SIXTH DIVISION
Order Filed: September 9, 2016

No. 1-15-3499

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re MARRIAGE OF KRISTI L. HANNA,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County
	)	
and	)	No. 03 D 230065
	)	
STEPHEN J. HANNA,	)	Honorable
	)	Jeanne M. Reynolds,
Respondent-Appellee.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The circuit court's order granting a motion for the assessment of sanctions pursuant to Illinois Supreme Court Rule 137 was reversed, and the resulting judgment entered in favor of the movant's attorneys was vacated.

¶ 2 The petitioner, Kristi L. Hanna, n/k/a Kristi L. Grandt (Kristi), appeals from orders of the circuit court granting the motion of the respondent, Stephen J. Hanna (Stephen), for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013) and entering a $28,000 judgment in favor of Stephen's attorneys, Pasulka & Associates. For the reasons which follow, we reverse the order granting Stephen's motion for sanctions, and vacate the resulting $28,000 judgment in favor of Pasulka & Associates.

¶ 3 Stephen, the appellee, has not filed a brief in this appeal. However, the relevant portions of the record are not extensive, and the issues raised by Kristi are not complex and easily decided without the aid of an appellee's brief. As a consequence, we will decide this appeal on the merits. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). Before we do, however, we find need to comment on the brief which was filed on behalf of Kristi.

¶ 4 Illinois Supreme Court Rule 342(a) (eff. Jan. 1, 2005) provides, in part, that an appellant's brief shall include an appendix containing, among other items, the judgment appealed from. In this case, the copies of the orders contained in the appendix to Kristi's brief are of such poor quality they are unreadable and the same is true of the copy of the transcript of the proceedings before the trial court on May 4, 2015, which is also contained in the appendix. We trust that, when the supreme court enacted Rule 342, it intended that the documents included in the appendix be legible. We are unable to understand the reason for the poor quality of the copies included within the appendix as the original documents contained in the record are of excellent quality.

¶ 5 We turn now to the merits of this appeal. A Judgment for Dissolution of Marriage was entered in the instant case on November 21, 2003, dissolving Kristi and Stephen's marriage. In addition, a Joint Parenting Agreement was approved by the court which granted Kristi residential custody of the parties' minor child, Gabrielle Hanna (Gabrielle), and granted liberal parenting time to Stephen.

¶ 6 On March 27, 2014, Kristie filed her *pro se* petition seeking an order permitting her to remove Gabrielle from Illinois to take up residence with her in Texas (petition). In the petition, Kristi alleged, *inter alia*, that: she had been offered a promotion by her employer, Kriser's For

Your Pet's All Natural Life (Kriser), to the position of District Manager of all Texas stores expected to open in 2014 which would require her to relocate to Houston, Texas; she would experience a $20,000 increase in annual income due to the raise attached to the promotion; moving to Texas would result in a decrease in her cost-of-living; living in a warm climate would result in less frequent "flare-ups" of the rheumatoid arthritis of which she suffers; the symptoms which Gabrielle suffers from as a result of asthma are much worse in cold weather; and her research revealed that the public school system in Houston, Texas would provide Gabrielle with a "similar if not better education and environment" than she now receives in Illinois.

¶ 7 Following discovery, Kristi's petition came before the trial court for hearing on May 4, 2015. Kristi appeared *pro se* in support of her petition. Stephen appeared through counsel and the child's representative was also present. Prior to testifying, Kristi sought the admission of a number of exhibits, including a letter from her supervisor at Kriser relating to the availability of a future position which Kristi was seeking in Texas, documents relating to the housing options in Texas which Kristi explored, and information taken from the website of Cinco Ranch High School. Counsel for Stephen objected to the exhibits on hearsay grounds, and his objections were sustained. Kristi testified in narrative form and was cross-examined by both Stephen's attorney and the child's representative. Kristi was asked if she had an actual job offer in writing to which she answered, "Yes." When Stephen's counsel asked to see the letter, Kristi told her that it was the letter in her binder, the letter from her supervisor to which the court had sustained a hearsay objection. She admitted, however, that she did not have a formal job offer at the time she filed her petition. When she was asked if Kriser was holding the Texas position for her, Kristi answered: "That is the plan." According to Kristi, the offer is still viable, but her employer is aware of the instant court proceedings. She stated that, when she first started

