

No. 1-15-1831

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MATRIX BASEMENT SYSTEMS, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
TOM DRAKE,)	
Defendant-Appellant)	
)	
(Karl Splett, Paul Allen, Ron Mackey, Jeramiah)	
Royer, Dave Gasta, and Superior Corporation of)	
Illinois,)	
Defendants).)	
)	No. 13 CH 24570
<hr/> TOM DRAKE,)	
)	
Petitioner-Appellant,)	
)	
v.)	
)	
MATRIX BASEMENT SYSTEMS, INC.,)	
KLUEVER & PLATT, LLC, ANDREW PLATT,)	
and JASON ALTMAN,)	Honorable
)	LeRoy K. Martin, Jr.,
Respondents-Appellees.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Following plaintiff's voluntary dismissal and defendant's motion for sanctions against the plaintiff and plaintiff's attorneys, the trial court did not abuse its discretion in declining to award sanctions pursuant to its inherent authority or pursuant to Supreme Court Rule 137, and the court correctly determined that defendant was not a "prevailing party" entitled to attorney's fees under the Illinois Trade Secrets Act. The trial court also did not err in declining to make a factual finding as to whether defendant returned a flash drive to the plaintiff in connection with the motion for sanctions.

¶ 2 Tom Drake, one of the defendants in the underlying action, appeals from the order of the circuit court of Cook County denying his motion for sanctions against plaintiff-appellee Matrix Basement Systems, Inc. (Matrix) and Matrix's counsel, Kluever & Platt, LLC, Andrew Platt, and Jason Altman (together with Matrix, the respondents), following the voluntary dismissal of Matrix's complaint. For the following reasons, we affirm the circuit court.

¶ 3 **BACKGROUND**

¶ 4 This appeal arises from an action in which Matrix alleged that Drake, its former contractor, brought Matrix's trade secrets to one of its competitors, defendant Superior Corporation of Illinois (Superior). On October 30, 2013, Matrix initiated this action by filing a verified complaint against Tom Drake, Karl Splett, Paul Allen, Ron Mackey, Jeramiah Royer, Dave Gast and Superior.

¶ 5 Matrix alleged that that it had spent years developing a "system to fabricate, market, sell and install cost-efficient mold proof basement systems" marketed to homeowners, as well as a "detailed computer pricing program," and proprietary sales and marketing materials.

¶ 6 Matrix alleged that Drake had initially contacted Matrix to discuss a potential acquisition of Matrix. In September 2011, Drake had entered into a non-disclosure agreement (the NDA) under which he agreed that he would not divulge any of Matrix's "trade secrets," "confidential

information," or "any other proprietary data." The NDA further provided that, upon the termination of his involvement with Matrix, Drake was to return all property of Matrix.

¶ 7 Although the acquisition did not occur, Drake later agreed to work for Matrix as an independent contractor "to manage the recruiting and re-screening of candidates to become potential Matrix dealers." Drake executed an independent contractor agreement (ICA) with Matrix. The ICA provided that upon its termination, Drake would promptly deliver to Matrix copies "of all business materials" "including Confidential Information." The ICA also provided that Drake would not disclose or use for the benefit of any third party any "Confidential Information of the Company" during or after his engagement.

¶ 8 The original complaint alleged that Drake and Splett (who was also an independent contractor of Matrix) "severed their relationship with Matrix" in March 2013, and that, in April 2013, Drake and Splett became independent contractors with Superior. Matrix alleged that Drake and Splett "developed a mold proof basement system for Superior based upon the system developed by Matrix." Matrix thus alleged that Superior, using Matrix's trade secrets, attempted to compete with Matrix.

¶ 9 Matrix further alleged that Drake and Splett "poached" members of Matrix's sales and marketing staff, causing defendants Royer, Allen, Mackey and Gasta to leave Matrix and join Superior. Matrix further alleged that it demanded each individual defendant, including Drake, to "turn over their laptop computers" and allow Matrix to remove its trade secrets from the computers, but that Drake and the other defendants had refused.

¶ 10 The original complaint contained four counts. Count I pleaded a violation of the Illinois Trade Secrets Act (TSA) against all defendants. Count II alleged breach of contract by Drake for violating the terms of the NDA and the ICA by disclosing trade secrets to Superior and refusing

to return Matrix's trade secrets. Counts III and IV pleaded breach of contract claims against Allen and Mackey based on separate agreements. The original complaint was verified by Nick Richmond, Matrix's president, on behalf of Matrix.

