2012 IL App (2d) 100625-U
No. 2-10-0625
Order filed March 30, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF LINDA MARIE SPAGNOLI, Petitioner-Appellee, and MICHAEL CHARLES SPAGNOLI, Respondent, (Ann O'Connell, Respondent-Appellant).	)))))))))))	Appeal from the Circuit Court of Du Page County. No. 96-D-1801 Honorable James J. Konetski, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

Held: (1) Trial court did not abuse its discretion in concluding that attorney's filing of a section 2-1401 petition violated Supreme Court Rule 137, where the petition and the evidence provided a sufficient basis on which to prove a violation of the rule, where the trial court's finding that the attorney's investigation into the facts was not reasonable under the circumstances was not against the manifest weight of the evidence, and where the attorney participated in the violation of the rule; however, (2) trial court did abuse its discretion in awarding attorney fees in the amount of $7,905 without finding that the fees were reasonable or that the party incurred all of the fees as a result of the sanctionable filing.

¶ 1 Respondent-Appellant, attorney Ann O'Connell, appeals from the trial court's order directing her to pay to petitioner, Linda Marie Spagnoli, attorney fees in the amount of $7,905 as a sanction pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994)[1] for her filing of a petition under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2008)) that was not well grounded in fact. The court imposed the sanction jointly and severally against O'Connell and her client, respondent Michael Charles Spagnoli, but only O'Connell appeals from the order. For the following reasons, we affirm in part, reverse in part, and remand.

¶ 2 BACKGROUND

¶ 3 Linda Spagnoli filed for dissolution of her marriage to Michael Spagnoli in July 1996. The parties reached a marital settlement agreement (MSA), in which they agreed, among other things, that they would maintain joint custody of their two children, that Michael would pay to Linda child support equal to 25% of his net income, that he would provide to Linda copies of his 1099s and W-2s by April 1 of each year, that he would maintain health insurance policies covering the children, that he would maintain a life insurance policy covering himself for the benefit of the children, and that the children's college expenses would "be divided on a prorated basis based upon the parties' individual ability to pay at the time said expenses are incurred." The MSA further provided that the

[1]In the order awarding attorney fees, the court stated that it was granting Linda's motion for attorney fees "[p]ursuant to 750 ILCS 5/508/2 [*sic*] and Illinois Supreme Court Rule 137." However, at the hearing on the motion, the trial court referenced Rule 137 only, and in her brief, O'Connell characterizes the order as imposing sanctions pursuant to Rule 137 and makes no arguments concerning sections 508(a)(2) or 508(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/508(a)(2), (b) (West 2010)).

parties agreed to resolve any dispute arising under the agreement through mediation by a mutually agreed upon attorney mediator. The MSA was incorporated into the judgment for dissolution of marriage entered by the trial court in December 1996.

¶ 4 Linda filed her first contempt petition against Michael in September 1999. The petition alleged a child support arrearage of $4,684 and other violations of the MSA. The record reflects that the parties resolved the petition within two weeks through an agreed order.

¶ 5 Linda filed her next contempt petition against Michael in May 2009. It alleged a child support arrearage of $13,499.60, as well as Michael's failure to provide annual tax forms, failure to maintain medical insurance covering the children, and failure to provide proof of life insurance.

¶ 6 The record contains agreed orders dated June 30 and September 15, 2009. Each order is labeled "agreed" and was prepared by Linda's attorney and signed by the trial judge; only the June 30 order was also signed by Michael and Linda. In the June 30, 2009, order, Michael agreed, among other things, to provide Linda tax returns for the years 2004 through 2008 within 10 days, to provide proof of life insurance no later than July 1, 2009, and to pay for half of the children's college expenses. In the September 15, 2009, order, Michael agreed, among other things, to pay Linda $22,000 in satisfaction of his child support arrearage, to pay $5,000 in attorney fees incurred due to his willful failure to comply with the MSA, and to provide proof of life insurance within 10 days. The September 15 order began, "This matter comes on for hearing on Petitioner's Petition for Indirect Civil Contempt and Reasonable Attorneys [*sic*] Fees, the Respondent being found in indirect civil contempt of court, the parties agree as follows ***."

