

2011 IL App (1st) 101638-U

No. 1-10-1638

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).

FIFTH DIVISION
December 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SHELLIE BEVERLIN a/k/a JANE DOE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant/)	Cook County.
Cross-Appellee,)	
)	
v.)	No. 09 L 1012
)	
JAY PAUL DERATANY et al.,)	
)	Honorable
Defendants-Appellees.)	Thomas Quinn,
Cross-Appellants.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Joseph Gordon and McBride concurred in the
judgment.

ORDER

HELD: The trial court did not abuse its discretion by denying defendants' Supreme Court Rule 137 motion for sanctions.

¶ 1 The sole issue presented in this appeal is whether the trial

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court abused its discretion by failing to grant Supreme Court Rule 137 sanctions against the plaintiff's attorneys in the underlying action. For the reasons that follow, we affirm the trial court's decision.

¶ 2 BACKGROUND

¶ 3 This case reflects a long and rather contentious history between the parties. Defendants Jay Paul Deratany, Terrance S. Carden III and Deratany & Carden, Ltd. were attorneys who formerly represented plaintiff Shellie Beverlin in a medical negligence lawsuit. After a judgment was entered in the defendant-doctors' favor in the medical negligence case, Shellie Beverlin started a website where she discussed her experiences of being both a patient of the defendant-doctors and a client of the attorneys representing her in the negligence action.

¶ 4 On December 18, 2003, defendants filed a complaint against Beverlin, seeking both damages and injunctive relief in order to have their names removed from her website (for convenience we refer to this suit as the "first case.") Beverlin filed counter-claims against the defendants.

¶ 5 In her counter-claim, Beverlin alleged she was a witness in several criminal cases involving attorneys, judges and police officers. Beverlin alleged the FBI provide her and her family with a new identity because of threats made against her personal

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safety. Beverlin alleged defendants learned that she and her family had been provided with new identities for their protection as a result of their representation of her. Beverlin alleged she suffered damages when the defendants filed the suit for an injunction and disclosed her new identity. In addition, Beverlin alleged defendants made false statements about her on a website they allegedly procured.

¶ 6 On October 3, 2006, defendants and Beverlin voluntarily dismissed their claims against each other. Defendants' claims against Beverlin were dismissed with prejudice. Beverlin's claims against the defendants were dismissed without prejudice. On September 27, 2007, within one year of the dismissal of the counter-claims, Beverlin re-filed her claims against the defendants in case number 07 L 10196 (plaintiff's second case). However, Beverlin did not file the complaint in her given name; instead, she chose to file the claims under the alias "Jane Doe and Jane Doe."

¶ 7 On December 19, 2007, defendants filed a motion to dismiss the complaint. The motion alleged that the named plaintiff, "Jane Doe and Jane Doe," was a fictitious name, and, therefore, the complaint was a nullity and void *ab initio* because plaintiff failed to follow the procedure outlined in section 2-401(e) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-401(e)

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(West 2006)) in order to allow them to proceed anonymously. On January 30, 2008, the circuit court entered an order dismissing the case. The court's order said the dismissal was entered "without prejudice." Plaintiff appealed from the court's order more than 30 days after it was entered. We dismissed plaintiff's appeal from that order based on a lack of jurisdiction in *Doe v. Deratany et al.*, No. 1-09-2047 (2010) (unpublished order under Supreme Court Rule 23).

¶ 8 On January 28, 2009, plaintiff filed a new action against defendants under case number 09 L 001012 (plaintiff's third case). The named plaintiff in the new action was listed as "Jane Doe, Jane Doe and Shellie Beverlin." The *pro se* complaint alleged five counts, including wrongful disclosure of private facts (Count I), intentional infliction of emotional distress (Count II), breach of fiduciary duty (Count III), false light (Count IV), and defamation (Count V). Counts I through III centered on allegations that defendants had improperly disclosed the new identity plaintiff had been granted by the FBI in their previously filed lawsuit. Counts IV and V were based on allegations that defendants allowed Spencer Lord, an alleged employee of defendants, to link plaintiff's name to pornographic websites, and that defendants revealed confidential and privileged communications regarding plaintiff's medical

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malpractice case on the internet.

¶ 9 Defendants filed a motion to dismiss plaintiff's claims on March 16, 2009, alleging several of the claims were barred by the applicable statute of limitations. Defendants also alleged plaintiff's claims were barred by section 13-217 of the Illinois Code of Civil Procedure (735 ILCS 5/13-217 (West 2008)) because she had failed to re-file her action within one year of the dismissal of her prior action.

