2015 IL App (1st) 141184-U

THIRD DIVISION
March 18, 2015

No. 1-14-1184

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN F. BAUER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 L 11796
	)	
ARTHUR G. JAROS, JR.,	)	Honorable
	)	Kathy M. Flanagan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Mason concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court did not abuse its discretion by denying defendant's motion for sanctions pursuant to Illinois Supreme Court Rule 137 without an evidentiary hearing.

¶ 2 Defendant, Arthur G. Jaros, Jr., an attorney, appeals from the trial court's denial of his Rule 137 motion for sanctions against plaintiff, John F. Bauer. On appeal, defendant argues the court erred by denying his motion and by doing so without first holding a hearing. For the reasons that follow, we affirm.

¶ 3 In October 2012, plaintiff filed a *pro se* complaint for legal malpractice against defendant, seeking $70,000 in damages. Plaintiff alleged that he was a named beneficiary of the Jean D. Cooney Trust (Trust), of which defendant was the successor trustee. Plaintiff further alleged that defendant advised him that he was entitled to $70,000 and never provided him with an accounting of the Trust. According to plaintiff, defendant misappropriated, wrongfully concealed, and intentionally diverted Trust assets, thereby breaching his duty to Jean Cooney (who died in October 2010), plaintiff, and the other trust beneficiaries.

¶ 4 In March 2013, defendant filed a motion to dismiss, asserting that plaintiff's claim was barred by some affirmative matter pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2012)). Defendant attached to his motion, among other things, a copy of the Trust agreement directing the trustee to distribute to plaintiff $70,000 as a "pecuniary" amount. Defendant also attached a copy of an email that he sent to plaintiff's attorney in March 2011 in which he indicated he was enclosing his "trustee's work paper" showing items that constituted or may have constituted "an offset against the gross amount" of plaintiff's trust distribution. The email indicated an "interim distribution amount" was computed as $6,210. A copy of the "trustee's work paper" was also attached to defendant's motion. In addition, defendant's motion included his unsworn declaration made pursuant to section 1-109 of the Code (735 ILCS 5/1-109 (West 2012)) and Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013)). In his declaration, defendant stated that plaintiff had never been his client and was not a residuary beneficiary pursuant to the Trust agreement. Defendant believed that plaintiff had no right to an accounting pertaining to all trust transactions and defendant's sole duty to plaintiff was to distribute the pecuniary amount of $70,000, less any amounts required to be offset

pursuant to the law or terms of the Trust Agreement. Defendant further stated he determined Cooney loaned $49,990 to plaintiff and made $13,800 in "excess gifts" to plaintiff. Thus, defendant determined the net amount due to plaintiff was $6,210. Defendant informed plaintiff of his determinations and provided plaintiff's attorney with a copy of the trustee's work papers and advised him as to the amount of the proposed interim distribution. Defendant also gave plaintiff a $6,210 check. Plaintiff filed no response to defendant's motion.

¶ 5 In June 2013, the trial court denied defendant's motion to dismiss, finding the various documents he attached to his motion did not defeat plaintiff's claim and defendant had failed to attach a copy of plaintiff's complaint to his motion. Later that month, defendant filed a motion to reconsider, attaching thereto a copy of the complaint. In August 2013, the trial court dismissed the action against defendant for want of prosecution. The court did not rule on defendant's motion to reconsider.

¶ 6 In September 2013, defendant filed a motion for sanctions against plaintiff pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013). Defendant alleged plaintiff's complaint was not well-grounded in the law because plaintiff (1) lacked standing to file a complaint for malpractice because he was not defendant's client, and (2) had no right to an accounting pertaining to all Trust transactions because plaintiff was a pecuniary, not residuary, beneficiary under the Trust agreement. Defendant further alleged plaintiff's complaint was untruthful in that it claimed defendant was entitled to $70,000 and that he had not received any portion of the $70,000 even though defendant admitted in his answer to defendant's request to admit facts that he received a $6,210 check from the Trust. Defendant further asserted it was "completely untrue" that defendant misappropriated, wrongfully concealed, or intentionally diverted trust assets.

Finally, defendant alleged that plaintiff filed his complaint for an improper purpose, asserting "bad blood" existed between plaintiff and defendant based on defendant having previously prohibited plaintiff from residing in Jean Cooney's home.

¶ 7 Defendant attached to his motion plaintiff's answer to defendant's request to admit facts (Illinois Supreme Court Rule 216 (eff. May 1, 2013)). In it, plaintiff admitted, among other things, that he was never defendant's client, that he received a $6,210 distribution check, and that he wrote out checks to himself and drew from the account of Jean Cooney. However, he denied, *inter alia*, that he was only entitled to receive $6,210 from the estate, that Jean Cooney made loans to him during her lifetime, and that he received the accounting spreadsheet from defendant on March 4, 2011.

