SIXTH DIVISION
August 14, 2015

No. 1-14-2750

JOHN J. McHUGH, III; McHUGH & McCARTHY, LTD.,	)	Appeal from the
	)	Circuit Court of
Respondents-Appellants,	)	Cook County.
	)	
v.	)	
	)	
KOTTKE ASSOCIATES, LLC, an Illinois Limited Liability Company, and JOSEPH VANDEPUTTE,	)	No. 06 CH 12756
	)	
Petitioners-Appellees	)	
	)	
(Walter S. Cronin and Ronald L. Anderson,	)	Honorable
	)	Rita M. Novak,
Plaintiffs).	)	Judge Presiding

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 ***Held***: We reversed the award of attorney fees against appellants, where the law-of-the-case doctrine prohibited further litigation of the issue of sanctions after remand.

¶ 2 Respondents, John J. McHugh, III, an attorney (Mr. McHugh), and McHugh & McCarthy, Ltd., a law firm (the law firm), appeal from an award of $63,205 in attorney fees imposed against them as a sanction pursuant to Illinois Supreme Court Rule 219(c)(v) (Ill. S. Ct. R. 219(c)(v) (eff. July 1, 2002)), for their failure to fully comply with a scheduling order regarding final trial preparation procedures as set forth in the circuit court's standing order. The circuit court had previously dismissed the case, with prejudice, for the same purported failures with those procedures. On July 23, 2012, we reversed the dismissal with prejudice, having found

that plaintiffs had not exhibited a blatant disregard of the circuit court's orders. See *Cronin v. Kottke Associates, LLC*, 2012 IL App (1st) 111632, ¶¶ 1, 75 (*Cronin I*). We further remanded the matter, specifically stating that defendants would not be prejudiced by the case proceeding to trial. Upon remand, defendants immediately filed a motion seeking an "appropriate" sanction which, ultimately, resulted in the award of attorney fees against Mr. McHugh and the law firm as attorneys for plaintiffs at the time at issue. Because we find the law-of-the-case doctrine applies here and prohibited further litigation as to sanctions for any prior noncompliance with the scheduling and standing orders, we reverse.

¶ 3 I. BACKGROUND

¶ 4 The procedural and factual background of this case was fully set forth in *Cronin I*. We set forth only those facts relevant to the disposition of the instant appeal.

¶ 5 In a two-count complaint, filed on December 11, 2006, plaintiffs Walter S. Cronin and Ronald L. Anderson, commodity brokers, claimed they formed a partnership with defendant Kottke and Associates, LLC (Kottke), a commodity trading firm, and defendant Joseph Vandeputte for the purpose of investing in agricultural commodities. According to the complaint, plaintiffs together were to receive one-third of the partnership's profits. Plaintiffs asserted that defendants wrongfully reduced their interest in the profits and caused dissolution of the partnership. Plaintiffs claimed defendants breached their fiduciary and loyalty duties and "unjustly enriched" themselves. Plaintiffs sought recovery of lost fees of $2,536,000, plus interest, for the period ending May 2006, and an accounting for monies owed plaintiffs after June 1, 2006. The complaint included a jury demand. At the time of suit, plaintiffs were represented by Mr. McHugh; an Ohio lawyer admitted *pro hac vice*, the law firm; and a local attorney; Christopher Berghoff, of Berghoff & Berghoff, Ltd.

¶ 6 In their answers, defendants denied that they had formed a partnership with plaintiffs.

¶ 7 After extensive written and oral discovery, the parties filed cross-motions for summary judgment. Each motion was separately and fully briefed and supported by a significant amount of written material including depositions, pleadings, answers to written discovery, and other exhibits. Plaintiffs argued that there was no dispute that they had formed a partnership or joint venture with defendants and sought a judgment for lost profits in the amount of $2,599,258, plus interest, for defendants' claimed breaches of fiduciary duties and a "full and complete accounting." Defendants argued that the undisputed facts established a partnership had not been formed and, even if there had been a partnership, the partnership had ended and plaintiffs were owed no additional compensation. The circuit court, after a hearing, denied the motions.

