2016 IL App (3d) 150358-U

Order filed February 24, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

DIANE MOLER,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Plaintiff-Appellee,	)	Kankakee County, Illinois.
	)	
v.	)	
	)	
KANKAKEE AREA JAYCEES, INC.,	)	
	)	Appeal No. 3-15-0358
Defendant,	)	Circuit No. 12-L-135
	)	
and	)	
	)	
BOURBONNAIS PARK DISTRICT,	)	The Honorable
	)	Kendall O. Wenzelman,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: In a tort case in which the defendant park district's motion for summary judgment was granted, the circuit court denied the park district's motion for sanctions, which alleged that the plaintiff's failure to dismiss the defendant park district from the case constituted a violation of Supreme Court Rule 137. The appellate court affirmed the circuit court's judgment.

¶ 2 The plaintiff, Diane Moler, filed a negligence action against the defendants, the Kankakee Area Jaycees, Inc., and the Bourbonnais Park District. The Park District filed a motion for summary judgment, which the circuit court granted. The court also denied the Park District's motion for sanctions brought pursuant to Supreme Court Rule 137 (eff. Feb. 1, 1994). On appeal, the Park District argues that the court erred when it denied the motion for sanctions. We affirm.

¶ 3 FACTS

¶ 4 On October 14, 2011, the Jaycees hosted a hayride at Perry Farm in Bourbonnais. A hayride had been scheduled to begin at 7:30 p.m. that night, and the plaintiff had purchased a ticket for the ride. To access the wagon, a set of mobile stairs were used by the Jaycees. While ascending the stairs and attempting to get into the wagon, the plaintiff was injured when one of her legs slipped into the gap between the end of the stairs and the edge of the wagon.

¶ 5 On September 7, 2012, the plaintiff filed a negligence action against the Jaycees. The Park District was named as a respondent in discovery. Attached to the complaint were interrogatories and requests for production that sought to obtain information from the Park District. In its answer, the Jaycees alleged an affirmative defense of contributory negligence on the part of the plaintiff.

¶ 6 On February 8, 2013, the plaintiff filed a motion to compel the Park District to respond to the discovery requests. The motion alleged that on October 29, 2012, the plaintiff's attorney spoke with the Park District's attorney, who said that the responses were forthcoming. A subsequent voicemail message from the plaintiff's attorney went unanswered. The plaintiff's attorney then sent a letter on January 7, 2013, to the Park District's attorney in which a conference was requested to address the unanswered discovery requests. On January 22, 2013,

the plaintiff's attorney called the Park District's attorney and again left a voicemail message. The Park District's attorney responded and again said that the responses were forthcoming. When those responses still did not come, the plaintiff filed the motion to compel. The Park District finally responded to the discovery requests on February 25, 2013.

¶ 7 On March 13, 2013, the plaintiff filed a motion to convert the Park District into a defendant and requested leave to file an amended complaint. The proposed amended complaint added a willful and wanton negligence count against the Park District. That count claimed that the Park District owned the wagon and the mobile stairs and that it failed to advise and/or train the Jaycees on the safe operation of those objects.

¶ 8 On April 25, 2013, the Park District filed a response to the plaintiff's motion. In its response, the Park District stated that the plaintiff learned through the discovery responses that: (1) the Jaycees leased the premises from the Park District to conduct the hayride; (2) the event was solely staffed and operated by the Jaycees; (3) the wagon was in good condition at the time of the lease; and (4) the Park District was unaware of anyone who had been injured as a result of the operation of the wagon in the past two years. The Park District contested the plaintiff's motion to convert on the grounds that, *inter alia*, the plaintiff could not establish legally or factually that it was owed a duty by the Park District or that the Park District breached any such duty.

¶ 9 On August 12, 2013, the circuit court held a hearing on the plaintiff's motion to convert the Park District to a defendant. After hearing arguments, the court allowed the motion, finding that "I think the issues that are out there are ones that are going to have to be flushed out more and subject to probably additional motions on down the road."

¶ 10 On September 16, 2013, the Park District filed a motion to dismiss the complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 619 (West 2012)). The Park District claimed that it had no legal duty to train the Jaycees in how to use a mobile staircase, that the complaint failed to state a cause of action for willful and wanton conduct, that the Park District had no actual or constructive notice of any dangerous condition, that the Park District is not liable for any dangerous conditions on its property that were created by a lessee, and that the Park District, as a local public entity, was immune from tort liability.

¶ 11 The Park District also filed a motion for sanctions pursuant to Rule 137, which alleged that the plaintiff failed to conduct a reasonable inquiry into the facts and law before filing the complaint. Then, through discovery and correspondence with the Park District's attorney, the plaintiff learned that no action could be sustained against the Park District, but the plaintiff proceeded to convert the Park District into a defendant anyway.

¶ 12 The circuit court held a hearing on the motions in February 2014 and issued a decision in May 2014. The court denied both motions after finding that the plaintiff had sufficiently pled a cause of action.

