

THIRD DIVISION
January 23, 2013

No. 1-12-0316

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
FIRST JUDICIAL DISTRICT

REAVA KING,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee)	Cook County
)	
v.)	No. 11 OP 72205
)	
JASON HARRIS,)	Honorable
)	Patrice Ball-Reed,
Respondent-Appellant.)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Neville and Justice Hyman concurred in the judgment.

ORDER

Held: Circuit court's order denying respondent's motion for sanctions reversed and cause remanded where court applied the incorrect legal standard in ruling on the motion.

¶ 1 Petitioner-appellee Reava King filed a petition for a stalking no contact order against respondent-appellant Jason Harris. Shortly after taking petitioner's deposition in connection with the petition, respondent moved for summary judgment, which was granted. Respondent then moved for sanctions against petitioner's counsel pursuant to Illinois Supreme Court Rule 137,

arguing that opposing counsel pursued this petition despite knowing it had no factual basis. The circuit court denied the motion for sanctions, and respondent now appeals on the grounds that the denial was an abuse of discretion. For the reasons that follow, we reverse and remand for further proceedings.

¶ 2

BACKGROUND

¶ 3 Petitioner and respondent first became acquainted when petitioner's house suffered a fire in January 2009. Respondent, who operates as a public adjuster and general contractor as well as an attorney, offered to adjust petitioner's insurance claim and oversee the rehabilitation of her house. Petitioner agreed, but the parties' relationship deteriorated after work had gone on for one year. On or about November 2010, petitioner brought suit against respondent in the Law Division of the Circuit Court of Cook County, alleging that despite her payments to respondent, the work had not been completed. In response, respondent filed a mechanics lien suit against petitioner in the Chancery Division of the Circuit Court of Cook County.

¶ 4 While both causes of action were being litigated, in April 2011, petitioner filed a *pro se* petition for a stalking no contact order against respondent. Her petition alleged a single incident of stalking in December 2010, when, according to petitioner, respondent drove to her residence and asked to speak with her. Petitioner's *pro se* emergency motion for no contact based upon this petition was denied on May 2, 2011, and the matter was continued for status and discovery. At some point during the month of May 2011, petitioner retained Stephen Pollack as her attorney, who also represented her in the Law and Chancery matters. According to Pollack, he initially declined to represent petitioner with regard to the no contact petition due to his

unfamiliarity with this area of law, but later reconsidered.

¶ 5 Petitioner's deposition in connection with her petition took place on July 11, 2011. At her deposition, petitioner testified to three incidents of alleged stalking. First, in December 2010, petitioner saw a car similar to respondent's car – a black 2- or 4-door Lexus – parked outside her house, which "spooked" her. She did not, however, see respondent in the car. Next, in February 2011, she again saw a black Lexus outside her house. She heard what sounded like her name in respondent's voice, and when she turned around, she believed she saw respondent's face. Again, she testified that she was spooked. Finally, in April 2011, she saw a black Lexus by her house, but did not see the driver, nor did she know if there was a driver in the car. She testified that she was never verbally or physically threatened on any of these occasions and that respondent had generally treated her respectfully throughout their acquaintance.

¶ 6 On cross-examination, she testified that her name was called during the December 2010 incident as well. Further, over respondent's objection, she testified that she was scared at the time the alleged stalking incidents occurred.

¶ 7 At the status hearing the day following the deposition, respondent asked Pollack to dismiss the petition for no contact due to lack of a factual basis, but Pollack refused. Respondent then filed a motion to dismiss as well as a motion for summary judgment. The court granted the motion for summary judgment on September 6, 2011, after hearing argument. Subsequently, respondent filed a motion for sanctions against Pollack. In his motion, respondent argued that Pollack improperly pursued the petition for a no contact order despite knowing it was both untrue and legally insufficient. The circuit court denied the motion on January 5, 2012, ruling that

Pollack had an obligation to continue litigating the petition so long as his client wished to move forward. Respondent timely filed this appeal.

¶ 8

ANALYSIS

¶ 9 As a preliminary matter, we note that petitioner's response brief fails to comply with Supreme Court Rules 341(h) and 341(i) (eff. July 1, 2008). First, in the introductory paragraph, rather than stating the "nature of the action and of the judgment appealed from and whether the judgment is based upon the verdict of a jury," as prescribed by Supreme Court Rule 341(h)(2)(i), petitioner sets forth as fact allegations of the complaints pending in the Law and Chancery divisions, both of which are irrelevant to the case at bar. Moreover, in violation of Supreme Court Rule 341(h)(7), petitioner fails to provide sufficient citations to the record on appeal throughout her brief. Instead, she cites sporadically to her deposition and the transcript of the hearing on respondent's motion for sanctions.