¶ 8 The matter was set for a settlement conference on December 17, 2010 and, on that date, plaintiffs presented a settlement memorandum. In their memorandum, plaintiffs stated that "[m]ost of the material facts" were not disputed and that the central legal question was the definition or description of the legal relationship between the parties which had been "extensively briefed [on the cross-motions for summary judgment]." Plaintiffs contended they were entitled to damages in lost compensation of $2,599,258 and, under the "principles of unjust enrichment," an additional recovery of $3 million based on monies earned by defendants on the wrongfully withheld funds. Defendants submitted a pretrial settlement memorandum, which included 10 pages of detailed discussion relating to the nature of the case, issues, and relief sought.

¶ 9 When the suit was not resolved at the December 17, 2010, settlement conference, the circuit court—for the first time—set the case for trial by an order entered on the same day. That order stated:

"Trial is scheduled for May 16-23, 2011 at 1:30 p.m.; Final pre-trial conference on May 9 at 1:30 p.m.; Documents and demonstrative evidence will be exchanged by May 2; Evidentiary objections due on May 9; Pre-trial memoranda due on May 6; Motions *in limine* due at final Pre-trial."

¶ 10 The standing order of the circuit court included the following provisions:

"At the time the Court sets the date for the final pretrial conference, it will also order the preparation of a final pretrial memorandum by each party. The purposes of [these] memoranda [are] to limit the issues to be decided at trial, to ensure that essential trial preparation is done in a timely fashion, and to eliminate unnecessary delays during the course of a trial." (Emphasis omitted.)

The standing order warned: "Failure to comply with the Court's orders regarding final pretrial memoranda may result in the imposition of sanctions pursuant to Supreme Court Rule 218 and/or 219."

¶ 11 According to the standing order, the final pretrial memorandum (trial memorandum) was to be served on each party and on the court five days before the final pretrial conference (trial conference). The court's scheduling order, however, provided that the trial memorandum in this case should be filed by May 6, only three days before the scheduled May 9 trial conference.

¶ 12 The standing order stated that the trial memorandum was to include, *inter alia*, the estimated length of trial, short statement of the case, fact stipulations, an affidavit of compliance with Illinois Supreme Court Rule 237 (Ill. S. Ct. R. 237 (eff. July 1, 2005)), certifications regarding jury demands, lists of witnesses who will or may be called to testify, and numbered exhibits with any agreement regarding admissibility. The standing order also required that all counsel should confer concerning objections to exhibits prior to the trial conference, with copies

of exhibits to be served on the court five "court days" before the scheduled trial date, *i.e.*, May 9. However, the scheduling order required the exhibit exchange by May 2.

¶ 13 Defendants sought to comply with the court's trial preparation requirements by sending a letter to Mr. McHugh, dated April 15, 2011, proposing 84 stipulations of fact. Additionally, by letter dated April 21, 2011, and again addressed to Mr. McHugh, defendants requested the originals of two e-mails pursuant to Illinois Supreme Court Rule 237 (Ill. S. Ct. R. 237 (eff. July 1, 2005)). It appears Mr. McHugh did not respond to these letters.

¶ 14 During this period before trial, defendants also supplemented their discovery responses, by producing over 400 documents on two dates—March 28, 2011, and April 1, 2011. Mr. McHugh, in reviewing this supplemental discovery, believed additional requested documents, in particular e-mails, had still not been produced by defendants. Mr. McHugh also concluded that this new discovery production included e-mails which defendants, during discovery, had previously asserted did not exist.

¶ 15 Counsel for both sides exchanged letters, from April 1 through April 11, in an attempt to resolve the dispute. In his letters to defense counsel, Mr. McHugh said he was prepared to seek a forensic review of defendants' computers. He also expressed a wish to promptly reach an agreement with defense counsel so this issue did not "jeopardize our trial date" or "consume most of our discussion" at the trial conference. In his April 8 letter, Mr. McHugh stated:

> "Like you, and perhaps your clients, we are anxious to try this matter to its proper conclusion. We do not, however, concede to anything less than a level playing field. We were told there were no documents. That is no longer true. Vandeputte testified that he never discussed a • , • , • sharing arrangement with Neal Kottke. His recent production belies that statement as well."

Mr. McHugh stated he would ask the circuit court for a hearing date as to this lingering discovery dispute. In the last letter exchanged by counsel as to this issue, dated April 11, defense counsel stated they would "oppose any [such] motion."

