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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE: THE ESTATE OF DANIEL KUC,)	Appeal from the
)	Circuit Court of
A Disabled Person,)	Cook County.
_____)	
)	
EUGENE J. KUC, Individually and as)	
Guardian of the Estate,)	
)	
Petitioner,)	
)	
v.)	No. 08 P 4108
)	
GUSTAVO H. SANTANA,)	
)	
Respondent-Alleged-Contemnor,)	
_____)	
)	
GUSTAVO H. SANTANA,)	
)	
Respondent-Counter-Petitioner,)	
)	
v.)	
)	
EUGENE J. KUC, Individually and as)	
Guardian of the Estate and)	
THE NOVOSELSKY LAW OFFICES,)	
)	
Petitioner-Counter-Respondents.)	
_____)	

DAVID A. NOVOSELSKY, Individually and)	
d/b/a NOVOSELSKY LAW OFFICES,)	
)	Honorable
Appellants.)	Maureen E. Connors,
)	Judge Presiding.

ORDER

HELD: We affirmed the entry of two sanctions imposed by the trial court pursuant to Illinois Supreme Court Rule 137 where the appellant waived review by filing a brief that failed to comply with Illinois Supreme Court Rules 341(h)(6) and 341(h)(7).

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Karnezis concurred in the judgment.

¶ 1 David A. Novoselsky, individually, and doing business as the Novoselsky Law Offices, appeals the entry of two sanctions pursuant to Supreme Court Rule 137. Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). We affirm.

¶ 2 Mr. Novoselsky's appellant's brief acknowledges "the record is quite voluminous in this matter." Yet his brief contains a statement of facts that is only about one page in length, and which is insufficient to understand the basis of the trial court's sanctions orders, as it only cursorily states that those orders were premised on an April 2009 motion filed by an associate of the Novoselsky Law Offices and the orders were entered after a "series" of hearings. The statement of facts contains no discussion of the two sanctions orders, the hearings on sanctions, or the "testimony, memorandum, case law, and arguments of counsel" expressly relied on by the trial court in each of its sanctions orders. The only citations to the record in the statement of facts are to: (1) Gustavo Santana's "response to petitioner, Eugene J. Kuc and the Novoselsky Law Firm's emergency motion for a substitution of judge for cause, filed December 2, 2009;" and (2) Mr. Novoselsky's and the

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Novoselsky Law Offices' "motion to reconsider [the] October 22, 2010 order which entered judgment against David Novoselsky individually and d/b/a Novoselsky Law Offices pursuant to Rule 137 for filing December 1, 2009 motion to substitute judge as a matter of right, December 2, 2009 motion to dismiss, and December 2, 2009 motion to substitute judge for cause." The statement of facts contain no discussion or explanation of either of these pleadings. Mr. Novoselsky's statement of facts, therefore, fails to comply with Supreme Court Rule 341(h)(6), which provides, the appellant's statement of facts "shall contain the facts necessary to an understanding of the case, *** and with appropriate reference to the pages of the record ***." Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008)). The following statement of facts was developed from our independent review of the record.

¶ 3 In April 2009, Dr. Eugene J. Kuc, as the limited guardian of the estate and person of his mother, Daniela Kuc, a disabled person, by and through his attorneys, the Novoselsky Law Offices, filed a motion entitled a "rule to show cause and for sanctions" against Robert Kuc and Gustavo Santana. The motion alleged that Robert Kuc (who is Dr. Kuc's brother) was subject to a protective order barring him from contacting or appearing at Ms. Kuc's home or attempting to contact her. The motion alleged that on March 29, 2009, Dr. Kuc discovered a note on Ms. Kuc's bedstand setting out both the office and cell phone number of "Gus Santana," who was Robert Kuc's attorney. Attached to the motion were phone records allegedly showing that telephone calls had been made from Ms. Kuc's home phone to Mr. Santana's office and cell phones on March 26, 2009. Dr. Kuc requested the court issue a rule to show cause why "Gus Santana should not be held in indirect criminal contempt by contacting and discussing with Daniela Kuc her guardianship, without notifying either the guardian *ad litem* appointed for Daniela Kuc, or the attorney for the limited guardian of the

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person and estate, in violation of Illinois Supreme Court Rules of Professional Responsibility 4.2, or the alternative, if the phone calls to Mr. Santana were made by Robert Kuc, then finding that Robert Kuc had violated the Order of Protection entered on behalf of Daniela Kuc by being on her premises on 6510 West Belmont Avenue, Chicago, Illinois and using her telephone to call his attorney."

