2018 IL App (2d) 170329-U
No. 2-17-0329
Order filed March 20, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF FREDERICK VELASCO BAIT-IT	)	Appeal from the Circuit Court of McHenry County.
Petitioner-Appellee,	)	
and	)	No. 15-DV-518
DOUGLAS PETERSON,	)	
Respondent-Appellant	)	Honorable Michael E. Coppedge,
(Lauren Cohen, Appellant).	)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in awarding petitioner sanctions under Rule 137: despite respondent's assertion that he had merely repeated what he had been told, respondent had accused petitioner's attorney of offering respondent an illegal bribe.

¶ 2 Respondent, Douglas Peterson, and his attorney, Lauren Cohen, appeal from an order awarding $900 in attorney fees to petitioner, Frederick Velasco Bait-It (who goes by Samantha), as a sanction under Illinois Supreme Court Rule 137 (eff. July 1, 2013). We affirm.

¶ 3 Peterson filed a petition in a Connecticut court, seeking to annul his marriage to Bait-It on grounds of fraud. The court entered a default judgment against Bait-It on April 28, 2015. However, the court vacated the judgment on May 20, 2016. In the interim, on June 17, 2015, Bait-It filed a petition for dissolution of marriage in the circuit court of McHenry County. On August 20, 2015, that court stayed proceedings on Bait-It's petition "pending further order of the Connecticut Court on the annulment matter pending there."

¶ 4 On September 15, 2016, Peterson filed a second annulment petition in a different Connecticut judicial district. On October 14, 2016, Peterson's first annulment petition was dismissed. Bait-It subsequently moved to lift the stay of the Illinois dissolution proceedings. On February 8, 2017, Bait-It moved to impose sanctions under Rule 137. Bait-It sought to sanction Peterson and Cohen for a statement appearing in Peterson's response to the motion to lift the stay. On February 14, 2017, the trial court granted the motions to lift the stay and to impose sanctions on Peterson and Cohen. On June 2, 2017, Bait-It moved for voluntary dismissal of the McHenry County proceedings on the basis that a judgment for dissolution had been entered in Connecticut pursuant to a settlement between the parties. On June 20, 2017, the court granted the motion. The only issue raised on appeal is whether the trial court erred in entering sanctions against Peterson and Cohen.

¶ 5 We initially note that Bait-It has not filed a brief in this appeal. Nevertheless, the record and the issues raised on appeal are such that review of the merits is appropriate under *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 6 Rule 137 provides, in pertinent part, as follows:

> "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. *** 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 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. R. 137 (eff. July 1, 2013).

Attorney fees are properly awarded "where movant demonstrates his opponent has pled statements which he knew, or should have known, to be untrue." *Heritage Pullman Bank & Trust Co. v. Carr*, 283 Ill. App. 3d 472, 479 (1996). "The determination of whether to impose sanctions generally rests within the sound discretion of the trial court, whose decision is entitled to great weight and will not be disturbed on review absent an abuse of discretion." *Toland v. Davis*, 295 Ill. App. 3d 652, 654 (1998). "An abuse of discretion occurs only where no reasonable person could agree with the position taken by the trial court." *In re Estate of Wright*, 377 Ill. App. 3d 800, 803–04 (2007).

¶ 7 Peterson and Cohen first argue that "when a claim is dismissed with prejudice against a defendant it is considered abandoned as a matter of law." Peterson and Cohen note that the

proceedings in Connecticut were settled and that the Illinois proceedings were voluntarily dismissed. They argue that "[w]hen a Voluntary Dismissal occurs pursuant to a Settlement Agreement, which is a Dismissal with Prejudice because a Settlement is final and binding on the parties acts as a bar to further proceedings." Here, however, sanctions were entered *before* the settlement of the Connecticut action and the voluntary dismissal of the dissolution action in Illinois. The claim for dissolution had been abandoned, but not the claim for sanctions, which had already been resolved. Accordingly, the argument is meritless.

¶ 8 Peterson and Cohen next argue that the sanctions must be vacated because they were entered without an evidentiary hearing. At the hearing on the motion for sanctions, the trial court stated as follows:

> "It is not contemplated that this will be an evidentiary proceeding. It is the Court's belief that based upon the filings, this is a matter that warrants legal argument, but is not evidentiary in nature."

¶ 9 Cohen was represented by counsel at the hearing on the motion for sanctions. Her attorney expressly stated that it was unnecessary to hold an evidentiary hearing. Accordingly, Cohen, through counsel, waived whatever right to an evidentiary hearing she might otherwise have had. See generally *Davis v. City of Chicago*, 2014 IL App (1st) 122427, ¶ 75 (quoting *Gallagher v. Lenart*, 226 Ill. 2d 208, 229 (2007), quoting *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill .2d 307, 326 (2004)) ("Waiver ' "consists of an intentional relinquishment of a known right" ' "). Cohen herself, as Peterson's attorney, did not object to the trial court's decision to forgo an evidentiary hearing. Accordingly, Peterson forfeited whatever right to an evidentiary hearing he might otherwise have had. See *Meeks v. Great America, LLC*, 2017 IL App (2d) 160655, ¶ 14 (quoting *Tokar v. Crestwood Imports, Inc.*, 177 Ill. App. 3d 422, 434

(1988)) (" 'A party cannot sit idly by while the trial court undertakes a course of action and then allege error in that regard.' ").

¶ 10 Peterson and Cohen next argue that the statement for which sanctions were entered was not sanctionable. The record reflects that Bait-It came to the United States from the Philippines on a "Fiancée Visa." In his written response to Bait-It's motion to lift the stay of the McHenry County dissolution proceedings, Peterson contended that Bait-It "would rather obtain a dissolution than an annulment as it directly affects her immigration status and the pendency of her obtaining her green card." The trial court imposed sanctions for the following statement in Peterson's response:

> "[Bait-It], via counsel, contacted [Peterson], during the pendency of [the] original annulment action, and offered to tender two thousand dollars ($2,000.00) to drop the fraud charges in the annulment action and consent to pursuing a dissolution of marriage. Of course, [Peterson] declined. Moreover, [Peterson] spoke to representatives from the United States Citizenship and Immigration Services and obtained knowledge that said 'bribery' was completely illegal."

The trial court awarded sanctions on the basis of Peterson's accusation that Bait-It's attorney had offered Peterson an illegal bribe.

¶ 11 Peterson and Cohen argue that his statement was not untrue; he merely indicated that he had been told that Bait-It's attorney's conduct was illegal. They also note that the word "bribery" was placed in quotation marks. According to Peterson and Cohen, Peterson had no malicious intent and never said that Bait-It's attorney was a briber. The trial court found that Peterson did not merely repeat what he had been told; rather Peterson indicated that he had "obtained *knowledge*" (emphasis added) that the offer from Bait-It's attorney was illegal. In

effect, Peterson indicated not merely that he had been told that the offer was illegal, but that he *knew* that the offer was illegal. We agree with the trial court's reasoning. Furthermore, as the trial court observed, it is of no consequence that the word "bribery" was in quotation marks; the thrust of the statement is that Bait-It's attorney violated the law by offering money to Peterson.

¶ 12 In view of the foregoing, we cannot say that the trial court abused its discretion in imposing sanctions under Rule 137 on Peterson and Cohen. We therefore affirm the judgment of the circuit court of McHenry County.

¶ 13 Affirmed.