2013 IL App (2d) 121319-U
No. 2-12-1319
Order filed November 6, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

FRANK HANEY and MARGARET HANEY,	)	Appeal from the Circuit Court
	)	of McHenry County
Plaintiffs and	)	
Counterdefendants-Appellees,	)	
	)	
v.	)	No. 10 CH 3178
	)	
VILLAGE OF JOHNSBURG,	)	
	)	Honorable
Defendant and	)	Michael J. Caldwell,
Counterplaintiff-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying sanctions under Supreme Court Rule 137 (eff. Feb. 1, 1994) at the conclusion of plaintiffs' suit against the Village of Johnsburg to quiet title to a tract of land adjacent to plaintiffs' lots.

¶ 2 Defendant, the Village of Johnsburg (Village), appeals the denial of a motions for sanctions that it submitted at the conclusion of a quiet-title action brought against the Village by plaintiffs, Frank and Margaret Haney. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiffs own Lots 1 and 2 in the Village's Buena Park Subdivision. In the underlying litigation, plaintiffs and the Village contested ownership of the portion of Maple Avenue that is contiguous to plaintiffs' Lot 1. This particular stretch of roadway, which apparently has been used by others (against plaintiffs' wishes) for access to the Fox River, has remained unimproved since it was platted in 1933. By contrast, the remainder of Maple Avenue was improved and maintained by the Village. Plaintiffs have never disputed in this litigation that the tract to which they lay claim is designated as Maple Avenue on public records. The 1933 plat of subdivision for Buena Park depicts a "Maple Avenue" intersecting with "Second Avenue" at the corner of plaintiffs' Lot 1, with Maple Avenue running contiguous to the entire length of plaintiffs' Lot 1 and continuing across Second Avenue. In 1990, the McHenry Township Road District accepted jurisdiction over Maple Avenue. In 1991, the Village annexed an area including Maple Avenue.

¶ 5 While not contesting that the disputed tract was platted as Maple Avenue, plaintiffs claim that Maple Avenue has never been designated as a public way as such. Unless indicated otherwise, we hereinafter use "the Property" to designate the portion of Maple Avenue contiguous to plaintiffs' property. It is uncontested that both the Property and plaintiffs' lots were once part of a larger tract owned by John and Della Miller.

¶ 6 On October 29, 2010, plaintiffs brought against the Village a one count complaint to quiet title. Plaintiffs were represented by Matthew Coppedge of Cowlin, Curran, and Coppedge (CCC) in Crystal Lake. Plaintiffs alleged that, "[p]ursuant to a Quit Claim Deed," they "own[ed]" the Property. Plaintiffs set forth the following legal description for the Property:

> "That part of Maple Avenue, platted as a 60 foot private road, lying Northwesterly of the Southeasterly line of Lot 1 extended Southwesterly to the Southwesterly line of Buena Park

> Subdivision, in Buena Park Subdivision, being a subdivision of part of Fractional Section 18, Township 45, Range 9 East of the Third Principal Meridian, according to the plat thereof recorded May 1, 1933[,] as Document Number 105733 in Book 7 of Plats, page 48, in McHenry County, Illinois."

Plaintiffs attached to their complaint two quitclaim deeds purporting to convey the Property. The first was recorded on February 27, 2006. The second, which was recorded on August 17, 2010 (the August 2010 quitclaim deed), strikes out the legal description in the first deed and references, as a corrected description, a document entitled "Boundary Survey." This document depicts plaintiffs' Lot 1 as well as a contiguous tract labeled "Portion of 60 Ft. Private Road not opened, used [for] access by Residents of Buena Park Subdivision." Above the depiction is a legal description (presumably of the contiguous tract) which is identical to, and presumably the source for, the legal description quoted above.

¶ 7 Notably, the August 2010 quitclaim deed designates plaintiff Margaret Haney as both grantor and one of the grantees, the other grantee being plaintiff Frank Haney, her husband. The deed specifies that Margaret and Frank Haney are receiving the Property in joint tenancy.

¶ 8 In subsequent paragraphs of the complaint, plaintiffs alleged that (1) the Property was "vacant and unoccupied"; (2) someone had recently vandalized the Property by removing bushes, and when plaintiffs reported it, the Village police determined "that the damage took place on Village[-]owned property"; (3) plaintiffs thereafter requested from the Village documentation verifying that the Property was owned by the Village; (4) in response, the Village produced a plat of survey (which plaintiffs alleged they had previously commissioned) identifying the Property as " 'Unimproved Portion of Maple Avenue' "; (5) there are no public records that depict the Property "as a dedicated

public way or easement"; (6) despite the lack of such public records, the Village has "continued to assert that the [P]roperty is public property and/or a public easement," and has "informed Plaintiffs that [they] cannot continue to use the [P]roperty for the storage of their recreational vehicle or for other private uses that have taken place on the [P]roperty"; and (7) the Village's assertion "that the [P]roperty is a public way or easement is a cloud on the title of Plaintiffs but is not sustainable and is null and void and of no effect."

¶ 9 Plaintiffs attached to their complaint an extract of a plat of survey that they acknowledged receiving from the Village. The extract, which is undated, depicts the Property as "Unimproved Portion of Maple Avenue," consistent with plaintiffs' allegations.

