2019 IL App (1st) 180087-U

SIXTH DIVISION
APRIL 19, 2019

Nos. 1-18-0087 & 1-18-1076 Consolidated

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

UNITED EQUITABLE INSURANCE COMPANY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 15 CH 5312
	)	
ORALIA MICHELE and JESUS LARES,	)	Honorable
	)	Anna Helen
	)	Demacopoulos,
Defendants-Appellees.	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The trial court did not err in entering summary judgment with respect to the plaintiff's declaratory judgment action. The trial court did not err in entering summary judgment in favor of the defendants on their counterclaim. The trial court did not abuse its discretion in the amount of fees, penalties, and costs awarded to the defendants. The defendants are permitted to file a supplemental fee petition for the trial court's consideration.

¶ 2 The plaintiff-appellant, United Equitable Insurance Co. (plaintiff), filed a declaratory judgment action in the circuit court of Cook County seeking to rescind an automobile insurance

policy it had issued to the defendants-appellees, Oralia Michele (Oralia) and Jesus Lares (Jesus) (collectively, the defendants). Oralia applied for the policy and was the primary insured while Jesus was named as an additional insured. The plaintiff sued Oralia and Jesus, and initially their son, Daniel. The circuit court granted summary judgment in favor of the defendants and held that the plaintiff could not rescind its policy of insurance. The defendants subsequently filed a counterclaim seeking attorney fees and costs on the basis that the plaintiff had acted in bad faith when it denied them coverage under the subject insurance policy. The defendants claimed support for their counterclaim under Section 155 of the Illinois Insurance Code (Code) (215 ILCS 5/155(1) (West 2016)). The defendants moved for summary judgment on their counterclaim, which the trial court granted and awarded attorney fees and costs. The plaintiff now appeals both orders. For the following reasons, we affirm the judgment of the circuit court of Cook County and we remand to permit the circuit court's consideration of a supplemental petition for defendants' attorney fees and costs incurred on appeal.

¶ 3 BACKGROUND

¶ 4 The defendants' three vehicles were insured by the plaintiff through a policy issued in 2013. On February 20, 2014, the defendants were involved in an accident as passengers while their 21-year-old son, Daniel Lares (Daniel), was driving one of their vehicles. The other drivers involved in the accident filed a tort action against the defendants and Daniel.[1] Oralia submitted a claim to the plaintiff for coverage. She explained in her claim that she had given Daniel permission to drive that day because she was feeling "unwell" and "was in no condition to drive" and that Jesus could not drive because he does not have a driver's license.

[1]The underlying tort case is not part of this appeal.

¶ 5 On March 31, 2015, the plaintiff filed a single-count complaint seeking a declaration that it had no obligation to the defendants under the policy.[2] The plaintiff's complaint alleged that Oralia's October 2013 application for insurance only listed Oralia and Jesus as members of the household. Further, the application failed to disclose Daniel as a driver and a member of the household, as well as Oralia's brother, Elpidio Michele (Elpidio), as a member of the household. The plaintiff alleged in its complaint: "Defendants' failure to disclose *** members of the household, was a substantive material misrepresentation and breached the agreement and the terms and conditions of the Application for Insurance and policy of insurance." The complaint sought a declaration that the plaintiff had no obligation to defend or indemnify the defendants or Daniel in the underlying tort case.

¶ 6 On March 23, 2016, the defendants filed an answer denying the material allegations of the plaintiff's complaint. At the same time, the defendants filed a counterclaim seeking attorney fees and costs pursuant to Section 155 of the Code (215 ILCS 5/155(1) (West 2016)) on the basis that the plaintiff had acted in a vexatious and unreasonable manner by denying coverage under the policy. The defendants alleged in their counterclaim that "[r]ather than investigate the facts of the loss reported," the plaintiff "set about determining a way in which it could deny coverage and avoid defending" the defendants. The counterclaim further alleged that the plaintiff "focused on the insurance application and, without even a cursory examination of the facts surrounding [Daniel's] true residency status, summarily determined that a material misrepresentation was made by [the defendants] in their insurance application."

