

No. 1-14-3309

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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SYLVIA SZCZEPANIK,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 M1 127581
	)	
BEAULIEU MANAGEMENT COMPANY,	)	Honorable
	)	Joyce Marie Murphy Gorman,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HYMAN delivered the judgment of the court.  
Presiding Justice Pierce and Justice Neville concurred in the judgment.

**O R D E R**

- ¶ 1 *Held:* Defendant failed to show that trial court lacked jurisdiction to grant voluntary dismissal of complaint. Order denying pleadings sanctions not erroneous for lack of express written findings.
- ¶ 2 Defendant Beaulieu Management Company appeals from an order granting plaintiff Sylvia Szczepanik's motion for voluntary dismissal of her breach of contract action and denying defendant's motion for sanctions under Supreme Court Rule 137 (eff. July 1, 2013). Beaulieu contends the trial court lacked jurisdiction to grant the voluntary dismissal and the denial of Rule

137 sanctions was erroneous for failing to state the grounds. We affirm the order granting voluntary dismissal and denying sanctions.

¶ 3 Background

¶ 4 Szczepanik, through counsel, filed her initial complaint in May 2013, alleging that Beaulieu evicted her from her Chicago apartment in May 2011 without prior notice or court order in violation of their residential real estate lease agreement, the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* (West 2012)) and the Chicago Residential Landlord-Tenant Ordinance (Ordinance) (Chicago Municipal Code §§ 5-12-010 *et seq.* (amended Nov. 26, 2013)). She also alleged that with regard to her security deposit, Beaulieu violated the Ordinance by commingling, failing to pay interest, and failing to disclose the institution holding the security deposit. She further alleged that she suffered severe emotional distress as a result of all this. Szczepanik's allegations included that (i) her lease was going to expire at the end of May 2011, (ii) she notified Beaulieu that she would not renew the lease and had arranged for some of her personal property to be moved on or about April 30, (iii) she nonetheless did not intend to vacate until the end of May, (iv) she found on May 10 that her key would not open the door and "all her personal belongings were gone," and (v) the apartment had been leased to another. A copy of the lease was not attached to the complaint.

¶ 5 Beaulieu appeared through counsel in July 2013 and filed a motion to strike for failure to attach written material on which a claim is founded. 735 ILCS 5/2-606 (West 2012). Beaulieu stated its "records do not show that 'Sylvia Szczepanik' was ever a tenant in any apartment leased to the public by Beaulieu" and Beaulieu needed the lease on which Szczepanik was relying to determine if there were limitations issues. Szczepanik responded to the motion, noting that section 2-606 requires either a copy of the document or that the relevant portions be recited in

the complaint and arguing that the complaint did so. Szczepanik also argued that her claims under the Ordinance do not require a copy of the lease and her copy of the lease was one of the articles of personal property that Beaulieu deprived her of in the eviction. Beaulieu replied in support of its motion, arguing that Szczepanik's response was not supported by her affidavit that the lease was unavailable as required by section 2-606 and that the complaint's references to the lease were not recitations of the lease but vague and conclusory summaries. On October 2, 2013, the court ordered Szczepanik to file an amended complaint on or about October 16.

¶ 6 Szczepanik timely filed an amended complaint, identical in substance to the initial complaint, except for adding an allegation that a copy of the lease is "not accessible" to Szczepanik and Szczepanik's affidavit that she rented the Premises "pursuant to an agreement between the parties in June of 2010," timely paid rent to Beaulieu from June 2010 through May 2011, her personal property on the Premises included her copy of the lease, and her eviction on May 10 left her "not in possession of a copy of the lease, nor is a copy of the lease accessible to her."