¶ 10 On December 3, 2010, the Village filed its answer, denying the essential allegations of the complaint. Between December 2010 and June 2011, the Village filed several discovery requests and subpoenas. Notably, on December 8, 2010, the Village asked plaintiffs to produce "[a]ny and all documents, including but not limited to correspondence, written statements, reports, and plats of survey, relative to the property for which you seek to quiet title in [this] litigation." On February 25, 2011, the Village served on plaintiffs the following request to admit: "You sought to purchase the Property in 1996 from Martha Freund." (Martha Freund was one of John and Della Miller's children.) On April 15, 2011, the Village served on plaintiffs another request to admit. The Village attached a typewritten warranty deed with blank signature lines designating the year 1996. The grantors are the children of John and Della Miller, the grantees are plaintiffs, and the tract conveyed is the Property. The Village asked plaintiffs to admit that the draft warranty deed was prepared in 1996 by plaintiffs' attorney, John Cowlin of CCC, and "was delivered to Martha Freund."

¶ 11 On June 1, 2011, the Village filed a motion for summary judgment, attaching several documents including (1) an affidavit from a title searcher who had determined that Margaret Haney was not in the chain of title for the Property; (2) affidavits identifying the children and grandchildren of John and Della Miller and stating that the children of the Millers are deceased; (3) eleven quitclaim deeds (dated and recorded between January and March 2011) from the Miller grandchildren conveying the Property to the Village, and describing the Property as "[t]hat part of Maple Avenue, platted as a 60 foot road"; (4) a February 1996 letter from surveyor Michael F. O'Connor to Cowlin, indicating that the Miller heirs were willing to convey the Property to plaintiffs subject to a pedestrian easement for the benefit of other occupants of Buena Park Subdivision; (5) the 1996 draft warranty deed that the Village had previously attached to its April 2011 request to admit; (6) excerpts of Margaret Haney's March 16, 2009, deposition in which she acknowledged that, in 1996, she and her husband unsuccessfully attempted to acquire the Property from the Miller heirs, and that subsequently, on the advice of her (former) attorney, she signed a quitclaim deed "convey[ing] [the [P]roperty] to herself";[1] and (7) interrogatory answers in which plaintiffs acknowledged: "All residents of Buena Park Subdivision have the right to access the [P]roperty for purposes of accessing the [Fox] River. This is a passive right of use, *i.e.*, one that allows those residents to traverse the [P]roperty to reach the river."

¶ 12 In the summary judgment motion, the Village argued that it was entitled to judgment because, first, the August 2010 quitclaim deed was insufficient to demonstrate title to the Property and,

[1] Elsewhere in the record is a March 1996 letter from Cowlin to O'Connor wherein Cowlin writes: "The only way I can see clearing title in the Haneys' name was if the property was on the tax roll and was sold for unpaid taxes."

moreover, plaintiffs' attempt to acquire the Property in 1996 implied that they knew they did not have title. Second, the Village argued that its title was superior because it proved a chain of title from the Miller heirs.

¶ 13 On June 2, 2011, while the summary judgment motion was pending, plaintiffs moved to disqualify the Village's attorney, Michael Smoron of the law firm of Zukowski, Rogers, Flood & McArdle. In support, plaintiffs asserted that Smoron had prepared the quitclaim deeds from the Miller heirs and appeared as counsel for the heirs at their recent discovery depositions. Plaintiffs cited case law for the proposition that a government attorney cannot represent a private party. See, *e.g.*, *In re LaPinska*, 72 Ill. 2d 461, 471 (1978) ("An attorney may not represent both a governmental body and a private client even if disclosure is made and the parties agree to such dual representation."). Additionally, plaintiffs claimed that Smoron had a conflict of interest prohibited by Rule 1.7 of the Rules of Professional Conduct (eff. Jan.1, 2010). Plaintiffs' theory of where the conflict lay was rather novel and is best conveyed in their own words:

> "At [their] depositions, the deponents [*i.e.*, the Miller heirs] uniformly identified that the alleged reason for deeding the property to [the Village] was to make sure that 'Grandpa [John] Miller['s] intent was followed. The intent of Grandpa Miller was identified as making sure that residents of certain subdivisions were allowed to use the property in question to gain access to the Fox River. The deponents were clear[,] however[,] that the intent of 'Grandpa Miller' did not extend to the public at large but was only applicable to the residents of the subdivisions that were identified in the original platting documents recorded in the early 1930s.
>
> * * *

*** The Grantors [*i.e.*, the Miller heirs] have testified that their expectation is a limited scope of use. [The Village], [which] apparently espouses an unlimited range of use, induced the Grantors to convey their alleged interest in the [P]roperty to [the Village]. Ironically, the position of Plaintiffs and Grantors is in harmony and simultaneously in conflict with [the Village]. In this regard, Mr. Smoron is now representing parties who have conflicting positions and he cannot continue to do so. Quite frankly, even if the Grantors and [the Village] were espousing the same position, Mr. Smoron would likely have a conflict under Rule 1.7. Given the testimony that has been elicited from Grantors and [the Village],[2] there is no question that Mr. Smoron has a conflict that, at this juncture, requires that he be disqualified."

¶ 14 On August 6, 2011, the trial court issued a written order denying the motion to disqualify. The court reasoned:

"Plaintiffs contend that counsel is representing the [V]illage and at the same time is the attorney for the heirs of John Miller, who allegedly expressed an interest contrary to the position taken by [the Village], and who may be called as witnesses in the case. The conflict of interest, if any exists, is not because Mr. Smoron previously represented the plaintiffs and now represents the defendant in a lawsuit brought by his former client. The alleged conflict arises from the fact that Mr. Smoron has been identified as the attorney for the family that will be called as witnesses in the case and that, as attorney for [the Village], he will be taking a position contrary to a verbal expression of [the] intent of the witnesses' ancestor.

[2] It is not clear what "testimony" of the Village is referred to here.