[2]The plaintiff's complaint was originally filed against the defendants *and* Daniel, but Daniel moved to quash service on the basis that he was improperly served with substitute service at the defendants' address and not his address. The plaintiff later agreed to voluntarily quash service on Daniel and was given leave to issue an alias summons.

¶ 7 The defendants then moved for partial summary judgment on the plaintiff's declaratory judgment action, arguing that they were "entitled to a declaration that plaintiff had a duty to defend and indemnify [the defendants] in [the] underlying tort case." Their motion argued: "Plaintiff's sole basis for denying coverage was that Daniel and Elpidio's status as residents of the household were misrepresented. At no time from October 21, 2013 through February 20, 2014 did Daniel or Elpidio reside at Defendants' home." The defendants attached several documents purporting to prove that Daniel lives at a separate residence in Cicero (the Cicero residence) and not with the defendants at their house in Chicago (the Chicago residence). Those documents included: a medical bill addressed to Daniel at the Cicero residence; a copy of Daniel's vehicle registration with the Cicero residence; affidavits from Daniel, Oralia, and Jesus all stating that Daniel has not lived at the Chicago residence since 2010; and an affidavit from Daniel's roommate stating that he and Daniel have lived together at the Cicero residence since September 2013. Each of the affidavits from Daniel, Oralia, and Jesus also stated that Daniel does not drive the defendants' three cars regularly and that he had driven their cars less than ten times in past three years.

¶ 8 In response to the defendants' motion for partial summary judgment, the plaintiff argued that questions of fact existed as to whether the defendants had made material misrepresentations in their application. The plaintiff noted that several of the documents attached to the defendants' motion referencing Daniel's Cicero residence were either not dated at all or dated after the insurance application was submitted. The plaintiff also noted that the police report from the accident reflected that Daniel's driver's license listed the Chicago residence as his address, even though he claimed to have moved out four years prior. Additionally, the plaintiff stressed that the

defendants "own three vehicles at their home address -- yet only one of them is a licensed driver, and two of the vehicles are owned by Jesus, the unlicensed person." The plaintiff argued that all of this circumstantial evidence raised questions of fact surrounding the accuracy of representations in the defendants' application, rendering summary judgment improper.

¶ 9 In their reply in support of their motion, the defendants argued that the plaintiff did not rebut the supporting documentation proving that Daniel has lived at the Cicero residence since 2013, particularly the affidavits. The defendants also highlighted that the plaintiff had an affidavit from Daniel's roommate in its own claim file, dated August 11, 2014, which stated that Daniel lives with him at the Cicero residence.

¶ 10 Following a hearing on the defendants' motion[3], the trial court entered an order granting the defendants' motion for partial summary judgment with respect to the plaintiff's request for declaratory judgment. The trial court's order stated that the plaintiff "has a duty to defend and indemnify the underlying tort claim under [the] policy."

¶ 11 The case then proceeded on the defendants' counterclaim for attorney fees and costs on the basis that the plaintiff had denied coverage in bad faith. The defendants issued discovery and filed a motion to compel discovery from the plaintiff. The defendants subsequently filed a second motion to compel, arguing that the plaintiff had failed to provide several amended interrogatory responses.[4] The plaintiff did not respond to the second motion to compel and the defendants eventually filed a third motion to compel. The defendants' third motion to compel

[3]The record indicates that a hearing was held on the defendants' motion. However, a transcript from the hearing is not included in the record on appeal.

[4]It is unclear from the record whether the trial court ever ruled on the defendants' first or second motions to compel.

argued that the plaintiff had repeatedly cancelled scheduled depositions of the plaintiff's witnesses.

¶ 12 The trial court granted the defendants' third motion to compel and ordered the plaintiff to produce the requested witnesses for depositions within 28 days. The order warned the plaintiff that if the witnesses were not produced by the deadline, the plaintiff would be barred from presenting any testimony by deposition or otherwise. The plaintiff did not present any witnesses by the deadline and was thereafter barred from presenting any testimonial evidence.

