicago Business. Anderson requested $33,558 associated with the filing of the sanctions motion, and $12,652.82, representing one-ninth of the fees incurred by all of the defendants in defending the lawsuit up to the point of the sanctions motion. Anderson attached to his petition invoices from the attorneys who worked on his case detailing their fees.

¶ 15 Plaintiff did not file a response to Anderson's petition, but on December 10, 2013, filed a motion for discovery on sanctions. In his motion, plaintiff again asserted that it was reasonable for him to believe that Anderson had an ownership interest in the Company and that Anderson had failed to demonstrate that he did not have such an interest. Plaintiff, therefore, requested that Anderson appear for a deposition to explain his role in the Project, that defendants be compelled to produce documents and information related to plaintiff's underlying claims against the Company, and that an evidentiary hearing be set following discovery and briefing on Anderson's petition.

¶ 16 On December 19, 2013, the trial court denied plaintiff's motion for discovery on sanctions. The trial court explained that it had already considered plaintiff's claims regarding the basis for his complaint and determined that Anderson should not remain as a defendant because

the allegations in the complaint did not support naming him as a defendant. The court clarified that the only question remaining was the amount of sanctions that should be imposed, which the court noted plaintiff had a right to challenge. The court explained that in the course of challenging the sanctions, plaintiff may be able to demonstrate that he proceeded in a reasonable manner and that, therefore, the requested sanctions should not stand. The court stated, however, that Anderson had no obligation to provide plaintiff with information that he did not have before filing the complaint. Accordingly, the court found that plaintiff was entitled to discovery on the reasonableness of the attorneys' fees and the additional $300,000 requested in Anderson's sanctions petition. The court directed plaintiff to file a corrected consolidated amended complaint "in which the relief sought in each paragraph identifies the specific defendant against whom the claim is brought."

¶ 17 On December 20, 2013, plaintiff filed a corrected consolidated amended complaint in accordance with the court's instructions. On January 23, 2014, defendants filed their answer to plaintiff's amended complaint, and on February 6, 2014, plaintiff took a deposition of Anderson regarding his petition for sanctions. Plaintiff subsequently filed his response to Anderson's sanctions petition in which he contended that it was reasonable for him to name Anderson as a defendant based on the information he received from the Company, JBC, and Anderson, and plaintiff's own experience working with the Company. He also contended that he made efforts to meet with Anderson in an attempt to minimize litigation expenses and that Anderson suffered no damages as a result of the article in Crain's Chicago Business. In Anderson's reply in support of his sanctions petition, he contended that plaintiff's basis for naming him as a defendant was irrelevant because the court had already ruled that such action was sanctionable, that Anderson was not at fault for failing to prevent plaintiff from pursuing a frivolous cause of action, and that

the requested fees and other sanctions were reasonable under the circumstances.

¶ 18 The evidentiary hearing on Anderson's petition took place on May 7, 2014. Prior to the start of the hearing, plaintiff filed an objection to the timing of the hearing, arguing that the trial court entered sanctions in its November 2013 order dismissing all claims against Anderson, which was improper without an evidentiary hearing. Plaintiff also contended that the November order did not contain sufficient factual findings. In response to plaintiff's arguments, the trial court explained that it was entering a two-part sanction. The first part was immediately dismissing Anderson from the complaint, a ruling which plaintiff never contested and was, therefore, "stuck" with. The court further explained that the second part of the sanctions was Anderson's request for attorneys' fees and other relief. The court also noted that it was not required to specify facts or explain the November ruling because it was "one of law," which was based on filings by the parties.

¶ 19 In response to plaintiff's continued protestations, the court clarified that plaintiff's cause of action against Anderson was based on whether he was a member of the Company. The court found that he was not a member, was not a party specified in the Agreement, and did not benefit from the Agreement or from the dilution of plaintiff's equity. The court believed that plaintiff did not have sufficient information at the time he filed the complaint to include Anderson in the suit, and it was a violation of Rule 137 for plaintiff to first file the complaint, then seek further information that would support his inclusion of Anderson as a defendant. The court thus determined that that the only matter left to decide was its ruling on the relief requested, which it would decide following the evidentiary hearing.

