FIRST DIVISION
FILED: December 17, 2012

No. 1-12-0351

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JASMINA DJORDJEVIC de la TORRE VARVITSIOTIS,	)	Appeal from the Circuit Court of Cook County.
Petitioner-Appellant,	)	
v.	)	No. 06 D 79593
STEPHEN JAMES COUKOS,	)	Honorable Mary S. Trew,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court is affirmed.

¶ 2 The petitioner, Jasmina Djordjevic de la Torre Varvitsiotis, appeals from a judgment of the circuit court (1) dismissing her motion for sanctions against the respondent, Stephen James Coukos, (2) dismissing her petition for a change of custody of the parties' minor son and for other relief, and (3) imposing sanctions against her pursuant to Supreme Court Rule 137 (eff. Feb. 1, 1994), and

section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/508(b) (West 2010)). For the reasons that follow, we affirm.

¶ 3 This appeal arises out of protracted and contentious litigation, including multiple prior appeals, over the care, custody, and support of the parties' minor son, James Stephen Coukos. The record on appeal, which consists of the custody judgment entered on March 19, 2010, post-judgment proceedings initiated by both parties, and the decisions issued in the previous appeals, reveals the following relevant facts.

¶ 4 The parties, both of whom are licensed attorneys, began a relationship in 2003. At the time, the petitioner was recently divorced with a two-year-old daughter, and the respondent had never been married. Their son, James, was born on February 3, 2006. The parties lived together for several months in 2004 and 2005 and again for a brief period in early 2006, but have not resided together since April 2006. The respondent signed an acknowledgment of paternity when James was born, and he subsequently was adjudged James' natural father. Thereafter, the respondent sought sole custody of James, while the petitioner sought joint custody and an order designating her as the primary residential parent. The petitioner married Tom Varvitsiotis on July 12, 2008, and subsequently gave birth to a son.

¶ 5 On March 19, 2010, the circuit court entered its custody judgment, granting sole custody of James to the respondent and allowing the petitioner extensive visitation pursuant to a detailed parenting schedule. The petitioner appealed, and this court affirmed the judgment of the circuit court. See *Djordjevic de la Torre v. Coukos*, No. 1-10-1341 (2010) (unpublished order under Supreme Court Rule 23). Both parties initiated post-judgment proceedings, and this court affirmed

the trial court's grant of attorney fees to the respondent under section 508(b) of the Act (750 ILCS 5/508(b) (West 2010)). See *Djordjevic de la Torre v. Coukos*, 2011 IL App (1st) 110778-U. The petitioner ultimately moved to Paris, France, with Varvitsiotis, who had been assigned to a position there by his employer.

¶ 6 Thereafter, the petitioner filed a motion for sanctions against the respondent. Although this motion is not included in the record on appeal, the parties' subsequent filings and the circuit court's orders indicate that the petitioner's motion sought imposition of sanctions against the respondent and his attorneys for alleged violations of the Illinois Rules of Professional Conduct and of Circuit Court of Cook County Rule 13.11, relating to fairness, truthfulness, and civility in the practice of law.[1]

¶ 7 On February 25, 2011, the petitioner filed a petition for a change of James' custody, for relief due to visitation abuse, and to remove James from Illinois and have him reside with her in Paris. In support, the petitioner alleged that the respondent had deprived her of her visitation rights, had excluded her from important decisions regarding James' life, and had put James' health at risk and that it was in James' best interests to reside with her in Paris.

¶ 8 Pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)), the respondent moved to dismiss the petitioner's motion for sanctions and her petition to change

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[1] The record is unclear as to when the petitioner's motion for sanctions was filed. The petitioner's notice of motion and hearing, filed in February 2011, indicates that her motion was originally filed on November 17, 2010. However, the circuit court's order disposing of the motion indicates that it was filed on April 18, 2011, and the petitioner's brief on appeal asserts that it was filed on February 25, 2011.

custody and for other relief. He also requested that the court enter an order under section 508(b) of the Act and Supreme Court Rule 137, requiring the petitioner to pay the attorney fees and costs he incurred in opposing the motions.