¶ 11 On January 23, 2014, Drake moved to dismiss the original complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)), arguing, *inter alia*, that Matrix failed to plead sufficiently specific facts about: (1) Drake's alleged refusal to return Matrix's trade secrets, (2) how the alleged "poaching" occurred or how it breached any agreement, (3) whether Matrix's alleged secrets were publicly available, and (4) how any misappropriation of Matrix's information had benefited Superior. The remaining defendants joined in Drake's motion to dismiss.

¶ 12 On April 9, 2014, the trial court granted the motion to dismiss the original complaint, but granted Matrix leave to amend its complaint.

¶ 13 On June 9, 2014, Drake's counsel sent a letter to Matrix, which demanded "an acknowledgment that Matrix's action against Mr. Drake was baseless and in error," and demanded that Matrix compensate Drake for his legal fees. Drake sent another letter on June 25, 2014, requesting a response. Matrix did not respond.

¶ 14 On July 15, 2015, Matrix filed an amended complaint containing substantially identical factual allegations, including that Matrix demanded access to Drake's laptop computer but that Drake refused. However, unlike the original complaint, the amended complaint did not plead a count for violation of the TSA. The sole claim maintained against Drake in the amended complaint was a breach of contract count for disclosing "Matrix Trade Secrets to Superior and refusing to return the Matrix Trade Secrets to Matrix." The amended complaint also contained breach of contract claims against Allen and Mackey, as well as a "tortious interference with

contract" claim against Superior. The amended complaint did not plead any counts against Splett, Royer, or Gasta. The amended complaint was also verified by Richmond.

¶ 15 On August 19, 2014, Matrix filed a motion to voluntarily dismiss its amended complaint in its entirety, "without prejudice pursuant to 735 ILCS 5/2-1009(a)." On August 25, 2014, Drake's counsel sent a letter demanding that Matrix dismiss its claim against Drake "with prejudice" by noon on that date, or that Drake "will be forced to file his counterclaims under Rule 137 and the ITSA 'bad faith' section." Matrix's counsel replied that it would forward the demand to Matrix.

¶ 16 On August 26, 2014,—while Matrix's voluntary dismissal motion was still pending—Drake filed his "Counterclaims Against Matrix Basement Systems, Inc." (the counterclaims). The counterclaims pleaded a count seeking sanctions pursuant to Supreme Court Rule 137 (eff. Jan. 4, 2013), alleging Matrix had no factual or legal basis for its claims against Drake. The counterclaims included a second count seeking relief under section 5(i) of the ITSA, which permits an award of reasonable attorney's fees to a "prevailing party" if "a claim of misappropriation is made in bad faith." 765 ILCS 1065/5 (West 2012).

¶ 17 Separately, on September 30, 2014, Drake filed objections to Matrix's voluntary dismissal motion, urging that voluntary dismissal without prejudice should not be granted before Drake's counterclaims were resolved. Among other arguments, Drake urged that because a dismissal *with prejudice* may be imposed as a sanction pursuant to Rule 137, "Rule 137 trumps the voluntary dismissal statute." On October 3, 2014, over Drake's objections, the trial court granted Matrix's voluntary dismissal motion. Drake moved the trial court to reconsider Matrix's voluntary dismissal; that motion was denied on November 19, 2014.

¶ 18 Meanwhile, the parties debated, as a procedural matter, whether Drake could pursue sanctions through counterclaims, or if Drake must seek sanctions through a motion. On October 31, 2014, Drake filed a motion for sanctions, after which, on November 19, 2014, the trial court required Drake to voluntarily dismiss his counterclaims.

¶ 19 Drake's sanctions motion sought relief against Matrix as well as Matrix's attorneys, Kluever & Platt LLC, Andrew Platt, and Jason Altman, who are also appellees herein. Drake's motion asserted three independent bases for sanctions: (1) Supreme Court Rule 137; (2) section 5(i) of the TSA; and (3) the trial court's inherent authority to control its docket.

¶ 20 Drake's sanctions motions relied in part, on prior email exchanges between Drake and Richmond, Matrix's president. According to Drake, the emails proved that, contrary to Matrix's pleaded allegations, (1) Drake had resigned on January 24, 2013, rather than severing his relationship with Matrix in March 2013, as alleged by Matrix; (2) on January 28, 2013, Drake had voluntarily brought his personal laptop computer to Richmond for inspection and gave Richmond a flash drive returning all of Matrix's proprietary information that had been on his computer; (3) that Matrix had never told Drake that he was not in compliance with any contractual obligations prior to filing its complaint. Drake also alleged that Richmond had left him an intimidating voicemail message on April 26, 2014. On January 20, 2015, Drake amended the sanctions motion to specify that he sought additional monetary sanctions beyond the amounts of his legal fees and costs.