¶ 13 On September 21, 2018, the defendants filed a motion for summary judgment on their counterclaim for attorney fees and costs. In their motion, the defendants argued that the plaintiff never meaningfully investigated the merits of the accident or whether Daniel actually lived at the Chicago residence. The defendants asserted that the plaintiff had an affidavit from Daniel's roommate stating that Daniel had lived with him at the Cicero residence since 2013. The defendants argued that the plaintiff ignored that affidavit and without contrary evidence, still denied the defendants coverage on the basis that Daniel lived with the defendants at their Chicago residence. The defendants asserted that "[t]he information contained in Daniel's roommate's affidavit was sufficient to place any reasonable insurer on notice that its coverage position required additional investigation or that it was wrong." The defendants additionally pointed out that the plaintiff's own claim file regarding the defendants' claim under the policy included a note which stated "AT NO TIME IS ANY OFFER TO BE MADE!!!" The defendants noted that the plaintiff's claim file was the only evidence which plaintiff had produced in response to discovery requests from defendants. Further, plaintiff had failed to produce any of the witnesses that the defendants had repeatedly requested. The defendants' motion averred:

"[the plaintiff] is now barred from tendering any testimony in this matter rendering this case ready for disposition by summary judgment."

¶ 14 The plaintiff responded by laying out "the timeline of the events and Plaintiff's investigation," which it argued proved that it had not acted in a vexatious and unreasonable manner. In their reply in support of their motion, the defendants argued that there was still no question of fact precluding summary judgment in their favor. Specifically, the defendants claimed that there were various documents in the plaintiff's claim file which proved that the plaintiff "utterly failed to investigate" whether Daniel lived with the defendants or drove their vehicles regularly.

¶ 15 During the hearing on the defendants' motion[5], the defendants acknowledged that the record consisted of documents only and no testimonial evidence, but pointed out that that was the product of the plaintiff's own failure to comply with multiple discovery requests, including the court's order compelling it to produce witnesses for depositions, which it ignored. Thus, no witnesses testified for the plaintiff and the content of its claim file was its only evidence before the court.

¶ 16 Regarding that evidence, the trial court noted:

> "It is troubling that [the plaintiff] can't even get the correct date of the accident. [The plaintiff has] used the wrong date of the accident in all of [its] communication. *** [It doesn't] even have the facts of the accident. *** The only inquiry [it] made was making a phone call, and in that phone call there was a breakdown in

[5]New counsel substituted in for the plaintiff shortly before the hearing.

> communication based on a language barrier, and that is it. [It] did nothing else."

The trial court then concluded:

> "[T]here is nothing in the claims file that indicate[s] anything that [the plaintiff] did [was reasonable] in denying the claim and then rescinding the policy. There is definitely in this court's opinion a vexatious delay in responding to this claim. For all of those reasons, in addition to the hostile and obstructive conduct of [the plaintiff's] prior counsel *** [T]his court is very aware that we should be making our decisions based on the merits. But at some point in time, we also have to give some meaning to Section 155, and it is not intended to specifically punish an individual attorney. It is also to deter future conduct of this nature. It shouldn't have to last three years of litigation to get to this point. *** For all those reasons, the motion for summary judgment will be granted."

The trial court then entered an order granting summary judgment in the defendants' favor and issuing $15,000 in penalties against the plaintiff pursuant to Section 155 of the Code. The court also instructed the defendants to prepare a fee petition.

¶ 17 The defendants filed their fee petition, which sought $73,311.50 in attorney fees and costs for defending against the plaintiff's declaratory judgment action and for pursuing a bad faith counterclaim against the plaintiff. A detailed itemization of the tasks performed, time

recorded, and attorney billing rates was attached to the defendants' petition. The plaintiff responded by challenging the reasonableness of the fees incurred.

¶ 18 Following a hearing on the defendants' fee petition, the trial court found that the hourly rate was reasonable. However, the court found that there were several instances of excessive staffing and unnecessary tasks, and accordingly reduced the fee award by $6,699.50. The trial court granted the petition and awarded $66,013.15 in fees and $1,184.00 in costs, for a total of $81,013.15, including the prior $15,000 penalty. This appeal followed.

