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SIXTH DIVISION
September 22, 2017

No. 1-16-2473
2017 IL App (1st) 162473-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DEANDRE HALL,	)	
	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 15 L 5131
TIMOTHY J. CAVANAGH & ASSOCIATES, P.C. d/b/a CAVANAGH LAW GROUP, RODERICK FOWLER, REGINALD FOWLER, and SHAWN BOGDANOVICZ,	)	
	)	Honorable
	)	Margaret Ann Brennan,
	)	Judge Presiding.
Defendants-Appellees.	)	

JUSTICE CONNORS delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

Held: The circuit court properly granted plaintiff's motion to voluntarily dismiss defendants without prejudice, and properly denied defendants' motion for sanctions against plaintiff and his attorney.

¶ 1 Defendants, Roderick Fowler, Reginald Fowler, and Shawn Bogdanovicz, appeal from an order voluntarily dismissing them from the case, as well as an order denying the imposition of

sanctions against plaintiff Deandre Hall and his attorney. For the following reasons, we affirm the judgment of the circuit court.

¶ 2 BACKGROUND

¶ 3 The underlying facts of this case have been laid out extensively in *Hall v. Timothy J. Cavanagh & Associates, P.C., et al.*, 2014 IL App (1st) 133535-U, and therefore we will only discuss those facts necessary to the instant appeal.

¶ 4 Plaintiff originally filed a complaint in 2011 against defendants and defendants' attorney, Cavanagh Law. Plaintiff's claim against defendants was for conversion, while his claim against Cavanagh Law alleged that the law firm committed legal malpractice when it disbursed settlement funds from a wrongful death lawsuit to defendants despite knowing that plaintiff was the sole beneficiary of the settlement proceeds. The trial court ultimately found that plaintiff lacked standing to bring either claim because he failed to prove by clear and convincing evidence that decedent was plaintiff's father. On appeal, this court found that there was a question of fact as to whether plaintiff could establish by clear and convincing evidence that he was decedent's son. *Id.* ¶ 36. This court noted that "if the trial court were to find, after assessing the credibility of the witnesses, that plaintiff successfully established paternity, this order has no bearing on whether plaintiff can ultimately establish the claims he made against defendants in his amended complaint for legal malpractice and conversion." *Id*. ¶ 37. Accordingly, this case was remanded for further proceedings.

¶ 5 Before the trial court, additional discovery and motion practice ensued. On August 4, 2015, the trial court entered an order requiring all dispositive motions to be filed by February 9, 2016, and setting a pretrial date of May 5, 2016, with a trial date of May 9, 2016. Defendants then filed a combined motion to dismiss pursuant to section 2-619.1 of the Illinois Code of Civil

Procedure (Code) (735 ILCS 5/2-619.1) (West 2012)). The trial court denied defendants' motion to dismiss under section 2-615 of the Code (735 ILCS 5/2-615) (West 2012)), stating that plaintiff "states a claim for conversion when the allegations establish that plaintiff, as sole heir of the decedent, has an unconditional right to the settlement funds; made a demand for possession of the funds; and the defendants wrongfully assumed control over the funds."

¶ 6 The trial court granted defendants' motion under section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)) motion, finding that in order to prevail on his claim for conversion, plaintiff was required to establish paternity for the first and second elements of conversion. The trial court agreed with this court that the issue of paternity requires a trial, but found that an action to establish paternity must be brought within two years after the child reaches majority. The trial court found that plaintiff reached majority on June 10, 2009, and therefore would have had to bring a paternity action by June 10, 2011, but did not take action against defendants until September 2011, and thus could not legally establish paternity. The trial court found that because plaintiff could not establish paternity, he could not establish his conversion claim, and thus the court granted defendants' section 2-619 motion to dismiss.

¶ 7 On December 16, 2015, plaintiff filed a motion for reconsideration, and defendants filed their response. Plaintiff then filed a reply on January 13, 2016, asserting that the Illinois Parentage Act of 2015 (Act) (750 ILCS 56.101 *et seq*. (West 2016)), effective January 2016, abolished the statute of limitations under the Illinois Parentage Act of 1984, and therefore the statute of limitations was no longer a valid defense to this action.