¶ 21 On May 1, 2015, the trial court conducted an evidentiary hearing on the sanctions motion, at which Drake offered his email communications into evidence. During the evidentiary hearing, the court heard conflicting testimony from Drake and Richmond. Drake testified that, due to his disagreement with proposed changes to Matrix's compensation plan, Drake resigned from

Matrix on January 24, 2013. On January 28, 2013, he met with Richmond for a brief exit interview; Drake testified that he brought his laptop computer to the meeting. Drake testified that he allowed Richmond to inspect his computer to ensure that Matrix's information was no longer on it, and opened the various folders on his computer to "show[] [Richmond] there was nothing that belonged to Matrix." Drake also testified that during the January 28, 2013 meeting, he gave Richmond a flash drive that contained all of Matrix's information that had previously been on his personal computer.

¶ 22 Drake denied that he was ever subsequently contacted by Matrix to further inspect his computer, denied that he had ever refused to make his computer available, and denied that Richmond had ever contacted him to request the return of any "trade secrets." Drake stated that he "had returned all the [trade] secrets. There was nothing to return."

¶ 23 Although he resigned in January, Drake testified that in March 2013, Richmond contacted him to see if he was available "to come for one day to work for [Matrix] on an open house." Drake agreed and stated that he did attend that open house.

¶ 24 In Richmond's testimony, he stated that when Drake resigned from Matrix on January 24, 2013, Richmond specifically requested that Drake bring his computer to their exit meeting on January 28, because Richmond wanted to ensure that all of Matrix's information had been removed. However, Richmond testified that Drake failed to bring his computer for inspection at the January 28, 2013 meeting. Richmond recalled that Drake told him "he had forgotten his computer, that he would bring it back in, ***, and I believed he was being honest at that time." However, Drake never brought his computer back. Richmond denied that, during the January 28, 2013 meeting, Drake had given him a flash drive to return Matrix's information.

¶ 25 Richmond further testified that in April 2013, he received an e-mail from Splett that was directed to Drake's former email account at Matrix, and that the email forwarded an independent contractor agreement with Superior. Richmond testified he believed that the email was inadvertently sent by Splett to Drake's former Matrix account rather than Drake's personal account. Upon receiving the email, Richmond became concerned and "called [Drake] to ask questions about the nature of his involvement with Superior." During that call, Drake "put [Richmond] at ease" by telling Richmond that Superior was "not going to be competing with Matrix." Richmond also testified that, during the same telephone call, he again asked Drake to bring in his computer to ensure the removal of Matrix's information, but that Drake never did so.

¶ 26 On May 22, 2015, the trial court denied Drake's motion for sanctions, including Drake's request to convert Matrix's voluntary dismissal to a dismissal "with prejudice." The court explained that it did not find sanctions warranted under any of the three bases relied on by Drake.

¶ 27 First, the court specifically declined to exercise its inherent power to sanction Matrix. The court remarked that "generally if the court is going to exercise its discretion to enter sanctions against a party, it is to sanction a party for conduct so that the conduct does not occur again." However, in light of Matrix's voluntary dismissal, it found no need for such a sanction: "[T]his case is dismissed. There is nothing left for the Court to do as far as exercising its discretion by entering sanctions in order to protect the proceeding or move the case along or protect the parties from some kind of harassing conduct."

¶ 28 Next, the court also declined to find that Matrix was entitled to sanctions under section 5(i) of the TSA. The court found that Drake was not a "prevailing party" entitled to attorney's fees under that statute, since "there has never been a ruling by this Court *** on the merits of the trade secret claims." The court noted Drake's reliance on a California decision, which had found

(under an analogous statute) that the defendant was a "prevailing party" after the plaintiff voluntarily dismissed its claim for misappropriation of trade secrets. *Cypress Semiconductor Corp. v. Maxim Integrated Products, Inc.*, 236 Cal. App. 4th (2015) (*Cypress*). However, the trial court found that *Cypress* was distinguishable, as the *Cypress* court found the plaintiff's complaint was "meritless on its face based upon theories of liability which were not merely specious but nonsensical." The court explained that this was not the situation here. Rather, the court reasoned that under an "objective standard," Matrix's complaint was not facially meritless at the time it was filed:

"We can all sit here now many months after the complaint was filed and look back and say to ourselves, 'well, this is unsupported or that is unsupported' but at the time the complaint was filed it appears that [Matrix] believed that Mr. Drake leaving to go to work for a company that did not compete with Matrix, and then sometime after Mr. Drake left other employees of Matrix left and went to work for the same entity. *** And then Superior began to do work – Matrix believed – competing against Matrix, that would not be unreasonable for Matrix to believe that Mr. Drake had somehow carried away some trade secrets and given them to Superior.