¶ 9 When these matters were called for hearing, the petitioner orally moved to withdraw her petition to change custody and for other relief, but the respondent objected. The circuit court heard the respondent's motions to dismiss, and ultimately granted them. Regarding the petitioner's motion for sanctions, the circuit court ruled that it lacked the authority to impose professional sanctions against the respondent and his attorneys because the discipline of attorneys is within the exclusive authority of the supreme court. In addition, the court found that the petitioner had violated Supreme Court Rule 137 because her motion for sanctions had no basis in law. As a consequence, the court entered an order pursuant to Rule 137 requiring the petitioner to pay the attorney fees and costs the respondent incurred in opposing the petitioner's motion for sanctions.

¶ 10 As to the petition to change custody and for other relief, the court found that it had failed to satisfy the pleading requirements set forth in sections 609 and 610 of the Act (750 ILCS 5/609, 610 (West 2010)) and also failed to allege that the respondent had violated the terms of the court-ordered visitation. The court further determined that the petition was brought for the improper purpose of causing unnecessary delay and expense. Accordingly, the court entered an order under section 508(b) of the Act mandating that the petitioner pay the respondent's attorney fees and costs in seeking dismissal of the petition.

¶ 11 The respondent moved to reduce the fee award to judgment, and the trial court entered judgment against the petitioner in the amount of $4,795.75, representing the amount of reasonable

and necessary fees for the work performed by the respondent's counsel in opposing the petitioner's motion for sanctions and petition to change custody and for other relief. The court also found that, pursuant to Supreme Court Rule 304(a) (eff. Feb. 26, 2010), there was no just cause for delay in enforcement or appeal of the judgment. This appeal followed.

¶ 12 On appeal, the petitioner initially contends that the circuit court erred in dismissing her motion for sanctions and in ordering her to pay the respondent's attorney fees pursuant to Rule 137. We note, however, that the record on appeal is inadequate to permit our review of these aspects of the court's judgment.

¶ 13 It is well established that the appellant has the burden of presenting a sufficiently complete record to support her claim of error, and any doubts arising from the incompleteness of the record will be resolved against her. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958 (1984). Where the record is incomplete or does not demonstrate the alleged error, a court of review will not speculate as to what errors may have occurred below. *Foutch*, 99 Ill. 2d at 391-92; *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757, 844 N.E.2d 989 (2006). In the absence of a complete record, the reviewing court must indulge in every reasonable presumption favorable to the judgment and will presume that the trial court's judgment conformed with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92; *Smolinski*, 363 Ill. App.3d at 757-58; *In re Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462, 610 N.E.2d 769 (1993). The presumption of correctness in the circuit court is especially strong when, as here, there is an indication that the circuit court was "fully advised." *Smolinski*, 363 Ill. App. 3d at 758; *Mars v. Priester*, 205 Ill. App. 3d 1060, 1066, 563 N.E.2d 977 (1990).

¶ 14 Here, the record on appeal does not contain the petitioner's motion for sanctions, and, in support of her arguments, the petitioner cites to a document in her appendix that purports to be a copy of the filed motion. Though the respondent does not dispute that the petitioner filed a motion for sanctions, the document in the petitioner's appendix does not bear a file stamp, and there is no stipulation that it is a true and correct copy of the original, filed motion. In the absence of a record containing the petitioner's original motion, or an agreement as to its contents, we are unable to engage in a substantive review of the court's decision. Rather, we must presume the trial court had a sufficient factual basis for its ruling and properly applied the law. *Foutch*, 99 Ill. 2d at 391-92.