¶ 4 The motion was signed, solely, by the associate attorney in the Novoselsky Law Offices who was then handling the case, James J. Ayres, Sr. Below his signature, Mr. Ayres's name was printed above the name and address of the Novoselsky Law Offices.

¶ 5 On May 1, 2009, Robert Kuc and Mr. Santana each filed a motion to dismiss Dr. Kuc's April 2009 motion. Robert Kuc stated in his motion to dismiss that Dr. Kuc's motion "does not conform to the requirements under the law for the commencement of an indirect criminal contempt proceeding nor does [it] sufficiently set forth facts complying with the Respondent's due process rights." Mr. Santana stated in his motion to dismiss that "nowhere in the factual allegations of the motion does the Petitioner allege or otherwise plead that upon personal knowledge or upon sufficient information and belief that Attorney, Gustavo H. Santana, *ever* spoke or communicated with Daniela Kuc. *** Furthermore, counsel for the Petitioner, the Novoselsky Law [Offices] was under a duty and professional obligation to investigate the veracity of the allegations brought forth by the Petitioner *before* filing such a pleading. Moreover, a petition initiating indirect criminal contempt proceedings ought not have the title 'Petition for a Rule to Show Cause,' the designation commonly and appropriately used for a petition initiating an indirect civil contempt proceeding. Instead, a petition initiating an indirect criminal contempt proceeding must be brought as a Petition for

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Adjudication of Criminal Contempt." (Emphasis in the original.) Mr. Santana further argued in his motion to dismiss that a pleading entitled "petition for a rule to show cause" is not sufficient to provide the due process to which the alleged contemnor is entitled, and that an alleged contemnor cannot be required to show cause why he should not be held in contempt. Mr. Santana sought Rule 137 sanctions against the Novoselsky Law Offices for failing to adequately investigate the veracity of the allegations brought against him by Dr. Kuc.

¶ 6 On December 1, 2009, Dr. Kuc, by and through his attorneys, the Novoselsky Law Offices, filed a motion for substitution of judge as a matter of right. On December 2, 2009, Dr. Kuc, by and through his attorneys, the Novoselsky Law Offices, filed a motion for substitution of judge for cause. On December 2, 2009, Dr. Kuc, James J. Ayres, Sr., and David Novoselsky, "d/b/a Novoselsky Law Offices," filed an emergency petition to dismiss Mr. Santana's May 1, 2009, motion for Rule 137 sanctions.

¶ 7 On September 2, 2010, Mr. Santana filed additional motions for Rule 137 sanctions against the Novoselsky Law Offices, alleging that the motion for substitution of judges as a matter of right was untimely filed, and that the motion for substitution of judge for cause failed to comply with section 2-1001(a)(3)(ii) of the Code of Civil Procedure. Section 2-1001(a)(3)(ii) states:

"Every application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant." 735 ILCS 5/2-1001(a)(3)(ii) (West 2010).

Mr. Santana alleged that the motion for substitution of judge for cause failed to allege specific conduct by the trial judge showing bias or prejudice. Mr. Santana also filed a motion for Rule 137

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sanctions against Mr. Ayres and Mr. Novoselsky, doing business as the Novoselsky Law Offices, for filing the emergency motion to dismiss Mr. Santana's May 1, 2009, motion for sanctions.