Now, those allegations may be completely wrong. Matrix may never be able to prove that. *** But that doesn't mean it was brought in bad faith."

¶ 29 The court additionally found that sanctions were not warranted under the TSA as there was no "determination that the claims were brought in bad faith." The court again stated that "using an objective standard," "it wasn't unreasonable for Matrix to believe that its trade secrets may have been compromised."

¶ 30 After rejecting the TSA argument, the court proceeded to determine that the allegations in the complaint did not rise to the level of a Rule 137 violation to justify sanctions on that basis. The court first rejected Drake's contention that the complaint was "facially false" in alleging that Drake continued to work for Matrix after January 2013, particularly in light of Drake's acknowledgment that he attended an open house for Matrix in March 2013. The court then determined that the allegations that Drake "poached" Matrix employees were not sanctionable, reasoning:

"Using an objective standard, Matrix sees Mr. Drake go to work for Superior. Superior is not a competitor. Then within a few months after Mr. Drake leaving to go to Superior other employees of Matrix leave to go to Superior and Matrix believes that Superior is now competing with it. So it concludes that if Drake goes to Superior and Superior isn't competing with us and then other employees leave and go to Superior and now Superior is competing with us, it's Mr. Drake's fault. That could be completely wrong and they never prove it. But using an objective standard that doesn't appear to me to be an allegation that is so facially false that it would warrant some sanction. *** Using an objective standard, it is not an unreasonable allegation to make."

¶ 31 Next, the court addressed the allegations that Matrix had demanded Drake's laptop, and that Drake had refused to permit its inspection. The court found no support for these specific allegations and deemed them "false statements," but concluded that they did not warrant sanctions under Rule 137.

¶ 32 The court found that "Matrix never made an explicit demand to see Mr. Drake's computer; nor did Mr. Drake ever explicitly refuse to allow his computer to be examined." The court stated "there wasn't a reasonable bas[is] to make that allegation[] the way it was made." Nonetheless, noting that "[w]e are talking about two sentences *** out of a complaint that had 400 plus sentences in it" the court reasoned that "these two allegations don't appear to me to be the filing of a false or frivolous suit" and declined to find "these two false sentences make this document worthy of Supreme Court Rule 137 sanctions."

¶ 33 The court noted that it did not believe that these particular allegations could harm Drake: "[Drake] has done incredible work for all kinds of companies around the country at the very highest level. I can't imagine that these two false allegations would somehow hurt Mr. Drake." The court further reasoned that these "two sentences *** aren't really pled as a basis for liability" as "[t]here was no claim that [Matrix] should be entitled to recover damages against Mr. Drake because he didn't let us see his computer and he refused to turn it over to us."

¶ 34 The court further remarked that, "even if [it] were incorrect" and these two false statements violated Rule 137, the appropriate sanction would be dismissal—which had already occurred: "in light of the fact that we are looking at two allegations that don't form the basis of liability *** it seems to me that the appropriate sanction would be just what the Court did[,] dismiss that complaint. Dismiss those claims and to admonish the Plaintiff not to plead them again." The court thus concluded that no Rule 137 sanction was warranted.

¶ 35 Drake's counsel asked the court to clarify whether the dismissal of Matrix's complaint remained "without prejudice" to refile pursuant to section 2-1009 of the Code (735 ILCS 5/2-1009) (West 2012)), or if the court would order that the claims against Drake would be dismissed with prejudice. The court declined to grant dismissal with prejudice, explaining:

"No, I am not inclined to do that, because I think [section] 2-1009 allows a party unfettered discretion to dismiss their complaint. I am loathed [sic] to interfere with that and say they cannot replead the claim.

*** I think in light of the Court's comments today, that Matrix would put itself in a difficult position by attempting to bring those claims again. But I think it has the right to, if that is what it chooses to do. So I am disinclined to change the involuntary [sic] dismissal to an involuntary dismissal with prejudice."

¶ 36 Matrix's counsel subsequently asked the court if it had made a specific factual finding as to whether Drake had returned the flash drive to Richmond on January 28, 2013. The court stated that it had not done so, because it did not believe this particular fact question was "critical" in deciding whether sanctions were warranted. The court also commented that, even if Drake had returned a flash drive, that fact would not necessarily establish that Drake had not retained any of Matrix's trade secrets, as "it is certainly possibl[e] that Mr. Drake could have downloaded the material onto some other device."