¶ 15 Moreover, even if the parties had stipulated that the document in the appendix represents an accurate copy of the petitioner's motion, we would agree with the circuit court's ruling. It is firmly established that the authority to sanction or discipline attorneys for unprofessional conduct falls within the exclusive province of the supreme court and is administered by the Attorney Registration and Disciplinary Commission (ARDC). *People ex rel. Brazen v. Finley*, 119 Ill. 2d 485, 492-94, 519 N.E.2d 898 (1988). The inherent power of a circuit court to control its courtroom and maintain proper decorum extends no further than its ability to find someone in contempt. *In re General Order of March 15, 1993*, 258 Ill. App. 3d 13, 17, 629 N.E.2d 673 (1994). Absent conduct that is sanctionable as contempt, constitutes a discovery violation embraced by Supreme Court Rule 219 (eff. March 28, 2002), or consists of the filing of a pleading that is not grounded in fact and law as proscribed by Rule 137, circuit courts do not have authority to mete out discipline for unprofessional conduct by an attorney. In this case, the challenged conduct did not fall within the specific grants of authority described above. Consequently, the circuit court lacked the authority to impose

sanctions against the respondent and his attorneys, and the petitioner's motion seeking such sanctions was properly dismissed.

¶ 16 Further, in light of the fact that the petitioner's motion for sanctions was not well-grounded in law, we are unable to say that the circuit court abused its discretion by ordering the petitioner to pay the respondent's attorney fees and costs, pursuant to Rule 137. See *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 307 Ill. App. 3d 92, 98, 716 N.E.2d 829 (1999) (holding that Rule 137 is intended to penalize litigants who plead frivolous or false matters or bring suit without any basis in the law and that the grant of fees and expenses under the rule falls within the trial court's discretion and will not be disturbed on appeal absent an abuse of that discretion). For all of the reasons set forth above, the dismissal of the petitioner's motion for sanctions and the imposition of fees under Rule 137 are affirmed.

¶ 17 We next address the petitioner's argument that the court erred in dismissing her petition to change custody, for relief due to visitation abuse, and to remove James from Illinois and in ordering her to pay the respondent's attorney fees incurred in opposing that petition, pursuant to section 508(b) of the Act.

¶ 18 A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473, 905 N.E.2d 781 (2009). In reviewing a dismissal under section 2-615, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Pooh-Bah Enterprises, Inc.*, 232 Ill. 2d at 473. However, a plaintiff may not rely on mere conclusions of law or fact unsupported by specific factual allegations. *Pooh-Bah Enterprises, Inc.*, 232 Ill. 2d at 473. Review of a dismissal

under section 2-615 is *de novo*. *Pooh-Bah Enterprises, Inc.*, 232 Ill. 2d at 473.

¶ 19 Section 610(a) of the Act provides, in relevant part, that "no motion to modify a custody judgment may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral or emotional health." 750 ILCS 610(a) (West 2010). This provision allows a circuit court, in its discretion, to permit a petition for modification to be heard in those situations where the court, based upon submitted affidavits, has reason to believe that a child's welfare is at serious risk. *Department of Public Aid ex rel. Davis v. Brewer*, 183 Ill. 2d 540, 554-55, 702 N.E.2d 563 (1998). This two-step process "serves an important gatekeeping function, as only those cases which satisfy the initial procedural prerequisite contained in subsection (a) proceed to an evidentiary hearing conducted pursuant to the provisions of subsection (b)." *Department of Public Aid ex rel. Davis*, 183 Ill. 2d at 555.

¶ 20 Here, the custody order was entered on March 19, 2010, and the petition to change custody was filed 11 months later on February 25, 2011. The circuit court considered the allegations set forth in the petition and concluded that the petitioner had failed to comply with the mandated two-step process, where her petition failed to sufficiently allege that James' physical, mental, moral or emotional health may be seriously endangered by his present custodial environment.

¶ 21 The petition's allegations that relate to James' physical health and safety pertain to routine care and treatment of common childhood illnesses. With regard to the petitioner's claim that parental alienation constitutes a ground for a change in custody, we note that the cases relied upon by the petitioner are inapplicable because they did not involve a party seeking a custodial change within two

years of the custody judgment's entry. In addition, the allegations in the petition that purport to assert that the respondent has alienated James from the petitioner are contradicted by other allegations that James has made repeated requests to travel to spend time with her. Based on our review of the petition, we agree with the circuit court's determination that dismissal of the request to change custody was proper because the petitioner failed to satisfy the serious-endangerment pleading requirements set forth in section 610(a).