working for Kriser, she was only given a job offer after she agreed to take the position. Kristi testified that she currently earns $40,000 per year as a store manager and that, if she were to take the position of District Manager in Texas, her salary would increase to between $65,000 and $70,000, annually. She admitted, however, that her employer's offer of the Texas position did not specify a salary should she accept the position. Kristi also stated that she looked at available housing when she and Gabrielle visited Texas in May of 2014. The housing which she looked at was similar to her present home. According to Kristi, the rent she would be required to pay is lower than the rent she currently pays. She stated that she is now paying $1,600 per month; whereas, the monthly rental of the housing which she looked at in Cinco Ranch would be $1,000 to $1,100 per month. Kristi was cross-examined about the exhibit relating to housing options that was excluded from evidence on hearsay grounds. She admitted that the document showed townhomes with monthly rentals of $1,380, $1,350 and $1,275. On the issue of Gabrielle's education, Kristi testified that she and Gabrielle visited Cinco Ranch High School and spoke to the vice-principal and the basketball coach. She stated that the school is similar to Gabrielle's current school. In addition, Kristi testified to the fact that her current condition of ill-health and Gabrielle's condition are worse in cold weather.

¶ 8 Other than herself, Kristi presented no other witnesses in support of her petition. Following Kristi's testimony, Stephen's attorney moved for a directed finding. The trial court granted the motion, finding that Kristi failed to meet her burden of proving by a preponderance of the evidence that a move to Texas was in Gabrielle's best interest. According to the transcript, the trial court found that Kristi did not have a firm job offer in Texas; rather, it found that the offer was speculative. The court also noted that Kristi did not have a place to live in Texas, and that, other than her testimony that she and Gabrielle visited Cinco Ranch High School, Kristi did

not introduce any evidence of the difference between that high school and Gabrielle's current school. The trial court also found that the housing rental in Texas that Kristi testified to is comparable to the rental that she is presently paying. Militating against permitting Kristi to remove Gabrielle to Texas, the trial judge found that, by Kristi's own admission, Stephen has been very much involved in Gabrielle's life and has a close relationship with her and that removal to Texas would impact on that relationship. The court noted that Gabrielle "is rooted in Chicagoland," is doing well in school and is on the basketball team. The court was uncertain how Gabrielle would acclimate to Texas or to a new school and commented that Kristi had not conducted the proper amount of research or presented evidence regarding the benefits of Gabrielle transferring schools or a plan of action for integrating her into the Texas school system. The court also noted that Kristi had no family in Texas or a support system to help in the care of Gabrielle as Stephen had done when Kristi traveled. The trial court also found that Kristi had not explored job opportunities in the Chicago area. The court did acknowledge that both Kristi and Gabrielle had health issues. Although the trial judge denied Kristi's petition, she stated that "I don't believe that you have an ill-motive in wanting to move to Texas."

¶ 9 On June 3, 2015, Stephen filed a motion pursuant to Rule 137, seeking sanctions against Kristi. According to the motion, the allegations in Kristi's petition were "blatantly false or a clear misrepresentation." Specifically, the motion alleges that, although Kristi asserted in her petition that she had been offered a promotion to District Manager requiring her to relocate to Houston, Texas, she failed to establish the existence "of an actual job" should she relocate. According to the motion, Kriser only opened four stores in Houston as of the filing of Kristi's petition and not the five stores she claimed. In addition, the motion asserts that Kristi failed to provide any evidence that Gabrielle's asthma symptoms would be reduced if she lived in Texas.

In addition, Stephen alleged that Kristi failed to demonstrate she had done anything other than a "cursory online search" to support her allegation that the public school system in Houston, Texas can provide a similar, if not better, education and environment for Gabrielle than she currently receives. In his motion, Stephen concluded that Kristi's petition was filed in bad faith, was not well grounded in fact and was not warranted by existing law, and he prayed for an award of sanctions against Kristi, including payment of the attorney fees he incurred as a result.