¶ 8 On February 11, 2016, the trial court entered an order finding that it properly found that the conversation claim was barred by the two-year statute of limitations provided for in the Illinois Parentage Act of 1984, because to prevail on the conversation claim, plaintiff had to

establish paternity, and the two-year requirement to bring a paternity action had passed. However, the court noted that plaintiff's reply brief raised new arguments not addressed in its original motion – that there had been a change in law that required the court to vacate the December 4, 2015 order. Specifically, plaintiff argued that section 607 of the Illinois Parentage Act of 2015, effective January 1, 2016, now applied. That section states that "a proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated parent may be commenced at any time, even after: (a) the child becomes an adult but only if the child initiates the proceedings; or (b) an earlier proceeding to adjudicate parentage has been dismissed based on application of a statute of limitations then in effect." 750 ILCS 46/607 (West 2016). The court found that while plaintiff improperly raised this new argument in his reply brief, "the Court would be in plain error in failing to apply the new applicable legislation." It found that the Parentage Act of 2015 did not provide for a statute of limitations, and due to this change in law, "the December 4, 2015[,] Order must be vacated." The trial date of May 9, 2015, was to remain.

¶ 9 On March 4, 2016, defendants filed a motion for judgment on the pleadings alleging that plaintiff had judicially admitted the unchallenged order of March 22, 2010, which judicially and conclusively determined that the settlement proceeds belonged to defendants, and that even if not admitted by plaintiff, the court was required to take judicial notice of that order. The trial court summarily dismissed the motion, stating that "all dispositive motions were to have been filed by February 9, 2016."

¶ 10 On May 3, 2016, defendants filed their pretrial conference materials, including a motion to dismiss that asserted the court lacked subject matter jurisdiction and that the Illinois Parentage Act of 2015 was unconstitutional. Defendants argued that plaintiff's amended complaint did not meet the requirements of section 602 of the Act because it was not a petition, was not verified,

and did not name Reunond Fowler, the putative father, as a defendant. Defendants argued that the trial court could not obtain personal jurisdiction over the putative father, and he therefore could not be adjudicated a parent. Defendants also contended that the Act "attempts to eliminate the Fowler Defendants' right to trial by jury on the issue of the parentage of Plaintiff," and is therefore unconstitutional.

¶ 11 Defendants also filed an amended motion for judgment on the pleadings, which was substantially similar to the previous motion except that it argued that the trial court had allowed plaintiff to articulate a new statutory cause of action under the Act effective as of the date of the February 11, 2016, order, but that all dipositive motions were to have been filed by February 9, 2016.

¶ 12 A pretrial conference was held on May 5, 2016. At that time, plaintiff's counsel indicated that he was seeking to voluntarily dismiss the claim against the individual defendants without prejudice pursuant to section 2-1009 of the Code (735 ILCS 5/2-1009 (West 2016)). Defendants' attorney was not present, so the trial judge called him on the phone and asked if he had received a copy of plaintiff's counsel's motion to dismiss. Defense counsel stated, "I did, your Honor." Defense counsel then objected to the motion, stating that there were two dispositive motions by defendants pending and that they were entitled to a ruling. Plaintiff's counsel responded that the filing of dispositive motions had a firm deadline, and that plaintiff would be severely prejudiced if he had to go to trial at the same time against defendants as against Cavanagh Law. Plaintiff's counsel stated that it would not be in his client's best interest to go to trial at the same time against all defendants, so he filed the motion to dismiss the Fowler defendants.

¶ 13 The trial court noted that defendants had moved for reconsideration of its order of February 11, 2016, and that the court had entered an order on March 4, 2016, indicating that no

further motions would be entertained, and thus allowing its February 11, 2016 order to stand. The trial court stated:

> "[W]hile recognizing the conflict of my order as far as the dates of February 11th and February 9th, you, in fact, did come into the court after Febraury 11th trying to raise this in a further motion to reconsider, which was denied by this Court. And so because of that, your motions at this point in time of trial are – were previously disposed of for purposes of going forward; and therefore, plaintiff's motion to voluntarily dismiss your clients is granted."

¶ 14 The trial court then entered a written dismissal order on May 5, 2016, granting plaintiff's motion to voluntarily dismiss over objection, without prejudice, pursuant to section 2-1009 of the Code (735 ILCS 5/2-1009 (West 2012)).

¶ 15 The case then proceeded to a bench trial on the issue of paternity against the remaining defendant, Cavanagh Law. On May 11, 2016, the trial court entered an order finding that plaintiff failed to prove paternity and therefore had no standing to proceed. The court found that "parentage/heirship had not been proven" and that "the matter is dismissed with prejudice as Plaintiff lacks standing."

