2011 IL App (1st) 110001-U

FIFTH DIVISION
December 16, 2011

No. 1-11-0001

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE: THE ESTATE OF MARY G. SYKES,	)	
	)	Appeal from the
A Disabled Person,	)	Circuit Court of Cook County
	)	
KENNETH DITKOWSKY,	)	Circuit Court No: 09 P 4585
	)	
Appellant,	)	Honorable
	)	Maureen E. Connors and
ADAM M. STERN, Special Guardian *Ad Litem*,	)	John J. Fleming,
	)	Judges Presiding.
Appellee.	)	

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

ORDER

Held: Judgment of the circuit court of Cook County imposing sanctions against attorney vacated where attorney had not entered appearance and court therefore had no jurisdiction over attorney. Attorney Registration and Disciplinary Commission was appropriate venue for allegations of professional misconduct against attorney.

¶ 1 On June 23, 2010, the circuit court entered sanctions against appellant pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). On November 30, 2010, the trial court awarded sanctions in the amount of $4,638.50. This appeal followed. We now vacate both orders of the

circuit court of Cook County.

¶ 2 ILLINOIS SUPREME COURT RULES

¶ 3 At the outset, it is necessary to address appellee's argument that this court should strike those portions of appellant's amended brief that do not pertain to the issue of sanctions against him. Appellee correctly notes that, despite this court's prior order striking appellant's brief, appellant continues to include irrelevant arguments unrelated to the issue of sanctions. We choose not to strike those portions of the brief and will ignore any arguments unrelated to the issue of sanctions.

¶ 4 We further note, however, that appellant has failed to comply with Illinois Supreme Court Rules 341 and Rule 342. Supreme Court Rule 341(h)(6) and (7) require appropriate reference to the pages of the record relied upon. Appellant fails to make appropriate citations to the record in his brief. See, *e.g.*, *People v. Karim*, 367 Ill. App. 3d 67, 94 (2006) (it is neither the function nor the obligation of this court to act as an advocate or search the record for error); *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001) ("It is well established that this court is not required to search the record to determine what legal issues are involved in an appeal").

¶ 5 Appellant has also failed to adequately comply with Supreme Court Rule 342 regarding the appendix to an appellant's brief. On January 28, 2011, appellant filed a two-volume record replete with materials unrelated to the issue on appeal. On April 12, 2011, this court granted appellant leave to file *instanter* a one volume supplemental record. On April 12, 2011, appellant also filed his appendix, in which he states as follows:

> "As the record herein is spread over a number of appeals the record herein is sparse. It consists of only one volume. Key documents that appear in the total record are part of this appendix. The record on appeal will be supplemented as the other appeals are completed. This appeal is keyed particularly to jurisdiction."

This court subsequently allowed appellant to file a one-volume supplemental record and allowed him to use a nine-volume record from a related appeal.

¶ 6 Rule 342(a) states, in relevant part:

> "Appendix to the Brief. The appellant's brief shall include, as an appendix, a table of contents to the appendix, a copy of the judgment appealed from, any opinion, memorandum, or findings of fact filed or entered by the trial judge or by any administrative agency or its officers, any pleadings or other materials from the record which are the basis of the appeal or pertinent to it, the notice of appeal, and a complete table of contents, with page references, of the record on appeal. The table shall state:
>
> (1) the nature of each document, order, or exhibit, e.g., complaint, judgment, notice of appeal, will, trust deed, contract, and the like;
>
> (2) in the case of pleadings, motions, notices of appeal, orders, and judgments, the date of filing or entry."

Appellant's index is inadequate and does not include "a complete table of contents, with page references, of the record on appeal." Although it is not the role of this court to search the record to find reason to reverse, we have reviewed the record. It appears, however, that appellant has

failed to include materials relevant to this appeal, the effect of which will be discussed further in our analysis.

¶ 7 BACKGROUND

¶ 8 On December 10, 2009, Mary Sykes (Mary) was adjudicated a disabled person and her daughter, Caroline Toerpe, was appointed plenary guardian of her estate and her person. Gloria Sykes (Gloria) was Mary's other daughter.

¶ 9 We take judicial notice of the following facts. On March 24, 2010, Gloria filed an appeal, *pro se*, (Appeal No. 10-0808. This court subsequently struck Gloria's brief, agreeing with the appellee that it was "replete with unsubstantiated and outright false and malicious assertions of fraud and misconduct allegedly committed by the circuit court judge who presided over the guardianship proceedings, as well as two court-appointed guardians *ad litem* who were appointed to represent Mary's interests." We also struck the *amicus* brief of Kenneth Ditkowsky, appellant in this case, which had been filed without leave of court. Gloria's revised brief was stricken and Appeal No. 10-0808 was dismissed on June 22, 2011.

¶ 10 At some point, according to appellant, "members of Mary Sykes' family and friends" engaged him to investigate certain "irregularities." On April 22, 2010, (which we note was one month after Gloria filed her appeal *pro se*) appellant sent a letter to one of Mary's physicians, Dr. Pramod Patel, seeking access to Mary's records as her alleged attorney. The letter stated as follows:

> "Dear Dr. Patel:
>
> I have been contacted to represent the interests of Mary Sykes. I am in

receipt of the following documents which I have labeled Exhibits 1.2 and 3. In reading Exhibits 1 and 2 there seems to be a definite conflict between Exhibits 1, 2 and 3.