¶ 7 Following entry of the agreed orders, Michael met with attorney O'Connell on October 20, 2009. On October 29, 2009, O'Connell filed a petition under section 2-1401 of the Code, seeking

to vacate the June 30 and September 15, 2009, agreed orders. In the petition, Michael alleged that Linda's attorney had "falsely labeled" the orders as "agreed." He further contended that Linda's attorney had directed him to sign the June 30, 2009, order "on the false pretense that his signature was only for the purpose of showing the [j]udge that [he] had read the order." With regard to the September 15, 2009, order, he alleged that Linda's attorney had "again deceived [him] by pretending the [o]rder was agreed to" and had "again prepared another [o]rder which he misrepresented to the court as being 'agreed.' " He alleged that he never agreed to pay $22,000 in child support or $5,000 in attorney fees, or to be held in indirect civil contempt of court. Michael further alleged that he "reasonably believed that he was somehow mediating the issues" as provided for in the MSA, and that he did not understand the legal consequences of an agreed order. Michael accused Linda's attorney of deception and of making misrepresentations to both him and the trial court. Michael's affidavit was attached to the section 2-1401 petition and essentially repeated the allegations contained in the petition.

¶ 8 On November 16, 2009, while Michael's 2-1401 petition remained pending, Linda filed two more contempt petitions. The first alleged that Michael had failed to reimburse Linda for half of the children's college expenses as agreed in the June 30, 2009, order. The second alleged that Michael had failed to pay the $22,000 child support arrearage and the $5,000 in attorney fees, and to provide proof of life insurance, as agreed in the September 15, 2009, order.

¶ 9 On February 9, 2010, the trial court conducted a hearing on Michael's section 2-1401 petition. Linda, Linda's attorney, and Michael all testified at the hearing. With regard to the June 30, 2009, agreed order, Michael testified as follows: "[Linda's attorney] wrote up some documents. I did read them and sign them. It was my belief that those were the numbers that they were looking

for, and I would have time to respond to those numbers." O'Connell then asked him, "[D]id you step up in front of the [j]udge on June 30th and tell the [j]udge that [*sic*] you had agreed to?" Michael responded, "Yes." Michael did not testify, as he had stated in his affidavit, that Linda's attorney told him that his signature on the June 30, 2009, order was merely to show the judge that he had read it. With regard to the September 15, 2009, agreed order, Michael testified that Linda's attorney told him that $22,000 was the amount of child support arrearage that he had calculated based on Michael's tax returns. Michael testified that he did not agree with the number, and that he also did not agree to pay $5,000 in attorney fees or to be held in contempt of court. When O'Connell asked him what happened when he and Linda's attorney went back in front of the trial judge, Michael testified that "[w]e came before the [j]udge, and they were going to set a status hearing on payment of what I believed was the number of arrearage that they were looking for." He further testified that "although called an order, [he] did not realize that that was me agreeing" that $22,000 was the amount of the arrearage.

¶ 10 The court denied the section 2-1401 petition, finding that O'Connell had not presented evidence to establish any of the allegations. At the conclusion of the hearing, the court commented that the allegations levied against Linda's attorney had been "completely out of bounds," and the court granted Linda leave to file a petition for attorney fees pursuant to Rule 137, which Linda subsequently filed.

¶ 11 Following a hearing on Linda's Rule 137 petition for attorney fees, the trial court ordered O'Connell and Michael to pay to Linda attorney fees in the amount of $7,905. The court stated its findings on the record, again emphasizing the seriousness of the allegations of fraud, deceit, and misrepresentation levied against Linda's attorney. The court acknowledged O'Connell's concern

that Michael had not understood the nature of the agreed orders, but stated that O'Connell "went so far beyond that *** without really properly investigating anything." The court read numerous excerpts from the section 2-1401 petition in which O'Connell had accused Linda's attorney of "misrepresenting things to [the court], misrepresenting things in orders, entering orders that were false, entering orders that weren't agreed, [and] lying to [Michael]." The court found that O'Connell had "accused *** [Linda's] attorney of all kinds of things that are just reprehensible and didn't even take the time to talk to him, for whatever reason." The court's written order entered on May 28, 2010, stated that the court was granting the sanctions "for the reasons stated by the Court." On June 17, 2010, O'Connell filed a notice of appeal from the May 28 order.

¶ 12 The record contains an order dated June 23, 2010, in which the court found Michael "to be in indirect civil contempt for his willful violation of the order entered September 15, 2009[,] and subsequent orders as alleged in [p]laintiff's pending petitions for adjudication of contempt." In the same order, the court continued the matter to July 13, 2010, "for hearing on sentencing and setting of a purge." The last order contained in the record is dated July 13, 2010, and continued the matter to August 4, 2010, "for hearing on setting of purge."