¶ 16 On June 3, 2016, defendants filed a petition for attorney fees and costs as sanctions against plaintiff and plaintiff's counsel pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013), and a motion to reinstate the order of voluntary dismissal and enter judgment in favor of defendants. Defendants argued that plaintiff's amended complaint was frivolous on its face because it judicially admitted that the proceeds had been awarded to defendants, and therefore only defendants had sole claim to such proceeds. The motion alleged that plaintiff's counsel offered to dismiss the lawsuit against defendants if they would testify that they knew plaintiff

was the son of Reunond Fowler and that defendants had so informed Cavanagh Law. Defendants argued that the lawsuit was vexatious and harassing since it was not supported by fact or law and the pleadings were frivolous and false. Defendants argued that because the amended complaint was frivolous, they were entitled to reasonable attorney fees in the sum of $94,770 and costs in the sum of $884.34.

¶ 17 The trial court held a hearing on the issue of payment of costs associated with the voluntary dismissal on June 20, 2016, and ordered plaintiff to pay defendants $438.94 within seven days. Plaintiff paid these costs.

¶ 18 Plaintiff filed a response, arguing that Rule 137 sanctions are only available to a prevailing party, and not, whereas here, the parties were voluntarily dismissed. Plaintiff also argued that Rule 137 sanctions were not warranted because plaintiff had an objectively reasonable basis for filing the conversion claim.

¶ 19 The trial court entered an order on August 26, 2016, without oral argument. In its written order, the trial court noted that while it "may disagree with [p]laintiff's position, [p]laintiff did engage in a reasonable inquiry, and indeed, this reasonable inquiry was affirmed by the Appellate Court." The court ultimately found that sanctions were not warranted. The trial court stated that it did not view plaintiff's motion for voluntary dismissal as forum shopping and denied defendants' motion to vacate the order allowing plaintiff's motion for voluntary dismissal and denied defendants' motion for judgment on the pleadings.

¶ 20 Defendants filed their notice of appeal on September 16, 2016. In their notice of appeal, defendants stated that they were appealing "an order entered on August 26, 2016 denying their Motion (Petition) for Sanctions Pursuant to Illinois Supreme Court Rule 137 and further Denying their Motion to Vacate Plaintiff's Voluntary Dismissal order of May 5, 2015 and further denying

their Motion to Reinstate the case and for Judgment in Favor of the Fowler Defendants on their Motion for Judgment on the Pleadings or the Amended Motion to Dismiss." Defendants further stated that "[b]y this appeal, [they] seek an order of this court reversing the trial court, granting sanctions, vacating the order of voluntary dismissal and entering judgment on the merits in favor of Defendants-Appellants."

¶ 21 ANALYSIS

¶ 22 On appeal, defendants contend that: (1) the trial court lacked personal jurisdiction to enter any order other than dismissal for lack of jurisdiction; (2) portions of the Illinois Parentage Act of 2015 are unconstitutional; (3) the trial court deprived defendants of their right to procedural due process; (4) the trial court erred in its approach to applying the Illinois Parentage Act of 2015; (5) the trial court erred in granting plaintiff's motion for voluntary dismissal; (6) the trial court erred in refusing to enter a sanction order against plaintiff and his counsel; and (7) the trial court abused its discretion in failing to award defendants monetary sanctions. Plaintiff responds that this court lacks jurisdiction to review certain orders of the trial court, as well as certain issues raised on appeal. Plaintiff also responds that the trial court did not abuse its discretion in granting plaintiff's motion for voluntary dismissal, and that the trial court's denial of defendants' motion for sanctions was not an abuse of discretion.

¶ 23 Jurisdiction

¶ 24 We first address plaintiff's jurisdictional concerns. Plaintiff contends that several of defendants' arguments (that the trial court lacked jurisdiction to enter any order other than dismissal for lack of jurisdiction, that the Parentage Act of 2015 is unconstitutional, that the trial court erred by depriving defendants of procedural due process, and that the trial court erred in its approach to applying the Illinois Parentage Act of 2015), which were made in their: (1) motion

for reconsideration of the February 11, 2016, order, (2) amended motion for judgment on the pleadings, and (3) motion to dismiss for want of subject matter jurisdiction and unconstitutionality of the Illinois Parentage Act of 2015, cannot be reviewed by this court. Plaintiff notes that the trial court summarily denied these motions because they were filed after the deadline for dispositive motions to be filed. Plaintiff contends that it is inappropriate to make these arguments on appeal, since the only order being appealed from is the order denying defendant's motion to vacate the trial court's order granting plaintiff's section 2-1009 motion for voluntary dismissal, and denying sanctions.