¶ 37 On May 22, 2015, the court entered a written order denying Drake's motion for sanctions "for the reasons stated on the record." Drake filed a notice of appeal on June 19, 2015.

¶ 38

ANALYSIS

¶ 39 Before we address the merits of Drake's arguments, we note that we have appellate jurisdiction. Our supreme court has held that a voluntary dismissal pursuant to section 2-1009 of the Code (735 ILCS 5/2-1009 (West 2012)) is a final order, appealable by the defendant. *Kahle v. John Deere Company*, 104 Ill. 2d 302, 305-07 (1984); *Swisher v. Duffy*, 117 Ill. 2d 37 (1987). In this case, following the order granting voluntary dismissal pursuant to section 2-1009, the only outstanding matter for resolution was Drake's motion for sanctions. Thus, the subsequent May 22, 2015 ruling denying that motion terminated the litigation and operated as a final order. See *Valdovinos v. Luna-Manalac Medical Center, Ltd.*, 307 Ill. App. 3d 528, 538 (1999) ("A judgment is final for appeal purposes if it determines the litigation on the merits or some definite part thereof so that, if affirmed, the only thing remaining to be done by the trial court is to proceed with execution on the judgment.") Thus, we have appellate jurisdiction pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. Jan. 1, 2015).

¶ 40 On appeal, Drake argues that the court erred in declining to impose sanctions against Matrix, pursuant to either its inherent authority to manage its docket, Supreme Court Rule 137, or section 5(i) of the TSA. He also argues that the court erred in declining to decide the fact question of whether Drake had returned Matrix's information on January 28, 2013. We address each of these arguments in turn.

¶ 41 Our precedent recognizes that a trial court may impose sanctions, including dismissal of a cause of action with prejudice, based on its "inherent authority to control its docket." *Sander v. Dow Chemical Company*, 166 Ill. 2d 48, 65-66 (1995); *Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 65 ("A trial court has inherent authority to control its docket and impose sanctions for failure to comply with a court order."). This inherent authority "is necessary to prevent undue

delays in the disposition of cases caused by abuses of procedural rules, and also to empower courts to control their dockets." *Sander*, 166 Ill. 2d at 66. "The purpose of imposing sanctions" under the court's inherent authority "is to coerce compliance with court rules and orders, not to punish the dilatory party." *Id.* at 68.

¶ 42 "Reversal of a trial court's decision to impose a particular sanction is only justified when the record establishes a clear abuse of discretion." *Id.* at 67. "A trial court abuses its discretion only if it acts arbitrarily ***, exceeds the bounds of reason and ignores recognized principles of law *** or if no reasonable person would take the position adopted by the court." (Internal quotation marks omitted.) *Alm v. Loyola University Medical Center*, 373 Ill. App. 3d, 1, 4 (2007). Under the record before us, we cannot say that no reasonable court would decline to sanction Matrix.

¶ 43 Drake's appellate brief suggests that, pursuant to its inherent authority, the court should have sanctioned Matrix for "[u]sing the courthouse to injure Drake and to restrain competition, through false allegations and perjured testimony." Drake argues that his emails to Richmond in January 2013 proved that he "returned all of Matrix's secrets" at the time of his resignation. Drake further argues that, once the amended complaint dropped the trade secret count, "Drake's sole liability was for breach of contract," which was premised on the allegations—found by the trial court to be false—that Drake refused a demand by Matrix to inspect his computer. Drake argues that the court "abused [its] discretion in refusing to award sanctions in the face of knowing and repeated perjury by Richmond on behalf of Matrix" as well as "knowing omissions and misstatements designed to create the impression of wrongdoing by Drake without any facts."

¶ 44 We disagree. First, Drake's argument suggests that the court should have used its inherent authority to sanction Matrix and its counsel as punishment for pleading false allegations

and Richmond's alleged "perjury" at the evidentiary hearing. Yet, the purpose of imposing sanctions under the court's inherent authority to control its docket "is to coerce compliance with court rules and order, not to punish the dilatory party." *Sander*, 166 Ill. 2d at 68. Drake does not identify any court order that was violated so as to invoke this authority. Further, as the court recognized, since Matrix's complaint had already been voluntarily dismissed, the purpose of imposing a sanction to coerce compliance with court orders no longer applied.