¶ 13 ANALYSIS

¶ 14 Before reaching the merits of O'Connell's appeal, we have an independent duty to consider our jurisdiction and to dismiss the appeal if jurisdiction is lacking. *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 542 (2011). O'Connell contends that this court has jurisdiction pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 15 "This court's jurisdiction extends only to appeals from final judgments unless the appeal is within the scope of one of the exceptions established by our supreme court permitting appeals from

interlocutory orders in certain circumstances." *In re Marriage of Waddick*, 373 Ill. App. 3d 703, 705 (2007). " 'An order is final and appealable if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof.' " *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008) (quoting *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998)). However, where an action involves multiple parties or multiple claims, an order that disposes of fewer than all of the claims is not appealable unless the trial court makes "an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

¶ 16 Although Linda's contempt petitions remained pending at the time the court entered the Rule 137 sanctions order against Michael and O'Connell (see *Gutman*, 232 Ill. 2d at 152 (holding that a contempt petition remains pending until entry of "a contempt judgment that imposes a sanction")), the filing of Michael's section 2-1401 petition initiated a separate action that was not a continuation of the dissolution action in which the agreed orders that he sought to vacate were entered (735 ILCS 5.2-1401(b) (West 2008)). Although Michael does not appeal from the order denying his section 2-1401 petition, because Linda's Rule 137 petition was filed within 30 days of that order and is considered to have been filed "within the civil action" in which the section 2-1401 petition was filed (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)), we conclude that the order imposing Rule 137 sanctions was final and appealable because no claims remained pending in the section 2-1401 proceeding. Therefore, we have jurisdiction over the appeal.

¶ 17 O'Connell argues on appeal that we should reverse the trial court's order imposing Rule 137 sanctions against her because (1) the court failed to specify the basis for the sanctions in its written order; (2) Linda failed to meet her burden of proof on her Rule 137 petition; (3) the trial court's

finding that O'Connell did not conduct an objectively reasonable investigation into the facts was against the manifest weight of the evidence; (4) the court improperly considered O'Connell's conduct after she filed the section 2-1401 petition; (5) the court erroneously imposed sanctions against O'Connell where Michael was her only source of information; and (6) Linda's attorney provided no evidence to establish the reasonableness of the attorney fees. Although Linda has filed no appellee's brief, we will address O'Connell's arguments on the merits because the record is simple and the issues are such that we can easily decide them without the aid of an appellee's brief. See *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 18 Supreme Court Rule 137 provides for sanctions against a party or a party's attorney who signs a "pleading, motion[,] or other paper" that is not well grounded in fact or warranted by existing law. Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). The purpose of the rule is to penalize attorneys and parties who abuse the judicial process by filing frivolous or false matters without a basis in law or fact or for purposes of harassment. *DeRaedt v. Rabiola*, 2011 IL App (2d) 100719, ¶ 21. The sanctions may include reasonable attorney fees incurred as a result of the improper filing. Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). A trial court's decision to impose sanctions is entitled to significant deference, and we will not disturb the trial court's decision absent an abuse of discretion. *Feret v. Schillerstrom*, 363 Ill. App. 3d 534, 542 (2006). " 'A trial court abuses its discretion when its finding is against the manifest weight of the evidence [citation] or if no reasonable person would take the view adopted by it [citation].' " *DeRaedt*, 2011 IL App (2d) 100719, ¶ 21 (quoting *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 244 (2000)). The primary inquiries are whether (1) the trial court's decision was an informed one, (2) the decision was based on valid reasons that fit the case, and (3) the decision followed logically

from the application of the reasons stated to the particular circumstances of the case. *North Shore Sign Co. v. Signature Design Group, Inc.*, 237 Ill. App. 3d 782, 790-91 (1992).

¶ 19 Sufficiency of the Court's Written Order

¶ 20 O'Connell argues that we should reverse the May 28, 2010, order because the trial court failed to specify the basis for its decision in the written order. Rule 137 provides that, "[w]here a sanction is imposed under this rule, the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). However, the trial court can satisfy this requirement by stating its findings on the record and by incorporating those findings into a written order by reference, so long as the record provides the legal or factual basis for the court's decision such that the reviewing court may make an informed and reasoned decision. See *Kellet v. Roberts*, 276 Ill. App. 3d 164, 172 (1995) (holding that an order imposing sanctions that incorporated by reference the plaintiff's motion for sanctions and the reasoning therein was sufficient because it provided the legal and factual basis for the court's decision); see also *Kellett v. Roberts*, 281 Ill. App. 3d 461, 465 (1996) (holding that an order denying sanctions that incorporated by reference the trial court's reasons stated on the record was insufficient because the reasons did not disclose the legal or factual basis for the court's decision).