¶ 8 The trial court initially set defendant's case for a December 2013 status and case management conference. After plaintiff's attorney failed to appear for the conference, he filed a motion for new court date. Defendant filed a response objecting to plaintiff's motion, noting, among other things, that plaintiff failed to file a response to defendant's motion and "no just cause to delay ruling upon the Rule 137 motion for sanctions" existed.

¶ 9 Later that month, the trial court entered a memorandum opinion and order, denying plaintiff's motion for a new court date and defendant's motion for Rule 137 sanctions. The court found that although plaintiff's malpractice complaint was "woefully deficient, both legally and factually," it could not be said that the complaint was "either not well-grounded in law or fact or that it was filed for an improper purpose." The court reasoned that while plaintiff was not defendant's client, he was a beneficiary under the trust, and a non-client may sue an attorney for malpractice if he is an intended third-party beneficiary of an attorney-client relationship

according to *McLane v. Russell*, 131 Ill. 2d 509 (1989). Thus, although the court could not determine on the information before it whether plaintiff was an intended third-party beneficiary as a matter of law, it found plaintiff's position was not unreasonable under the law. The court also found the evidence raised numerous factual issues, and defendant had failed to demonstrate that plaintiff made assertions of fact that were untrue or made without reasonable cause, or that the action was filed merely to harass defendant.

¶ 10 In January 2014, defendant filed a motion to reconsider the trial court's denial of his motion for sanctions. Defendant alleged the court failed to address his claims that plaintiff's demand for an accounting was not well-grounded in law and that plaintiff concealed from the court that he had received $6,210. Defendant attached to his motion portions of a discovery deposition taken in relation to an Illinois Attorney Registration and Disciplinary Commission (ARDC) proceeding. In the deposition, plaintiff acknowledged receiving a $6,210 distribution from Cooney's estate. He also acknowledged that defendant gave him a spreadsheet that showed all of the loan payments allegedly made to him. Plaintiff testified as follows: "I asked [defendant] to show me every check that said it was a loan, and he pulls out a registry book that said loan after so many checks or whatever that my Aunt Jean had written to me, and it wasn't even in my—the same pen that I had wrote the thing out in the registry book. It was with a different pen and different writing." Plaintiff acknowledged he received a spreadsheet from defendant but did not try to determine whether it was accurate, explaining he "just wanted to see all the checks that [defendant] said that were mine" to "prove that they were loans." Plaintiff had "no idea" how many loans Cooney gave him and did not know if he "completely paid back" the

loans. He received a $15,000 or $20,000 loan from her at one point and paid back about $15,000 of it.

¶ 11 In March 2014, the trial court denied defendant's motion to reconsider, finding that even with the addition of plaintiff's deposition testimony, it could not say that plaintiff's complaint was not well-grounded in law or fact or that it was filed for an improper purpose. The court reiterated that plaintiff's belief that he had standing to sue was not unreasonable on its face and that the many factual issues raised by the evidence precluded the court from finding that plaintiff engaged in sanctionable conduct. Finally, the court found defendant failed to demonstrate that plaintiff made assertions of fact that were untrue and made without reasonable cause or that plaintiff filed the action merely to harass defendant. This appeal followed.

¶ 12 On appeal, defendant first argues the trial court erred by denying his Rule 137 motion for sanctions. Specifically, defendant contends the court erred by (1) overlooking that the law "plainly did not entitle" plaintiff to an accounting, (2) holding plaintiff had standing to maintain an action for legal malpractice, and (3) finding that plaintiff's claim of having been damaged in the full amount of $70,00 was "well grounded in fact."

¶ 13 Rule 137 requires that a party unrepresented by an attorney sign every pleading, motion, or other document. A party's signature "constitutes a certificate" that he has read the motion, "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." Ill. S. Ct. 137(a) (eff. July 1, 2013). If a document is signed in violation of Rule 137,

the court may impose upon the person who signed it "an appropriate sanction," including requiring the person to pay the reasonable expenses incurred because of the filing of the document. Ill. S. Ct. Rule 137(a) (eff. July 1, 2013).

¶ 14 The purpose of Rule 137 is to prevent abuse of the judicial process by sanctioning parties "who file vexatious and harassing actions based upon unsupported allegations of fact or law." *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217 (2007). The purpose is not, however, to punish parties "simply because they have been unsuccessful in the litigation." *Burrows v. Pick*, 306 Ill. App. 3d 1048, 1050 (1999). Using an objective standard, the trial court must evaluate whether a party made a reasonable inquiry into the facts and law supporting his allegations. *Dismuke*, 378 Ill. App. 3d at 217. Because it is penal in nature, Rule 137 is to be strictly construed and courts should reserve sanctions for the most egregious cases. *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1032 (2006). A party " 'seeking to have sanctions imposed by the court must demonstrate that the opposing litigant made untrue and false allegations without reasonable cause.' " *Mohica v. Cvejin*, 2013 IL App (1st) 111695, ¶ 47 (quoting *Dismuke*, 378 Ill. App. 3d at 217).

