FOURTH DIVISION
APRIL 28, 2011

No. 1-09-3532

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL T. POBUDA, Plaintiff-Appellant, v. THE HOT LEAD COMPANY, LLC., a NEVADA Limited Liability Company, (a/k/a MY HOT LEADS and a/k/a HOT LEAGUE COMPANY), MICHAEL HORNE (a/k/a ROBERT MICHAEL HORNE), individually and d/b/a THE HOT LEAD COMPANY, GREGORY HORNE (a/k/a MICHAEL GREGORY HORNE), and individually and d/b/a THE HOT LEAD COMPANY, and DANIEL R. BODA, individually and d/b/a BODA FINANCIAL SERVICES and a/k/a BODA DEVELOPMENT, (Defendants), JOSEPH PACE, individually, PACE INVESTMENT, INC., an ILLINOIS CORPORATION, and STELLA SPROAT, individually Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 06 M1 137625 Honorable Daniel Gillespie, Judge Presiding.

JUSTICE SALONE delivered the judgment of the court. Presiding Justice Lavin and Justice Sterba concurred in the judgment.

ORDER

HELD: Plaintiff's request to strike defendants' motion for sanctions based on section 2-615 of the Code of Civil Procedure was properly denied. Sanctions pursuant to Supreme Court Rule 137 were not an abuse of discretion where plaintiff was aware nearly two years prior to dismissal of case against defendant-appellees that his complaint was not well-grounded in fact.

Plaintiff Michael T. Pobuda appeals from an order of the circuit court of Cook County ordering plaintiff to pay defense counsel the sum of $9,000 in costs and fees, pursuant to Supreme Court Rule 137 (eff. February 1, 1994), for filing a law suit with no basis in fact against defendant-appellees Joseph Pace, Pace Investments, Inc., and Stella Sproat (hereinafter 'defendants'). On appeal plaintiff contends, that the trial court erred in refusing to strike defendant's motion for sanctions and that the trial court erred in granting defendant's motion for sanctions.

BACKGROUND

Plaintiff, a licensed attorney in Illinois, filed suit under the Telephone Consumer Protection Act, 47 U.S.C. 227(b)(1)©) (West 2008) and a common law claim of conversion alleging that defendants sent seven unsolicited facsimiles to his law office between February and April 2006. In plaintiff's initial complaint, dated May 22, 2006, he named "The Hot League Company, LLC a/k/a The Hot Lead Company and unknown others doing business as The Hot

League Company" as defendants.

On August 28, 2006, plaintiff filed an amended complaint naming Joseph Pace and Daniel Boda as respondents for discovery pursuant to section 2-402 of the Code of Civil Procedure ((735 ILCS 5/2-402) (West 2006)). During discovery plaintiff learned that the phone number on the unsolicited facsimiles, 708-343-4342, was included under the main business number, 708-343-3671. Both numbers were registered to the Hot League Company, and corresponded to office space leased by the Hot League Company located at 1701 South First Avenue, Suite 404-B in Maywood. The property owner provided plaintiff with a copy of the lease for the Hot Lead Company, which showed that the tenants began their lease in July 2005, and that the lease was renewed in July 2006 through July 2007.

Plaintiff also learned that defendant Daniel R. Boda had leased the office space prior to the Hot League Company and that he vacated the space, pursuant to a five-day notice, in July of 2005. In that five-day notice, Joseph Pace was named as a sub-lessee, however, Joseph Pace was not listed on the original lease that Mr. Boda signed. Plaintiff also learned that Joseph Pace and Stella Sproat owned a phone line, 708-338-3000, attached to the same office space. On October 13, 2006, defense counsel, Edmund P. Wanderling, sent correspondence to plaintiff informing him that he represented Joseph Pace and that in May 2005, Mr. Pace and Mr. Boda vacated the office location in question. Attached to the correspondence was a copy of the five day notice served upon Mr. Pace and Mr. Boda. In response to plaintiff's interrogatory Joseph Pace stated that he vacated the office space in May 2005, when Mr. Boda was served with the five-day notice for failure to pay rent.