¶ 20 At the subsequent evidentiary hearing, Anderson's counsel testified regarding the reasonableness of the attorneys' fees, which were detailed in invoices attached to Anderson's

petition. Anderson's counsel testified regarding the basis for both categories of attorneys' fees Anderson requested in his petition and also the $300,000 sanction based on the article in Crain's Chicago Business. Plaintiff's counsel then cross-examined Anderson's counsel regarding the reasonableness of the requested sanctions. Anderson testified regarding his involvement in the suit and the preparation of the sanctions motion and the affect of the Crain's Chicago Business on his personal life. Plaintiff's counsel also cross-examined Anderson regarding the relief he requested in his petition and his involvement in the Company and the Project.

¶ 21 Plaintiff then testified regarding his history with the Company and JBC and his reasons for naming Anderson as a defendant in the lawsuit. He testified that, based on representations from Anderson and the Company, he believed Anderson was the project manager for the Project, and, based on his experience with the Company and JBC, believed that Anderson had an ownership interest in the Company as a result of his project manager position. On cross-examination, plaintiff acknowledged that before he brought the lawsuit he did not have any document to show that Anderson possessed an equity interest in the Company, nor had anyone told him that Anderson had such an interest. Plaintiff also acknowledged his receipt of Anderson's affidavit in which Anderson stated that he did not have an ownership interest in the Company.

¶ 22 Following closing argument, the court found that sanctions were warranted based on plaintiff's complaint, which named Anderson as a defendant, and nothing presented at the hearing altered that conclusion. The court determined that there was "no question" that Anderson was entitled to recover the attorneys' fees accrued in resolving the matter. The court noted, however, that there were "substantial questions" as to the scope of the additional relief sought beyond the attorneys' fees and indicated that it would take that matter under consideration. The

court then directed Anderson to file an update to the attorneys' fees he was seeking to include the fees accrued as a result of the evidentiary hearing. The court explained that these updated fees fell into the first category that Anderson identified in his petition relating to fees incurred in bringing the sanctions petition because these are fees that Anderson would not have incurred if he were not improperly included in the complaint. The court recognized that the case law mandated that there should be an evidentiary hearing regarding these updated fees only in those cases where the sanctions are being challenged, but the court found no basis for challenging the updated attorneys' fees.

¶ 23 On May 14, 2014, Anderson filed a Notice of Updated Attorneys' fees to include the fees accrued relating to the evidentiary hearing. On May 20, 2014, plaintiff filed an objection to the updated fees, contending that the court should re-evaluate the relief granted in light of the fact that it was reasonable for plaintiff to name Anderson as a defendant in the lawsuit. Plaintiff also contended that the sanctions imposed in the November 2013 order were improper because they were entered without the benefit of an evidentiary hearing, and that the requested attorneys' fees were disproportionate.

¶ 24 On May 23, 2014, the trial court entered a written order awarding Anderson $12,652 for one-ninth of the attorneys' fees incurred by all defendants in the defense of the lawsuit and $63,270 for attorneys' fees arising from the Rule 137 proceedings. The court determined, however, that the additional $300,000 of sanctions requested was "not appropriate" under Rule 137. The trial court based its ruling on the fact the cause of action asserted against Anderson was not well grounded in fact and that it was "beyond dispute" that Anderson did not have equity in the Project. This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, plaintiff contends that the trial court erred by imposing sanctions in the November 2013 order before holding an evidentiary hearing. He further maintains that the trial court's order contained an insufficient factual basis for the imposing sanctions and that the court erred in determining that he did not have a reasonable basis for naming Anderson as a defendant in the lawsuit. He also claims that the trial court abused its discretion in *sua sponte* directing Anderson to file an updated sanctions petition following the evidentiary hearing. Anderson responds that the trial court did not abuse its discretion in imposing sanctions in the November 2013 order and an evidentiary hearing was not required because the court's decision was based on the pleadings and the court could dismiss Anderson as a matter of law. Anderson also contends that the trial court's order was sufficiently specific to support its ruling and that the court did not abuse its discretion in directing Anderson to submit updated attorneys' fees to include the evidentiary hearing because those fees fit into the first category of sanctions Anderson requested in his sanctions petition and were reasonable under the circumstances.

