

**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  
SECOND DISTRICT

---

KELLY ZUERNER,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 17-L-839
	)	
LINDA GOTTSCHALK and JEANINE	)	
ZUERNER,	)	
	)	
Defendants	)	Honorable
	)	Ronald D. Sutter,
(Jeanine Zuerner, Defendant-Appellant).	)	Judge, Presiding.

---

JUSTICE McLAREN delivered the judgment of the court.  
Justices Hutchinson and Zenoff concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in denying defendant sanctions under Rule 137, as defendant provided no evidence to support her assertions as to why plaintiff's complaint was sanctionable.

¶ 2 Defendant, Jeanine Zuerner, appeals the trial court's order denying her motion for sanctions against plaintiff, Kelly Zuerner. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In July 2017, plaintiff sued defendant and her mother, Lisa Gottschalk, alleging defamation, intentional infliction of emotional distress, and conspiracy to defame in connection with an undated letter that Gottschalk sent to plaintiff's employer, a high school in Downer's Grove. Defendant was the ex-wife of plaintiff's husband, and there was ongoing contentious postdecree litigation. The letter accused plaintiff of engaging in unauthorized use of school property.

¶ 5 Defendant moved to dismiss the complaint. The trial court allowed plaintiff to amend the complaint, noting that the complaint had inadequate allegations as to intentional infliction of emotional distress and conspiracy and that defendant's involvement in the matter was not clear.

¶ 6 On October 2, 2017, plaintiff filed an amended complaint that named only Gottschalk and alleged only intentional infliction of emotional distress. The amended complaint also stated that the letter was discovered by plaintiff in February 2016. On October 3, 2017, plaintiff filed a motion to voluntarily dismiss without prejudice.

¶ 7 On October 18, 2017, defendant filed a motion for sanctions under Illinois Supreme Court Rule 137 (eff. July 1, 2013). The motion stated that, upon information and belief, plaintiff and her counsel knew that there was no good-faith factual or legal basis for the original complaint and that it was filed for purposes of harassment. The motion also stated that, upon information and belief, the date the letter was discovered was intentionally omitted from the original complaint because the limitations period had expired. The motion also alleged that, upon information and belief, plaintiff and her counsel failed to conduct a reasonable inquiry into the facts and plaintiff did not suffer emotional trauma.

¶ 8 At the hearing on the motion for voluntary dismissal, the trial court stated that the suit was "crazy" but that it was not going to impose sanctions. Defendant's counsel responded that

he wanted a hearing on the motion for sanctions, and the court set a hearing date but again noted that it was not inclined to impose sanctions under the circumstances of the case.

¶ 9 At the hearing, defendant’s counsel stated “I’m going to speculate a little” and argued that, while the letter was arguably defamatory *per se*, plaintiff’s counsel knew that the limitations period had run for a defamation claim. Defendant’s counsel also stated that defendant had nothing to do with the letter and was upset with Gottschalk when she learned of it. Counsel said that he “would suggest” that, if defendant were to testify at an evidentiary hearing, she would make it clear that plaintiff was the driving force behind the post-decree litigation. He also stated though “again I’m speculating here,” that plaintiff’s counsel, who was hired in regard to the postdecree litigation, filed the action to help “put [defendant] off of this.” Defendant did not provide any evidence.

¶ 10 The trial court, noting its discretion, denied the motion, stating that the case did not rise to the level of warranting Rule 137 sanctions. Defendant appeals.

¶ 11 **II. ANALYSIS**

¶ 12 Defendant contends that the trial court erred in denying her motion for sanctions, arguing that plaintiff’s complaint lacked allegations against defendant and was otherwise frivolous.

¶ 13 Rule 137 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. \*\*\* 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).

¶ 14 Whether to grant Rule 137 sanctions is within the trial court’s discretion, and we will not reverse its decision absent an abuse of discretion. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 579 (2000).

¶ 15 Under Rule 137, sanctions may be granted when: (1) a pleading, motion, or other paper is not well grounded in fact or is not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; or (2) it is made for purposes such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *People v. Stefanski*, 377 Ill. App. 3d 548, 551 (2007).

¶ 16 “When a party asks that Rule 137 sanctions be imposed, that party bears the burden of proof.” *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 243 (2000). 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. *Toland v. Davis*, 295 Ill. App. 3d 652, 656 (1998); *Edward Yavitz Eye Center, Ltd. v. Allen*, 241 Ill. App. 3d 562, 569 (1993). If 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 that may include an order to pay the other party's attorney fees and costs. *Chicago Title & Trust Co. v. Anderson*, 177 Ill. App. 3d 615, 621 (1988). "Because of Rule 137's penal nature, courts must construe it strictly, must make sure the proposing party has proven each element of the alleged violation with specificity, and should reserve sanctions for the most egregious cases." *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1032 (2006). A court should not impose sanctions on a party for failing to conduct an investigation of facts and law when the party presents objectively reasonable arguments for his or her position, regardless of whether those arguments are unpersuasive or incorrect. *Id.* at 1034.

¶ 17 "It is well settled that '[a] motion for sanctions must meet minimum requirements of specificity so that a responding party has an opportunity to challenge and defend against the allegations made and so that fees and costs may be fairly apportioned.'" *Whitmer v. Munson*, 335 Ill. App. 3d 501, 512-13 (2002) (quoting *Cmarko v. Fisher*, 208 Ill. App. 3d 440, 445 (1990)). Thus, "[w]hen relief under Rule 137 is sought, the petition must meet certain specificity requirements. It must identify: (1) the offending pleading, motion, or other paper; (2) which statements in the document were false; and (3) the fees and costs that directly resulted from the untrue allegations." *In re Marriage of Adler*, 271 Ill. App. 3d 469, 476 (1995). "Such specificity is necessary to afford the responding party an opportunity to challenge and defend the allegations alleged to be untrue and to enable the trial court to make a determination of the reasonable expenses incurred as a consequence thereof." *Id.*

¶ 18 Here, the court did not err in denying the motion. Defendant failed to assert specific facts in order to properly allege that plaintiff's complaint was not well grounded in fact or law when it was filed. All of defendant's allegations were broad conclusory statements based "upon information and belief." Indeed, at the hearing, defendant presented no evidence, admitted that

the letter might be defamatory *per se*, and merely speculated that plaintiff filed the complaint knowing that the limitations period had run and for the purpose of harassing defendant in connection with the postdecree litigation. Defendant bore the burden of proof and was allowed a hearing on her motion, but then failed to provide evidence at that hearing to support the imposition of sanctions. Accordingly, the court did not abuse its discretion in denying the motion.

¶ 19

### III. CONCLUSION

¶ 20 The trial court did not abuse its discretion in refusing to order sanctions. Accordingly, the judgment of the circuit court of Du Page County is affirmed.

¶ 21 Affirmed.