In February 2007, plaintiff filed a motion and was granted leave to file a second amended complaint adding Joseph Pace, Pace Investments, Inc., and Stella Sproat as defendants. Plaintiff acknowledged in his motion that defendants lease terminated in May of 2005. However, plaintiff maintained that Joseph Pace's claim that he did not have access to the office suite was untrue based on phone records, which showed that the last outgoing call from Pace's number occurred July 29, 2005. The phone records also showed that Pace and Stella Sproat made payments on the phone bill in January and May of 2006. Although defense counsel was given notice of the hearing, neither defendants nor their counsel appeared and the motion was granted *ex parte*. The record is devoid of any transcripts of the hearing on plaintiff's motion.

Thereafter, defendants filed a motion to dismiss, but later withdrew the motion. In correspondence dated September 21, 2007, defense counsel indicated that plaintiff had refused to discuss the merits of his complaint against his clients. Defense counsel included attachments showing that Pace Investments, Inc. procured the phone line in February 2005, and that there was no use on the phone line after July 2005. The attachments also showed that the Hot Lead Company maintained a lease on the premises from July 2005 through July 2007, and that the Hot Lead Company maintained a phone line at the same premises beginning in August 2005. The phone number maintained by the Hot Lead Company was the same number that plaintiff claimed was responsible for sending the facsimiles. Defense counsel concluded the correspondence with notice that defendants would seek sanctions following the dismissal of the case, based on the fact that plaintiff was made fully aware of these facts following his discovery and he continued with the suit against these defendants without a basis in fact.

Trial was held on May 20, 2009, and the court entered a default judgment against all

named defendants with the exception of Joseph Pace, Pace Investments, Inc., and Stella Sproat, in the amount of $10,507. Judgment was also entered against plaintiff and for defendants Joseph Pace, Pace Investments, Inc., and Stella Sproat. In rendering that verdict the trial court noted that plaintiff failed to produce "a scintilla of evidence" that Joseph Pace, Pace Investments, Inc., or Stella Sproat took part in sending the unsolicited facsimiles.

On May 29, 2009, defendant-appellees filed a motion for sanctions pursuant to Supreme Court Rule 137 (eff. February 1, 1994), claiming that plaintiff filed a law suit against them that was not well-grounded in fact. In response, plaintiff filed a motion to strike defendant's motion for sanctions, pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2008)). The circuit court denied plaintiff's motion to strike, on the grounds section 2-615 was an improper vehicle to challenge a motion for sanctions. In August 2009, the trial court held a hearing, and found that plaintiff filed a complaint that was not well-grounded in fact. The court relied on defense counsel's correspondence in September of 2007, as well as the information plaintiff obtained through discovery. Thereafter, defendant submitted his fee petition and, after considering defense counsel's seniority, the difficulty of the case, the volume of the materials, and defense counsel's summary of his time and hourly rate, the trial court ordered plaintiff to pay defense counsel $9,000 on behalf of defendants. Plaintiff appeals this order.

ANALYSIS

Plaintiff raises two central issues on appeal. First, he contends that the circuit court erred in denying his motion to strike pursuant to section 2-615 of the Code of Civil Procedure ((735 ILCS 5/2-615 (West 2008)). Defendants respond that this issue is not properly before this court, where plaintiff failed to include it in his notice of appeal, and therefore this court lacks

jurisdiction to review the issue. Second, plaintiff contends that the trial court erred in granting defendant's motion for sanctions.[1] Defendants respond that the trial court did not abuse its discretion in sanctioning plaintiff.

We begin our analysis with the question of jurisdiction. Defendants are correct that this court only has jurisdiction over those matters raised in the notice of appeal. *Wells v. Kern*, 25 Ill. App. 3d 93, 98 (1975). However, a notice of appeal need not reference each specific order to confer jurisdiction, where the order that is specified directly relates back to the judgment or order from which review is sought. *Taylor v. Peoples Gas Light and Coke Co.*, 655, 659 (1995). Thus, an order that is not specified in a notice of appeal may be reviewed if it is a step in the procedural progression to the judgment from which appeal is taken. *Taylor*, 275 Ill. App. 3d at 659.