¶ 45 Moreover, although the trial court did find that two particular allegations in the complaint—Matrix's demand for Drake's computer, and Drake's alleged refusal to return it—were false, the court specifically found that these allegations were not the primary basis of liability alleged by Matrix. The court apparently reasoned that, whether or not Drake had complied with a demand to return his laptop computer, that fact question did not conclusively determine whether he may have brought Matrix's trade secrets to Superior. Further, the court explained that it did not find that it was objectively unreasonable for Matrix to suspect, at the time of the allegations, that Drake may have brought Matrix's trade secrets to Superior. Finally, we note that although the court found Drake more credible, it did not make a finding of "perjury" by Richmond, as alleged by Drake's appellate briefing. For all of the above reasons, we cannot say that the trial court abused its discretion in declining to impose any sanction pursuant to its inherent authority to control its docket.

¶ 46 We similarly decline to find that the court abused its discretion in declining to award sanctions against Matrix, or its counsel, pursuant to Rule 137. That rule provides, in pertinent part:

"The signature of an attorney or party constitutes a certificate by him that he has read the pleading *** 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 *** is signed in violation of this rule, the court *** may impose upon the person who signed it, a represented party, or both, an appropriate sanction, 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 ***including a reasonable attorney fee." Ill. S. Ct. R. 137 (eff. Jan. 4, 2013).

¶ 47 "The purpose of Rule 137 is to prevent parties from abusing the judicial process by imposing sanctions on litigants who file vexatious and harassing actions based upon unsupported allegations of fact or law. [Citation.] The party seeking to have sanctions imposed by the court must demonstrate that the opposing litigant made untrue and false allegations without reasonable cause. [Citation.] Rule 137 will be strictly construed because it is penal in nature. [Citation.] Using an objective standard, the trial court must determine whether a party made a reasonable inquiry into the facts and law supporting their allegation to meet the burden of Rule 137." *Dismuke v. Rand Cook Auto Sales*, 378 Ill. App. 3d 214, 217 (2007).

¶ 48 "The standard for evaluating a party's conduct under Rule 137 is one of reasonableness under the circumstances existing at the time of the filing." *Cook v. AAA Life Insurance Co.*, 2014 IL App (1st) 123700, ¶ 64. "Thus, [i]f a reasonable inquiry into the facts to support the

filing has not been made to ensure that the facts stated are well grounded, the party, the party's attorney, or both are subject to an appropriate sanction ***." *Id.* However, "[t]he decision whether to impose sanctions under Rule 137 is committed to the sound discretion of the circuit judge, and that decision will not be overturned unless it represents an abuse of discretion."

Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 487 (1998).

¶ 49 Drake's brief argues that Rule 137 sanctions are warranted because there was "no factual basis to sue Drake," and that Matrix and its counsel "tried to manufacture one by omitting material facts that they knew and provided perjured testimony from Richmond."

¶ 50 Drake argues that Matrix's failure to plead that, in January 2013, Drake resigned and had an exit interview was a "conscious omission" of a material fact, or demonstrated a failure to properly investigate the facts. Further, Drake suggests that Matrix's "failure to seek any form of injunctive relief," and the fact that it "abandoned multiple defendants" in the amended complaint before seeking voluntary dismissal "without securing any promises from anyone" was "hardly a course of conduct this Court would expect from a company serious about protecting its trade secrets." Separately, Drake argues that sanctions should be awarded due to the "injuries to Drake's reputation and finances." Drake claims that the trade secret allegations made against him are "defamatory *per se*" and also cites the legal fees he has incurred in defending Matrix's lawsuit. Thus, he urges that it was unreasonable for the trial court not to, at the least, dismiss the complaint with prejudice, and award Drake's attorney fees. He also urges that he is entitled to additional damages for his reputational injury.

¶ 51 Despite these arguments, our review of the record, including the court's thorough explanation for its decision, leads us to conclude that it did not abuse its discretion in declining to award sanctions in this case. We acknowledge that the court found that two particular

allegations regarding Drake's computer were unfounded. Nevertheless, the court explained that, at the time of filing, it was not unreasonable for Matrix to believe that Drake had brought Matrix's trade secrets to Superior, or that Drake was involved in "poaching" Matrix's employees who joined Superior, which thereafter began to compete with Matrix.

¶ 52 We do not find that the specific arguments raised by Drake on appeal in support of Rule 137 sanctions necessarily indicate that Matrix's lawsuit was frivolous. To the extent that Matrix's complaint pleaded that Drake "severed" his relationship with Matrix in March 2013 (and did not plead the January meeting with Richmond), the trial court could reasonably find that this particular allegation was not facially false or in bad faith, especially as Drake acknowledged that he had worked at an "open house" for Matrix (albeit for one day) in March 2013.