¶ 22 The circuit court also determined that the petitioner's request for approval to remove James from Illinois must be dismissed because she was not James' custodial parent. Under section 609(a), the circuit court may approve a removal request brought by "any party having custody of any minor child." 750 ILCS 5/609(a) (West 2010)). In light of this clear and unambiguous statutory provision that only a custodial parent may seek approval to remove a child, we find no error in the circuit court's dismissal of this aspect of the petition.

¶ 23 With regard to the petitioner's request for relief based on abuse of her visitation rights, we note the custody judgment provided that, if the parties were living more than 100 miles apart and alternate-weekend visitation is not feasible due to a parent's relocation, James shall reside with the petitioner for up to 12 days per month, with no more than 6 days being consecutive. The plaintiff's assertions of visitation abuse pertain to the time period after she moved to Paris in 2010. The circuit court found that the petition failed to allege that the respondent had violated the terms of the court-ordered visitation. Implicit in this decision was the determination that the custody judgment did not provide for visitation outside of the United States, nor did it contemplate that James, who was four years old, would travel to and from France twice each month for six-day visits each time. In

reviewing the sufficiency of the petitioner's assertions, we agree that they do not allege that she was deprived of visitation that was granted to her in the custody judgment. Accordingly, dismissal was proper.

¶ 24 Based on the rulings set forth above, the circuit court ordered the petitioner to pay for the attorney fees incurred by the respondent in opposing her petition to change custody and for other relief. Section 508(b) states as follows:

> "If at any time a court finds that a hearing under this Act was precipitated or conducted for any improper purpose, the court shall allocate fees and costs of all parties for the hearing to the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." 750 ILCS 5/508(b) (West 2010).

An award of attorney fees under section 508(b) of the Act lies within the sound discretion of the circuit court, and its determination will not be overturned absent a clear abuse of discretion. *Hofmann v. Hofmann*, 94 Ill. 2d 205, 229, 446 N.E.2d 499 (1983).

¶ 25 In granting the respondent's request for attorney fees pursuant to section 508(b), the circuit court specifically found that the petition to change custody and for other relief was brought for the improper purpose of causing unnecessary delay and expense, which needlessly increased the cost of litigation. In light of the circumstances described above, we cannot say that the award of fees constituted an abuse of discretion.

¶ 26 We also reject the petitioner's claim that the circuit court committed a procedural error by

hearing and ruling on the respondent's motion to dismiss the petition. Section 2-1009(b) of the Code of Civil Procedure provides that the circuit court may hear and decide a previously filed and potentially dispositive motion before ruling on a plaintiff's motion for a voluntary dismissal. 735 ILCS 5/2-1009(b) (West 2010). Such a decision is reviewed for an abuse of discretion. *Morrison v. Wagner*, 191 Ill. 2d 162, 165, 729 N.E.2d 486 (2000). In this case, the petition for a change of custody was filed in February 2011, and the respondent's motion to dismiss was filed in May 2011. The petitioner verbally requested leave to withdraw her petition when it and the motion to dismiss were called for hearing on September 1, 2011. We find no abuse of discretion in the circuit court's decision to hear and decide the motion to dismiss.

¶ 27 In light of this decision, we similarly reject the petitioner's argument that the fees awarded were excessive because they compensated the respondent's attorney for services in arguing the motion to dismiss, briefing the motion to reduce the fee award to judgment, opposing her motion to reconsider, and briefing the supplemental request for fees. With regard to the petitioner's claim that the fee award included time spent on various other motions, we observe that the circuit court reduced the amount of the fees that were requested by the respondent's attorney. Based on our review of the record, we find no abuse of discretion in the trial court's determination of the amount of the attorney fees that was reasonable and necessary to defend against the petitioner's motion and petition.

¶ 28 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 29 Affirmed.