Here, plaintiff's motion to strike immediately preceded his challenge to the merits of defendant's motion for sanctions. Plaintiff's notice of appeal does specify that he is appealing the judgment of the sanctions order. Thus, we find that the judgment denying his motion to strike was a step in the procedural process to the judgment granting defendant's motion, from which plaintiff properly specified in his notice of appeal. Accordingly, we hold that plaintiff's notice of appeal was sufficient to confer jurisdiction upon this court. *Perry v. Minor*, 319 Ill. App. 3d 703, 709 (2007).

We now turn to the substance of the procedural question raised, regarding whether section 2-615 of the Code of Civil Procedure may properly be used to strike a motion. For the

[1] Although plaintiff contends that there are five issues on appeal, the latter four are each a different reason why the court erred, and not a separate legal issue.

reasons that follow, we answer that question in the negative. Where, as here, plaintiff raises an issue on appeal which is purely a question of law, we review that question *de novo*. *Mid-West Energy Consultants, Inc. v. Covenant Home, Inc.,* 352 Ill. App. 3d 160, 162 (2004). Section 2-615, entitled 'Motions with respect to pleadings," is limited to the dismissal or striking of pleadings. 735 ILCS 5/2-615 (West 2008). This court has held that pleadings and motions are legally distinct, in that a pleading consists of a party's formal allegations of his claims or defenses, while a motion is an application to the court for a ruling or an order in a pending case. *KSAC Corporation v. Recycle Free, Inc.*, 364 Ill. App. 3d 593, 597 (2006). It is a basic rule of statutory interpretation that, whenever reasonable, statutory language must be given its plain and ordinary meaning. *U.S. Bank National Ass'n v. Clark*, 216 Ill. 2d 334, 346 (2005).

Applying those definitions to the instant case, we find that defendants filed a motion and not a pleading. Defendants sought a ruling that plaintiff violated Supreme Court Rule 137 and an order for payment of costs and fees. Nothing in defendants request was a formal allegation or affirmative defense to the underlying cause of action. Indeed at the time defendant's filed their motion, the underlying action against them had been disposed of in their favor. Thus, defendants filed a motion and not a pleading. Having so found, we must apply the plain meaning of section 2-615, which is limited to the dismissal of pleadings. We therefore hold that section 2-615 is inapplicable to motions for sanctions and, as such, plaintiff's motion was properly denied.

We next address the merits of plaintiff's claim that the circuit court erred in granting defendants motion for sanctions. Plaintiff asserts several bases for his claim of error. Specifically, plaintiff contends that the trial court abused its discretion where: (1) plaintiff provided evidence that defendants occupied the premises after May 2005; and (2) plaintiff was

found to have probably cause to add defendants to the suit pursuant; and (3) defense counsel's summary of his costs was too vague to be relied upon by the court. We address each of these issues, in turn, and find no abuse of discretion.

First, plaintiff contends that his evidence was sufficient to show that his suit was well-grounded in fact. Defendants respond that, after reasonable inquiry, there was no evidence linking them to the facsimiles sent between February and April 2006.

The purpose of Supreme Court Rule 137 (eff. February 1, 1994) is to discourage parties from abusing the judicial system by imposing sanctions on litigants who file harassing law suits without supporting facts or law. *Burrows v. Pick*, 306 Ill. App. 3d 1048, 1050 (1999). In order to discourage frivolous law suits, the rule requires a party to make a reasonable inquiry into the legal and factual basis for the suit. *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020 (2004). To determine whether sanctions were appropriate, reviewing courts use an objective standard based on the circumstances as they existed at the time. *Baker v. Daniel S. Berger, Ltd.*, 323 Ill. App. 3d 956, 963 (2001). A party's honest belief that his allegations are based in fact is insufficient to shield him from sanctions. *Sterdjevich v. RMK Management Corp.*, 343 Ill. App. 3d 1, 19 (2003).