¶ 53 Further, we do not agree with Drake's suggestion that the trial court must infer bad faith from Matrix's "failure to seek any form of injunctive relief," the fact that it abandoned claims against certain defendants in the amended complaint, and the fact that Matrix eventually sought voluntary dismissal. First, we note that Matrix's conduct of the litigation after commencing the lawsuit does not address the relevant Rule 137 inquiry as to whether its allegations were reasonably made *at the time of filing*. *Cook*, 2014 IL App (1st) 123700, ¶ 64. The trial court explicitly found that, at the time of filing, Matrix could reasonably suspect Drake's involvement in that (1) several Matrix employees went to Superior shortly after Drake did, and (2) Superior began marketing a competing product shortly thereafter. Further, although we recognize that the trial court found that two particular allegations regarding a demand for Drake's computer were false, the trial court emphasized that these particular allegations were not the primary basis for Matrix's claims. The trial court concluded that, viewing the allegations of the lawsuit in their entirety, even those two false allegations did not render the pleadings frivolous or sanctionable;

we cannot say that no reasonable court would reach the same conclusion. See *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067, 1074 (1995) (in reviewing denial of Rule 137 sanctions, "[a] trial court exceeds its discretion only where no reasonable person would take the view adopted by it.").

¶ 54 Furthermore, even if Drake proved his reputation was damaged by Matrix's allegations, it would not affect the reasonableness of Matrix's allegations at the time they were made. As we have explained, the trial court gave a cogent, reasonable explanation for its conclusion that Matrix's lawsuit was not frivolous, based on its knowledge of the circumstances at the time of filing. Thus, we cannot say that the trial court abused its discretion in declining to impose sanctions under Rule 137.

¶ 55 Finally, we agree with the trial court that Drake was not entitled to attorney fees pursuant to section 5(i) of the TSA, which permits a "prevailing party" to recover attorney fees if "a claim of misappropriation is made in bath faith." 765 ILCS 1065/5(i) (West 2012). Specifically, we agree that Drake was not a "prevailing party" for purposes of that statute.

¶ 56 On appeal, the parties dispute whether Matrix's voluntary dismissal made Drake a "prevailing party" under the TSA. As this is a question of statutory interpretation, our standard of review is *de novo*. *Alvarez v. Pappas*, 374 Ill. App. 3d 39, 43 (2007).

¶ 57 The respondents argue that Drake cannot be considered a prevailing party because there was no decision on the merits in his favor. Drake argues that section 5(i) should be liberally construed such that he is the "prevailing party" by virtue of Matrix's voluntary dismissal. He argues the remedial purpose of the statute would not be served if plaintiffs could bring trade secret claims in bath faith but avoid sanctions by voluntarily dismissing the claims prior to an adjudication on the merits.

¶ 58 Apparently, there is no controlling Illinois case defining a "prevailing party" under the TSA. Drake directs our attention to a pair of California state court decisions applying nearly identical fee-shifting language in a California statute, which concluded that defendants were prevailing parties after the voluntary dismissal of claims for misappropriation of trade secrets. *Cypress Semiconductor Corp. v. Maxim Integrated Products, Inc.*, 236 Cal. App. 4th 243 (Cal. Ct. App. 2015); *Beer & Wine Services, Inc. v. Dumas*, 2003 WL 1194724 (Cal. Ct. App. March 17, 2003).

¶ 59 On the other hand, Matrix and its counsel point out that the United States District Court for the Northern District of Illinois has held that a voluntary dismissal of a claim for misappropriation of trade secrets does *not* render the defendant a "prevailing party" entitled to attorney fees under the Act. *Organ Recovery Systems, Inc. v. Preservation Solutions, Inc.*, No. 11 C 4041, 2012 WL 2577500, *15 (N.D. Ill. 2012) (defendant "has not shown that ITSA permits a defendant to recover damages as a prevailing party when a plaintiff has dismissed its own claim.").

¶ 60 In reviewing other precedents discussing who is a "prevailing party" under analogous statutory fee-shifting provisions, we conclude that Matrix and its counsel have the better argument. That is, we agree with the trial court that a voluntary dismissal of a claim under the TSA, absent an adjudication on the merits or a settlement agreement, does not render the defendant a "prevailing party" entitled to attorney fees.

¶ 61 The United States Supreme Court, in interpreting fee-shifting provisions of the federal Fair Housing Amendment Act of 1988 and the Americans with Disabilities Act of 1990, held that a "prevailing party" is "one who has been awarded some relief by the court," through either a judgment on the merits or a settlement agreement enforced through a consent decree.

Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources, 121 S. Ct. 1835, 1839-40 (2001).