¶ 16 On May 2, 2011, the date set for the parties to exchange exhibits, defense counsel served a list of 254 proposed trial exhibits on plaintiffs. On that date, Mr. McHugh sent defense counsel an e-mail containing a list of 11 categories or groups of exhibits which plaintiffs intended to offer at trial. Plaintiffs' exhibit groups, for the most part, covered documents that had been previously produced through discovery or were exhibits used at depositions or in briefing the motions for summary judgment. Plaintiffs' exhibits did include a damages calculation spreadsheet that had not been previously produced (later identified as exhibit number 38), but was prepared by plaintiff Cronin and was intended to be used as a demonstrative exhibit at trial. Additionally, Mr. McHugh notified defendants that plaintiffs continued to believe that additional relevant documents needed to be produced by defendants pursuant to earlier discovery requests. He reserved the right to supplement the exhibit list should plaintiffs be successful on an anticipated motion to compel relating to defendants' supplemental document productions in March and April 2011.

¶ 17 In the e-mail, Mr. McHugh stated that he did not foresee any objection as to the authenticity of defendants' 254 proposed trial exhibits. Mr. McHugh suggested that because many of plaintiffs' trial exhibits were duplicative of defendants' exhibits, the parties should agree to a procedure that would expedite the use of exhibits at trial. Mr. McHugh ended the e-mail by stating that he intended to send defense counsel a list of stipulated exhibits "within the next two days" and that he intended "to arrange the documents chronologically in logically sequenced categories." He indicated that he "[l]ooked forward to discussing" the matters set forth in his e-

mail with defense counsel.

¶ 18 In a May 3, 2011, letter, defendants' counsel objected to plaintiffs' failure to exchange exhibits as required by the order of December 17, 2010, and asserted that plaintiffs' "broad identification of categories of documents [made] it virtually impossible to review and determine whether there are any evidentiary objections." Nonetheless, defense counsel set forth objections to some of the categories of plaintiffs' exhibits while also indicating that there were no objections as to other categories.

¶ 19 On May 6, 2011, Mr. McHugh, on behalf of plaintiffs, filed a motion to compel discovery, just as he had forewarned in his April letters and May 2 e-mail to defendants. That motion included a request for a forensic examination of Kottke's computers based upon defendants' supplemental production of documents. On May 9, 2011, at the time set for the trial conference, the circuit court struck plaintiffs' motion to compel as "untimely and in violation of the orders of this court."[1] In opposing the motion to compel, defendants had apparently raised the fact that the circuit court judge who had first presided over the case had entered an order on November 14, 2007, which stated: "The parties are *granted leave* to file motions to compel on or before November 30, 2007." (Emphasis added.)

¶ 20 On May 9, the circuit court also allowed defendants leave to file a motion for sanctions pursuant to Illinois Supreme Court Rule 219 (Ill. S. Ct. R. 219 (eff. July 1, 2002)), having found plaintiffs failed to timely file a trial memorandum, and set a hearing date of May 11, 2011.

¶ 21 Accordingly, on May 10, defendants filed a motion for sanctions seeking only one possible sanction–dismissal with prejudice pursuant to Supreme Court Rule 219(c)(v) (Ill. S. Ct.

[1]The motion to compel is not included in the record on appeal. There is no transcript of the proceedings held on May 9, 2011. Our discussion of the motion to compel is guided by other pleadings, exhibits and transcripts that are in the record.

R. 219(c)(v) (eff. July 1, 2002)). Defendants argued that plaintiffs had acted in bad faith by failing to file a trial memorandum by May 6, identify and exchange exhibits by May 2, participate in a process to stipulate to facts as proposed in defendants' April 15 letter, name an expert who would support the damages calculations set forth in plaintiffs' exhibit number 38 produced on May 2, and by filing a "spurious" and untimely motion to compel. Defendants argued that these failures and actions had prejudiced them in that they would "be required to try this case based on speculation and surmise." The motion included defendants' May 3 response, but did not attach plaintiffs' May 2 e-mail as an exhibit.