Rule 137 is to be strictly construed because it is penal in nature. *Dowd & Dowd Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). On appeal, we will only reverse a decision to impose sanctions where the trial court abused its discretion. *Sterdjevich*, 343 Ill. App. 3d at 19. The circuit court abuses its discretion when no reasonable person could take the view it adopted. *Whitmer v. Munson*, 335 Ill. App. 3d 501, 514 (2002). Where the circuit court's decision was informed, based on valid reasons, and followed logically from the circumstances of the case,

there is no abuse of discretion. *Whitmer*, 335 Ill. App. 3d at 514.

The record demonstrates that plaintiff was first made aware of defendants' contention that they were not connected to the facsimiles in October 2006, when defense counsel notified plaintiff by letter with attachments that defendants had vacated the office space in 2005. Defense counsel provided plaintiff with the five-day termination notice for the leased office space and the lease for the new tenant, Hot Lead Company, who plaintiff had already named in the suit. In defense counsel's letter and in Pace's response to the interrogatories, plaintiff was informed that defendants had no knowledge of the Hot Lead Company. Plaintiff continued on and filed his second an amended complaint naming defendants in March 2007. In his motion to add defendants, plaintiff acknowledged defendants denial of access to the premises and the five-day notice, but insisted that the statement was inaccurate based on the fact that they maintained telephone line 708-338-3000, after May 2006. However, in that same motion, plaintiff stated that the facsimiles referenced phone number 708-343-4342, and included the main business number 708-343-3671, which was registered to the Hot Lead Company. Plaintiff's internet search of the leased office space address showed that defendants were listed as one of thirty businesses having that ten-foot by ten-foot office space.

At no point during plaintiff's investigation did he find any connection between these defendants and the phone line he claimed sent the facsimiles. Indeed, plaintiff was aware in March of 2007, when he filed his motion to add defendants, that the phone line defendants maintained could not have sent the facsimiles in 2006 because their last outgoing call was in July of 2005. Plaintiff was also aware that defendants had vacated the premises as of July 2005 and that a new tenant was leasing the office space. Thus, plaintiff had no basis in fact which linked

defendants to the physical office space or the phone line which send the transmissions in 2006. While the records indicate that the phone bill was not paid in full until July 2006, that alone is insufficient to establish a connection, where the same records showed that it was not used beyond July 2005. Plaintiff also failed to provide any facts tying defendants individually to the Hot Lead Company. Indeed, plaintiff named other parties who he learned, through court and state incorporation records had a connection to the company. From that search, plaintiff was unable to show that Joseph Pace, Stella Sproat or Pace Investments, Inc., had any contact with the Hot Lead Company. Therefore, as of March 2007, plaintiff had no information which established a connection between Joseph Pace, Stella Sproat and Pace Investments, Inc., and the Hot Lead Company. Moreover, plaintiff continued the suit after defense counsel threatened sanctions based on the same information. The record is also devoid of any additional information plaintiff obtained after March 2007, which connected the defendants to the 2006 facsimiles.

The circuit court reviewed this information and found that plaintiff should have been aware that his case against defendants had no merit and dismissed them from the suit. The circuit court went on to state that defendants had incurred the unnecessary expense of legal fees as a result of plaintiff's persistence. It was on that basis that the circuit court sanctioned defendant and ordered him to pay defendant's costs of litigation. Given the circumstances as they existed in 2007, we find that the circuit court's decision was informed, based on valid reasons, and flowed logically from the case, such that sanctions were appropriate. *Whitmer*, 335 Ill. App. 3d at 514.

Plaintiff, next argues that the probable cause hearing established that he had a sufficient basis in fact to name defendants. However, plaintiff has failed to provide any record of that

hearing. It is the appellant's burden to provide this court with the information needed to support his claim on appeal. Illinois Supreme Court Rules 321(eff. February 1, 1994) and 323 (eff. December 13, 2005) require a party to support his argument with a report of proceedings. Plaintiff has failed to provide any such record to demonstrate what the trial court relied upon in permitting defendants to be added to the suit. The record before us shows that the hearing was *ex parte* and was completed before defense counsel provided his second letter explaining defendants lack of involvement. Therefore, from September 21, 2007, the date of defense counsel's letter, until the trial court found for defendants, plaintiff was aware of the lack of evidence against defendants and he failed to gather additional evidence or dismiss defendants from the suit. Even assuming, *arguendo*, that plaintiff's claim was not well grounded in fact before September 2007, we find that upon receipt of the evidence defense counsel provided in September 2007, plaintiff should have known that his suit was not well grounded in fact with regard to Joseph Pace, Pace Investments, Inc., and Stella Sproat. Plaintiff, nevertheless maintained the suit against defendants for almost two additional years having no additional factual basis for his claim.