¶ 27 Rule 137 provides, in pertinent part, that:

> "Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name ***. 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 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." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

A trial court's decision to impose Rule 137 sanctions is accorded significant deference (*Hess v. Loyd*, 2012 IL App (5th) 090059, ¶ 22) and will not be reversed absent an abuse of discretion (*Nelson v. Chicago Park Dist.*, 408 Ill. App. 3d 53, 67 (2011)). This court will find that the trial court abused its discretion when no reasonable person could have taken the view the trial court adopted. *Nelson*, 408 Ill. App. 3d at 67-68.

¶ 28 In reviewing the trial court's decision to impose sanctions "'the primary consideration is whether the trial court's decision was informed, based on valid reasoning, and follows logically from the facts.'" *Id.*, quoting *Sterdjevich v. RMK Management Corp.*, 343 Ill. App. 3d 1, 19 (2003). A hearing is necessary for a trial court to determine if any untrue statement within the pleadings was made without reasonable cause, unless the court's determination of the issue can be made on the basis of the pleadings or trial evidence. *Hess*, 2012 IL App (5th) 090059, ¶ 26, citing *Century Road Builders, Inc. v. City of Palos Heights*, 283 Ill. App. 3d 527, 531 (1996). Once the trial court finds that a pleading is sanctionable, the court should hold an evidentiary hearing on the reasonableness of any fees to be awarded because the issue of reasonableness is a matter of proof which should be subject to cross-examination. *Id.*

¶ 29 In this case, the trial court found that plaintiff's complaint was sanctionable because he did not have a reasonable basis for naming Anderson as a defendant. Although plaintiff contends that this ruling was improper because the court did not first hold an evidentiary hearing, we observe that a hearing is necessary only where the court's determination cannot be made on the basis of the pleadings or trial evidence. *Hess*, 2012 IL App (5th) 090059, ¶ 26; see also *Olsen v. Staniak*, 260 Ill. App. 3d 856, 862 (1994) (holding that an evidentiary hearing is not necessary if the requirements of Rule 137 can be satisfied by examining the pleadings, trial evidence, or other matters of record).

¶ 30 Here, the trial court stated that its ruling that Anderson should not have been named in the complaint was "one of law," which was based on filings by the parties. As such, the trial court was not required hold an evidentiary hearing because the requirements of Rule 137 were satisfied by an examination of the parties' pleadings and other evidence contained in the record. Moreover, contrary to plaintiff's contentions, the trial court's order was sufficiently detailed to support its ruling. Although the trial court's order was sparse, this court has found no abuse of discretion where there is sufficient support in the record as a whole for the trial court's finding. See, *Nelson*, 408 Ill. App. 3d at 69. The court stated that its ruling that plaintiff had no reasonable basis for naming Anderson as a defendant was "one of law" based on the pleadings filed by the parties. Based on our review of the record, we cannot say that no reasonable person could have taken the view adopted by the trial court, and we thus reject plaintiff's argument that the trial court failed to make an informed decision regarding the basis on which it imposed Rule 137 sanctions. *Id.*

¶ 31 At the time he filed his complaint, plaintiff had insufficient information to determine whether Anderson had an ownership interest in the Company that would permit his inclusion in the lawsuit. Plaintiff acknowledged at the evidentiary hearing that at the time he filed his complaint, he did not have any information showing that Anderson had an ownership interest in the Company. As the trial court recognized, plaintiff could not wait to obtain more information in the discovery process after filing his complaint in order to support the initial filing of his complaint against Anderson. Contrary to plaintiff's contention, the trial court did not determine that Anderson could be held liable only if he were a signatory to the agreement. Instead, the court found that Anderson was not liable because he did not sign the agreement and, furthermore, that plaintiff did not have a reasonable basis to believe that Anderson had an

ownership interest in the Company or stood to benefit in any way from the dilution of plaintiff's ownership interest. The court repeatedly addressed plaintiff's contentions that his decision to include Anderson in the lawsuit was reasonable despite previously ruling on that issue, and continually stated that it found that plaintiff had no reasonable basis for naming Anderson as a defendant in the suit. We find nothing in the record to disturb that determination.