¶ 22 Plaintiffs did not file a written response to the motion. Instead, on the same day, May 10, 2011, at 4:26 p.m., Mr. McHugh sent defense counsel an e-mail attaching plaintiffs' trial memorandum, which included, as required by the standing order, the estimated length of the trial, a short statement of the case, a list of potential witnesses, a statement of stipulated facts, a statement that plaintiffs did not intend to offer responses to Rule 216 requests for admission, an exhibit list, an affidavit of Rule 237 compliance, Rule 213(f) (Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007)) disclosures, a deposition transcript as to their expert, Howard Schneider, and a statement of applicable legal principles. As to a jury, plaintiffs stated they "have demanded trial by jury, since the remedy they seek is ultimately monetary damages [and] *** restitution for what was withheld from them." Plaintiffs' list of nine potential witnesses included plaintiffs' disclosed expert, Mr. Schneider, plaintiffs Cronin and Anderson, Neal Kottke, founder of Kottke, defendant Vandeputte, and employees of Kottke. With the exception of the expert Mr. Schneider, plaintiffs' witnesses were also listed as potential witnesses in defendants' final trial memorandum. All of plaintiffs' witnesses had been deposed.

¶ 23 The trial memorandum's exhibit list delineated 41 trial exhibits, including business

records of defendants, documents that had been exhibits to the summary judgment motions, and exhibits that also were listed as defendants' trial exhibits. Plaintiffs' trial exhibit number 38 was the damages calculation document that had been served on defendants, along with the May 2, 2011, e-mail. Mr. McHugh stated that duplicates of the exhibits would be sent "immediately," and hard copies would be delivered to defendants by the end of the business day.

¶ 24 At the hearing on May 11, 2011, defendants presented arguments as set forth in their written motion for sanctions and further argued that plaintiffs' "last minute" trial memorandum raised a new damages claim based on unjust enrichment; indicated a jury was requested; wrongfully stated there were no Rule 237 issues when defendants, by letter, had requested plaintiffs produce the originals of two e-mails; and offered confusing stipulations of facts. They claimed prejudice in their trial preparation and that plaintiffs had an unfair advantage because "defendants did everything they were supposed to do." Defendants described plaintiffs' conduct as "contumacious."

¶ 25 Mr. McHugh, in turn, apologized both to the court and to defense counsel and addressed his failure to abide by the court's order. He explained:

> "My judgment was clouded because of the discovery dispute. I accept responsibility for that. It was not meant to be contumacious with the Court.
>
> It went to what we believe was the heart of our case ***."

Mr. McHugh, in response to defendant's seeking dismissal of his clients' suit, with prejudice, requested that any sanctions "be visited upon me. Not my clients." Mr. McHugh also denied he filed the motion to compel as a tactical matter, or as a form of "gamesmanship," stating that he felt bound to resolve this discovery dispute for his clients.

¶ 26 Mr. McHugh stated further that, having been admonished by the court, he had driven

back to Toledo, Ohio, after the May 9 hearing, worked through the night, "gathered all the exhibits," prepared a trial memorandum, and sent it to defendants' counsel the next day. Mr. McHugh hoped that, in this way, "any prejudice I might have caused by failing to abide by the pre-trial memorandum order could be mitigated."

¶ 27 After hearing arguments, the circuit court entered an order granting defendants' motion for sanctions pursuant to Rule 219(c)(v), striking plaintiffs' pleadings, and dismissing the suit with prejudice. Plaintiffs retained new counsel and filed a motion to vacate the dismissal order. That motion was denied on September 15, 2011, and plaintiffs then appealed.

¶ 28 On July 23, 2012, we reversed the dismissal of plaintiffs' suit with prejudice. See *Cronin I*, 2012 IL App (1st) 111632, ¶¶ 1, 75. We remanded the matter for further proceedings, stating that " 'it will not cause a hardship for the parties to proceed to trial on the merits.' " *Id*. ¶ 72 (quoting *White v. Henrotin Hospital Corp.*, 78 Ill. App. 3d 1025, 1029 (1979)). We also asserted that "[a]ny issues as to plaintiffs' proposed trial exhibits, claims for damages, stipulations of facts, the jury demand, or objections to exhibits may be resolved in due course pursuant to the applicable rules of discovery, evidence, and procedure, as well as the trial court's standing order and any scheduling order which might be entered by the trial court upon remand." *Id*.