¶ 25 "A notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts of judgments specified in the notice of appeal." *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011). In the case at bar, the only judgment specified in the notice of appeal was the August 26, 2016, order denying defendants' motion to vacate the trial court's order granting plaintiff's motion to voluntary dismiss the claim against defendants without prejudice, and denying defendants' motion for sanctions against plaintiff's counsel. There is no question that an order granting a plaintiff's motion for a voluntary dismissal is "final and appealable by defendants." *Kahle v. John Deere Co*., 104 Ill. 2d 302, 307 (1984). But, because jurisdiction in the appellate court is generally limited to appeals from final judgments, the power to address a defendant's appeal from a voluntary dismissal "does not form the jurisdictional basis from which we may also address the substantive merits of other nonfinal orders entered by a trial court prior to the granting of a voluntary dismissal." *Valdovinus v. Luna-Manalac Medical Center, Ltd*., 307 Ill. App. 528, 537 (1999).

¶ 26 "A judgment is final if it determines the litigation on the merits so that, if affirmed, nothing remains for the trial court to do but to proceed with its execution." *Big Sky Excavating,*

Inc. v. Illinois Bell Telephone Co., 217 Ill. 2d 221, 233 (2005). "When an order leaves a cause still pending and undecided, it is not a final order." *Austin's Rack, Inc. v. Gordon & Glickson, P.C.*, 145 Ill. App. 3d 500, 502 (1986). Here, the order denying defendants' motion for reconsideration of the February 11, 2016, order, amended motion for judgment on the pleadings, and motion to dismiss for want of subject matter jurisdiction and because the Illinois Parentage Act of 2015 is unconstitutional, was not a final order, as it left the conversion claim against defendants still pending.

¶ 27 It is true that an appeal from a final judgment draws into issue all previous interlocutory orders that produced the final judgment. *Valdovinus,* 307 Ill. App. 3d at 538. But such orders must constitute procedural steps in the progression leading to the entry of the final judgment. *Id*. In the case at bar, the order by the trial court denying defendants' motion for reconsideration of the February 11, 2016, order, denying the motion for judgment on the pleadings, denying the amended motion for judgment on the pleadings and denying the motion to dismiss for want of subject matter jurisdiction and because the Illinois Parentage Act of 2015 is unconstitional, was not an interlocutory order constituting a procedural step in granting the motion for voluntary dismissal or denying sanctions. See *Resurgence Financial, LLC v. Kelly*, 376 Ill. App. 3d 60 (2007) (denial of summary judgment not a procedural step to an order of voluntary dismissal, and therefore not appealable); *Valdovinus*, 307 Ill. App. 3d at 538 (none of the interlocutory orders entered by the trial court denying motions for summary judgment, granting and denying motions to strike interrogatory answers, quashing deposition subpoenas, striking portions of the plaintiffs' complaint, denying motions to continue the trial date, and granting and denying certain of the parties' motions *in limine* were a procedural step in granting a motion for voluntary dismissal or the assessment of costs); *Saddle Signs, Inc. v. Adrian*, 272 Ill. App. 3d 132, 135-40

(1995) (court lacked jurisdiction to review trial court's denial of section 2-619 motion to dismiss that was entered the same day as plaintiff's section 2-1009 motion to voluntarily nonsuit the claim). Rather, the court denied these motions because they were filed after the final deadline of February 9, 2016, for dispositive motions to be filed. An order denying motions as time-barred cannot be considered a procedural step leading to a voluntary motion to dismiss. Accordingly, we will only review the trial court's grant of plaintiff's motion to voluntarily dismiss defendants, and the denial of defendants' motion for sanctions.

¶ 28 Voluntary Dismissal

¶ 29 We now turn to whether the trial court erred in granting plaintiff's motion to voluntarily dismiss defendants. Section 2-1009(a) of the Code states that the plaintiff may, "at any time before trial or hearing begins, upon notice to each party who has appeared or each such party's attorney, and upon payment of costs, dismiss his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause." 735 ILCS 5/2-1009(a) (West 2012). It has been held that three requirements must be met for a plaintiff to voluntarily dismiss his case without prejudice as of right: (1) the plaintiff must file a motion for voluntary dismissal prior to the beginning of trial; (2) the plaintiff must give proper notice; and (3) the plaintiff must pay costs. See *Valdovinos*, 328 Ill. App. 3d at 267. Our supreme court has relaxed the requirements of notice and payment of costs where the defendant suffered no prejudice from the lack of notice and where the plaintiff agreed to pay costs and the trial court's order provided for the plaintiff to pay the defendant's cost upon presentation. *Mizell v. Passo*, 147 Ill. 2d 420, 428 (1992).