> To the extent that any such evidence is admissible in this case, it is potentially negated not only by the rules of evidence regarding hearsay, but also by the inconsistent conduct of the decedent and his heirs. The subject property was reserved on the plat of subdivision as a street, Maple Avenue. It was not an easement, the use of which was restricted to adjoining or contiguous landowners. The reservation on the plat of subdivision was for a public street, not a private easement for the use of a few. The deeds from Miller's survivors and/or next of kin *** contain no reservation or restriction on the use of Maple Avenue by the general public.
>
> Any conflict of interest in this factual situation is merely potential and not actual, suspected rather than real. Under such circumstances, it is insufficient to require the disqualification of Mr. Smoron as attorney for the Village of Johnsburg."

¶ 15 On August 15, 2011, the trial court granted plaintiffs 60 days to respond to the Village's summary judgment motion. Over the following weeks, the Village filed several discovery requests concerning plaintiffs' attempted acquisition of the Property from the Miller heirs and plaintiffs' use of the Property such as erecting a deck on it. The Village also filed a motion to compel plaintiffs' depositions. At the September 2 hearing on the motion to compel, plaintiffs explained that their availability was limited because Margaret had re-enrolled in school and Frank was busy with his construction business. The trial court ordered plaintiffs to sit for their depositions by October 1.

¶ 16 On September 26, plaintiffs informed the court in writing that they had discharged Coppedge. They asked for a 90-day continuance to secure new counsel. On October 3, the Village filed a motion to dismiss plaintiffs' complaint for their failure to sit for depositions. On October 11, plaintiffs filed a pleading entitled, "Judicial Notice: In the Nature of Opposing Counsel's Conduct

After the Plaintiffs Severed their Attorney-Client Relationship for Cause." This document, which was in excess of 300 pages, was the first of several voluminous *pro se* pleadings from plaintiffs. Plaintiffs claimed therein that (1) the Village was harassing them by filing excessive discovery; (2) certain documents were missing from the case file that Coppedge had provided them when their relationship ended; (3) the McHenry County State's Attorney wrongfully denied their requests under the Freedom of Information Act (FOIA) (5 ILCS 140/1 to 11.5 (West 2012)), which plaintiffs interpreted as evidence of government corruption and conspiracy; and (4) the quitclaim deeds from the Miller heirs were legally insufficient and, moreover, their acceptance by the McHenry Country Recorder's Office was likewise reflective of government corruption and conspiracy.

¶ 17 Also on October 11, the Village moved for leave to file a counterclaim for a declaratory judgment that it owned the Property. On October 12, the trial court permitted Coppedge to withdraw and continued all pending motions to October 28. On October 26, plaintiffs moved for a 90-day continuance, reiterating that they needed to verify whether documents were missing from the client file provided by Coppedge. Plaintiffs also claimed to need additional time to compensate for Coppedge's many shortcomings in representation, including his failure to prepare a response to the Village's motion for summary judgment. Plaintiffs added that they were exploring a malpractice claim against Coppedge.

¶ 18 Also in October 2011, plaintiffs filed a complaint against Smoron with the Attorney Registration and Disciplinary Commission (ARDC) (the complaint was referenced throughout the litigation, but was finally included with the Village's motion for sanctions at the end of the case). Plaintiffs alleged, as they did in their motion to disqualify, that Smoron had a conflict of interest due to his involvement with the Miller heirs. Plaintiffs also appeared to imply that there was further

conflict because Smoron was effectively plaintiffs' employee given that their tax revenues funded his representation of the Village.

¶ 19 At the October 28 hearing, plaintiffs presented their motion for a 90-day continuance, noting that they had not yet retained counsel. Plaintiffs remarked that they were still looking for "expunged," or missing, documents. The Village accused plaintiffs of "gamesmanship" for claiming unavailability for depositions, filing complaints with the ARDC, and for complaining to the Illinois Attorney General regarding the Village's response to plaintiffs' FOIA requests. The court granted plaintiffs a continuance and postponed all pending motions to November 18. The court then made reference to one of plaintiffs' pleadings (it is not clear which), calling it "drivel" and an "abuse" and chastising them for failing to seek leave to file a pleading in excess of 15 pages.

¶ 20 At the proceeding on November 18, plaintiffs claimed that they were still trying to locate "expunged" documents and would not be able to retain an attorney until they found them. The trial court gave plaintiffs until December 16 to find counsel and set the matter for status on January 6, 2012.

¶ 21 On December 15, plaintiffs filed a pleading entitled, "Motion for a Continuance for Time to Correct Deficiencies, Respond to All Unanswered Court Filings, Obtain the Expunged Records Filed in Defendant's Discovery Documents, and Other Relief." Plaintiffs explained that they had paid Coppedge $10,000 for his representation in the case and were now unable to afford new counsel. Plaintiffs again claimed that Coppedge's poor representation had placed them at a disadvantage. They also complained of "illegal" and "corrupt" action by the Village, specifically, its November 4, 2011, application for a property tax exemption for the Property.

¶ 22 On January 4, 2012, plaintiffs amended their December 15 motion. At a January 6 status hearing, the Village announced that, in order to "expedite things," it was withdrawing its October 3 motion to dismiss plaintiffs' complaint for their failure to sit for depositions. When the trial court asked whether the Village was persisting in its desire to file a counterclaim, counsel answered: "Yes. We'd like to get resolution to this. And, Your Honor, this keeps just going on and on and on." The court replied, "Mr. Smoron [counsel for the Village], I didn't file these motions. I can only deal with them as they appear in front of me." The court then gave the Village leave to file its counterclaim and granted plaintiffs 28 days for response or answer. The court remarked that, with the counterclaim pending, a ruling on the Village's summary judgment motion would be premature. The court set the matter for status on February 10.