¶ 15 A trial court's decision as to Rule 137 sanctions "must be informed, based on valid reasons, and follow logically from the circumstances of the case." *Mohica*, 2013 IL App (1st) 111695, ¶ 47. It is well-established that a trial court's decision regarding Rule 137 sanctions will not be disturbed on review absent an abuse of discretion. See, *e.g.*, *Mohica*, 2013 IL App (1st) 111695, ¶ 47; *Dismuke*, 378 Ill. App. 3d at 217; *Burrows*, 306 Ill. App. 3d at 1051. This is true even where, as here, the court denied the motion for sanctions without an evidentiary hearing on the motion. *Shea, Rogal & Associates, Ltd. v. Leslie Volkswagen, Inc.*, 250 Ill. App. 3d 149, 153-

54 (1993) (reviewing the trial court's denial of sanctions, made without an evidentiary hearing, for an abuse of discretion). While defendant argues that our review should be *de novo* because the court committed an error of law, defendant has cited no authority to support his assertion. Accordingly, we adhere to the well-settled abuse-of-discretion standard to review the trial court's decision. A court abuses its discretion where no reasonable person would take its view. *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067, 1074 (1995).

¶ 16 The trial court did not abuse its discretion by denying defendant's motion for sanctions. The gist of plaintiff's complaint was that defendant misappropriated, wrongfully concealed, and intentionally diverted trust assets to himself and his nominees. Plaintiff alleged that defendant, as trustee of the Trust, told him that he was entitled to $70,000 and never provided plaintiff with an accounting of the trust. The evidence showed that the terms of the Trust entitled plaintiff to a $70,000 pecuniary benefit but plaintiff had only received a $6,210 disbursement. Defendant claimed that plaintiff was only entitled to $6,210 because Cooney made excess gifts to plaintiff and loans that plaintiff had not repaid. Plaintiff, however, denied that he was only entitled to receive $6,210 and denied that Cooney made loans to him. Later, in his deposition testimony, plaintiff admitted Cooney made loans to him but said he paid back at least $15,000 of those loans.[1] As the party seeking to have sanctions imposed, defendant was required to show plaintiff "made untrue and false allegations without reasonable cause." (Internal quotation marks omitted.) *Mohica*, 2013 IL App (1st) 111695, ¶ 47. Given that a factual dispute clearly existed as

[1] In his reply brief, defendant characterizes plaintiff's discovery deposition testimony that he repaid Cooney $15,000 in loans as "self-serving, inadmissible hearsay." However, to the extent defendant relies on portions of plaintiff's deposition in support of his claim that plaintiff's pleading was untrue, we must consider plaintiff's testimony that he repaid $15,000 to place plaintiff's statements in the proper context.

to why defendant had only distributed $6,210 to plaintiff, the trial court's determination that sanctions were not warranted was not unreasonable. Although plaintiff lacked concrete proof that defendant had engaged in any misconduct, the facts known to plaintiff at the time he filed his complaint could have given him reasonable cause to believe defendant misappropriated or concealed Trust funds.

¶ 17 We reject defendant's assertion that the trial court failed to consider his argument that plaintiff was not entitled to a trust accounting because he was a pecuniary beneficiary. The court specifically noted defendant's contention in the "factual background" section of both its initial order and its order denying defendant's motion to reconsider. Moreover, the case law cited by defendant is inapposite because it relates to the right to demand an accounting. See *Chicago City Bank and Trust Co. v. Lesman*, 186 Ill. App. 3d 697, 701-02 (1989). Yet, plaintiff did not demand an accounting; rather, he referenced an "accounting" only in his factual allegations, alleging defendant "never provided [p]laintiff with an accounting of the Jean D. Cooney Trust." Finally, while defendant argues the "undisputed facts" demonstrated that he provided plaintiff with an "accounting-type computation," we note that plaintiff acknowledged receiving a work paper from defendant but claimed defendant did not prove certain checks made out to him were loans. Accordingly, the facts relating to whether plaintiff received an "accounting-type computation" were not "undisputed."