¶ 10 Stephen's motion for Rule 137 sanctions came before the trial court for hearing on October 6, 2015. In her brief before this court, Kristi asserts that Stephen offered no testimony or evidence in support of his motion and that the trial court heard only the arguments of counsel for both parties. Unfortunately, the record before us does not contain a transcript of the proceedings on that date. There is a document entitled a bystander's report, but the document is unsigned and there is no evidence in the record that the document was ever approved by the trial court as required by Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005). Following the hearing on October 6, 2015, the trial court entered an order granting Stephen's motion for sanctions. In relevant part, that order states:

> "This cause coming on to be heard *** on respondent's motion for sanctions pursuant to Illinois Supreme Court Rule 137, both parties being represented by counsel. The court having heard the testimony of both parties + hearing argument of counsel + the court making the following findings:
>
> * * *
>
> (6) Respondent's motion for 137 sanctions is granted. The court finds that Petitioner's petition for removal to Texas was not well grounded in fact or law + the petitioner was aware of statutory removal factors + she provided no evidence

> to support the allegations of [the] removal petition at the time of trial on the removal petition. [The] court found that Petitioner did not do due diligence prior to filing removal petition.
>
> (7) The sanction of attorneys fees is reserved for determination of whether reasonable + necessary."

The matter was continued to November 23, 2015, for a hearing as to the "reasonableness of fees for 137 sanction."

¶ 11 When the matter was heard on November 23, 2015, both David Pasulka and Molly E. Caesar appeared on behalf of Stephen and Natalie Stec appeared on behalf of Kristi. Both Pasulka and Caesar were sworn, but only Caesar testified in support of the fee petition. Admitted in evidence was a billing statement from Pasulka & Associates covering the fees which were billed in reference to Kristi's removal petition and Stephen's Rule 137 motion. For the period from May 20, 2014, through November 19, 2015, the total amount billed was $33,772.18. Following Caesar's examination by Stec and after entertaining argument, the trial court ordered Kristi to pay $28,000 for attorney fees and costs as a sanction pursuant to Rule 137. The trial court's written order of November 23, 2015, contains a $28,000 judgment against Kristi and in favor of Pasulka & Associates. This appeal followed.

¶ 12 In urging reversal of both the trial court's order of October 6, 2015, granting Stephen's motion for sanctions and the resulting $28,000 judgment in favor Stephen's attorneys, Pasulka & Associates, entered on November 23, 2015, Kristi argues that the trial court abused its discretion in granting the motion for sanctions and, in the alternative, that the trial court abused its discretion by imposing a $28,000 monetary sanction.

¶ 13 Rule 137(a) provides, in relevant part, that:

> "A party who is not represented by an attorney shall sign his pleading, motion, or other document and shall state his address. *** The signature of *** [a] party constitutes a certificate by him that he has read the pleading, motion or other document; 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. *** If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, *** an appropriate sanction, which 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 document, including a reasonable attorney fee." Ill. S. Ct. R. 137(a) (eff. July 1, 2013).

¶ 14 The purpose of Rule 137 is to prevent abuse of the judicial process by litigants who make vexatious and harassing claims based upon unsupported allegations of fact or law. *In re Marriage of Johnson*, 2011 IL App (1st) 102826, ¶ 27. Rule 137 is penal in nature and must be strictly construed. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998).

¶ 15 The party requesting sanctions bears the burden of showing that the opposing litigant made untrue and false allegations without reasonable cause. *Mohica v. Cvejin*, 2013 IL App (1st) 111695, ¶ 47. When relief under Rule 137 is sought, the petition must meet certain specificity requirements. The petition must identify: (1) the offending pleading, motion, or other document; (2) which statements in the document were false; and (3) the fees and costs that

directly resulted from the untrue allegations. *In re Marriage of Adler*, 271 Ill. App. 3d 469, 476 (1995).