¶ 23 On January 6, the Village filed a request to admit the following statement: "You attempted to purchase the Property from Martha Freund prior to her death."[3] On January 11, the Village filed its counterclaim for declaratory judgment. On February 7, the Village filed a "Motion for Partial Summary Judgment." This motion was in substance identical to the previously filed summary judgment motion. The new motion attached all of the previous exhibits and added a July 27, 2007, letter from Cowlin to Margaret Haney, in which Cowlin states that, as best he could determine, Maple Avenue was a private road and, hence, subject to adverse possession. Cowlin also references "properties that John Roth suggested you [Margaret] deed to yourself." The Village's motion was for "partial" summary judgment since the Village sought judgment only on plaintiffs' complaint, not

[3] This was essentially identical to the Village's request to admit from nearly a year prior (February 25, 2011). The reason for the repetition is unclear.

on the recently-filed counterclaim. Three days later, on February 10, plaintiffs answered the Village's counterclaim.

¶ 24 At the February 10 status hearing, the trial court gave plaintiffs 28 days to respond to the motion for partial summary judgment, and set the case for status on March 9.

¶ 25 On February 15, plaintiffs moved to quash the Village's request for production (served in January 2012) of "[a]ny and all documents submitted to the [ARDC] by Frank and/or Margaret Haney which reference(s) the term 'Village of Johnsburg,' 'Johnsburg,' 'Maple Avenue,' or 'Maple Avenue right-of-way' after June 1, 2011." Plaintiffs objected on privacy and confidentiality grounds.

¶ 26 The court held a status hearing on March 2. The court gave the Village 7 days to respond to plaintiffs' motion to quash, and scheduled that motion for hearing on March 14. The court also gave plaintiffs 28 days to respond to the Village's motion for partial summary judgment, and scheduled that motion for hearing on April 23.

¶ 27 On March 5, plaintiffs filed a motion to reschedule the March 14 hearing beyond the return date on a subpoena they had served on Scott Renfroe of the ARDC. Plaintiffs suggested that the Renfroe subpoena might produce documents germane to the motion to quash. The trial court granted the motion and continued the hearing on the motion to quash to March 23.

¶ 28 On March 8, the Village filed its response to the motion to quash. The Village claimed that it had reason to believe that plaintiffs had made submissions to the ARDC concerning the Property and that those submissions would show that plaintiffs schemed to place the Property on the tax rolls by recording the August 2010 quitclaim deed. The Village denied that the materials it sought were privileged or confidential. Also on March 8, the Village served further discovery requests on

plaintiffs, including a request to admit that they prepared the August 2010 quitclaim deed on the advice of Attorney John Roth.

¶ 29 Plaintiffs' motion to reschedule the March 14 hearing was heard on March 9. The court granted the motion and continued the hearing to March 23.

¶ 30 During March, April, and May 2011, plaintiffs issued myriad subpoenas and discovery requests upon individuals, including the Miller heirs, various local government bodies, and the property owners' association of a neighboring subdivision. As part of this process, plaintiffs received two deeds in trust, both of which listed Martha Miller Freund (daughter of John and Della Miller) as grantor and Diane Neiss and Charlene Ash (daughters of Martha Miller Freund) as grantees and co-trustees of the Martha Miller Freund Land Trust. The preparer of the deeds is listed as Richard Short. The first deed, recorded on January 25, 2001, lists three parcels, the third having this description:

> "All that part of Maple Avenue lying Southwesterly of and adjoining the Southwesterly line of Lot 1 in Buena Vista Subdivision, being a Subdivision of part of fractional 18, Township 45 North, Range 9 East of the Third Principal Meridian, according to the Plat thereof recorded May 1, 1933[,] as Document No. 105733, in Book 7 of Plats, in McHenry County, Illinois."

The second deed, recorded April 10, 2001, crosses out parcel 3 and contains this statement: "Re-recorded April 10, 2001[,] to delete Parcel 3, not owned by the Grantors." Plaintiffs also received in discovery an affidavit from O'Connor concluding that the tract described in the 2001 deeds in trust was the Property.

¶ 31 Also disclosed to plaintiffs in discovery was a February 2003 land purchase agreement between Neiss and Ash in which they identify themselves as "sisters and the only heirs of MARTHA MILLER FREUND."

¶ 32 On March 30, plaintiffs filed their response to the Village's motion for partial summary judgment. The main thrust of the response was that the deeds from the Miller heirs were illegitimate. That same day, plaintiffs moved to continue the April 23 summary judgment hearing. Plaintiffs claimed that their outstanding discovery requests and subpoenas might produce evidence material to the motion. Specifically, plaintiffs claimed that the requested materials might corroborate their position that the deeds from the Miller heirs were "not genuine, legal or valid."

¶ 33 On April 4, plaintiffs' motion to quash came on for hearing. The court commented on the size of the motion:

> "THE COURT: Miss Haney,[4] I asked you on another time not to do this. You're re-creating things that are not needed. There are too many extraneous papers that are attached to this motion which really are not necessarily part of it. Every document that you have attached to this motion as an exhibit is already in the court file and can simply be referred to by reference. What you do when you file these term paper type of motions which replicate everything in the file is you simply duplicate everything that's there now, make it very difficult to make any sense of the file, and use up a finite amount of space in the clerk's office. I really didn't need all of this documentation to decide this motion.