¶ 19 ANALYSIS

¶ 20 We note that we have jurisdiction to review this matter. The plaintiff filed a timely notice of appeal following the trial court's order entering summary judgment on the plaintiff's declaratory judgment action, and a second timely notice of appeal following the trial court's order awarding attorney fees and costs. This court consolidated both appeals. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 21 The plaintiff purports to identify numerous separate issues on appeal. However, several of the issues presented and their respective arguments are repetitive and overlapping. We have determined the scope our review to be the following three issues: (1) whether the trial court erred in granting summary judgment in favor of the defendants on the plaintiff's declaratory judgment action; (2) whether the trial court erred in granting summary judgment in favor of the defendants on their bad faith counterclaim; and (3) whether the trial court abused its discretion in awarding $81,013.15 in attorney fees, penalties, and costs to the defendants. We address each issue in turn.

¶ 22 The plaintiff first argues that the trial court erred in granting summary judgment in favor of the defendants on its declaratory judgment action. The plaintiff claims that questions of fact

existed because there were "serious questions about the credibility of the witnesses, with strong circumstantial evidence contradicting defendants' story." Specifically, the plaintiff relies on the fact that at the time of the accident, Daniel's driver's license listed the defendants' Chicago residence as his address. The plaintiff also relies on the fact that the defendants own three vehicles, even though Jesus does not currently have a valid driver's license.

¶ 23 The purpose of summary judgment is to determine if a material question of fact exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). Summary judgment should be granted only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2016); *Adams*, 211 Ill. 2d at 43. Summary judgment is a drastic measure and should be allowed only where the right of the moving party is clear and free from doubt. *Wells Fargo Bank, N.A. v. Norris*, 2017 IL App (3d) 150764, ¶ 19. We review appeals from summary judgment rulings *de novo*. *Id.*

¶ 24 Here, the trial court granted summary judgment to the defendants upon concluding that the plaintiff had no basis for rescinding its insurance policy issued to Oralia. Section 154 of the Illinois Insurance Code provides that an insurance policy can be voided when a false statement is made by the insured "with actual intent to deceive or materially affects either the acceptance of the risk or the hazard assumed by the [insurance] company." 215 ILCS 5/154 (West 2016). "Whether an insured's statements are material 'is determined by whether reasonably careful and intelligent persons would have regarded the facts stated as substantially increasing the chances of the events insured against, so as to cause a rejection of the application.' " *Direct Auto Insurance*

Co. v. Beltran, 2013 IL App (1st) 121128, ¶ 47 (quoting *Northern Life Insurance Co. v. Ippolito Real Estate Partnership*, 234 Ill. App. 3d 792, 801 (1992)).

¶ 25 At the outset, we note that the plaintiff failed to include in the record on appeal, a transcript of the hearing on the defendants' motion for partial summary judgment. Our supreme court has long held that in order to support a claim of error on appeal, the appellant has the burden to present a sufficiently complete record. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391–92 (1984)). "Any doubts arising from an incomplete record must be resolved against the appellant." *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 278 (2006). In the absence of transcripts, it is presumed that the trial court acted in conformity with the law and that the findings were based on the evidence presented. *Watkins v. Office of State Appellate Defender*, 2012 IL App (1st) 111756, ¶ 19. Thus, because the absence of a transcript in the record deprives us of the opportunity to know what occurred at the hearing, or the basis for the trial court's order, we must presume that the court followed the law and had a sufficient factual basis for its ruling. Further, our *de novo* review does not reveal any material issue of fact.

¶ 26 The pleadings and their attachments establish that Daniel has not lived with the defendants at their Chicago residence since 2010 and that he has never been a regular driver of the defendants' vehicles. The unrebutted affidavits especially support this. We are not persuaded by the plaintiff's arguments that Daniel's driver's license raised questions of fact because it listed the defendants' Chicago residence as his address. The plaintiff failed to show what additional steps it took to ascertain Daniel's true residence. There may be multiple explanations for Daniel's driver's license listing the defendants' address. Daniel's driver's license showing the defendants' address, as a single fact in isolation, fails to raise a material issue sufficient to negate

the trial court's action, particularly in light of the more compelling evidence indicating that Daniel lived at the Cicero residence.