¶ 16 The decision to award sanctions is a matter committed to the trial court's discretion, and its resolution of the matter will not be disturbed on review absent an abuse of that discretion. *Mohica*, 2013 IL App (1st) 111695, ¶ 47. However, this deferential standard does not preclude a reviewing court from independently examining the record and finding an abuse of discretion if warranted. *Id.*; *Polsky v. BDO Seidman*, 293 Ill. App. 3d 414, 427 (1997). We base our review of a trial judge's decision to award sanctions on three factors: "(1) whether the ruling was an informed one; (2) whether the ruling was based upon valid reasons which fit the case; and (3) whether the ruling followed logically from the stated reasons to the particular circumstances of the case." *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020 (2004).

¶ 17 Based upon the record before us, we conclude that the trial court's decision to sanction Kristi for filing her removal petition was an abuse of discretion. As noted earlier, in granting Stephen's motion for the imposition of Rule 137 sanctions, the trial court found that Kristi's petition was not well grounded in fact or law, that she was "aware of statutory removal factors," and that, at the "time of trial on the removal petition," Kristi provided no evidence to support the allegations of her removal petition. The court also found that Kristi "did not do due diligence prior to filing [her] removal petition." We will address each of the findings.

¶ 18 On the question of whether Kristi's petition was well grounded in law, we turn to section 609(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) which governs petitions for the removal of a minor child from Illinois. 750 ILCS 5/609(a) (West 2012); *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 520 (2003). The statute provides, in relevant part, that:

> "The court may grant leave *** to any party having custody of any minor child *** to remove such child *** from Illinois whenever such approval is in the best interests of such child ***. The burden of proving that such removal is in the better interests of such child *** is on the party seeking the removal." 750 ILCS 5/609(a) (West 2012).

¶ 19 Contrary to the trial court's order of October 6, 2015, there are no "statutory removal factors" other than the court's obligation to determine whether removal is in the child's best interests under the circumstances. In the case of *In re Marriage of Eckert*, 119 Ill. 2d 316, 326-28 (1988), our supreme court suggested factors which a trial court should consider in ruling on a removal petition, namely: the likelihood for enhancing the general quality of life for both the custodial parent and the child; the motives of the custodial parent in seeking the move; the motives of the noncustodial parent in resisting removal; the visitation rights of the noncustodial parent; whether a realistic and reasonable visitation schedule can be reached if the move is allowed; and whether removal will substantially impair the noncustodial parents involvement with the child. The *Eckert* factors "are not exclusive." *In re Marriage of Smith*, 172 Ill. 2d 312, 321 (1996). "The purpose of the factors set forth in *Eckert* are not to establish a test in which the parent seeking removal must meet every prong." *Collingbourne*, 204 Ill. 2d at 523.

¶ 20 Kristi's petition was brought pursuant to section 609 of the Act and there is no evidence in this record that it was interposed for any improper purpose, for harassment, or to cause unnecessary delay or increase the cost of litigation. In point of fact, the trial judge specifically commented that she did not believe that Kristi had an "ill-motive" in wanting to move to Texas. As Kristi filed her removal petition pursuant to statute, for the purpose set forth in the statute, namely, to seek leave of court to remove Gabrielle from Illinois to live with her in Texas, and the

trial court found that she did not have an ill-motive, we fail to see how the petition was not well grounded in law.

¶ 21 Next, we address the trial court's finding that Kristi's petition was not well grounded in fact. In his motion for sanctions, Stephen specifically identified several statements in Kristi's removal petition that he asserted were false. We will address each. In her removal petition, Kristi alleged that she had been offered a promotion which would require her to relocate to Houston, Texas. According to Stephen's motion, Kristi failed to establish the existence of "an actual job" that she would have should she relocate to Texas. According to the motion, Kristi acknowledged that she did not have a "formal job offer for a position in Texas" and the trial court found that the job was "completely speculative." Our review of the record of the removal hearing of May 4, 2015, reveals that Kristi testified that she had an offer of a promotion if she moved to Texas and that she attempted to offer a letter from her supervisor attesting to that fact but was prevented by a hearsay objection which was sustained. Although Kristi admitted that she had yet to receive a salary offer, she stated that the job offer was still viable and that her employer was holding the Texas position for her. Kristi's testimony at the removal hearing stood uncontradicted. Based upon the testimony at the removal hearing, we fail to understand what, contained in the allegation in Kristi's petition to the effect that she had been offered a promotion which would require her to relocate to Houston, Texas, was false. There is no question that, by her own admission, she had not received a formal job offer containing a salary proposal, but that does not render the allegation in her petition false. She testified that she had received an offer of a promotion to District Manager which would require her to relocate to Texas. The offer may have been informal, it may even have been speculative, but it was an offer none the less, and there is no evidence in this record that she had not received such an offer.