[4] The suit was brought by both Frank and Margaret Haney, but Margaret appeared alone in court for all proceedings.

MS. HANEY: I apologize, your Honor. I was trying to make it less complicated (inaudible).

THE COURT: All you did was to succeed in making it more so. Simplicity should be the watchword."

¶ 34 The trial court proceeded to grant plaintiffs' motion to quash, reasoning that statements to the ARDC are confidential. The court retained April 23 as the date for hearing on the Village's motion for partial summary judgment.

¶ 35 At the next court dated, April 11, plaintiffs asked to continue the April 23 hearing, claiming they needed "time to complete [their] discovery, which was never done by [their] previous attorney." Plaintiffs commented that "during the depositions [of the Miller heirs] last year, they did not produce any documents showing ownership[,] and [our] previous attorney didn't do anything about it, and that's one of the reasons he was fired with cause." The Village objected to the request for a continuance. The Village commented on the volume of discovery previously provided to plaintiffs, disputed the materiality of the outstanding discovery requests to the narrow issue raised in the motion for partial summary judgment, and expressed doubt as to plaintiffs' motives:

"Judge, this motion for summary judgment was essentially filed June 2nd of last year.

***

Your Honor, the thrust of the motion for summary judgment brought by the Village is that [the August 2010 quitclaim deed] is outside the chain of title. That's it.

***

Your Honor, last count we have provided over a thousand pages of discovery to Mrs. Haney. That is outside the scope of numerous [FOIA] requests that she has sent to the

Village, which probably total another 2,000 to 2,500 pages, all relating to a deed that Mrs. Haney brought before this Court in a complaint against the Village saying that she owns title to a roadway.

Your Honor, this is not being brought in good faith.

***

This matter has been brought and marked by delay after delay in an effort to avoid resolution of whether the deed before this Court is outside the chain of title or not.

* * *

Your Honor, the representation being made to the Court that [plaintiffs'] previous attorney did not undertake discovery is false.

He took a number of depositions. He took depositions of the Miller family heirs about these very issues.

* * *

We've answered interrogatories. We have provided witness disclosures.

The subpoenas that are being sent out at this point are, What other documents do you have?

And, Your Honor, they were sent out on Friday of last week I believe. Thursday or Friday.

***

I received them on Saturday. And I'll tell you what the subpoenas involve. They want the employment histories of Village employees. They want additional documentation

from the heirs that they didn't produce at the deposition because they testified at the deposition that they didn't have anything more responsive.

These are people who are two generations removed from the original subdividers, Your Honor. And this is a pretense.

The representation being made that there was no discovery by Mr. Coppedge is false.

And again, the issue [in] the motion for partial judgment is as to the complaint. It is strictly speaking Mrs. Haney's deed.

They [the Miller heirs] did not have any idea about Mrs. Haney's deed. The concept of someone deeding themselves property out of the blue, they are not going to have facts bearing upon that, Your Honor, respectfully.

Your Honor, again, as I warned last week[,] this is still another machination to delay this again after thousands of pages have been produced by the Village."

¶ 36 The trial court postponed the summary judgment hearing to June 13. The court also ruled that, as of May 5, all discovery requests would require leave of court.

¶ 37 On May 25, plaintiffs moved for another continuance, on the ground that there were still subpoenas outstanding. Plaintiffs noted that they were seeking additional documentation from Richard Short concerning the 2001 deeds in trust and the 2003 land purchase agreement between Neiss and Ash. Plaintiffs claimed that these deeds and agreement were material as showing that Neiss and Ash were "the only two (2) qualified 'heirs' of Martha Miller Freund," and consequently, that the Village lied in representing that there were 11 Miller heirs.

¶ 38 On June 13, the date set for hearing on the summary judgment motion, plaintiffs presented their motion for continuance. Plaintiffs had the following exchange with the trial court regarding the materiality of the documents requested from Short:

"MS. HANEY: *** Mr. Smoron prepared eleven deeds claiming that they were the heirs of the—of Martha Miller. And they were deeding the property, my property, to the Village of Johnsburg.

Now, those deeds in the last three weeks have been proved to be false and—

THE COURT: How?

MS. HANEY: Because Mr. Short prepared a deed and trust in 2000—2001 I believe claiming that Parcel 3, which is my parcel, was [*sic*] he was deeding it from Martha Miller to her two heirs, Charlene and Diane Neiss.

Four months later that deed and trust were re-recorded. And that Parcel 3 was taken off because the grantor did not own the property.

There are not eleven heirs. There are two heirs.

And the agreement signed and prepared by these people in 2003 after the passing of Martha Miller, is very specific. My property is not in there. The chain of title has been put into the court record.

***

THE COURT: I'm having trouble to the point where I don't see what difference any of this is going to make in the—in the (Unintelligible) result anyway.

Whether any of these deeds are valid or not is immaterial to the basic question. And that is your deed from—your quit claim deed from yourself to you and your husband, when there is (Unintelligible) deed running from the—the subdivider (Unintelligible)—

MS. HANEY: There is a chain of title, sir.

* * *

THE COURT: The lawsuit is filed under the assumption that you are the owner of the property and that the claim of the Village is a cloud on your title.

MS. HANEY: There are no other owners on my property. When I bought my property in 1977, it is very clear and the deed—the right to use these properties. And after a certain amount of time, I am entitled to take it."

The court found that plaintiffs had shown no diligence in obtaining discovery, but nonetheless gave them two additional weeks to amend, if necessary, their response to the Village's motion for partial summary judgment. The court set that motion for hearing on June 28.