¶ 10 The trial court partially granted defendants' motion to dismiss on May 26, 2009. Counts I through III were dismissed and plaintiff was granted leave to amend Counts IV and V. Plaintiff filed an amended complaint on July 16, 2009, this time represented by counsel. The named plaintiff in the amended complaint remained Shellie Beverlin. Defendants filed a motion to dismiss the complaint on December 16, 2009. The trial court granted the motion to dismiss on February 18, 2010, finding that "Shellie Beverlin" was not plaintiff's legal name and that she had again filed her case under a fictitious name without following the proper procedures for doing so as outlined in section 2-401(e) of the Code. Plaintiff's motion to reconsider was denied.

¶ 11 On March 18, 2010, defendant brought a motion for sanctions under Supreme Court Rule 137 (eff. Feb. 1, 1994), alleging

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plaintiff's attorneys should be sanctioned under the rule for their intentional deception of the court by filing plaintiff's claim under a fictitious name, for their failure to investigate the allegations made against the defendants, and for their harassment of the defendants through filing frivolous allegations. The trial court denied the motion. Defendants appeal.

¶ 12 ANALYSIS

¶ 13 Defendants contend the trial court abused its discretion in deciding not to impose sanctions against plaintiff's attorneys under Rule 137. Specifically, defendants contend the trial court erred in basing its denial of sanctions on plaintiff's counsel's reputation, and the belief that plaintiff's counsel was entitled to believe their client's assertions and plead those assertions on her behalf. Defendants also contend the trial court erred in denying sanctions in light of plaintiff's counsel's failure to make a reasonable investigation into plaintiff's allegations, and in light of counsel's failure to properly follow the provisions of section 2-401(e) of the Code in order to allow plaintiff to proceed anonymously.

¶ 14 Rule 137 provides in pertinent part that:

"The signature of an attorney or party
constitutes a certificate by him that he has

read the pleading, motion or other paper;
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
paper 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 paper, including a reasonable
attorney fee." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

¶ 15 Rule 137 is not meant to be utilized as a means to punish
litigants whose arguments simply do not succeed; rather, it is a
tool intended to be employed to prevent future abuse of the
judicial process or discipline past abuses. *Schneider v.*
Schneider, 408 Ill. App. 3d 192, 200 (2011). However, a party's

honest belief that her case was well grounded in law and fact alone is not enough to avoid Rule 137 sanctions. *Id* (citing *Dunn v. Patterson*, 395 Ill. App. 3d 914, 923 (2009)). Instead, the party's pleadings must meet an objective standard of reasonableness. *Id*.

¶ 16 Because a trial court's decision on whether to impose or deny sanctions is entitled to great weight on appeal, we will not overturn a trial court's ruling on Rule 137 sanctions absent an abuse of discretion. *Id*; *Benson v. Stafford*, 407 Ill. App. 3d 902, 928-29 (2010). A trial court only exceeds its discretion where no reasonable person would take the view adopted by it. *Benson*, 407 Ill. App. 3d at 929. " 'When reviewing a decision on a motion for sanctions, the primary consideration is whether the trial court's decision was informed, based on valid reasoning, and follows logically from the facts.' " *Id* (quoting *Sterdjevich v. RMK Management Corp.*, 343 Ill. App. 3d 1, 19 (2003)).

¶ 17 In determining defendants' motion for Rule 137 sanctions should be denied in this case, the court noted:

"We have two lawyers representing the plaintiff in this case, both very reputable and well respected in the legal community. I think they have the right to rely on some of the representations that their clients gives

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them and an obligation to plead those on behalf of their client."

¶ 18 The court went on to note, however, that:

"My main focus of thi [sic] case as always been -- I know some the counts were dismissed outright. But there was counts that were still pending and I held that the dismissal was not an adjudication on the merits. I have never reached the merits of those counts. But you know, my main difficulty in the case has always been her trying to pursue the case anonymously and I could never quite figure out why there wasn't a request to pursue it under an assumed name, but then after I got into the case more and as I read more of those cases where it allows that type of prosecution of a case, I came to realize that she probably would have never been given that permission in the first place ***. And then, the second premise says that probably everybody would like to pursue their cases anonymously and that's why a right to do that is closely guarded and given under only the

extenuating circumstances, none of which would probably ever been met in this case, as I pointed out in one of the opinions that issue was never actually raised in front of me. But my guess is that it probably would not be granted. Anybody could point to something in their background that says there is a perceived threatening, and, therefore, I want to pursue the case anonymously and whether it is anonymously to avoid embarrassment it to, as I mentioned at one point in the case, is may be it was done to defraud creditors so that no -- if she owes money somewhere that nobody would know that she has lawsuit pending. But be that as it may, you know, I don't think -- that has always been my main problem with the case and that's certainly nothing that the lawyer should be sanctioned for."

¶ 19 After reviewing the record in this case, we cannot say the trial court abused its discretion in denying sanctions.