¶ 21 The record clearly sets forth the legal and factual basis for the court's decision to impose sanctions. The court stated in its May 28, 2010, order that it was imposing sanctions "for the reasons stated by the Court." At the hearing, the court stated that it was imposing sanctions pursuant to Rule 137. It then gave a detailed account of the factual basis for its decision, going so far as to quote the offending passages from the section 2-1401 petition. The court explained at length that it was

imposing sanctions because Michael's allegations of fraud, deceit, and misrepresentation levied against Linda's attorney were not well grounded in fact. On this record, we are easily able to make an informed and reasoned decision as to whether the trial court abused its discretion. We decline to reverse the sanctions order simply because the court did not reproduce in writing the basis for its decision.

¶ 22 Linda's Burden of Proof

¶ 23 O'Connell argues that Linda failed to meet her burden of proof on her Rule 137 petition because neither Linda nor the attorney who prepared the June 30 and September 15, 2009, agreed orders testified at the May 28, 2010, hearing. O'Connell is correct that the party moving for sanctions bears the burden of proving that the party's opponent made false allegations without reasonable cause (*Heckinger v. Welsh*, 339 Ill. App. 3d 189, 191 (2003)) and that generally an evidentiary hearing is required for this purpose (*Heritage Pullman Bank & Trust Co. v. Carr*, 283 Ill. App. 3d 472, 478 (1996)). However, where proof can be made on the basis of pleadings or trial evidence, an additional hearing is not required. *Heritage Pullman Bank & Trust Co.*, 283 Ill. App. 3d at 478. "[Even] a summary disposition of a motion for sanctions may be appropriate in cases where the pleadings, trial evidence[,] and the factual basis in the record are clear." *North Shore Sign Co.*, 237 Ill. App. 3d at 791.

¶ 24 We conclude that the trial court properly disposed of Linda's Rule 137 petition based on the pleadings and evidence presented. Although the court conducted a hearing on the Rule 137 petition, Linda presented little evidence at the hearing, other than to point out that the trial court had "concluded that there was absolutely no basis for *** the filing of the [section 2-1401] petition." Nevertheless, in reaching its decision, the court properly took into account the section 2-1401

petition and the evidence presented at the earlier hearing on the petition itself, which was sufficient to prove that O'Connell had violated Rule 137. Michael, Linda, and the attorney who prepared the June 30 and September 15, 2009, orders testified at the earlier hearing, and the trial court determined that their testimony provided no support for Michael's allegations. Although Michael stated in his affidavit that Linda's attorney had told him to sign the June 30, 2009, order to show the judge that he had read it, he did not testify to this at the hearing on the section 2-1401 petition. Additionally, Michael's affidavit attached to his section 2-1401 petition revealed that he first contacted O'Connell on October 18, 2009. O'Connell filed the section 2-1401 petition on Michael's behalf on October 29, 2009, only several days later. Based solely on Michael's account of what occurred, O'Connell accused Linda's attorney of a litany of unethical conduct. O'Connell testified at the May 28, 2010, hearing that she did not contact Linda's attorney prior to levying these allegations against him. Based on this information, the record was sufficient to prove that O'Connell's investigation into the factual basis for the allegations of fraud, deceit, and misrepresentation contained in the section 2-1401 petition was objectively unreasonable. Therefore, the court properly concluded that O'Connell violated Rule 137 based on the pleadings and evidence presented.

¶ 25 Our conclusion is reinforced by the consideration that O'Connell's review of the court file and the transcripts of the June 30 and September 15, 2009, hearings should have given her reason to doubt Michael's allegations. At the conclusion of the June 30, 2009, hearing, the trial court admonished Michael, "Mr. Spagnoli, take a look at the order; and if it's agreed, sign it. Okay?" Similarly, at the conclusion of the September 15, 2009, hearing, after Linda's attorney told the judge that the parties had reached an agreement and handed the judge the agreed order, the court asked, "You both have had an opportunity to review the *agreement*?" (Emphasis added.) Michael

answered, "Yes." At no point at either hearing did Michael express any concerns to the court or ask any questions concerning the effect of the agreed orders or the nature of the proceedings. The record also reveals that Michael had resolved a prior contempt petition filed by Linda in 1999 through an agreed order, which would suggest that he understood the effect of an agreed order and the nature of the proceedings.