¶ 8 On October 22, 2010, the trial court entered an order stating:

"NOVOSELSKY LAW OFFICES, including DAVID NOVOSELSKY and JAMES AYERS, SR. failed to conduct a reasonable inquiry into the facts of the pleading filed on April 1, 2009 in the above entitled action seeking a criminal contempt citation against Attorney GUSTAVO SANTANA that the above mentioned pleading when filed was not well grounded in fact, and that the filing of said pleading along with conduct on the part of the associate, JAMES AYERS, SR. and the principal, DAVID NOVOSELSKY in pursuing said action constitutes a violation of Supreme Court Rule 137. This finding is based on all the evidence received by the Court including testimony, memorandum, case law, and arguments of counsel."

The trial court entered judgment against the Novoselsky Law Offices and in favor of Mr. Santana and his attorney, David Sotomayor, in the amount of \$9,038.50, with payment to be made within 30 days.

¶ 9 Also on October 22, 2010, the trial court entered an order finding: (1) the motion for substitution of judge as a matter of right was untimely, was not well grounded in fact or law and had no good-faith basis, and violated Rule 137; (2) the motion to dismiss Mr. Santana's May 1, 2009, motion for sanctions was not well grounded in fact or law and had no good-faith basis and violated Rule 137; and (3) the motion for substitution of judge for cause had no good-faith basis, was not well grounded in fact or law in the absence of the requisite affidavit, and constituted a violation of Rule

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137. The trial court expressly stated its findings were "based on all the evidence received by the Court, including testimony, memorandum, case law, and arguments of counsel." The trial court entered judgment against "David Novoselsky individually and d/b/a Novoselsky Law Offices" and in favor of Mr. Santana and his attorney, Mr. Sotomayor, in the amount of \$8,013, with payment to be made within 30 days.

¶ 10 On March 22, 2011, the trial court entered an order denying the Novoselsky Law Offices' motions for reconsideration.

¶ 11 David A. Novoselsky, individually, and doing business as the Novoselsky Law Offices, filed this timely appeal. No appellee's brief has been filed. Therefore, we consider the merits of the appeal on Mr. Novoselsky's brief alone, pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976) (a reviewing court should decide the merits of an appeal where the record and the claimed errors are such that a decision can be made easily without the aid of an appellee's brief).

¶ 12 Mr. Novoselsky argues, "[a]s the Illinois Supreme Court pointed out in *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214 (2000)[,] whenever an attorney is aware of a potential ethical obligation, misconduct, or other improper practice on the part of another attorney, and so long as the information available rises beyond a 'mere suspicion', there is no discretion vested in the attorney who has the knowledge to refrain from bringing it to the attention of the appropriate forum as well as [the] ARDC." Mr. Novoselsky contends, "[i]n the present case, the fact that there was more than a 'mere suspicion' that calls had been made to Mr. Santana, the attorney for the son who was barred from communicating under the Protective Order, and also barred from discussing the matter with another

lawyer's client pursuant to Illinois Supreme Court Rule of Professional Conduct 4.2 had to be—and was—reported to the Court." Therefore, Mr. Novoselsky concludes that the trial court erred by entering "sanctions against the lawyer who did nothing more than follow what the Illinois Supreme Court in *Skolnick*, based on its earlier decision in [*In re Himmel*, 125 Ill. 2d 531 (1988)] made a mandatory disclosure."

¶ 13 Mr. Novoselsky further argues that the trial court erred by assessing the \$9,038.50 sanction against the "Novoselsky Law Offices" instead of against Mr. Ayres, individually, who signed the underlying pleading that was the subject of the sanction orders. He cites, in support, Rule 137, which states, "[e]very pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name ***" and "[t]he signature of an attorney *** constitutes a certificate by him" that the document conforms to certain requirements. Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). The rule also states, if a document violates the rule, the trial court may sanction "the person who signed it, a represented party, or both." *Id.* Mr. Novoselsky also cites *Medical Alliances, LLC v. Health Care Service Corp.*, 371 Ill. App. 3d 755, 757 (2007), which held Rule 137 "permits the trial court to sanction only the person who signed the document and/or the client."

¶ 14 Mr. Novoselsky also argues that the trial court erred in awarding sanctions in favor of Mr. Santana, who was not a party to the case. Mr. Novoselsky again cites in support Rule 137, which states in pertinent part that an appropriate sanction "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." (Emphasis added.) Ill. S. Ct. R. 137 (eff. Feb.