¶ 20 Although defendants make much of the court's statement that both attorneys are "very reputable and well respected in the

legal community," we note the totality of the court's findings indicate it did not rely on this allegedly improper factor alone in determining sanctions were not warranted. Instead, the record reflects the court adequately examined plaintiff's amended pleading to determine whether it was reasonable. In particular, the court specifically noted plaintiff's attempts to file the complaint anonymously "has always been my main problem with the case and that's certainly nothing that the lawyer should be sanctioned for." While the court recognized it had already dismissed several of plaintiff's claims, it also noted: "there [were] counts that were still pending and I held that the dismissal was not an adjudication on the merits. I have never reached the merits of those counts." Accordingly, we find the record belies defendants' contention that the court solely relied on the attorneys' reputations in the legal community in reaching its decision.

¶ 21 Notwithstanding, defendants also contend sanctions were clearly warranted here because neither plaintiff nor her attorneys established that they made a reasonable investigation into plaintiff's claims that plaintiff's identity was a matter of FBI confidentiality, that Deratany caused plaintiff's identity to be linked to pornographic websites, or that Deratany threatened to distribute nude photographs if plaintiff continued with her

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claims.

¶ 22 The court specifically noted in denying sanctions that although it had dismissed several of plaintiff's claims when granting defendants' prior section 2-619 motion to dismiss, there were some claims still pending where it had not reached the merits. Those claims centered on plaintiff's allegations that defendants had caused her name to be linked to pornographic websites on the internet. Accordingly, we find the trial court did not err in finding sanctions were not warranted based on plaintiff's attorneys re-allegation of those facts in plaintiff's amended complaint.

¶ 23 The court also noted its main problem with plaintiff's case had always been plaintiff's attempt to proceed anonymously instead of using her true name. However, the court recognized several reasons why plaintiff might not have been able to ultimately proceed anonymously under section 2-401(e) even if properly pled, and found the plaintiff's attorneys' decision to plead under plaintiff's birth name did not justify sanctions. A trial court's ultimate decision with regards to sanctions is entitled to great deference, and we cannot say no reasonable person would ever take the view adopted by the court here.

¶ 24 Moreover, we disagree with defendants' contention that plaintiff's attorneys' decision to file the complaint under

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plaintiff's birth name--rather than under her legal name--constituted a fraud upon the court. The history of the case makes clear that both the defendants and the court were clearly aware at all stages of the litigation that Shellie Beverlin was plaintiff's birth name, not her current legal name. In fact, the bulk of plaintiff's allegations against the defendants centered on a claim that they improperly disclosed her current legal name when they filed their previous lawsuit against her. While plaintiff's decision to pursue her case under something other than her legal name certainly constituted error sufficient to justify the court's dismissal of the amended complaint, we think it is equally clear plaintiff and her attorneys did not chose to plead under her birth name solely in an attempt to perpetuate a fraud upon the court.

¶ 25 We note this court's recent decision in *Santiago v. E.W. Bliss Co.*, 406 Ill. App. 3d 449 (2010), does not warrant a different conclusion. There, the plaintiff filed a complaint under the name Juan Ortiz and did not indicate that he had ever been know by another name. During discovery, the defendants discovered Juan Ortiz was not plaintiff's true name. Plaintiff attempted to remedy the situation by seeking leave of the court to file a second amended complaint under his true name. Over defendants' objection, the plaintiff was allowed to file an

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amended complaint under his true name. Defendants subsequently filed a section 2-619 motion to dismiss the complaint, alleging the amended complaint should be dismissed with prejudice as a sanction under Rule 137 because the plaintiff had committed a fraud on the court by filing his initial complaint under an assumed name. Noting Illinois courts had not previously considered the issue, the trial court certified the question of whether the plaintiff should be sanctioned under Rule 137 for appellate review.

¶ 26 While this court noted the filing of a complaint under a false name constitutes an egregious offense, the court held dismissal of the complaint with prejudice should not be a "mandatory" sanction under Rule 137. *Santiago*, 406 Ill. App. 3d at 459-60. The court noted "[i]t may, however, be an appropriate sanction, and whether to impose such a sanction is within the sound discretion of the circuit court." *Id.*

¶ 27 Under *Santiago*, it clearly would have been appropriate to sanction plaintiff's attorneys under Rule 137 for filing a complaint under something other than plaintiff's true name; however, *Santiago* also makes clear it was not mandatory for the court to do so. See *Id.* Whether plaintiff's attorneys should have been sanctioned for not filing the amended complaint under plaintiff's true name was a matter "within the sound discretion

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of the circuit court." *Id.* Because the record before us suggests the trial court's decision was informed, based on valid reasoning, and followed logically from the facts, we find the trial court did not abuse its discretion in denying defendants' motion for sanctions. See *Benson*, 407 Ill. App. 3d at 930.

¶ 28 CONCLUSION

¶ 29 We affirm the trial court's order.

¶ 30 Affirmed.