¶ 7 Beaulieu filed a motion to dismiss the amended complaint, arguing that Szczepanik's affidavit is conclusory and does not state facts showing that the lease is unavailable to her, noting that Szczepanik does not actually allege or aver that she signed a written lease, arguing that Beaulieu was insisting on a copy of the lease due to the absence of a reference to Szczepanik in its records, and claiming that "an apartment was leased to an apparently close relative of Szczepanik during the time period in question, and that written lease expressly limits occupancy 'to Anna Szczepanik only.'" The motion to dismiss was supported by a copy of the first page of a lease between Beaulieu and Anna Szczepanik from June 2010 to the end of June 2011 for an apartment near, but not the same as Szczepanik's. It was also supported by the affidavit of

Beaulieu's property manager averring that a review of "all tenants and leases kept by us in the ordinary course of business for years 2010 and 2011 [found] no tenant named Sylvia Szczepanik [nor any] apartment lease containing any reference whatsoever to such a person either as a tenant, guarantor, or otherwise." Szczepanik responded to the motion to dismiss, arguing that her affidavit states facts showing why the lease is unavailable to her, her lease is not required for all of her claims, and Beaulieu's affidavit that Szczepanik was not a tenant contests Szczepanik's factual allegation that she was so. Beaulieu replied in support of its motion to dismiss, arguing that Szczepanik "must allege some fact that shows her to be more than just a trespasser" but failed to do so, and that Beaulieu's affidavit does not contest Szczepanik's allegation of fact but is an affirmative matter under section 2-619(a) (9) of the Code of Civil Procedure (Code) demonstrating that her allegations are conclusory and unsupported. 735 ILCS 5/2-619(a) (9) (West 2012). The court denied the motion to dismiss on January 9, 2014, in an order granting Szczepanik leave to file an amended complaint by January 30, 2014.

¶ 8 The court granted Szczepanik leave to file her second amended complaint *instanter* on February 27, 2014. She alleged that her mother, Anna Szczepanik, entered into a lease with Beaulieu for an apartment near-by in June 2010, then "Anna and [Szczepanik] had some issues with the [a]partment, and Anna requested of [Beaulieu] if it would be possible to move to another apartment." Beaulieu accommodated the request by moving Anna, and "the parties amended and/or executed a new lease to reflect this fact." Szczepanik took over occupancy while Anna Szczepanik worked as a live-in caretaker elsewhere. Szczepanik paid rent to and interacted with employees of Beaulieu who were thus aware of her occupancy and Szczepanik was the tenant. The second amended complaint raised the same claims as the earlier complaints except

for claims relating to a security deposit, and Szczepanik made the same averment that the lease was unavailable to her.

¶ 9 Beaulieu filed a motion to dismiss the second amended complaint, arguing that its motions seeking the lease "succeeded in exposing the false and misleading nature of [Szczepanik]'s first two complaints" and that Szczepanik "deliberately avoids stating a chronology of events, \*\*\* connecting herself to any operative event [or] specifying how she can claim status as a lessee." Beaulieu claimed that Szczepanik's counsel admitted to Beaulieu's counsel in court on February 27 that Szczepanik has bad credit and could not have qualified for a lease with Beaulieu, so that Anna Szczepanik used her credit to obtain an apartment for Szczepanik, and Szczepanik and Anna thereby "perpetrated a fraud on [Beaulieu]." Beaulieu requested that the second amended complaint be dismissed, and Beaulieu be allowed to file a petition for Rule 137 sanctions, unless Szczepanik "can quickly demonstrate thru [sic] a specific and clear recitation of facts that no fraud actually exists here."

¶ 10 On July 9, 2014, the court issued an order granting Beaulieu's motion to dismiss the cause with prejudice, including a finding of "no just reason to delay enforcement of or appeal from this dismissal order," and granting Beaulieu leave to file a Rule 137 petition *instanter*. The court issued another order that same day providing that the motion to dismiss is granted but also granting Szczepanik 28 days to file her third amended complaint. The order dismissing the cause with prejudice was prepared by Beaulieu's counsel as a typewritten order with minor handwritten amendments, and the order granting the motion to dismiss with leave to amend the complaint was prepared by Szczepanik's counsel by handwriting on a form order.