¶ 39 On June 21, the Village filed its second motion for partial summary judgment. This motion sought judgment on the Village's counterclaim for a declaratory judgment that it owned the Property. The Village included several documents indicating that (1) the McHenry Township Road District accepted jurisdiction over Maple Avenue in 1990; (2) the Village became successor to that interest in 1991 when it annexed the area including Maple Avenue; (3) the Property is subject to a public use, namely drainage for the improved portion of Maple Avenue; and (4) the Village has paid the taxes on the Property for several years.

¶ 40 On June 26, while the two new summary judgment motions were pending, plaintiffs filed an amended complaint containing four counts. Plaintiffs did not move for leave to file the amended complaint.

¶ 41 At the proceeding on June 28, plaintiffs again claimed to have ascertained that there were "only two heirs" of John and Della Miller and that the Village engaged in fraud. Plaintiffs asked for leave to issue subpoenas to various entities and individuals, including those who signed the 2011 quitclaim deeds as the purported heirs of the Millers. In response, the Village urged the court to rule that day on its motion for summary judgment on plaintiffs' complaint, and stressed that nothing that plaintiffs sought by further subpoenas would be relevant to the issue presented in that motion:

> "*** [T]he issue today is very specific. Mrs. Haney's complaint[,] which says she has a deed to the subject property on which she bases her claim. It's as if I quitclaim myself the Sears Tower. No reference to a successor. She admits she didn't receive the property by gift. She didn't pay for it. And, your Honor, all along she has said, I have perfect title. I can show you the chain of title. Wonderful. Demonstrate it. We all know that that's not the case.
>
> And so, your Honor, perhaps she can argue about the Village's title on our motion for partial summary judgment on our counterclaim, but here what we're saying is a deed to oneself out of the blue ***, whatever it was, your Honor, all this information about criminal proceedings and fraud, your Honor, that's irrelevant to the motion for summary judgment today and Mrs. Haney's complaint, unless she maintains that that's part of it.
>
> But, your Honor, this is a deed from onself to another, herself, that is completely out of the blue, out of the chain of title that we've maintained from the inception of the case and

it has taken this long to get a decision; and this last minute effort to try to thwart and further delay this *** is improper."

¶ 42 The trial court agreed with the Village that plaintiffs were deliberately attempting to delay the litigation:

"Of all the words you had to say this morning, Ms. Haney, the ones that stick in my mind and the ones I recall specifically are the ones that you said you wanted to expedite this matter; and I will be direct and honest with you, it is my personal and judicial opinion that every single act that you have committed within the confines of this lawsuit has been done for one sole purpose, and that is to delay the ultimate disposition of this relatively simple question."

¶ 43 The court then granted summary judgment for the Village on plaintiffs' complaint:

"The issue in this case is relatively simple and the issue in this case is resolved by the words:

You don't own the property and never have.

The issue of summary judgment has been pending for over a year. The motion for summary judgment is going to be allowed."

The court also (1) denied plaintiffs leave to file their amended complaint; (2) gave them time to answer the Village's counterclaim and its remaining motion for partial summary judgment; and (3) set August 16 for hearing on the remaining motion for summary judgment.

¶ 44 Subsequently, plaintiffs again moved to file an amended complaint. On July 16, the trial court denied the motion without prejudice because plaintiffs had not attached a copy of the amended complaint. Also on July 16, the trial court, for reasons unclear, rescheduled the summary judgment

hearing to August 20. On July 20, plaintiffs re-filed their motion for leave to file an amended complaint. This time, plaintiffs attached the proposed amended complaint, which contained four counts. Count I was entitled "Quiet Title" and consisted of 26 paragraphs. Paragraph 5 alleged, as in the prior complaint, that plaintiffs owned the Property "[p]ursuant to" the August 2010 quitclaim deed. In the 25 other paragraphs, plaintiffs alleged that (1) they paid the 2010 and 2011 taxes on the Property; (2) "the [P]roperty and surrounding areas were platted in and around 1920-1935," yet "[n]one of the applicable Plats depict the property in question as a dedicated right of way," and "[t]here are no public records that depict the [P]roperty *** as [a] dedicated right of way or easement"; and (3) the quitclaim deeds from the Miller heirs were fraudulent because, as shown by the 2001 trust deeds, Martha Miller Freund did not own the Property. Count II, "Quiet Title by Adverse Possession," alleged that, since 1977, plaintiffs have exercised such acts of dominion over the Property as mowing and landscaping it, marking it with "No Trespassing Signs," and parking vehicles on it. Count III, "Quiet Title By Ancient Grant," alleged that plaintiffs' "longstanding and continued possession of the [P]roperty creates a presumption of title in [them] by way of ancient grant." Finally, Count IV, "Alleged Fraud Scheme," alleged that the Village arranged for the deeds from the Miller heirs knowing that the heirs did not own the Property, as reflected in the fact that Martha Miller Freund struck the description of the Property when she recorded the second trust deed in 2001.

¶ 45 Three days later, on July 23, plaintiffs moved to continue the August 20 hearing date, suggesting that, if allowed to be filed, their amended complaint would moot the Village's remaining motion for summary judgment.

¶ 46 At the July 31 hearing on the motion to continue, the trial court remarked on the proposed amended complaint submitted by plaintiffs. The court chastised plaintiffs because the exhibits to the complaint were duplicates of documents already on file:

MS. HANEY: Good morning, your Honor. Margaret Haney, plaintiff, here with a motion for leave to file an amended complaint.

Here's your copy, Sir.

THE COURT: What is this, Mrs. Haney?

MS. HANEY: When we were in court the last—

THE COURT: This is 243 pages.