¶ 29 The mandate was issued on January 9, 2013 after our supreme court denied defendants' petition for leave to appeal on November 28, 2012.

¶ 30 On January 11, 2013, defendants filed in the circuit court a motion which, in relevant part, requested a hearing on an appropriate sanction because this court's decision in *Cronin I* had "left open the issue of a proper sanction for plaintiffs' conduct" which was at issue in that earlier appeal. In their memorandum in support of the motion for an appropriate sanction, defendants contended that our conclusion that the circuit court possessed the authority to dismiss the case

with prejudice included a finding that "plaintiffs' conduct was sanctionable," but dismissal "was too 'drastic.' " Defendants asked the circuit court to consider: striking plaintiffs' trial memorandum; barring plaintiffs from filing any additional pretrial proceedings or motions; striking plaintiff's exhibits; barring plaintiffs from presenting evidence as to the existence of a joint venture or partnership and from seeking unjust enrichment; and awarding defendants their attorney fees incurred from May 9, 2011, to the date of any trial.

¶ 31 On June 26, 2013, after a hearing the circuit court made an oral ruling that *Cronin I* "permitted an award of sanctions *** and that the proper sanction is the award of attorney fees for the time the defendants' counsel expended preparing for trial," and preparing the current motion for sanction. The circuit court directed defendants to file a petition for fees and set a briefing schedule as to that petition. On July 30, 2013, the circuit court entered an order modifying the briefing schedule to allow Mr. McHugh, the law firm, and Mr. Berghoff to participate in the briefing as to the fee petition in that they were "within the purview of the court's order assessing sanctions."

¶ 32 In their petition, defendants sought an award of over $93,000 in fees. The circuit court reviewed the petition and granted an award of $63,205 in fees. The circuit court determined that the fees award should be entered against Mr. McHugh and the law firm. This determination was based, in part, on Mr. McHugh's statement at the May 11, 2011, hearing opposing the dismissal of the suit, with prejudice, that any sanctions should be "visited upon [him]" and not his clients. The circuit court specifically found that Mr. Berghoff, as local counsel, had not engaged in improper conduct.

¶ 33 On July 25, 2014, an order of dismissal was entered pursuant to the stipulation of the parties. The order stated the parties "had resolved all matters between them." The order also

stated that the attorney fees award was subject to enforcement. Mr. McHugh and the law firm have now appealed the award of attorney fees as a sanction under Rule 219.

¶ 34 II. ANALYSIS

¶ 35 On appeal, Mr. McHugh and the law firm argue that the award of fees served only as punishment, in contravention of the purpose of Rule 219, and was contrary to the decision and findings of *Cronin I*, in violation of the law-of-the-case doctrine. In response, defendants argue that *Cronin I* gave the circuit court "latitude to have an appropriate sanction for Mr. McHugh's misconduct as she found necessary in her discretion." Defendants maintain that, in *Cronin I*, we only found Mr. McHugh did not act contumaciously so that dismissal with prejudice was not justified.

¶ 36 Rule 219(c) allows for the imposition of "a just order where a party unreasonably refuses to comply with discovery or a discovery order." *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 120 (1998); *Donner v. Deere & Co.*, 255 Ill. App. 3d 837, 841 (1994); *Cronin I*, 2012 IL App (1st) 111632, ¶ 35. "The sanctions authorized under Rule 219 are intended to combat abuses of the discovery system and to maintain the integrity of our court system." *Smith v. P.A.C.E.*, 323 Ill. App. 3d 1067, 1075 (2001). "A just order of sanctions under Rule 219(c) is one which, to the degree possible, insures both discovery and a trial on the merits." *Shimanovsky*, 181 Ill. 2d at 123. "A party's noncompliance is 'unreasonable,' thereby warranting the imposition of sanctions, when there has been a deliberate and pronounced disregard for a discovery rule." *Shimanovsky v. General Motors Corp.*, 271 Ill. App. 3d 1, 7 (1994).