¶ 32 Accordingly, we reject plaintiff's contentions that the trial court erred in determining that he had no basis for naming Anderson as a defendant and that the trial court erred in failing to include sufficient factual basis for the imposition of sanctions in its November 2013 order. We also reject plaintiff's contention that he was entitled to an evidentiary hearing prior to the court's finding that his complaint was sanctionable because the basis for the sanctions was apparent from the pleadings. Any error that the trial court could have made by not conducting an evidentiary hearing prior to the entry of sanctions was cured when the trial court later held an evidentiary hearing.

¶ 33 Plaintiff next contends that the trial court erred in *sua sponte* directing Anderson to file a request for updated attorneys' fees following the evidentiary hearing on May 7, 2014. He maintains that Anderson never requested such relief and the court failed to hold an evidentiary hearing on the reasonableness of such fees. Anderson responds that the updated attorneys' fees were part of the first category of sanctions he identified in his sanctions petition and that the court was not required to hold an evidentiary hearing where plaintiff failed to object to the reasonableness of the updated fees at the time they were imposed. He further contends that plaintiff failed to rebut the reasonableness of the fees.

¶ 34 "[A]lthough an evidentiary hearing on the reasonableness of any fees to be awarded is usually required because the issue of reasonableness is a matter of proof which should be subject

to cross-examination, the circuit court's acceptance of unrebutted affidavits of counsel as to fees, in the absence of an evidentiary hearing, is within its discretion. *Hess*, 2012 IL App (5th) 090059, ¶ 26, citing *Heritage Pullman Bank & Trust Co. v. Carr*, 283 Ill. App. 3d 472, 481 (1996). Moreover, the court is permitted to use its own knowledge and experience to assess the time required to complete particular activities and the determination of attorneys' fees is within the discretion of the court. *Heritage Pullman Bank*, 283 Ill. App. 3d at 481.

¶ 35 In this case, the trial court directed Anderson to file an updated petition including attorneys' fees accrued from the evidentiary hearing. The court determined that these fees fit into the first category of sanctions Anderson requested because they were related to the sanctions petition. The court noted that although plaintiff had not seen the invoices for these fees he was "present for them." The court determined that an evidentiary hearing on the updated attorneys' fees was not necessary because there was no basis to challenge them. Plaintiff did not present any evidence or affidavits to contradict the evidence submitted by Anderson as to the amount of the fees and we find that the trial court was justified in relying on the unrebutted affidavits of Anderson's attorneys in determining the amount of fees to be awarded. *Hess*, 2012 IL App (5th) 090059, ¶ 27; *Heritage Pullman Bank*, 283 Ill. App. 3d at 481.

¶ 36 Plaintiff finally contends that the final order of May 23, 2014, lacked sufficient findings of fact and conclusions of law to warrant the imposition of sanctions. As discussed in regard to the November 2013 order, there was a sufficient basis on the record as a whole to support the trial court's award of sanctions. *Nelson*, 408 Ill. App. 3d at 69. During the evidentiary hearing, both Anderson and his counsel testified regarding the nature of the fees accrued and the amount sought as detailed in the invoices attached to Anderson's petition. In its written order following the hearing, the court reviewed the procedural history of the case, including its ruling in the

November 2013 order and Anderson's requested sanctions. The court concluded that based on the circumstances of the case, Anderson was entitled to one-ninth of the attorneys' fees incurred by all defendants in the lawsuit and attorneys' fees related to the sanctions petition as detailed in the affidavits and invoices submitted by Anderson and his attorneys. Accordingly, we find that the trial court's order was sufficiently detailed to support its ruling and that there is sufficient support in the record as a whole support its decision. *Id.*

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the order of the circuit court of Cook County awarding Anderson sanctions in the amount of $75,922 where plaintiff has failed to demonstrate that the trial court abused its discretion in awarding the sanctions imposed.

¶ 39 Affirmed.