¶ 62 Since *Buckhannon*, a number of Illinois cases, addressing other statutes permitting recovery of attorney fees by a "prevailing party," have similarly required either a judgment on the merits, or a judicially enforceable settlement agreement. See, e.g., *Halpern v. Titan Commercial LLC*, 2016 IL App (1st) 152129, ¶¶ 14-15 (under Commercial Broker's Lien Act, "a party is a 'prevailing party' for the purposes of awarding attorney fees when a judgment is entered in his favor and he achieves some sort of permanent affirmative relief after adjudication on the merits" but not "by merely the grant of an interlocutory motion for a preliminary injunction"); *Rock River Times v. Rockford Public School District*, 2012 IL App (2d) 110879 (plaintiff newspaper was not a "prevailing party" entitled to attorney fees under Freedom of Information Act when it achieved the desired outcome of its lawsuit, public release of a letter, without a judgment on the merits); *City of Elgin v. All Nations Worship Center*, 373 Ill. App. 3d 167 (2007) (religious group sued by city for violating a zoning ordinance was not "prevailing party" entitled to fees under Illinois Religious Freedom Restoration Act, despite the city's dismissal of its claims against the religious group without prejudice).

¶ 63 Drake does not identify any convincing reason why we should depart from this precedent to construe the term "prevailing party" in section 5(i) more broadly than our court's interpretation of analogous statutory provisions. Thus, we conclude that the voluntary dismissal of Matrix's claims did not render Drake a "prevailing party" entitled to attorney fees under section 5(i).

¶ 64 Moreover, even if Drake could be considered a "prevailing party," we note that there was no finding that Matrix's misappropriation claim was brought in "bad faith" within the meaning of section 5(i). Drake's appellate brief contends that Drake established that Matrix brought and

maintained the lawsuit against Drake in bad faith "purely to injure Drake." However, the court made no such finding. To the contrary, the court found that Matrix could reasonably suspect that Drake may have taken its trade secrets to Superior. Notably, Drake does not attempt to argue that the trial court's factual finding of a lack of bad faith was against the manifest weight of the evidence. See *Madison Miracle Productions, LLC v. MGM Distribution Co.*, 2012 IL App (1st) 112334, ¶ 39 (factual findings at evidentiary hearing on the issue of personal jurisdiction are reviewed "deferentially under the manifest weight of the evidence standard"); *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd.*, 384 Ill. App. 3d 849, 859 (2008) ("[w]hen contradictory testimony *** is given at a bench trial, an appellate court will not disturb the trial court's factual finding based on the testimony unless a contrary finding is clearly apparent."). Just as we decline to find error in the court's conclusion that Matrix's allegations were not sanctionable under Rule 137, we find no reason to disturb the court's conclusion that Matrix had not acted in bad faith, which independently precludes an award of attorney fees under the TSA.

¶ 65 Finally, we address Drake's argument that the trial court erred by failing to make a factual determination as to whether, on January 28, 2013, Drake had given Richmond a flash drive containing all Matrix-related information from his personal computer. Drake criticizes the court's remarks that, even if Drake had returned a flash drive, it was possible that Drake could have downloaded the material onto some other device. Drake argues that the court improperly required Drake to prove a negative proposition—that he had not retained Matrix's information. Drake argues it "was incumbent upon Matrix to offer proof that Drake kept something, and the only proof it offered was the testimony of perjurer Richmond." Drake urges that we "should find that, as a matter of law, *** Drake demonstrated that he returned all Matrix property," or that we should remand and direct the trial court to decide this fact question.

¶ 66 Drake's argument is not convincing, considering that this was a hearing on Drake's motion for sanctions, and not a trial on the merits of Matrix's claims against Drake. The suggestion that Matrix had to "pro[ve] that Drake kept something" in order to avoid being sanctioned is simply wrong. Rather, as recognized by the trial court, the relevant inquiry in determining the sanctions motion was the reasonableness of the allegations at the time they were made. As the court emphasized, even if an allegation is eventually found to be false, this does not necessarily mean that the underlying action was frivolous or brought in bad faith.

¶ 67 Drake cites nothing to suggest that, in order to decide a motion for sanctions, the court must resolve every factual conflict at an evidentiary hearing. As the court explained, it determined that this particular fact question was not necessary to its determination that Matrix's allegations were not in bad faith. The trial court could reasonably conclude that, even if it believed Drake's testimony regarding the flash drive, Matrix's allegations did not rise to the level of sanctionable conduct. Thus, we decline to find that the trial court erred in deciding the sanctions motion without making this particular factual finding.

¶ 68 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 69 Affirmed.