¶ 13 Correspondence attached to several of the motions filed in the circuit court indicate that the parties' attorneys had contacted each other numerous times regarding the inclusion of the Park District in the case. These documents variously showed that the plaintiff's attorney had offered to "entertain" dismissing the Park District if the Jaycees would agree not to assert a sole proximate cause defense at trial; that the Jaycees' attorney would not agree because the plaintiff's attorney was requesting that it waive a potential defense without any consideration in return. In addition, the plaintiff's attorney had agreed with the Park District's attorney after the depositions that the Park District should be let out of the case, and that the plaintiff's attorney

would not contest any summary judgment motion filed the Park District after the Jaycees refused to waive a sole proximate cause defense.

¶ 14 On November 24, 2014, the Park District filed a motion for summary judgment on the second count of the plaintiff's complaint. The plaintiff did not contest the motion, and the circuit court granted the motion on December 1, 2014.

¶ 15 On December 18, 2014, the Park District filed its renewed motion for sanctions against the plaintiff, which essentially reiterated the same arguments it made in its prior motion for sanctions. The Park District appended several depositions to its motion. A Jaycees volunteer was deposed, who stated that she was helping people use the stairs to get into the hay wagon. Because it was dark, she used a flashlight to illuminate the stairs for people, including the gap between the edge of the stairs and the hay wagon. She used "common sense" in coming up with this procedure and there were no instructions given by anyone to her regarding a procedure to follow in helping people get into the hay wagon. The staircase was sturdy, heavy, and had two wrought iron rails. The Jaycees did not move the staircase during the event, and it did not have wheels. The hay wagon driver would back up to the staircase to load people into the wagon, and the top of the stairs was at essentially the same height as the wagon. If the gap between the stairs and the wagon was more than one foot, the wagon driver would be told to pull out and back up again. Another Jaycees official who was deposed stated that she believed that the Park District held some safety-related meetings with Jaycees personnel prior to the event.

¶ 16 On April 27, 2015, the circuit court held a hearing on the Park District's renewed motion for sanctions. At the close of the hearing, the court denied the motion. In so ruling, the court stated:

"THE COURT: At the time of the motion for conversion I made the determination -- I granted the conversion because there was a question out there as to whether or not there was a need for proper instruction as to the use of the hayrack, placement of the stairs, etc., enough to get them to the point to where they could convert you as a defendant.

* * *

I don't feel that there is enough of a showing of lack of investigation. In fact, probably the potential is out there if they hadn't named you as a defendant maybe eventually on down the road they could have been held liable for failure to do that. There's a little bit of bounce here. I also look at, you know, the Rule 137 every pleading motion or other paper that's basically filed there needs to be an investigation with respect to. I found that they had done enough investigation to convert you, etc.

So I don't think there's a basis under 137 for the imposition of sanctions. However, I am going to note at this time, counsel, that you can't always necessarily package the case into the perfect form.

[PLAINTIFF'S ATTORNEY]: Absolutely.

THE COURT: So when it's evident that maybe somebody shouldn't be involved, I don't know that you really have a bargaining chip to try to avoid the empty-chair type of a situation,

> and that. Probably if they'd been let out we wouldn't be here today. But I still don't think there's a sufficient basis for the imposition of sanctions[.]"

¶ 17 The Park District appealed.

¶ 18 ANALYSIS

¶ 19 On appeal, the Park District argues that the court erred when it denied the motion for sanctions. Variously, the Park District contends that: (1) the plaintiff did not conduct a reasonable inquiry into the complaint; (2) it was unreasonable for the plaintiff to move to convert the Park District; (3) the court recognized the impropriety of the plaintiff's conduct, but refused to apply Rule 137 to impose sanctions; (4) the plaintiff had learned through discovery and through law provided by the Park District that she had no viable claim against the Park District; and (5) it was unreasonable for the plaintiff to fail to dismiss the Park District.

¶ 20 Initially, we note that the parties dispute the appropriate standard of review. The Park District acknowledges that generally, a circuit court's decision on a sanctions motion is reviewed for an abuse of discretion. See, *e.g.*, *In re Estate of Hanley*, 2013 IL App (3d) 110264, ¶ 78. However, the Park District claims that *de novo* review should apply because: (1) the interpretation of Rule 137 is at issue; and (2) the resolution of this issue involves undisputed facts. The Park District's claims are without merit.

¶ 21 First, the resolution of this appeal does not involve the construction of Rule 137. The Park District's claim to the contrary is that this case involves:

> "whether Supreme Court Rule 137 contains an unwritten 'exception', which would allow a plaintiff to continue to prosecute an action against a defendant for which there is no good faith basis

> in law or fact, solely because the plaintiff seeks to gain an evidentiary concession and/or agreed waiver of a trial strategy or defense by another named defendant[.]"