¶ 22 Kristi also alleged in her petition that her employer was planning to open five new stores in Houston in 2014 as well as additional stores in Dallas and San Antonio in 2015 and 2016. In his sanction motion, Stephen noted that Kristi testified that Kriser only opened four stores in Houston as of May 2015 and presented conflicting testimony as to whether she knew of plans to open additional locations in Texas. Aside from our failure to see the significance of whether Kriser opened four stores in 2014, as opposed to the five stores alleged in Kristi's petition, to the issue of whether removal of Gabrielle to Texas would be in the child's best interest, we find no evidence that the allegation was false when made. Kristi alleged what her employer intended to do, not what it had actually done, and we find nothing in this record supporting a finding that Kriser had no intention of opening five stores at the time that Kristi filed her removal petition.

¶ 23 Next, Stephen alleged that Kristi failed to provide evidence to support her assertion that Gabrielle's asthma symptoms would be reduced if she lived in Texas. The record reflects that Kristi did, in fact, testify that our cold climate contributes to Gabrielle's symptoms. Although Kristi may not have offered evidence that Texas enjoys a warmer climate than Chicago, the trial judge apparently understood that fact as she commented that "the weather is there."

¶ 24 Lastly, Stephen alleged that Kristi failed to demonstrate that she had done anything other than a "cursory online search" to support her allegation that the public school system in Houston, Texas can provide a similar, if not better, education and environment for Gabrielle than she currently receives. On that issue, Kristi testified that she and Gabrielle visited Cinco Ranch High School and spoke to the vice-principal and the basketball coach and that the school is similar to the one that Gabrielle is now attending. As to her online search of the Cinco Ranch High School website, the information Kristi discovered was not admitted into evidence on hearsay grounds.

In any case, Kristi's testimony as to her investigation and conclusion was unrebutted. We find no evidence that the allegation was false when made.

¶ 25 In summary, we find no evidence in the record before us that the statements in Kristi's removal petition, which Stephen identified, were false when made. Further, as to the trial court's finding in its order of October 6, 2015, that Kristi "provided no evidence to support the allegations of [the] removal petition at the time of trial on the removal petition," we find that the record belies the court's finding in this regard. Kristi testified in support of her petition and her testimony was unrebutted. The fact that the trial court found that Kristi failed to meet her burden of proving that allowing removal of Gabrielle from Illinois to take up residence in Texas would be in the best interests of the child, a finding which has not been appealed and is, therefore, not before us, does not mean that she failed to provide evidence in support of the allegations in her petition or that the allegations contained therein were false.

¶ 26 As noted earlier, Rule 137 is penal in nature and must be strictly construed. The rule was not intended as a penalty for litigants merely because they are unsuccessful. *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 68 (2011). Nor was it intended as a fee-shifting vehicle for the benefit of prevailing parties. *Toland v. Davis*, 295 Ill. App. 3d 652, 657 (1998).

¶ 27 Based upon the foregoing analysis, we conclude that there is no evidence in this record that Kristi's removal petition was not well grounded in law or that the allegations contained therein were false or untrue when made. We conclude, therefore, that the trial court abused its discretion in granting Stephen's motion for Rule 137 sanctions. Consequently, we reverse the trial court's order of October 6, 2015, granting Stephen's motion for the assessment of Rule 137 sanctions and vacate the resulting $28,000 judgment entered on November 23, 2015, in favor of

Stephen's attorneys, Pasulka & Associates. Based on our decision in this regard, we need not address Kristi's alternate argument for reversal.

¶ 28 Reversed in part and vacated in part.