After I appear for Mary Sykes I will want all your records in connection with Mrs. Sykes and I will want to have Mrs. Sykes examined independently at the University of Chicago to determine if she is indeed a disabled person

What disturbs me in connection with this case is that from the letters that I've seen and the information I've accumulated Mrs. Sykes knows the objects of her bounty, the extent and nature of her property and can formulate a plan. If I have read Exhibits 1.2 and 3 incorrectly I would appreciate if you would enlighten me as to what my mistake is.

If Mrs. Sykes children are fighting it would be reprehensible if medical professionals side with one side or the other or become partisan. This is the reason I will be asking the court for an independent evaluation at the University of Chicago.

Thank you for your cooperation and courtesy.

Yours very truly,

Kenneth Ditkowsky

Cc: Mary Sykes, Adam M. Stern, Cynthia R. Farenga, Peter J. Schmiedel, Gloria Sykes" (Emphasis added).

¶ 11 On April 23, 2010, appellee received a copy of the letter. Attached to the letter, but

omitted from the record, was an appearance form under the caption of this guardianship proceeding and *signed* by appellant stating that he was entering an appearance as attorney for Mary. As noted earlier, Mary had been adjudicated a disabled person over four months earlier and Mary's estate was already represented by counsel at that time. Appellant had not obtained consent from Mary or her guardian to represent her and he did not request leave of court to enter his appearance.

¶ 12 On April 26, 2010, appellee filed an "Emergency Petition for Sanctions and Court Order," which apparently was not included in the record on appeal, to enjoin appellant from holding himself out as Mary's attorney and from wrongfully requesting medical records. The motion also asked that the court impose sanctions against appellant for the expenses he forced the estate to incur.

¶ 13 During the hearing on the emergency motion, appellant informed the court that he had not filed an appearance. He further stated: "I am not even really before the court as yet." The court granted the request that appellant not hold himself out as Mary's attorney and gave appellant fourteen days to respond to the motion for sanctions, but he filed no response. Instead, he filed a "Motion to Vacate Orders Entered Appointing Guardians in this Case and to refer the Case to the States Attorney of Cook County, or DuPage County to Investigate Possible Elder Abuse Claims and Other Relief."

¶ 14 On June 23, 2010,the court granted appellee's motion and continued the matter for a hearing on the amount of sanctions only. The court also barred appellant from filing any documents unrelated to the sanctions issue without leave of court.

¶ 15 On November 30, 2010, the court granted sanctions against appellant in the amount of $4,638.50. Included in his fee petition, appellee had sought fees related to his work in reporting appellant to the Attorney Registration and Disciplinary Commission, but the court disallowed those fees.

¶ 16 ANALYSIS

¶ 17 The sole issue before this court is whether the trial court properly granted sanctions against appellant, pursuant to Supreme Court Rule 137. Appellant argues that his actions here can only be evaluated by the Illinois Supreme Court which has the "exclusive jurisdiction to discipline attorneys." Appellee has already reported appellant's actions to the ARDC but correctly notes that sanctions are distinct from disciplinary actions against attorneys for unprofessional conduct. The latter are meant to "protect the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach." *In re Winthrop*, 219 Ill. 2d 546, 529 (2006). Sanctions, however, are meant to prevent litigants from abusing the judicial process by "penalizing the party who initiates a vexatious or harassing action without a sufficient legal or factual underpinning." *In re Marriage of Pitulla*, 256 Ill. App. 3d 84, 90 (1993). The trial court's inherent authority to impose sanctions for abuse of the judicial process does not conflict with our supreme court's inherent authority to impose discipline for the unprofessional conduct of attorneys.

¶ 18 Due to the unusual facts here, we have been unable to find any case involving attorney conduct of this nature. Nonetheless, we hold that the trial court lacked authority to impose sanctions in this case because appellant did not file an appearance in the trial court. See, *e.g.*,

Blanchard v. EdgeMark Financial Corp., 175 F.R.D. 293, 303, n. 12 (N.D. Ill.,1997) (declining to make any comment upon the conduct of the attorney whose conduct was alleged to have violated Rule 4.2 of the Illinois Rules of Professional Conduct and instead noting that the attorney had not filed an appearance in the case and was thus "outside the purview of [the] Court's jurisdiction");

Shade v. Bank of America, N.A., USA 2009 WL 2252551, 2 (E.D. Cal.,2009) (plaintiff's motion for sanctions against certain attorneys denied where attorneys had not appeared in the action and thus court had no jurisdiction to enter sanctions order).

¶ 19 CONCLUSION

¶ 20 Based on the foregoing, we vacate the judgment of the circuit court of Cook County imposing sanctions against appellant. The clerk of our court is directed to forward a copy of this order to the Attorney Registration and Disciplinary Commission to determine whether disciplinary action should be taken against appellant.

¶ 21 Vacated.