¶ 10 Where a brief relies on matters that are outside of the record to support its position on appeal, a court of review may strike the brief in its entirety, or simply disregard the inappropriate material. *Keener v. City of Herrin*, 235 Ill. 2d 338, 346 (2009). We opt for the latter course here, and disregard all inappropriate and unsupported material in petitioner's brief.

¶ 11 Turning then to the merits of respondent's appeal, the sole issue is whether the circuit court erred in denying respondent's motion for sanctions pursuant to Illinois Supreme Court Rule 137, which reads as follows:

"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. Jan. 4, 2013).¹

Rule 137 was created to prevent parties from abusing the judicial process by imposing sanctions on litigants who file vexatious and harassing actions based upon unsupported allegations of fact or law. *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217 (2007). Pursuant to Rule 137, "litigants and attorneys have an affirmative duty to conduct an inquiry of the facts and law prior to filing an action, pleading, or other paper." *Couri v. Korn*, 202 Ill. App. 3d 848, 855 (1990). To prevail on a motion for Rule 137 sanctions, the party requesting the same must demonstrate that the opposing party pled untrue facts without reasonable cause. *Id.*

¶ 12 On review of a lower court's decision to deny or impose sanctions, this court must

¹ The recently amended Rule 137 cited herein does not differ in relevant part from the version in effect at the time of the circuit court's ruling on the motion for sanctions in the instant case.

determine whether the circuit court's decision was "informed, based on valid reasons, and followed logically from the circumstances of the case." *Burrows v. Pick*, 306 Ill. App. 3d 1048, 1051 (1999). Generally, we will defer to a circuit court's decision regarding the imposition of sanctions and will not reverse unless there has been an abuse of discretion. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). However, where, as here, a party argues that the circuit court applied the incorrect legal standard in exercising its discretion, our review is *de novo*. *1350 Lake Shore Associates v. Randall*, 401 Ill. App. 3d 96, 102 (2010).

¶ 13 In the case *sub judice*, the circuit court, in denying respondent's motion for sanctions, erroneously held that Pollack was obligated to continue pursuing the petition where petitioner directed him to do so. Specifically, the court stated:

"I do not believe that Mr. Pollack instigated this. *** This petition was filed by Ms. King. Counsel came in subsequently; and *if Ms. King wished to go forward, as his client that was his obligation to go forward, Counsel. If she chose not to step away, then he had the obligation to go forward in this matter.*

I do not believe that Mr. Pollack has in any form or fashion attempted to cause vexatious acts or false proceedings. *He proceeded on behalf of Ms. King because she chose to go forward. *** I'm not going to grant your motion for 137.*"

(Emphases added.)

This is not the law. Rather, it has long been held that an attorney has a "professional duty to promptly dismiss a baseless lawsuit, *even over the objections of his client*, when the attorney

learns that the client has no case." *Cmarko v. Fisher*, 208 Ill. App. 3d 440, 446 (1990) (emphasis added); see also *Walsh v. Capital Engineering and Manufacturing Co.*, 312 Ill. App. 3d 910, 916 (2000) (holding that an attorney may not avoid Rule 137 sanctions by pleading that he was merely following his client's directions). The court's comments make clear that it did not apply this rule of law and instead premised its decision to deny sanctions on the mistaken belief that an attorney is bound by the whims of his client when determining whether to pursue litigation.

¶ 14 When a court applies an incorrect standard in exercising its discretion, as in the instant case, we must remand and direct the court to apply the correct standard. *People v. Longoria*, 375 Ill. App. 3d 346, 351 (2007). Respondent, however, urges us instead to remand with directions for the court to impose sanctions, arguing that the court's statements suggest that it would have done so had it applied the correct rule of law. In support, respondent cites the following statement made by the court at the time of its ruling: "Based upon what [King] testified to in the deposition, she could have – clearly could not have proceeded with the case or proven that Mr. Harris had stalked or harassed her in any form or fashion, so, I granted the motion for summary judgment and that should have ended it right there because the case was resolved." Respondent maintains this is evidence of the court's belief that continuing to proceed with the case after the deposition would have been sanctionable were it not for the fact that Pollack was following his client's directions. We do not agree that this conclusion necessarily follows from the court's statement.

¶ 15 Accordingly, we remand to the circuit court with directions to consider whether, at any time after Pollack agreed to represent petitioner, a reasonable investigation would have revealed

that the petition was factually or legally baseless. If so, sanctions against Pollack for continuing to pursue the litigation are appropriate. Importantly, this is an objective inquiry; an attorney's subjective honest belief that the case has merit is insufficient. See *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067, 1074-75 (1995).

¶ 16 For the reasons stated, we reverse and remand the circuit court's order denying Rule 137 sanctions for further proceedings in accordance with this order.

¶ 17 Reversed and remanded.