MS. HANEY: I know.

THE COURT: Why? Why do you persist on doing this when I have instructed you not to do it?

MS. HANEY: I went by your instructions on July 18, your Honor, when you told me that I had to attach the motion to the amended complaint that I filed on June 28. And the reason it's so—

THE COURT: (Unintelligible) this goes back well beyond, well before the instructions on this particular document. There was a document that you filed long ago after I denied your motion to disqualify Mr. Smoron which I regarded as an abusive filing because of its length and instructed you specifically not to do that because it is unnecessary. All you do is replicate what is already on file in this case.

MS. HANEY: Your Honor, Mr. Smoron has eleven deeds, three pages each. That's thirty-seven pages. Mr. Smoron—I have—

THE COURT: That doesn't explain the other 210.

MS. HANEY: I know but I have my—my exhibits and my affidavits that have to be put in there. And they all go around those eleven deeds. The agreements made proving that the eleven deeds don't—are false, those are ten, twelve pages in addition to that."

The court granted the Village time to answer the motion for leave to file. The court denied plaintiffs' motion to continue the August 20 date, noting that the granting of leave to file the amended complaint would "[n]ot necessarily" moot the Village's motion for summary judgment.

¶ 47 On August 20, the court heard both the motion for leave to file and the remaining motion for partial summary judgment. On the merits of the latter, plaintiffs argued that, if the Village indeed had annexed Maple Avenue in 1991, the Village would not have needed to obtain quitclaim deeds from the Miller heirs as it did. The Village responded that it acquired the quitclaim deeds in order "[t]o thwart the issue, to make it moot." Plaintiffs then argued that the dimensions of Maple Avenue as described in the 1991 acceptance certificate did not include the unimproved portion of the road. The court rejected this argument and granted summary judgment for the Village on its counterclaim. The court also denied plaintiffs leave to file their amended complaint.

¶ 48 Plaintiffs filed a motion to reconsider. At the October 17, 2012, hearing on the motion, plaintiffs remarked that their "original complaint [was] deficient in numerous ways[,] which is why [their] attorney was fired with cause."

¶ 49 Subsequently, the Village filed a motion for sanctions under Supreme Court Rule 137 (eff. Feb. 1, 1994). The Village specified the following conduct it believed was sanctionable: (1) the initiation of the lawsuit; (2) the multiple requests for continuances; (3) the request for depositions of the Miller heirs; (4) plaintiffs' failure to appear for their depositions; (5) the motion to disqualify

Smoron; (7) misrepresentations during the litigation; and (8) the attempt, after summary judgment was granted on the initial complaint, to file an amended complaint that continued to assert title based on the August 2010 quitclaim deed.

¶ 50 We quote in full the trial court's disposition of the motion:

"THE COURT: I am not entertaining any oral argument on this case today at all. This case stops here right now. It's done. Finished and over with.

When I ruled on Mr. Smoron's motion for summary judgment against you, Ms. Haney, your complaint was at an end.

When I ruled on Mr. Smoron's motion for summary judgment on the counterclaim, the counterclaim was at an end. The case was over. You lost.

Two things happened. On your complaint[,] you were found to [*sic*] not to be entitled to the property.

And on the counterclaim, Mr. Smoron's client, the Village of Johnsburg, was found to be the owner of the claim [*sic*]. The case is over.

Mr. Smoron extended the life of this case by bringing a motion for sanctions, which I am going to summarily deny.

And I'll tell you why. This case arose from the Haneys' basically unauthorized occupation of a parcel of land in part reserved for a public right of way, which has never been built.

The fact that it is a public right of way and there has never been anything built on it does not mean any of the adjoining landowners can simply move into it and take it for themselves.

As a matter of fact, when this sort of thing happens, no one in the subdivision has—owning any land abutting the—platted right of way has any right to assert the property to the loss of the rest of the residents of the subdivision. You have no greater or lesser right to use the property than anybody else, and you have no right to take it for yourself.

The fact of the matter is you have occupied the property for more than twenty years. And under some definitions that might give you title by adverse possession except for two problems. Number one, you did not ever have any greater right to enter that property and use it superior to anybody else's property. And you had no claim or color of claim to title to the property. You are simply a trespasser.

And the title of a trespasser can never ripen into—into full title to the property. And you cannot—(Unintelligible) titled by adverse possession to a public right of way. It simply cannot happen.

Now, I am denying the motion for sanctions, quite frankly, because I've seen more than one lawyer forget about the claim or color of—claim of title or color of title on adverse possession. It's a common failing.

And for that reason, I will—I'm going to deny the motion.

I know it's been hotly contested. I know that there were several times when the case should have gone forward and it didn't.

Mrs. Haney—the court granted many—many of the several motions by Ms. Haney for continuances so that she could, quote, complete her discovery.

The animosity in the case (Unintelligible) or litigiousness of the case increased when there was the filing of the counter claim based upon the new deeds. That's a decision the

[V]illage made. It simply (Unintelligible) the case on the complaint alone and still have had the same successful result.

So because I think that Mrs. Haney had at least an arguable claim—not a good one but an arguable claim, one in which she forgot a key element and one of which she probably did not appreciate the key element, I'm going to deny the motion for sanctions."

¶ 51 The Village filed this timely appeal.

¶ 52 II. ANALYSIS

¶ 53 A. General Standards

¶ 54 Supreme Court Rule 137 provides in relevant part:

"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. *** If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay 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).