¶ 11 Beaulieu immediately filed its petition for attorneys' fees and costs under Rule 137, arguing that Szczepanik's second amended complaint showed that she made false allegations in

the previous complaints and alleging the admission by Szczepanik's counsel on February 27. The accounting attached to the Rule 137 petition described \$7,598.13 in fees and costs, consisting of a \$206.88 appearance fee and an enumerated 32.85 hours of attorney work from July 2013 through July 2014 at an hourly rate of \$225.

¶ 12 On August 6, 2014, Szczepanik filed a motion to voluntarily dismiss its complaint under section 2-1009 of the Code (735 ILCS 5/2-1009(a) (West 2012)), supported by a notice of motion. In Szczepanik's August 2014 motion to reset the hearing on the Rule 137 petition, she claimed in relevant part that Beaulieu's counsel met with counsel substituting or "covering" for Szczepanik's counsel on July 9 and "it was communicated that if Szczepanik elected to dismiss the complaint, [Beaulieu] would not pursue Rule 137 sanctions." The motion to reset was signed by Szczepanik's counsel but not supported by an affidavit from substitute counsel.

¶ 13 On August 27, 2014, the court granted Szczepanik's motion to reset the Rule 137 hearing, in an order also providing "all other orders including the dismissal order stand." On September 24, 2014, in an order noting that both parties were present through counsel, the court denied Beaulieu's Rule 137 petition and granted Szczepanik "leave to voluntarily non-suit this matter as to [her] Second Amended Complaint \*\*\* pursuant to [her] renewed oral motion for voluntary dismissal," with costs awarded to Beaulieu. Beaulieu filed its notice of appeal from the September 24 order on October 24, 2014.

¶ 14 Analyses

¶ 15 Before proceeding to the merits of this appeal, we note that we are considering this appeal on Beaulieu's brief alone, as Szczepanik has not filed an appellee's brief. *In re Marriage of Earlywine*, 2013 IL 114779, ¶ 13. We also note that the record on appeal does not include a transcript or appropriate substitute (Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)) for any of the hearings

or other proceedings. As appellant, Beaulieu is obligated to provide us a sufficiently complete record of the trial court proceedings to support its claims of error, so that we must presume in the absence of such a record that the court's orders conformed to the law and had a sufficient factual basis. *People v. Carter*, 2015 IL 117709, ¶ 19. An issue relating to a court's factual findings and basis for its legal conclusions cannot be reviewed absent a report or similar record of the relevant proceedings. *Pekin Insurance Co. v. Campbell*, 2015 IL App (4th) 140955, ¶ 26. Conversely, our review is not precluded where the record on appeal contains all the evidence needed to dispose of the legal issues raised under the applicable standard of review; that is, where we are in the same position as the trial court. *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 655 (2007).

¶ 16 On appeal, Beaulieu first contends that the trial court lacked jurisdiction to grant the voluntary dismissal as the court dismissed the cause with prejudice more than 30 days earlier and had lost jurisdiction to rule upon anything but the then-pending Rule 137 petition. We note that we have jurisdiction to consider this contention; a defendant may appeal from an order granting a voluntary dismissal. *Resurgence Financial LLC v. Kelly*, 376 Ill. App. 3d 60, 62 (2007).

¶ 17 An order striking or dismissing a complaint is not final until the trial court enters an order dismissing the suit or cause, and a plaintiff granted leave to file an amended complaint but who has not yet filed an amended complaint retains the ability to voluntarily dismiss the case. *Smith v. Central Illinois Regional Airport*, 207 Ill. 2d 578, 587-88 (2003); *Kiefer v. Rust-Oleum Corp.*, 394 Ill. App. 3d 485, 498 (2009). A cause of action should not be dismissed with prejudice unless it is clear that no set of facts can be proven under the pleading that would entitle the plaintiff to relief. *Smith*, 207 Ill. 2d at 584-85. Where a dismissal order does not expressly state that it is entered either with or without prejudice we must determine whether the order is final.

To do so, we examine the context of the order including the issues and arguments and the substance of what the court decided in the dismissal order. *Kiefer*, 394 Ill. App. 3d at 494.