¶ 26 Because the court properly concluded that O'Connell violated Rule 137 based on the pleadings and evidence presented, we decline to reverse the sanctions order on this basis.

¶ 27 O'Connell's Investigation

¶ 28 O'Connell argues that her investigation into the allegations contained in the section 2-1401 petition was objectively reasonable under the circumstances and that the trial court's finding to the contrary was against the manifest weight of the evidence. "A party making a filing in the trial court must make prefiling inquiries that are reasonable under the circumstances existing at the time the pleading is signed." *Edward Yavitz Eye Center, Ltd. v. Allen*, 241 Ill. App. 3d 562, 569 (1993). O'Connell lists several circumstances under which she contends her investigation was reasonable: the "[n]ine day period (from October 20 to October 29)"[2]; the "[n]ecessity to file the petition as quickly as possible because of the [s]ection [2-]1401 due diligence requirement"; the "[e]xtensive interviews with Michael and preparation of the [a]ffidavit based on his sworn statements"; [O'Connell's] reliance on the facts which Michael swore to in the [a]ffidavit"; "[t]he facts were supported by the court documents and the record"; and "[O'Connell's] research of the law in the preparation of the [m]emorandum in [s]upport of the [p]etition to [v]acate."

[2]According to O'Connell's brief, she first met with Michael in person on October 20, 2009.

¶ 29 None of these circumstances rendered O'Connell's investigation into the factual basis for the allegations of fraud, deceit, and misrepresentation contained in the section 2-1401 petition objectively reasonable. O'Connell's desire to file the petition as quickly as possible did not negate her duty to conduct a reasonable investigation into the factual basis for the petition's allegations. Michael had two years in which to file a section 2-1401 petition (735 ILCS 5/2-1401(c) (West 2010)), and less than 45 days had passed following entry of the September 15, 2009, agreed order. The short nine-day period between O'Connell's initial meeting with Michael and her filing of the section 2-1401 petition resulted from nothing other than O'Connell's haste. Next, O'Connell's "[e]xtensive interviews with Michael" and her preparation of his sworn affidavit did not render her investigation objectively reasonable. Given the serious nature of the allegations levied against Linda's attorney, O'Connell's heavy reliance on Michael as her only source of factual information was not objectively reasonable under the circumstances, especially since the transcripts of the June 30 and September 15, 2009, hearings contradicted Michael's allegations. O'Connell does not support her statement that "[t]he facts were supported by the court documents and the record" by any citation to the record and we decline to search the record for her. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (providing that the appellant shall support his or her argument "with citation of the authorities and the pages of the record relied on"). Finally, the "circumstance" of O'Connell's "research of the law in the preparation of the [m]emorandum in [s]upport of the [p]etition to [v]acate" is not supported by the record. The memorandum appears to be a brief summary of the boilerplate law governing section 2-1401 petitions. Moreover, the memorandum provides no insight into how the law applies to any factual basis for the allegations of fraud, deceit, and misrepresentation contained in the section 2-1401 petition.

¶ 30 Next, O'Connell essentially repeats her arguments for why the June 30 and September 15, 2009, agreed orders should have been vacated and maintains that each of the arguments had a valid legal basis and was well grounded in fact. Almost all of O'Connell's arguments fail to address the factual basis for the allegations of fraud, deceit, and misrepresentation contained in the section 2-1401 petition. These include her arguments that Michael believed that he and Linda's attorney were engaging in mediation pursuant to the MSA when he signed the agreed orders; that the agreed orders were an improper attempt to modify the terms of the MSA; that there was no mutual assent by the parties to the agreed orders; that Linda's attorney did not explain to the trial court the terms of the June 30, 2009, agreed order or request approval of them, as required by *Blisset v. Blisset*, 123 Ill. 2d 161 (1988); that the agreed orders were unconscionable; that Michael did not understand that he was agreeing to be held in contempt of court; and that Michael did not agree to pay $22,000 in satisfaction of his child support arrearage or to pay $5,000 in attorney fees. O'Connell could have made each of these arguments without accusing Linda's attorney of a litany of unethical conduct; thus, regardless of whether they were well grounded in fact or warranted by exiting law, the arguments provide no factual support for the section 2-1401 petition's allegations of fraud, deceit, and misrepresentation levied against Linda's attorney.

