

2012 IL App (1st) 111523-U

FIFTH DIVISION
September 14, 2012

No. 1-11-1523

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

CHRISTOPHER HARLIN, an individual,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
CHICAGO RESIDENTIAL, INC., an Illinois corporation,)	No. 08 M1 167703
)	
Defendant-Appellee,)	
)	
and)	
)	
GREATER ILLINOIS TITLE COMPANY,)	Honorable
)	Pamela E. Hill-Veal,
Defendant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Epstein and Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court abused its discretion in awarding sanctions against plaintiff's attorney pursuant to Supreme Court Rule 137 for failure to attend two hearings where relevant pleadings filed by plaintiff were not alleged to contain false or frivolous statements.

¶ 2 The plaintiff-appellant, Christopher Harlin, appeals from an order of the circuit court of Cook County granting the motion of defendant-appellee, Chicago Residential, Inc., for Supreme Court Rule 137 (eff. Feb. 1, 1994) sanctions against Harlin's attorney based on costs incurred by Chicago Residential when Harlin's attorney failed to appear for hearings on two separate motions. Harlin contends on appeal that Rule 137 sanctions may not be awarded for the failure of a party's attorney to appear for a hearing.

¶ 3 Chicago Residential has failed to file an appellee's brief in this appeal. However we may still consider this appeal on plaintiff's brief alone. *People v. Cosby*, 232 Ill. 2d 262, 285 (2008); *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 4 Harlin filed a second amended complaint against Chicago Residential and Greater Illinois Title Company (GIT) alleging breach of contract, misrepresentation, and unjust enrichment. The trial court ultimately granted both defendants' motions to dismiss. On appeal, the dismissal of the complaint against Chicago Residential was affirmed and the dismissal against GIT was reversed and remanded for further proceedings. *Harlin v. Chicago Residential, Inc.*, No. 1-10-1292 (2011) (unpublished order under Supreme Court Rule 23). However, during the course of the lawsuit below, Harlin's attorney failed to appear at a number of hearings. The trial court ruled that, under Rule 137, Harlin and Harlin's attorney were liable for sanctions for attorney fees incurred by defendants when Harlin and his attorney failed to appear at those hearings. Chicago Residential subsequently moved for sanctions based on attorney fees arising from two of those hearings.

¶ 5 In ruling that both defendants were entitled to obtain attorney fees from Harlin and Harlin's attorney, the trial court issued an order which detailed the circumstances surrounding Harlin's attorney's failure to appear at five separate hearings. However, because Chicago

Residential sought the award of attorney fees arising from only two hearings, we will discuss only those hearings.

¶ 6 The first hearing for which Chicago Residential sought sanctions was one scheduled for March 16, 2010. The hearing was on Chicago Residential's motion to dismiss the complaint. In its findings, the trial court noted that neither Harlin nor his attorney appeared for the hearing. Harlin had been given until February 8, 2010, to respond. However, the trial court noted, Harlin's attorney had failed to furnish the court with a courtesy copy of any response she may have prepared, so the court could not determine whether such a response had been filed in accord with the briefing schedule. The trial court also noted that Harlin's attorney had a scheduling conflict with another case set for the same time as the hearing at issue. However, Harlin's attorney was aware of this conflict ahead of time and yet had failed to file a motion with the court seeking a continuance. Finally, the court found that Chicago Residential had incurred attorney fees in preparing for the hearing.

¶ 7 The second hearing relied upon by Chicago Residential in its motion for sanctions was one set for November 19, 2010. The court noted that in relation to the underlying appeal in this cause, Harlin had filed a motion to supplement the record on appeal, to be heard on this date. But Harlin and his attorney failed to appear at the hearing. Harlin's attorney asserted that a family medical emergency, which she only learned about on the day of the hearing, caused her to miss the hearing. Although she telephoned the court's clerk concerning this emergency, the court noted that she had failed to even attempt to notify either of the defense attorneys that she would not be appearing, thus causing them to incur attorney fees. Based upon these facts, the court ruled that Harlin and his attorney were subject to attorney fees as Rule 137 sanctions.

¶ 8 Chicago Residential's attorney filed an amended schedule A setting out the hours she had spent preparing for and attending these two hearings, as well as her work in connection with the

motion for sanctions. She asked for attorney fees in the amount of \$1,592 for this work. The trial court awarded this amount in an order dated April 27, 2011. This appeal ensued.

¶ 9 On appeal, Harlin contends that the trial court abused its discretion when it sanctioned Harlin and Harlin's attorney and awarded attorney fees to Chicago Residential, because Rule 137 fees cannot be awarded for a party's failure to appear at a hearing. We concur. Rule 137 applies to pleadings. *Kensington's Wine Auctioneers and Brokers, Inc. v. John Hart Fine Wine*, 392 Ill. App. 3d 1, 18 (2009). It does not authorize sanctions for all violations of court rules and acts of misconduct. *Krautsack v. Anderson*, 223 Ill. 2d 541, 562 (2006). The purpose of the rule is to prevent the filing of false or frivolous lawsuits. *Kensington*, 392 Ill. App. 3d at 15. It requires that when a party represented by an attorney submits a pleading, the party's attorney must sign that pleading as a certification that the attorney has read the pleading and that to his or her knowledge the pleading is well grounded in fact and warranted by law. *Dowd and Down, Ltd. v. Gleason*, 181 Ill. 2d 460, 486-87 (1998). The decision to impose sanctions pursuant to this rule is a matter for the trial court's discretion, to be overturned only upon a finding that the court has abused its discretion. *Dowd*, 181 Ill. 2d at 487. But because Rule 137 is penal in nature, it must be strictly construed. *Kensington*, 392 Ill. App. 3d at 15; *Whitmer v. Munson*, 335 Ill. App. 3d 501, 514 (2002). The rule does not apply to an attorney's conduct in failing to appear at hearings or in disregarding the court's briefing schedule. *Kensington*, 392 Ill. App. 3d at 18.

¶ 10 We also note that as a general matter a party may not recover attorney fees unless there is specific contractual or statutory authority for awarding such fees. *Hallmark Personnel, Inc. v. Pickens-Kane Moving & Storage Co.*, 82 Ill. App. 3d 18, 24 (1980). One exception to this is the common fund rule which permits a court to exercise its equitable powers to award attorney fees to a plaintiff who has successfully brought an action which results in a benefit to others not involved in the lawsuit. *De Fontaine v. Passalino*, 222 Ill. App. 3d 1018, 1033 (1991);

Hallmark, 82 Ill. App. 3d at 24. Courts have also been held to possess the inherent authority to dismiss a cause of action as a sanction for a party's failure to comply with court's orders. *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 66 (1995). But the sanctions here were the imposition of attorney fees and the court relied solely upon Rule 137 in ordering those fees. Because this rule does not support the award of attorney fees as a sanction and does not apply to a party's failure to appear at a hearing, we must reverse the trial court's order.

¶ 11 For the reasons set forth in this order, we reverse the judgment of the circuit court of Cook County.

¶ 12 Reversed.