¶ 18 Rather than a dismissal order silent on whether it was issued with or without prejudice, we have before us two orders of the same day—July 9, 2014—one stating that the cause is dismissed with prejudice and the other granting the motion to dismiss with leave to amend the complaint. A transcript or other record of the July 9 proceedings would resolve this discrepancy, but Beaulieu has not provided us with one. Examining the orders, the order dismissing the cause with prejudice shows a consistent intention that the litigation end except for the issue of sanctions because the order includes an appealability finding and grants Beaulieu leave to file a Rule 137 petition. But, the consistency may be explained by the fact that the order was prepared by Beaulieu's counsel as a typewritten document with only minor handwritten amendments. The court's August 27 order setting a briefing schedule on the Rule 137 petition tends to corroborate that the court's decision on July 9 was memorialized by the order dismissing the case with prejudice and allowing the Rule 137 petition to be filed. On the other hand, the motion that prompted the orders at issue—Beaulieu's motion to dismiss the second amended complaint—does not argue that no set of facts can be proven that would entitle Szczepanik to relief. Instead, the argument that the complaint should be dismissed unless Szczepanik "can quickly demonstrate thru [*sic*] a specific and clear recitation of facts that no fraud actually exists here" allows for the possibility that Szczepanik could state a claim and seems to solicit an amended pleading. While the court did not necessarily grant dismissal on the grounds sought by Beaulieu, the record contains no findings supporting an alternate basis for dismissal. In light of our presumption on an incomplete record that the trial court followed the law and had a factual basis



for its decisions, Beaulieu has failed to show that the July 9 dismissal was with prejudice or that the court lacked jurisdiction to grant Szczepanik her voluntary dismissal.

¶ 19 Beaulieu also contends that the trial court's denial of Rule 137 sanctions should have stated grounds or basis. Ill. S. Ct. R. 137 (eff. July 1, 2013). Rule 137(d), states, "Where a sanction is imposed under this rule, the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order."

¶ 20 The unambiguous language of Rule 137 requires an explanation when a court *imposes* sanctions. Our supreme court recently held that the "plain language of Illinois Supreme Court Rule 137 imposes no requirement on a circuit court to explain its reasons for denying a motion for sanctions." *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 19. "Nothing in the language of the rule implies that the court must also provide an explanation when it *denies* sanctions. If the drafters of the rule intended to impose such a requirement, they would have done so with specific language to that effect." (Emphasis in original.) *Id.*, ¶ 14. "The appellate court, when reviewing a circuit court decision to deny sanctions, should look to the record to determine whether the circuit court had an adequate basis for making its decision. In the event the appellate court finds that the record is insufficient for such purposes, then remanding the case may be appropriate. However, a record is not inherently insufficient when the circuit court does not provide its reasons for denying the motion." *Id.*, ¶ 19.

¶ 21 Beaulieu's sole contention regarding the denial of Rule 137 sanctions is that the trial court could not deny its uncontested petition for sanctions without stating reasons for its ruling. Our supreme court has held otherwise. The denial of a petition for Rule 137 sanctions is a matter of discretion reviewed for abuse of discretion so that we reverse only where no reasonable person would agree with the trial court's decision. *Lake Environmental, Inc.*, 2015 IL 118110, ¶ 16.

¶ 22 As stated, where the record is insufficient in a matter where we do not stand in the same position as the trial court as we review its decision, we presume the decision was not erroneous. Beaulieu argues that the denial of its petition "could not logically follow the circumstances of this case" because the petition "is not only detailed and legally sufficient [citation] but was also uncontested." But, it was uncontested only insofar as Szczepanik did not file a written response to the petition, and the incomplete record deprives us of any oral arguments against the petition made by Szczepanik's counsel and any oral findings made by the trial court. We see no reason to remand as the insufficiency of the record redounds to Beaulieu as appellant, and we conclude that Beaulieu has failed to show that the trial court abused its discretion in denying Beaulieu's petition for Rule 137 sanctions.

¶ 23 Accordingly, the judgment of the circuit court is affirmed.

¶ 24 Affirmed.