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2019 IL App (3d) 190203-UC

Order filed June 24, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

KURT DREGER, Individually and)	Appeal from the Circuit Court
Nominally on Behalf of THE DISPENSARY,)	of the 14th Judicial Circuit,
L.L.C., an Illinois Limited Liability Company,)	Rock Island County, Illinois
)	
Plaintiff-Appellant,)	
)	Appeal No. 3-19-0203
v.)	Circuit No. 19-L-14
)	
DANIEL P. DOLAN,)	Honorable
)	Kathleen E. Mesich
Defendant-Appellee.)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff entitled to sanctions from defendant based on defendant's motion to supplement the record filed after this court lost jurisdiction.

¶ 2 Defendant Daniel Dolan filed a motion to supplement the record and plaintiff Kurt Dreger filed a motion to strike Dolan's motion. Dreger also sought sanctions. We dismiss the appeal for lack of jurisdiction and impose sanctions against Dolan.

¶ 3 **FACTS**

¶ 4 Plaintiff Kurt Dreger and defendant Daniel Dolan have been involved in a dispute regarding The Dispensary, a medical cannabis dispensary in which both parties have ownership interests. Dreger brought a complaint against Dolan, alleging breaches of fiduciary duty and contract, and seeking, in part, the appointment of a receiver. The trial court dismissed the majority of the counts in the complaint but allowed Dreger’s request for a receiver to proceed. The court also denied Dreger’s “Emergency Motion for Court Order Compelling Proportionate Distributions to Dreger for Tax Purposes and Restraining the Defendant from Self Dealing.” Dreger filed an interlocutory appeal and we reversed and remanded, finding he was entitled to injunctive relief. *Dreger v. Dolan*, 2019 IL App (3d) 190203-U. We ordered the trial court to enter an order requiring Dolan to make a distribution from The Dispensary to enable Dreger to pay his tax liabilities connected to The Dispensary. *Id.*

¶ 5 On remand, Dolan objected to entry of an order in accord with our decision, asserting the trial court lacked jurisdiction. The trial court agreed. Dreger sought the immediate issuance of the mandate by this court, which we granted and issued an expedited mandate on May 7, 2019. *Dreger v. Dolan*, No. 3-19-0203 (2019) (unpublished minute order). Also on May 7, Dolan filed a motion for bond in the trial court. Dreger appeared on May 8 and asked the trial court to enter an order pursuant to our decision. The court again refused to comply with our order and Dreger filed a petition for a writ of *mandamus*. He asked this court to again order the trial court to comply with our decision. We granted Dreger’s request for a writ of *mandamus* on May 17, 2019. *Dreger v. Dolan*, 2019 IL App (3d) 190203-UB. The same day, the trial court entered an order requiring Dolan to disburse funds from The Dispensary sufficient to allow Dreger to pay his taxes. On May 24, 2019, The Dispensary distributed a \$101,017 payment to Dreger.

¶ 6 On May 30, 2019, Dolan filed a motion to supplement the record on appeal with this court and a petition for leave to appeal to the Illinois Supreme Court. Dreger moved to strike the motion to supplement and requested sanctions be imposed under Illinois Supreme Court Rule 375 (eff. Feb. 1, 1994).

¶ 7 ANALYSIS

¶ 8 The issues before this court are whether to grant Dolan’s motion to supplement or Dreger’s to strike the motion and whether to impose sanctions.

¶ 9 We start with Dolan’s motion to supplement the record on appeal. Dolan sought to include the report of proceedings from an April 15, 2019, hearing, arguing that the transcripts are necessary for a sufficiently complete record and to accurately reflect what occurred in the trial court. Dreger asks this court to strike the motion as untimely, and in the alternative, to deny it as this court is without jurisdiction.

¶ 10 We agree with Dreger that we lack jurisdiction. The mandate issued from this court on May 7, 2019. At that time, jurisdiction was revested in the trial court. *Hickey v. Riera*, 332 Ill. App. 3d 532, 542-43 (2001) (reviewing court’s mandate transmits its judgment to the trial court, revesting the trial court with jurisdiction). Because the mandate has issued and the proceedings have continued in the trial court as directed in this court’s prior judgments, we are without jurisdiction to consider Dolan’s motion to supplement or Dreger’s motion to strike it. We will, however, address Dreger’s request for sanctions under Supreme Court Rule 375. See *Gilkey v. Scholl*, 229 Ill. App. 3d 989, 993 (1992) (reviewing court retains jurisdiction to decide question of sanctions after the appeal is dismissed).

¶ 11 Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) provides that sanctions may be imposed by a reviewing court when it determines an appeal was frivolous, not taken in good

faith, or brought for an improper purpose, such as to delay the proceedings or needlessly increase the cost of litigation. The rule also allows sanctions when the manner of prosecuting or defending an appeal is for an improper purpose. *Id.* An appeal is frivolous where “it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.” *Id.* An appeal is taken or prosecuted for an improper purpose when its primary purpose is “to delay, harass, or cause needless expense.” *Id.* Appropriate sanctions may include the cost of the appeal, including reasonable attorney fees. *Id.* The question before the reviewing court is whether a reasonable, prudent attorney would have brought the appeal. *Penn v. Gerig*, 334 Ill. App. 3d 345, 357 (2002) (citing *Dreisilker Electric Motors, Inc. v. Rainbow Electric Co.*, 203 Ill. App. 3d 304, 312 (1990)). Rule 375(b) sanctions are penal in nature and apply only to cases that fall strictly within the rule’s language. *Enbridge Energy (Illinois), L.L.C. v. Kuerth*, 2018 IL App (4th) 150519-B, ¶ 72.

¶ 12 Under the circumstances of this case, it would have been apparent to a reasonable, prudent attorney that this court could not grant Dolan’s motion to supplement the record because the court lacked jurisdiction once the mandate issued. Dolan previously argued in the trial court that it lacked jurisdiction to comply with this court’s order issued on April 25, 2019, because the mandate had not issued. We then issued an immediate mandate and Dolan again successfully moved to postpone the proceedings by asking for bond. Dreger was required to obtain the issuance of a writ of *mandamus* from this court for the trial court to comply with our April order. The trial court then proceeded according to our directions and required Dolan to make a disbursement from The Dispensary to Dreger and enjoined him from attempting to disassociate Dreger.

¶ 13 Dolan knew this court lost jurisdiction when the trial court was revested with it on May 7 when the mandate issued. We must thus conclude that Dolan brought the motion to supplement for an improper purpose in order to delay the proceedings, harass Dreger or cause him needless expense. Accordingly, we grant Dreger’s request for sanctions.

¶ 14 We order Dreger to submit a detailed statement of expenses and attorney fees and an affidavit of the costs incurred for defending against Dolan’s motion to supplement. We will issue a supplementary order specifying the exact amount of sanctions we impose on Dolan after reviewing Dreger’s submissions. See *Amadeo v. Gaynor*, 299 Ill. App. 3d 696, 706 (1998) (sanctions amount based on affidavit and detailed statement of expenses and attorney fees incurred). See also *Deutsche Bank National Trust Co. v. Hart*, 2016 IL App (3d) 150714, ¶ 56 (providing that reviewing court would enter a supplemental order regarding the appropriate amount of sanctions).

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, the appeal is dismissed and Rule 375 sanctions are imposed.

¶ 17 Appeal dismissed; sanctions imposed.