¶ 27 The singular fact that Daniel was driving one of the defendants' vehicles on the day of the accident is also insufficient to establish that Daniel was a regular driver of the defendants' vehicles. Oralia, Jesus, and Daniel each submitted unrebutted affidavits stating that Daniel had driven the defendants' vehicles less than ten times in the past three years. Likewise, the defendants' ownership of three vehicles does not prove that Daniel was regular driver of any of the vehicles. It is also noteworthy that the record reflects that Daniel owned his own vehicle at the time of the occurrence.

¶ 28 The plaintiff dedicates the majority of its brief to arguing that Oralia made material misrepresentations on her application regarding Daniel. However, in its complaint it also alleged that Oralia had failed to disclose her brother, Elpidio, as a household member. The plaintiff only briefly mentions Elpidio in its brief in an effort to discredit Oralia. Thus, the plaintiff has effectively forfeited any argument that failure to disclose Elpidio justified denying the coverage at issue. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) ("[p]oints not argued [in appellant's opening brief] are forfeited"). In any case, failing to disclose Elpidio as a household member would not be considered a *material* misrepresentation as related to the denial of coverage under these facts.

¶ 29 Viewing the facts and circumstances of this case in their entirety, and without the transcript of the hearing, we cannot say that the trial court erred in granting summary judgment in favor of the defendants with respect to the plaintiff's complaint for declaratory judgment.

¶ 30 The plaintiff next argues that the trial court erred in granting summary judgment on the defendants' bad faith counterclaim pursuant to Section 155 of the Code. The plaintiff claims that there were "a lot of ambiguities surrounding the facts" of the defendants' claim, which created a *bona fide* dispute and precluded the award of attorney fees and penalties. The plaintiff urges that its decision to rescind the defendants' insurance policy was not done in bad faith because it reasonably believed that Daniel lived with the defendants and/or regularly drove their vehicles. It also argues that the conduct of its counsel should not be the basis for a bad faith claim.

¶ 31 Section 155 of the Code allows a trial court to award attorney fees, penalties, and costs in "any action by or against a company wherein there is in issue the liability of a company on a policy or policies of insurance or the amount of the loss payable thereunder, or for an unreasonable delay in settling a claim, and it appears to the court that such action or delay is vexatious and unreasonable." 215 ILCS 5/155(1) (West 2016). This section of the Code was enacted by the legislature to make lawsuits by policyholders economically feasible and to punish insurance companies for misconduct. *McGee v. State Farm Fire & Casualty Co.*, 315 Ill. App. 3d 673, 681 (2000). The key question in an action under Section 155 is whether the conduct of the insurance company was unreasonable and vexatious. *O'Connor v. Country Mutual Insurance Co.*, 2013 IL App (3d) 110870, ¶ 13. And the relevant inquiry is whether the insurer had a *bona fide* defense to the insured's claim. *Id.*

¶ 32 The record shows that the plaintiff merely *suspected* that Daniel lived with the defendants and/or regularly drove their vehicles. While there was some circumstantial evidence that may have caused the plaintiff to doubt or investigate the matter further, the plaintiff did not present evidence that it investigated the matter and that its investigation led to a *bona fide* dispute

warranting the rescission of the defendants' policy. This is especially true considering that the plaintiff's claim file contained an unrebutted affidavit from Daniel's roommate stating that Daniel has lived with him since 2013 at an address other than defendants and that the plaintiff obtained that affidavit *prior to rescinding the defendants' policy*. The plaintiff identified no action which it took to investigate further or contradict that affidavit. The plaintiff's claim file also contained a note which stated: "AT NO TIME IS ANY OFFER TO BE MADE!!!" This note suggests that the plaintiff had made a decision to deny the claim without any substantive investigation; this is indicative of bad faith.

¶ 33 Also, the trial court found that part of the plaintiff's vexatious and unreasonable behavior included "the hostile and obstructive conduct of [the plaintiff's] prior counsel." While the court's comment was improper, the court's order focused on the plaintiff's conduct in rescinding the defendants' insurance policy, not its counsel's behavior. Since our review of the record is *de novo*, we may affirm the trial court on any grounds found in the record. *Vulpitta v. Walsh Construction Co.*, 2016 IL App (1st) 152203, ¶ 22.