¶ 37 It is well recognized that "[a] decision on appeal becomes the law of the case on remand to the trial court and on a subsequent appeal on those issues which were raised and decided on the initial appeal." *Martin v. Federal Life Insurance Co. (Mutual)*, 164 Ill. App. 3d 820, 824

(1987). "The rule of the law of the case is a rule of practice, based on sound policy that, where an issue is once litigated and decided, that should be the end of the matter and the unreversed decision of a question of law or fact made during the course of litigation settles that question for all subsequent stages of the suit." *McDonald's Corp. v. Vittorio Ricci Chicago, Inc.*, 125 Ill. App. 3d 1083, 1086-87 (1984). Furthermore, "the law of the case doctrine encompasses a court's explicit decisions, as well as those issues decided by necessary implication." *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 39 (citing *Aardvark Art, Inc. v. Lehigh/Steck-Warlick, Inc.*, 284 Ill. App. 3d 627, 632-33 (1996)). "The two recognized exceptions to the law-of-the-case doctrine are: (1) when a higher reviewing court makes a contrary ruling on the same issue subsequent to the lower court's decision, and (2) when a reviewing court finds that its prior decision was palpably erroneous." *Bjork v. Draper*, 404 Ill. App. 3d 493, 501 (201) (citing *Long v. Elborno*, 397 Ill. App. 3d 982, 989 (2010)).

¶ 38 Because "the application of the law-of-the-case doctrine is a question of law, our standard of review is *de novo*." *Rommel v. Illinois State Toll Highway Authority*, 2013 IL App (2d) 120273, ¶ 14 (citing *In re Christopher K.*, 217 Ill. 2d 348, 363-64 (2005)). Based on the parties' arguments on appeal as to the law-of-the-case doctrine, we find it necessary to discuss, in some detail, our analysis and findings in *Cronin I*.

¶ 39 Plaintiffs in *Cronin I* argued that the circuit court, in dismissing their case with prejudice, failed to properly apply the applicable factors or standards for the imposition of a sanction of dismissal with prejudice and to consider lesser sanctions which would have addressed any prejudice to defendants and served the purposes of Rule 219. As to the latter argument, plaintiffs emphasized it was the conduct of Mr. McHugh, and not their conduct, which was the subject of defendants' motion for sanctions.

¶ 40 Before addressing plaintiff's substantive arguments, we first considered whether Rule 219(c), which deals with discovery-related misconduct, squarely applied to the specific conduct at issue–plaintiffs' alleged failure to comply with the court's procedures as to trial preparation, as reflected in the scheduling and standing orders. *Cronin I*, 2012 IL App (1st) 111632, ¶ 36. Relying on the holding in *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48 (1995), that Rule 219 should not be narrowly interpreted, we found the rule applied because defendants charged plaintiffs with violations of the circuit court's standing order, which included procedures for the expeditious adjudication of cases and the efficient presentation of evidence at trial. Implicit in the requirements set forth in the circuit court's standing order as to the exchange of exhibits, the preparation of trial memoranda, and other final trial provisions are determinations that the parties had been compliant with discovery requests and orders and that there would be no unwarranted surprises at trial. We concluded that plaintiffs' purported disregard of the circuit court's scheduling order and its standing order fell within the purview of Rule 219.[2] *Cronin I*, 2012 IL App (1st) 111632, ¶¶ 37-38. Contrary to defendants' position below, our finding as to the circuit court's authority to impose sanctions under such circumstances was not a finding that sanctions were actually warranted in this case.

¶ 41 Having concluded that the circuit court had authority under Rule 219 to enter a sanction of dismissal with prejudice, we then considered whether such a sanction was appropriate. We reviewed the order of dismissal with prejudice under an abuse of discretion standard (*Cronin I*, 2012 IL App (1st) 111632, ¶ 42 (citing *Sander*, 166 Ill. 2d at 67)), and the following well-