¶ 31 Two of O'Connell's arguments do concern the factual basis for the section 2-1401 petition's allegations of fraud, deceit, and misrepresentation. First, O'Connell argues that the allegation that the agreed orders were procured through fraud was well grounded in fact because Michael stated in his affidavit that Linda's attorney told him that his signature on the June 30, 2009, agreed order was merely to show the trial judge that he had read it. However, as discussed above, O'Connell's heavy reliance on Michael as her only source of factual information was not objectively reasonable under

the circumstances. O'Connell filed the petition only days after her first meeting with Michael; she did not contact Linda's attorney prior to accusing him of unethical conduct; and the court file and transcripts from the June 30 and September 15, 2009, hearings contained information that discounted Michael's allegations.

¶ 32 Second, O'Connell argues that the allegation that Linda's attorney committed fraud on the court was well grounded in fact because Linda's attorney did not disclose to the court that Michael did not agree to the terms of the agreed orders. This argument presupposes that Linda's attorney knew that Michael did not agree to the terms of the orders. More importantly, the argument presupposes that Linda's attorney was somehow under a duty to voice Michael's unspoken concerns. As discussed above, the transcripts of the June 30 and September 15, 2009, hearings reveals that Michael expressed no concerns and asked no questions about the agreed orders even after the trial court prompted him.

¶ 33 Based on the foregoing, we conclude that the trial court's finding that Linda's investigation was not reasonable under the circumstances was not against the manifest weight of the evidence.

¶ 34 O'Connell's Postfiling Conduct

¶ 35 O'Connell argues that the trial court improperly considered her conduct after she filed the section 2-1401 petition in determining that she violated Rule 137. O'Connell refers to the trial court's finding at the May 28, 2010, hearing that she "didn't even take the time to talk to [Linda's attorney]" prior to filing the petition. O'Connell then refers to Linda's allegation in her Rule 137 petition that her attorney called O'Connell on November 2, 2009, to discuss the allegations contained in the section 2-1401 petition, which was filed on October 29, 2009, and that O'Connell had refused to discuss the allegations. O'Connell concludes that, because the telephone call occurred four days

after she filed the section 2-1401 petition, the trial court must have improperly considered the telephone call in concluding that she violated Rule 137.

¶ 36 O'Connell's argument is circular and without merit. It would have been proper for the court to infer from the November 2, 2009, phone call that O'Connell had not spoken to Linda's attorney prior to filing the section 2-1401 petition. Although the inference arose from a postfiling telephone call, the inference itself concerned prefiling conduct. However, no inference was necessary, because O'Connell admitted in her testimony at the May 28, 2010, hearing that she had not contacted Linda's attorney prior to filing the section 2-1401 petition.

¶ 37 O'Connell's Liability

¶ 38 O'Connell argues that she should not be liable for the Rule 137 sanctions because she relied exclusively on Michael for the facts upon which she based the allegations in the section 2-1401 petition. O'Connell cites *Washington v. Allstate Insurance Co.*, 175 Ill. App. 3d 574 (1988), in support of this argument. In *Washington*, the plaintiffs, who were represented by counsel, filed a breach of contract action against their insurance company for denying a claim for the theft of their vehicle. *Washington*, 175 Ill. App. 3d at 576. The plaintiffs obtained new counsel prior to filing an amended complaint, which added a single factual allegation. *Washington*, 175 Ill. App. 3d at 576, 579. After the plaintiffs were unable to prove that they had any ownership interest in the vehicle, the trial court imposed sanctions against them, but not against the attorney who had filed the amended complaint. *Washington*, 175 Ill. App. 3d at 577-79. The appellate court affirmed the sanctions order entered against the plaintiffs alone, reasoning that the allegation added to the amended complaint was only one of several allegations upon which the sanctions were based, and that the plaintiffs had filed their original complaint when Rule 137's precursor did not apply to

attorneys. *Washington*, 175 Ill. App. 3d at 580. The court supported its holding by reasoning that one factor relevant to determining what constitutes a reasonable inquiry is whether an attorney had to rely on his client for information, and the court stated that "this was the type of case in which an attorney must rely almost exclusively on his client for the facts." *Washington*, 175 Ill. App. 3d at 580-81.