¶ 34 Ultimately, the record before us demonstrates that the plaintiff failed to raise a material question of fact as to whether it had a *bona fide* defense when it rescinded the defendants' insurance policy. The lack of testimonial evidence from the plaintiff is the product of the plaintiff's own failure to comply with the trial court's multiple discovery orders. We find that the trial court did not err in granting summary judgment in favor of the defendants pursuant to Section 155 of the Code.

¶ 35 Finally, the plaintiff argues that the trial court abused its discretion in awarding $81,013.15 in attorney fees, penalties, and costs to the defendants. The plaintiff argues that

defense counsel's billing rate was too high and that the total fee amount awarded is unreasonable because it exceeds the amount of property damage in the case.

¶ 36 In determining whether the attorney fee sought is reasonable under a fee-shifting statute, courts consider a number of factors, including: the skill and standing of the attorneys, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client, and whether there is a reasonable connection between the fees and the amount involved in the litigation. *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 102 (quoting *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 984 (1987)). The amount of the award is within the discretion of the trial court, and its decision will not be disturbed on appeal absent an abuse of discretion. *Bright Horizons Children's Centers, LLC v. Riverway Midwest II, LLC*, 403 Ill. App. 3d 234, 245 (2010). An abuse of discretion occurs when a trial court's decision is arbitrary, fanciful, unreasonable, or where no reasonable person would adopt the court's view. *Horlacher v. Cohen*, 2017 IL App (1st) 162712, ¶ 81.

¶ 37 The defendants attached to their fee petition, a detailed itemization of the tasks performed and time expended by their counsel. The record reflects that the court carefully considered these documents in light of the circumstances of the case. The trial court reduced the fees sought by $6,699.50, further attesting to its careful consideration.

¶ 38 We are not persuaded by the plaintiff's argument that the fees and costs awarded were an abuse of discretion because they exceeded the amount of property damage in the case. It is well established that in a fee-shifting case, the fact that the amount of the fees sought exceeds the

client's recovery, even by a large margin, does not justify rejection of the amount of fees sought. *Young*, 2015 IL App (1st) 131887, ¶ 104. We emphasize, as the trial court did, that the plaintiff protracted the litigation at times by failing to comply with legitimate, court-ordered discovery. That necessarily increased the defendants' attorney fees.

¶ 39 We also reject the plaintiff's argument that the defendants are not entitled to an award of attorney fees and costs because their counsel worked *pro bono* through a legal clinic. A primary purpose of Section 155 is to discourage insurer misconduct. See *Verbaere v. Life Investors Insurance Co.*, 226 Ill. App. 3d 289, 301-02 (1992) ("it might dilute that purpose if an insurance company is assessed fees under a reduced formula because of the fortuity that their insureds were represented by *pro bono* or public interest attorneys instead of private practitioners"). Moreover, the plaintiff should not benefit from the fact that the defendants were represented by *pro bono* counsel.

¶ 40 Under these facts and circumstances, it cannot be said that no reasonable person would adopt the view taken by the trial court. Accordingly, the trial court did not abuse its discretion in awarding $81,013.15 in attorney fees, penalties, and costs to the defendants.

¶ 41 We further note that, although the defendants have not explicitly requested reimbursement for their attorney fees and costs incurred in responding to the plaintiff's appeal, Section 155 of the Code covers both trials and appeals. *Statewide Insurance Co. v. Houston General Insurance Co.*, 397 Ill. App. 3d 410, 428 (2009). We therefore remand and the case to the circuit court to allow the defendants to file a supplemental fee petition for the circuit court's consideration. While we recognize the defendants' right to *seek* supplemental attorney fees

pursuant to Section 155 of the Code, we leave such additional fee award to the discretion of the circuit court.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, but we remand to permit the circuit court's consideration of a supplemental petition for the defendants' attorney fees and costs incurred on appeal.

¶ 44 Affirmed; remanded with directions.