Finally, plaintiff challenges the amount awarded in attorney's fees. Typically, we review the granting of attorney fees for an abuse of discretion. *Bright Horizons Children's Centers, LLC, v. Riverway Midwest II, LLC*, 403 Ill. App. 3d 234, 245 (2010). In this case, however, plaintiff urges this court to review the circuit court's order to pay attorney's fees *de novo*, contending that the trial court's acceptance of defense counsel's fees as presented was erroneous as a matter of law. Plaintiff argues that because defense counsel's summary did not specify what he did for the 13.25 hours of time he attributed to "court" his summary was too vague to be relied upon to determine the reasonableness of defense counsel's fees. For the reasons that follow, we

decline to review this claim *de novo* and find no abuse of discretion in the award of fees by the circuit court.

It is axiomatic that, "a petition for fees must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor." *Kaiser v. MEPC American Properties, Inc.*, 164 Ill App. 3d 978, 984 (1987). Because challenges to fee petitions typically involve questions of fact, we review said petitions for an abuse of discretion. *Kaiser*, 164 Ill. App. 3d at 983-84. In reaching its determination regarding the reasonableness of a fee petition, the trial court should consider the skill and experience of the attorney, the nature of the case, the difficultly of the issues, the importance of the matter, the degree of responsibility, the usual and customary charges for comparable services, the benefit to the client, and whether there is a reasonable connect between the fees and the amount involved in the litigation. *Kaiser*, 164 Ill. App. 3d at 984.

The dispute in this case involves a question of fact, where defense counsel submitted a summary of his charges and the trial court found the majority of them reasonable. Defense counsel's summary included specifics regarding the services performed, the time expended and his hourly rate, as well as indicating that he is a solo practitioner and performed the work himself. As such, his petition was legally sufficient on its face and will be reviewed for an abuse of discretion. *Kaiser*, 164 Ill. App. 3d at 984.

Plaintiff contends that defendant's hours billed for court appearances are not specific and therefor do not justify his fees for those appearances. We disagree and note that the purpose of requiring attorneys to specify their conduct is to give the court enough detail to determine the reasonableness of each charge. *Kaiser*, 164 Ill. App. 3d at 983-84. With regard to defense

counsel's charges for court appearances, the trial court was able to observe defendant perform on said days, and was therefore able to discern the reasonableness of the charges without additional specificity. Thus, we find that defendant's petition contained sufficient specificity as a matter of law to permit the trial court to render a decision as to its reasonableness.

At a hearing on defendant's motion for fees, the trial court reviewed defense counsel's fee petition and found that his rate was reasonable for an attorney of his experience. The court went on to state that defense counsel's itemized list of activities he performed on the case related directly to the documents filed by plaintiff. The court further noted that the case file was several inches thick, primarily comprised of documentary evidence advanced by plaintiff, to which defense counsel was required to respond. The trial court also noted that defense counsel is a solo-practitioner and that he performed the work in this case on his own. The trial court awarded defense counsel $9,000 of the $12,821 he accounted for in his petition. The court limited defense counsel's award because it found that the case was relatively straight forward.

The record establishes that the trial court reviewed the fee petition and limited the fees where necessary, while giving due consideration to the matters precedent requires. Accordingly, we find that the trial court's order was not one that no reasonable person could adopt, and therefore conclude that no abuse of discretion occurred in the award of costs and attorney fees.

CONCLUSION

For the foregoing reasons we affirm the order of the circuit court of Cook County.

Affirmed.