¶ 39 *Washington* is distinguishable. The current version of Rule 137—which was in effect when O'Connell signed and filed the section 2-1401 petition on behalf of Michael—specifically permits a trial court to impose sanctions against both an attorney and a represented party. Ill. S. Ct. R. 137 (eff. Feb. 1, 1994) (a court may impose sanctions "upon the person who signed [the pleading, motion, or other paper], a represented party, or both"). Additionally, based on the record before us, it does not appear that O'Connell simply acted as a passive conduit conveying facts from Michael to the trial court. O'Connell took the information she received from Michael and, in her discretion, chose to levy allegations of fraud, deceit, and misrepresentation against Linda's attorney. O'Connell's role is distinguishable from the attorney's role in *Washington*, who simply represented to the court that his clients owned the vehicle that was stolen. As discussed above, O'Connell could have challenged the agreed orders without resorting to allegations of unethical conduct. Finally, given the serious nature of the allegations, O'Connell should have made every effort to verify her allegations, and it was objectively unreasonable for her to rely exclusively on Michael as her source of factual information. Again, O'Connell's review of the court file and the transcripts of the June 30 and September 15, 2009, hearings should have given her reason to doubt Michael's story.

¶ 40 Based on the foregoing, we conclude that the trial court did not abuse its discretion in imposing sanctions against O'Connell.

¶ 41 Reasonableness of the Amount of Fees

¶ 42 O'Connell argues that the fee award was excessive and that Linda did not present sufficient evidence to prove that the amount of fees was reasonable. Rule 137 provides that a sanction imposed under the rule "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 paper, including a reasonable attorney fee." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). In determining what is a reasonable attorney fee, a court should look to several factors, including " 'the skill and standing of the attorney employed, the nature of the case, the novelty and difficulty of the issues involved, the degree of responsibility required, the usual and customary charge for the same or similar services in the community, and whether there is a reasonable connection between the fees charged and the litigation.' " *Robertson v. Calcagno*, 333 Ill. App. 3d 1022, 1028 (2002) (quoting *Olsen v. Staniak*, 260 Ill. App. 3d 85, 865-66 (1994)). A party seeking attorney fees as a sanction under Rule 137 need not meet the strict requirements for fee petitions as outlined by the court in *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978 (1987). *Robertson*, 333 Ill. App. 3d at 1029. "Fees are recoverable under Rule 137 even where they are 'lumped,' and even for unaccounted-for time entries." *Robertson*, 333 Ill. App. 3d at 1029-30 (quoting *Riverdale Bank v. Papastratakos*, 266 Ill. App. 3d 31, 43 (1994)). However, the court must at a minimum find that the fees arose out of the sanctionable pleading or motion, and that the amount of the fees was reasonable. See *Robertson*, 333 Ill. App. 3d at 1029 (holding that a court did not abuse its discretion in granting attorney fees as a sanction where the court found that the amount of the fees was reasonable and that the fees arose out of the sanctionable pleading).

¶ 43 The court made no finding that the amount of attorney fees awarded was reasonable or that all of the fees arose out of the filing of the section 2-1401 petition. The basis on which the court awarded fees in the amount of $7,905 was Linda's Rule 137 petition, in which her attorney stated that his law firm had expended 1.70 hours of court time and 39.10 hours of out-of-court time. Linda's attorney repeated those numbers at the May 28, 2010, hearing. When O'Connell asked Linda's attorney on cross-examination whether he had any breakdown of the firm's hours, the attorney said no and that he thought that the attorney-client privilege prevented him from attaching time records to the fee petition. Moreover, when asked how much time he spent responding to the section 2-1401 petition, Linda's attorney initially declined to answer but then estimated that he spent one hour to one and one-half hours responding to the petition.

¶ 44 Based on the foregoing, we conclude that the court abused its discretion to the extent that it awarded fees in the amount of $7,905 without determining whether the amount of fees was reasonable or whether all of the fees had been incurred as a result of the filing of the section 2-1401 petition.

¶ 45 CONCLUSION

¶ 46 Based on the foregoing, we affirm that part of the judgment imposing sanctions against O'Connell for her violation of Rule 137, but we reverse that part of the judgment imposing fees in the specific amount of $7,905, and we remand for further proceedings to determine the amount of reasonable attorney fees that Linda incurred as a result of O'Connell's filing of the section 2-1401 petition.

¶ 47 Affirmed in part, reversed in part, and remanded.