In essence, the Park District's claim assumes the truth of a premise—that what occurred in this case so clearly violated Rule 137 that the only way the court could have denied sanctions was to create an exception to the Rule. The question presented in this appeal is in fact whether the plaintiff's conduct violated Rule 137, not whether the plaintiff's conduct exists as an exception to the Rule.

¶ 22 Second, we are not persuaded by the Park District's claim that this appeal should be reviewed *de novo* because it allegedly involves the application of law to undisputed facts. In this case, the circuit court exercised its discretion in ruling that the plaintiff's attorney would not be sanctioned, and we see no reason to deviate from the typical abuse-of-discretion review that applies to the review of a circuit court's decision on a motion for sanctions. For these reasons, we reject the Park District's claim that *de novo* review applies, and we will accordingly review the circuit court's decision for an abuse of discretion (*Estate of Hanley*, 2013 IL App (3d) 110264, ¶ 78). The circuit court abuses its discretion when no reasonable person would agree with the court's ruling. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16.

¶ 23 Supreme Court Rule 137(a) provides:

> "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. A party who is not represented by an attorney shall sign his pleading, motion, or other document and state his address. Except when

otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; 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. If a pleading, motion, or other document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. 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 to 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. Rule 137(a) (eff. Feb. 1, 1994).

¶ 24 This court has previously stated:

"The purpose of Rule 137 is to prevent the filing of lawsuits without legal or factual foundation, and not to penalize an

> attorney who is zealous but unsuccessful. [Citation.] The rule is intended to prohibit the abuse of the judicial process by a litigant who makes a vexatious or harassing claim based on unsupported allegations of law or fact. [Citation.] Since Rule 137 is penal in nature, it should be strictly construed. [Citation.]" *Estate of Hanley*, 2013 IL App (3d) 110264, ¶ 79.

When reviewing a circuit court's decision on a Rule 137 motion for sanctions, our task is to determine whether the court's decision was an informed one, whether it was based on valid reasoning, and whether its conclusion logically followed from the facts of the case. *Id.* ¶ 80. In addition, we note that good faith, by itself, does not prohibit the imposition of sanctions. *Rankin ex rel. Heidlebaugh v. Heidelbaugh*, 321 Ill. App. 3d 255, 267 (2001). The appropriate means of assessing the conduct in question is to apply an objective standard of reasonableness in light of the totality of the circumstances. *Id.*

¶ 25 Rule 137 contains an implicit requirement that once it becomes apparent that a lawsuit is unfounded, an attorney must promptly dismiss the lawsuit. *Lake Environmental*, 2015 IL 118110, ¶ 13. However, a violation of Rule 137 does not *require* a circuit court to impose sanctions. Ill. S. Ct. R. 137(a); *Lake Environmental*, 2015 IL 118110, ¶ 15.

¶ 26 In this case, contrary to this law, the Park District essentially argues that the circuit court was required to impose sanctions. The Park District's claims largely assume that the plaintiff's conduct constituted a violation of Rule 137. However, that conclusion is not as clearly apparent as the Park District would suggest.

¶ 27 Our review of the record in this case reveals no error in the circuit court's decision not to impose sanctions on the plaintiff's attorney. The plaintiff's attorney filed a negligence action in

this case and included the Park District as a respondent-in-discovery. After conducting an inquiry through discovery, the plaintiff's attorney sought to convert the Park District to a defendant based on lingering questions as to whether the Park District could be held liable for failing to instruct the Jaycees on the proper operation of the stairs and the hay wagon. The circuit court agreed with the plaintiff's attorney, finding that there were issues along those lines that needed to be investigated, and the court granted the motion to convert. After that point, it appears from the record that the main motivation of the plaintiff's attorney in refusing to dismiss the Park District was the concern that, without the Park District, the Jaycees would raise a sole proximate cause defense[1] at trial and that the plaintiff would not be able to recover any damages for her injuries. While it was certainly questionable that the plaintiff's attorney sought to get the Jaycees to waive this defense without offering anything in return—as the circuit court noted—we agree with the court that it appears that the plaintiff's attorney conducted an adequate investigation into the complaint's allegations such that Rule 137 was not violated. There was also no indication in the record to suggest that the plaintiff's attorney filed anything with the intent to harass the Park District or cause it to incur needless legal expenses. Under these circumstances, we hold that the circuit court did not abuse its discretion when it refused to impose sanctions against the plaintiff's attorney.

¶ 28 CONCLUSION

¶ 29 The judgment of the circuit court of Kankakee County is affirmed.

[1] We note that this defense has been referred to in this case as the "empty chair defense." The "empty chair defense" is the colloquial description of the defense of sole proximate cause, and it can be asserted at trial if the conduct of another individual or entity, who is not a party to the negligence action, was the sole proximate cause of the plaintiff's injury. *Jones v. Beck*, 2014 IL App (1st) 131124, ¶ 27.

¶ 30 Affirmed.