[2] We also found that, even if Rule 219 was inapplicable, the circuit court had the inherent authority to control its docket and impose sanctions for the failure to comply with court orders. *Cronin I*, 2012 IL App (1st) 111632, ¶ 39 (citing *Sander*, 166 Ill. 2d at 66 and *J.S.A. v. M.H.*, 224 Ill. 2d 182, 196 (2007)). Pursuant to this inherent power, a court may dismiss a cause of action with prejudice where a party has deliberately and contumaciously disregarded the court's

established principles as to the propriety of such a drastic sanction. An order of dismissal with prejudice is to be entered only "where the party's actions show a deliberate, contumacious or unwarranted disregard of the court's authority." *Shimanovsky*, 181 Ill. 2d at 123 (and cases cited therein); *Adams v. Bath & Body Works, Inc.*, 358 Ill. App. 3d 387, 395 (2005). The sanction should be imposed reluctantly, as it runs contrary to public policy of this state and as well as the " 'underlying spirit of our system of civil justice' " that suits should be decided on their merits. *Gonzalez v. Nissan North America, Inc.*, 369 Ill. App. 3d 460, 471 (quoting *Smith v. City of Chicago*, 299 Ill. App. 3d 1048, 1054-55 (1998)).

¶ 42 We found Mr. McHugh had not acted contumaciously as to the circuit court's scheduling order and standing order relating to the exchange of exhibits. But we also specifically found there was not "a blatant and complete disregard of the court's authority on the part of plaintiffs' counsel" as to the exhibits. *Cronin I*, 2012 IL App (1st) 111632, ¶ 42. Our examination of the record belied such conclusions. For example, on May 2, the ordered deadline for exchanging exhibits, Mr. McHugh sent defendants an e-mail relating to proposed trial exhibits. This e-mail lacked detail as to plaintiffs' exhibits and did not actually include the exhibits, but did identify groups of exhibits. In this e-mail, Mr. McHugh stated that plaintiff' trial exhibits were largely duplicative of defendants' trial exhibits and, for the most part, had been previously disclosed. Additionally, Mr. McHugh indicated he had no anticipated objection as to the authenticity of defendants' exhibits, volunteered to organize the parties' trial exhibits, and suggested further discussions as to the exhibits. *Id*.

¶ 43 Similarly, we found Mr. McHugh did not act contumaciously and did not deliberately refuse to timely or fully comply as to the circuit court's trial memorandum procedures. Mr.

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authority. *Id*. (citing *Sander*, 166 Ill. 2d at 68).

McHugh failed to timely file a trial memorandum on May 6 but, instead, presented a motion to compel further discovery which he believed was crucial to his clients' case and, if granted, would lead to further trial exhibits. The motion to compel was brought after defendants had produced a large amount of documents in the months just before trial, and after efforts to resolve the resulting dispute as to the existence of additional documents had failed. The circuit court struck the motion to compel as untimely after the scheduled trial conference. The next day, Mr. McHugh, albeit only after being orally admonished by the circuit court and in the face of a motion for sanctions, served a trial memorandum in a form which sought to comply with the standing order. The memorandum was delivered six days before the scheduled trial date. *Id.* ¶ 49.

¶ 44 We found plaintiffs' motion to compel based on defendants' supplemental discovery production during the period before trial may have been ill-timed, but did not violate any deadline set by the court or by any rule. We also rejected as unsupported a conclusion that plaintiffs' motion to compel was brought as a means to delay trial. We accepted Mr. McHugh's explanation that the motion was not brought earlier because, until defendants produced these supplemental documents, he believed that the discovery documents at issue did not exist based on defendants' assertions. Indeed, Mr. McHugh contends in this appeal that the legitimacy of his discovery concerns were confirmed when, after the fee award was entered, defendants produced further relevant and significant documents.

¶ 45 We also rejected defendants' arguments that there *had* been repeated misconduct and transgressions on the part of Mr. McHugh throughout the litigation. We carefully searched the record and found no indication that plaintiffs' manner of conducting discovery or pursuing the case was subject to any prior form of reprimand from the circuit court, or even an expression of

frustration. We also rejected defendants' argument that every alleged individual violation of the scheduling order and standing order, as to final trial procedures raised by defendants, created a "pattern" of misconduct on the part of plaintiffs.

¶ 46 We concluded that there was no evidence Mr. McHugh would act in defiance of the circuit court's trial procedures in the future. This conclusion was based, in part, on the fact that after plaintiffs' motion to compel was denied and the circuit court granted leave for plaintiffs to file a motion for sanctions, Mr. McHugh immediately returned to his Ohio office and prepared and served a trial memorandum and exhibit list by the next day. *Id.* ¶¶ 56-58.