¶ 30 Here, plaintiff complied with all three requirements needed for a plaintiff to voluntarily dismiss his case. Moreover, in reviewing the lower court's judgment, we note that section 2-1009(a) confers on plaintiffs an unfettered right to voluntarily dismiss their claims without

prejudice, upon proper notice and payment of costs, before trial, subject to two qualifications: (1) where a previously filed defense motion could result in a final disposition of the cause of action if ruled upon favorably by the court, then the court has the discretion to hear and decide that motion before ruling on plaintiff's motion for voluntary dismissal, and (2) where the circumstances are such that dismissal under section 2-1009 would directly conflict with a specific rule of our supreme court. *Morrison v. Wagner*, 191 Ill. 2d 162, 165 (2000).

¶ 31 In this case, defendants contend that dispositive motions were pending at the time plaintiff moved for voluntary dismissal of the claim against defendants. However, as outlined above, the trial court stated at the pretrial conference that the motions were time-barred because they had been filed after the February 9, 2016, deadline imposed by the trial court. The judge recognized that the February 11, 2016, order was soon after that deadline, but acknowledged that defendants had an opportunity to address those issues in their motion to reconsider the February 11, 2016, order. Accordingly, because those motions were time-barred, there were no pending dispositive motions that needed to be ruled on, and thus we have no reason to find the trial court erred in granting plaintiff's motion to voluntarily dismiss defendants without prejudice.

¶ 32 Sanctions

¶ 33 Finally, we address whether the trial court abused its discretion in denying defendants' motion for sanctions against plaintiff. Defendants brought a motion for sanctions under Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)). Defendants alleged in that motion that plaintiff's counsel had offered to dismiss the lawsuit against them if they would testify that they knew plaintiff was the son of Reunond Fowler, and that defendants had so informed Cavanagh Law. Defendants alleged that the conversion claim against them was without

legal or factual merit, and was vexatious, harassing, and not brought in a good faith attempt to have a legitimate claim for damages adjudicated.

¶ 34 Rule 137 provides that:

> "(a) *** Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record ***. A party who is not represented by an attorney shall sign his pleading, motion, or other document and state his address. *** The signature of an attorney or 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." Ill. S. Ct. R. 137(a) (eff. July 1, 2013).

¶ 35 The rule is designed to discourage frivolous filings, not to punish parties for making losing arguments. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 15. Because this rule is penal in nature, we strictly construe Rule 137. *Sadler v. Creekmur*, 354 Ill. App. 3d 1029, 1045 (2004). A circuit court's decision to deny a motion for sanctions is reviewed for abuse of discretion. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). A court has abused its discretion when no reasonable person would agree with its decision. *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 52. Here, we do not believe the trial court abused its discretion in denying defendants' motion for sanctions.

¶ 36 In its order denying defendants' motion, the trial court stated that while it disagreed with plaintiff's position, plaintiff did engage in a reasonable inquiry, which is determined by the

circumstances at the time plaintiff's complaint was filed. *Yunker v. Farmers Automobile Management Corp.*, 404 Ill. App. 3d 816, 824 (2010). Here, at the time the conversion claim was filed, it appeared from the face of the complaint that it was a valid claim. In order to have standing to bring the claim, however, plaintiff was required to establish paternity, which the trial court found he was unable to do. On appeal, we noted that there was a question of fact as to whether plaintiff could prove by clear and convincing evidence that he was decedent's son, and therefore sent it back on the paternity issue. Establishing paternity would establish standing for both claims. However, as seen when this case continued on the legal malpractice claim, the trial court ultimately found that paternity was not established. Plaintiff's decision not to pursue the conversion claim against defendants does not render the claim vexatious or improper. We cannot say that no reasonable person would agree with the trial court's decision to deny defendants' motion for sanctions.

¶ 37 Additionally, we note that while the trial court did not specifically address each of the issues presented by defendants in their motion for sanctions, it nevertheless issued a written order containing its findings. Our supreme court has held that it is logical to require circuit courts to provide an explanation when imposing sanctions, to make sure that the sanctioned party and future litigants know what conduct will not be tolerated, but that there is no similar need for an explanation when a motion is denied. See *Lake Environment*, 2015 IL 118110, ¶ 6. In this case, the trial court set forth its reasons for denying defendants' motion for sanctions in a written order, and thus we find no abuse of discretion.

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 40 Affirmed.