

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).

2014 IL App (4th) 140083-U

NO. 4-14-0083

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 27, 2014

Carla Bender

4th District Appellate

Court, IL

SUSAN IRWIN,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
SHANNON C. SHYMANSKY,)	No. 10MR77
Defendant-Appellee.)	
)	Honorable
)	Leo Zappa,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Presiding Justice Appleton and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, rejecting the plaintiff's argument that the trial court lacked jurisdiction to consider the defendant's petition for attorney fees filed more than 30 days following this court's mandate in a prior appeal.

¶ 2 This appeal—the fourth before this court involving the same parties—originates from an August 2006 contractual dispute involving a condominium owned by defendant, Shannon C. Shymansky, which later resulted in the trial court's entering a judgment against plaintiff, Susan Irwin. Based on a fee-shifting provision in the parties' written agreement, Shymansky, as the prevailing party, was entitled to attorney fees from Irwin. At issue in this appeal is Irwin's contention that the court lacked jurisdiction to consider Shymansky's November 2013 petition for attorney fees because Shymansky filed her petition more than 30 days after this court issued its September 2013 mandate following the parties' second appeal. We disagree and affirm.

¶ 3

I. BACKGROUND

¶ 4

A. The Pertinent Procedural History

¶ 5 Because of the extensive procedural history of this case, we confine our recitation of the facts to only those necessary for an understanding of this appeal.

¶ 6 In February 2010, Irwin sued Shymansky, seeking a declaratory judgment that the written agreement she entered into with Shymansky regarding a condominium was a contract for deed. Shymansky later filed a motion for summary judgment, claiming that the agreement was a lease with an option to purchase. The parties' contractual agreement also included the following fee-shifting provision regarding attorney fees:

"In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees."

¶ 7 In May 2010, the trial court granted Shymansky's summary-judgment motion, finding that the parties entered into a lease agreement with an option to purchase that had since expired. The court later ordered Irwin to pay \$20,000 of Shymansky's attorney fees based on the contractual fee-shifting provision.

¶ 8 Irwin appealed, and this court affirmed, rejecting her claims that the trial court's decisions to grant summary judgment and award attorney fees in Shymansky's favor were erroneous and, alternatively, that the \$20,000 attorney-fee award was excessive. *Irwin v. Shymansky*, 2011 IL App (4th) 110159-U. In February 2012, this court granted Irwin's motion to stay our mandate. In May 2012, the Supreme Court of Illinois denied Irwin's petition for leave to appeal. *Irwin v. Shymansky*, No. 113878, 968 N.E.2d 1066 (table) (May 30, 2012). In July 2012, this

court issued its mandate, affirming the court's judgment.

¶ 9 B. The Circumstances Surrounding the Dispute in This Case

¶ 10 In August 2012, Shymansky filed a petition for attorney fees, seeking an additional \$26,012 in attorney fees for posttrial and appellate proceedings, legal research, and filing fees incurred as a result of Irwin's initial appeal. Following an October 2012 hearing, the trial court granted Shymansky's petition.

¶ 11 Irwin appealed, and this court affirmed, concluding, in pertinent part, that the trial court did not abuse its discretion by ordering Irwin to pay \$26,012 toward Shymansky's attorney fees. *Irwin v. Shymansky*, 2013 IL App (4th) 121073-U. On September 3, 2013, this court issued its mandate in case No. 4-12-1073, affirming the court's judgment. (Irwin did not file a petition for leave to appeal to the Supreme Court of Illinois.)

¶ 12 On November 8, 2013, Shymansky filed a petition, requesting an additional \$15,891 for appellate attorney fees incurred as a result of Irwin's second appeal in case No. 4-12-1073. On December 5, 2013, Irwin filed a "motion objecting to jurisdiction over the [plaintiff]." Citing Illinois Supreme Court Rule 369(b) (eff. July 1, 1982), Irwin contended that because Shymansky filed her petition for attorney fees "more than 60 days after the action was terminated and stricken," the trial court lacked jurisdiction to consider Shymansky's petition. In support of her motion, Irwin quotes the following two September 4, 2013, docket entries the trial court entered, which pertained to this court's mandate in case No. 4-12-1073:

"[1.] Judgment on Record on Appeal Jul. 30, 2013, Affirmed.

It is the decision [of] this court that the order on appeal be AFFIRMED and stand in full force and effect. 4-12-1073

Status: Judgement [(sic)]. Report: Terminated Jul. 30, 2013.

[2.] Mandate Jul. 29, 2013, Affirmed.

Status: Cause Stricken. Report: Terminated Jul. 29, 2013."

¶ 13 Following a December 6, 2013, hearing, the trial court entered an order denying Irwin's jurisdictional claim but granting Irwin leave to file any substantive objections to Shymansky's petition before a scheduled evidentiary hearing. On December 10, 2013, Irwin's counsel filed the following correspondence, which he addressed to the court:

"After consulting the case law and discussing the matter with our client, we will stand on the jurisdictional objection we have already made to [Shymansky's] fee petition and will not be filing any further objections or attending the hearing that [the trial court has scheduled]."