¶ 47 We also examined other factors found to be relevant to the imposition of sanctions under Rule 219. In concluding these factors did not weigh in favor of dismissal with prejudice, we specifically found there was no showing of surprise or prejudice by plaintiffs' failure to strictly comply with the scheduling and standing orders. Defendants had considerable knowledge and awareness of the basis of plaintiffs' suit through fact and expert discovery, aggressively litigated cross-motions for summary judgment, and a court-supervised settlement conference. Plaintiffs' witnesses had all been deposed and, significantly, the parties' fact witnesses were identical. For these reasons, we rejected defendants' contentions that they would be forced to try the case "based on speculation and surmise." *Id.* ¶ 61.

¶ 48 Although the central issue in *Cronin I* was whether the dismissal with prejudice was a proper sanction under Rule 219, our review of that issue required an examination of Mr. McHugh's conduct during pretrial litigation and, in particular, as to his trial preparation. In summary, we concluded: Mr. McHugh did not exhibit deliberate and wilful disregard of the court's authority; did not act in bad faith throughout the proceedings, including as to the trial procedures; and was not likely to defy the circuit court in the future. We found it unnecessary to

consider: (1) plaintiffs' arguments that the circuit court failed to consider lesser sanctions; and (2) that if there was, indeed, prejudice to defendant and actionable misconduct under Rule 219, it was Mr. McHugh who should be sanctioned. *Id.* ¶¶ 63-67.

¶ 49 It was within our authority in *Cronin I* to remand the case for the circuit court to make a determination of a less severe sanction. See, *e.g.*, *Donner*, 255 Ill. App. 3d at 842; *Blakely v. Gilbane Bldg. Corp.*, 303 Ill. App. 3d 872, 880 (1999). We deliberately chose not to do so in *Cronin I*, based on our analysis of the record and the purpose and provisions of Rule 219. Further, it is implicit in our decision in *Cronin I* that Mr. McHugh's conduct was not sanctionable where we reversed the dismissal without a finding that a lesser sanction would be appropriate. In the end, we saw no basis for the imposition of Rule 219 sanctions of any kind.

¶ 50 Thus, in remanding the case for resolution of its merits, we did not anticipate (and certainly did not invite) defendants to file another motion seeking a different sanction for the same conduct at issue in *Cronin I*. Those failures had been fully reviewed by this court and we found no "deliberate and pronounced disregard for a discovery rule." *Shimanovsky*, 271 Ill. App. 3d at 7. We also believed that any remaining, outstanding issues should be resolved in the normal course, the case should move forward on the merits, and that it should not be further delayed by any additional sanction-related litigation as to plaintiffs' prior purported failures to strictly comply with the trial scheduling and standing orders.

¶ 51 The principal which underlies the law-of-the-case doctrine is the avoidance of piecemeal litigation. See *Bjork*, 404 Ill. App. 3d at 501 ("The law-of-the-case doctrine protects settled expectations of the parties, ensures uniformity of decisions, maintains consistency during the course of a single case, effectuates proper administration of justice, and brings litigation to an end."). Defendants, initially, chose to seek only one sanction against plaintiffs under Rule 219—

dismissal with prejudice. Nevertheless, the record reflects the circuit court initially considered and rejected any lesser sanctions. See *Cronin I*, 2012 IL App (1st) 111632, ¶ 29 It was then only upon remand that defendants themselves sought other possible sanctions under Rule 219, for the very same conduct at issue in *Cronin I* and based upon the very same evidentiary record. Based upon this record and pursuant to the law-of-the-case doctrine, defendants were precluded from relitigating their Rule 219 sanction claims.

¶ 52 Defendants have not argued that our findings in *Cronin I* were "palpably erroneous." Furthermore, our decision was not reversed by our supreme court, as defendants' petition for leave to appeal was denied. Therefore, the exceptions to the law-of-the-case doctrine do not apply. See *Bjork,* 404 Ill. App. 3d at 501.

¶ 53 III. CONCLUSION

¶ 54 For the foregoing reasons, we conclude that defendants could not relitigate their Rule 219 sanction claims regarding the prior conduct of Mr. McHugh and the law firm, pursuant to the law-of-the-case doctrine. Therefore, we must reverse the award of attorney fees against Mr. McHugh and the law firm.

¶ 55 Reversed.