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1, 1994).

¶ 15 Finally, Mr. Novoselsky argues that the trial court improperly shifted the burden of proof to him by requiring him to prove that sanctions were not warranted. He cites in support *Peterson v. Randhava*, 313 Ill. App. 3d 1, 9 (2000), which held, "[a] party requesting sanctions under Rule 137 has the burden of demonstrating that the opposing party made untrue assertions of fact without any reasonable cause."

¶ 16 We affirm the sanctions orders, as Mr. Novoselsky has waived review by filing an appellant's brief that fails to comply with Rules 341(h)(6) and 341(h)(7). Rule 341(h)(6) states, the appellant's brief "shall contain a [statement of] the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008). Rule 341(h)(7) states, the appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Our supreme court has stated that the supreme court rules " 'are not aspirational. They are not suggestions. They have the force of law, and the presumption must be that they will be obeyed and enforced as written.' " *Rodriguez v. Sheriff's Merit Comm'n*, 218 Ill. 2d 342, 353 (2006) (quoting *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 494 (2002) (quoting *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995))).

¶ 17 As discussed above, Mr. Novoselsky's statement of facts fail to comply with Rule 341(h)(6) as it contains no discussion of the two sanctions orders, the hearings on the sanctions orders, or the evidence presented and relied on by the trial court, and as it provides citations to the record to

pleadings for which no explanation is given. The argument section of his brief similarly fails to comply with Rule 341(h)(7) by failing to cite to the pages of the record relied on. For example, he states, "argument was presented that the [underlying pleading signed by Mr. Ayres] was in the alternative and based on [the] evidence." However, he never cites to where in the record this argument was made. He states, "there is ample evidence to show that the provisions of Rule 137 were not violated," but he does not cite to said evidence in the record. He notes, "[t]hroughout the transcripts, and throughout the record, it should be clear that the trial court erroneously believed that it was the burden of the party defending against sanctions to 'prove' that sanctions were not warranted." However, he never cites the pages of the transcripts and record relied on in support of this argument. Nor does he list any such transcripts in his table of contents to the record on appeal, which is contained in his appendix to his appellant's brief.

¶ 18 In addition, each of the two October 22, 2010, orders state its finding "is based on all the evidence received by the Court including testimony, memorandum, case law, and arguments of counsel." Mr. Novoselsky has not provided us with the citations to the record for this evidence received by the court.

¶ 19 We also note that the October 22, 2010, order that imposed the \$8,013 sanction against Mr. Novoselsky, individually, and doing business as Novoselsky Law Offices, was premised in part on the trial court's finding that "[o]n June 4, 2010 when this matter came to be heard on the NOVOSELSKY LAW OFFICE'S Motion for a Substitution of Judge for Cause, Attorney DAVID NOVOSELSKY appeared for hearing and could not produce a file stamped copy of the affidavit required to accompany a Petition for Substitution of Judge for Cause." Mr. Novoselsky has not

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provided us with the citation to the record for the June 4 hearing, nor has he provided a citation to the record for his argument that "the GAL who was present in Court advised the Court that the copy in her possession had the affidavit attached."

¶ 20 Also, the March 22, 2011, order denying the Novoselsky Law Office's motions to reconsider states, the motions are denied "for [the] reasons stated on record." Mr. Novoselsky, again, has not provided us with the appropriate citation to the record.

¶ 21 We appreciate that the sanctions orders impose a significant penalty in excess of \$17,000, and that Mr. Novoselsky understandably seeks review thereof. However, in the absence of an appellant's brief complying with Rules 341(h)(6) and 341(h)(7), we are unable to give a meaningful review, as we do not know what evidence was presented, what arguments were made and relied upon, and even what issues have been preserved for appeal. Mr. Novoselsky's failure to comply with Rules 341(h)(6) and 341(h)(7) results in waiver of his contentions on appeal. See *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 211 (2007).

¶ 22 For the foregoing reasons, we affirm the circuit court.

¶ 23 Affirmed.