¶ 18 Equally meritless is defendant's claim that the trial court erred by holding plaintiff had standing to sue. Contrary to defendant's assertion, the court did not hold plaintiff had standing to sue. In fact, the court expressly stated it could not determine on the information before it whether plaintiff was an intended third-party beneficiary such that he would be able to sue defendant

even though defendant was not his attorney. However, the court found that plaintiff's "position"—*i.e.* that he had standing—was not unreasonable given the law set forth in *McLane*. While defendant points to alleged distinctions between the facts of his case and those in *McLane*, those distinctions go to whether plaintiff would ultimately be able to prevail on his complaint, not whether Rule 137 sanctions were appropriate. See *Burrows*, 306 Ill. App. 3d at 1050 (Rule 137's purpose is to punish individuals who file actions that are based upon unsupported allegations of fact or law, not to punish individuals simply for being unsuccessful in litigation). The question for the trial court was whether plaintiff's position that he had standing was well-grounded in the law. Given the holding in *McLane*, the court determined that it was, and we find no abuse of discretion in the court's decision. We further note that defendant's citations to authorities concerning the ability to sue corporate counsel are misplaced. See *Felty v. Hartweg*, 169 Ill. App. 3d 406 (1988); *Blue Water Partners, Inc. v. Edwin D. Mason, Foley and Lardner*, 2012 IL App (1st) 102165.

¶ 19 Finally, we reject defendant's claim that plaintiff's complaint was not well-grounded in fact because his prayer for relief sought $70,000. According to defendant, by seeking the same amount of money in his prayer for relief that he was entitled to receive pursuant to the Trust, plaintiff concealed from the court that he had received a $6,210 trust distribution. We disagree. Plaintiff's complaint contains no allegation that he did not receive $6,210. Moreover, we note that Rule 137 is to be strictly construed, and sanctions are to be awarded only in the most egregious cases. *Webber*, 368 Ill. App. 3d at 1032. Given that plaintiff was to receive $70,000 under the terms of the Trust agreement and that the parties disputed the amount of money plaintiff was to receive, the trial court could reasonably find sanctions were not warranted in this

case even though defendant sought $70,000 after having already received $6,210. Defendant's argument that the "maximum claim" plaintiff could have asserted was only $28,800 also lacks merit because plaintiff never admitted that he took out $49,990 in loans. Instead, plaintiff's brief noted that in defendant's statement of facts, *defendant* included an accounting of the amount of money due to plaintiff and calculated that plaintiff had $49,990 in outstanding loans.

¶ 20 In sum, the trial court's written orders make clear that it considered the facts of the case and made an informed decision, based on valid reasons, that followed logically from the circumstances of the case. *Mohica*, 2013 IL App (1st) 111695, ¶ 47. Accordingly, the court did not abuse its discretion by denying defendant's motion for sanctions.

¶ 21 Defendant next argues that the trial court was required to hold an evidentiary hearing before ruling on his motion for sanctions. He contends that because he was afforded no opportunity for such a hearing, he could not demonstrate plaintiff filed his complaint either principally or entirely to harass him.

¶ 22 Initially, we note that after plaintiff filed a motion for new court date, defendant objected and asserted that "no just cause to delay ruling upon the Rule 137 motion for sanctions" existed. Thus, defendant evidently sought to have the court rule on his motion for sanctions without conducting a hearing. A party may not request to proceed in one manner and then contend on appeal that the requested action was erroneous. *Gaffney v. Board of Trustees of Orland Park Fire Protection District*, 2012 IL 110012, ¶ 33. Moreover, "an evidentiary hearing is not always required under Rule 137." *Shea, Rogal & Associates, Ltd.*, 250 Ill. App. 3d at 154. Rather, where it is apparent from the record as a whole that Rule 137 sanctions are not warranted, an evidentiary hearing is not required to support a denial of relief. *Id.* 155. In this case, the trial

court determined that plaintiff did not file his complaint solely to harass defendant based on the parties' pleadings and the attachments thereto, which showed a factual dispute existed as to why defendant had only distributed $6,200 to plaintiff when the Trust reflected he was entitled to $70,000. Having reviewed those pleadings, we find no error in the court's denial of sanctions without an evidentiary hearing. We note that in support of his assertion that a hearing was required, defendant has cited *Century Road Builders, Inc. v. City of Palos Heights*, 283 Ill. App. 3d 527, 531 (1996). There, our court stated "[a]n evidentiary hearing should always be held when a sanction *award* is based upon a pleading filed for an improper purpose, rather than one which is merely unreasonable based on an objective standard." (Emphasis added). *Id.* However, no award was made in this case. Given that Rule 137 sanctions should be reserved for "the most egregious cases" (*Webber*, 368 Ill. App. 3d at 1032), we find no error in the court's denial of defendant's motion without an evidentiary hearing.

¶ 23 For the reasons stated, we affirm the trial court's judgment.

¶ 24 Affirmed.