On December 13, 2013, Shymansky filed a supplement to her petition for attorney fees, requesting an additional \$1,280 incurred as a result of responding to Irwin's jurisdictional claim. Later that same month, the trial court dispensed with the scheduled evidentiary hearing based on Irwin's letter and, instead, entered a written order (1) granting Shymansky's petition for attorney fees, which included her supplement and (2) mandating that Irwin pay \$17,171 to Shymansky.

¶ 14 This appeal followed.

¶ 15 **II. IRWIN'S JURISDICTIONAL CLAIM**

¶ 16 Irwin argues that the trial court lacked jurisdiction to consider Shymansky's November 2013 petition for attorney fees because she filed it more than 30 days following this court's September 2013 mandate in case No. 4-12-1073. We disagree.

¶ 17 In support of her argument, Irwin relies, in part, on Rule 369(b), entitled, "Filing of Mandate in Circuit Court and Proceedings." That rule provides, as follows:

"(b) Dismissal or Affirmance. When the reviewing court dismisses the appeal or affirms the judgment and the mandate is filed in the circuit court, enforcement of the judgment may be had and other proceedings may be conducted as if no appeal had been taken." Ill. S. Ct. R. 369(b) (eff. July 1, 1982).

¶ 18 Essentially, Irwin's argument proceeds in two distinct parts. Irwin first contends that because Rule 369(b) provides that an appellate court's mandate dismissing or affirming a trial court's judgment on review should be viewed "as if no appeal had been taken," this court's September 3, 2013, mandate—affirming the court's judgment—was the final judgment entered in this matter. Second, from that initial contention, Irwin then cites *Herlehy v. Marie V. Bistersky Trust*, 407 Ill. App. 3d 878, 899-900, 942 N.E.2d 23, 42 (2010), for the proposition that the court lacked jurisdiction to grant Shymansky's November 8, 2013, request for attorney fees because she filed it more than 30 days following a final order—that is, this court's September 3, 2013, mandate in case No. 4-12-1073.

¶ 19 Despite Irwin's reliance, however, *Herlehy* does not support the contention Irwin raises in this appeal—namely, the effect that an appellate court's mandate may have on subsequent trial-court proceedings under Rule 369(b). Rule 369(b) was not at issue in *Herlehy*, nor did that case concern the appellate court's mandate following a dismissal or affirmance of a trial court's judgment. Instead, *Herlehy* reaffirmed the long-established rule that in a particular case, a trial court loses jurisdiction to consider further legal claims 30 days after the trial court (1) enters a final judgment pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) or (2)

renders a ruling disposing of any remaining posttrial motions. *Herlehy*, 407 Ill. App. 3d at 898-99, 942 N.E.2d at 41-42.

¶ 20 We reject Irwin's contention that our September 3, 2013, mandate in case No. 4-12-1073—which affirmed the trial court's judgment—represented a final judgment. In *McNeil v. Ketchens*, 2011 IL App (4th) 110253, ¶ 21, 964 N.E.2d 66, this court noted that "Rule 369(b) *** presupposes that after an affirmance, the trial court has jurisdiction over the subject matter and the parties—even absent a remand—because without such jurisdiction, the court would be precluded from entering any order at all, including an order relating to the affirmance, and *Rule 369(b) contemplates further proceedings relating to the affirmance.*" (Emphasis added.) See *POM 1250 N. Milwaukee, LLC v. F.C.S.C., Inc.*, 2014 IL App (1st) 132098, ¶¶ 19-20, 12 N.E.3d 798 (agreeing with this court's holding in *McNeil*). See also *Stein v. Spainhour*, 196 Ill. App. 3d 65, 68, 553 N.E.2d 73, 75 (1990) (in a case involving a contractual lease with a fee-shifting provision, this court concluded that a request for attorney fees following a reviewing court's mandate dismissing or affirming the trial court's judgment constituted "other proceedings" as contemplated by Rule 369(b)).

¶ 21 The foundation upon which Irwin rests her argument concerns only the timing of Shymansky's request for attorney fees. In this regard, Irwin asserts that because Rule 369(b) requires an appellate court's mandate to be treated as if no appeal had been taken, "at the filing of the mandate after an affirmance, the clock begins ticking [and] 31 days later, the [trial] court loses jurisdiction." We disagree with Irwin's assertion because, simply put, the plain language of Rule 369(b) does not support such an interpretation. Instead, as applied to this case, Rule 369(b) states that when this court issued its September 3, 2013, mandate, affirming the court's \$26,012 attorney-fee award in Shymansky's favor, the trial court regained jurisdiction over the subject

matter and the parties, and other proceedings—relating to this court's affirmance—could be raised by the parties and considered by the court as if no appeal had been taken.

¶ 22 In her reply brief to this court, Irwin posits that absent the 30-day limit she claims is implicit in Rule 369(b), a litigant could take years before filing their "other proceedings," which "defies logic." Irwin's position, however, ignores that the fee-shifting provision at issue originates from a written contractual agreement, which permits a party to seek redress for violations of an accrued contract for a 10-year period. See 735 ILCS 5/13-206 (West 2012) (the statute of limitation imposed on written contracts is 10 years from the time the cause of action has accrued).

¶ 23 Accordingly, we reject Irwin's argument that the trial court lacked jurisdiction to consider Shymansky's November 2013 petition for attorney fees.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the trial court's judgment.

¶ 26 Affirmed.