¶ 55 "The purpose of Rule 137 is to prevent parties from abusing the judicial process by imposing sanctions on litigants who file vexatious and harassing actions based upon unsupported allegations

of fact or law." *Dismuke v. Rand Cook Auto Sales, Inc.,* 378 Ill. App. 3d 214, 217 (2007). "Rule 137 is not a means by which trial courts should punish litigants whose arguments do not succeed; instead, it is a tool which they can employ to prevent future abuse of the judicial process or discipline in the case of past abuses." *Schneider v. Schneider*, 408 Ill. App. 3d 192, 200 (2011). The test for whether a submission is adequately grounded in law and fact is objective reasonableness under the circumstances existing at the time the submission was filed. *People v. Stefanksi*, 377 Ill. App. 3d 548, 552 (2007). Under this facet of Rule 137, subjective good faith is inadequate to justify an objectively baseless submission. *Id.* By contrast, to award sanctions for a submission filed "for any improper purpose" (Ill. S. Ct. R. 137 eff. Feb. 1, 1994), there must be a finding of subjective bad faith. *Id.* Because Rule 137 is penal in nature, it must be strictly construed. *Rankin ex rel. Heidlebaugh v. Heidlebaugh*, 321 Ill. App. 3d 255, 260 (2001).

¶ 56 Plaintiffs were *pro se* for much of the proceedings below. "Sanctions may be awarded against *pro se* litigants under sufficiently egregious circumstances." *Parkway Bank and Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 85.

¶ 57 Rulings on Rule 137 motions are reviewed for abuse of discretion. *Schneider*, 408 Ill. App. 3d at 199. A trial court abuses its discretion when "its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court." *Patton v. Lee*, 406 Ill. App. 3d 195, 199 (2010). The abuse of discretion standard "is the most deferential standard of review—next to no review at all." *In re D.T.*, 212 Ill.2d 347, 356 (2004).

¶ 58 B. The Requirement of a Hearing

¶ 59 The Village's threshold argument on appeal is that the trial court erred by permitting neither evidence nor argument on the motion for sanctions. As support for this claim of error, the Village

cites two cases: *Berg v. Mid-American Industries, Inc.*, 293 Ill. App. 3d 731 (1997), from the First District Appellate Court, and *In re Estate of Baker*, 242 Ill. App. 3d 684 (1993), from the Third District.

¶ 60 In *Baker*, an heir of an estate filed an objection to the executrix's final report, which included $8,000 in attorneys fees. At the hearing on the objection, the attorney for the estate submitted his time log and hourly fee. The attorney explained why the fee was justified. At the conclusion of the hearing, the court found the fee grossly excessive, reduced the fee award to zero, and, as Rule 137 sanction, awarded the opposing law firm $3,000 in attorneys fees and costs. On appeal, the attorney for the estate argued that the trial court erred because it neither conducted a hearing on the issue of sanctions nor made specific factual findings to support the award. Specifically, the attorney noted that the court failed to identify any false representation in the time log. *Baker*, 242 Ill. App. 3d at 686-87.

¶ 61 The appellate court agreed that the trial court erred in the imposition of the sanction. The court explained that the "predicate" for deferential review of a ruling on sanctions is that the lower court "make an informed and reasoned decision." *Id.* at 687. The court continued:

> "For that reason, it has been noted that a hearing ought to be held to give the parties involved an opportunity to present any evidence needed to substantiate or rebut the claim for sanctions, and an opportunity to argue their positions. [Citation.] Furthermore, a trial court's decision on sanctions must clearly set forth the factual basis for the result reached in order to be afforded deferential treatment." *Id.* at 687-88.

The court then ruled:

> "In the present case, the record shows that the probate court failed to conduct an evidentiary hearing on the issue of sanctions imposed under Rule 137. We hold that a trial court must allow for an evidentiary hearing before imposing sanctions. Accordingly, we reverse and remand the cause for a hearing on whether sanctions are appropriate here." *Id.* at 688.

¶ 62 The plaintiffs in *Berg* were Albert E. Berg and his corporation. The defendants moved to dismiss the plaintiffs' complaint on the ground that it was not filed by a licensed attorney as required by Illinois law (Albert was not an attorney). There were two summonses in the record, each listing Albert's contact information. The first summons contained no information about the plaintiffs' attorney, and the second contained only an attorney registration number, which was later revealed to be that of Attorney Edward Scott. While the motion to dismiss was pending, Scott sought leave to appear. The defendants moved to disqualify Scott for a conflict of interest. The parties then submitted conflicting affidavits and certifications about Scott's past and current representation of the defendants. The trial court granted the motion to disqualify and set the case for status. Scott appeared at the status hearing but was admonished by the court not to speak. When no one appeared for the plaintiffs, the trial court asked the defendants if there was a motion to dismiss. Upon the defendants' oral motion, the court dismissed the suit. *Berg*, 293 Ill. App. 3d at 732-733.

¶ 63 The plaintiffs appealed the dismissal. Reviewing various possible bases for the dismissal, the appellate court agreed with the plaintiffs that the dismissal was not justifiable as a Rule 137 sanction. Citing *Baker*, the court noted that, "prior to the[] imposition [of Rule 137 sanctions], a hearing must be conducted to afford the parties an opportunity to present evidence to support or rebut

the claim and to allow them to articulate their respective positions." *Id.* at 736 (citing *Baker*, 242 Ill. App. 3d at 687). Reversing the award of sanctions, the court said:

> "At worst, the record here shows only the improper inclusion of an attorney's identification number on one of two summonses, and the presence of a disqualified attorney who rose to speak, but never said one word about the present case or any other, because he was precluded from doing so by the court. No hearing was conducted by the court in the case *sub judice* to resolve factually the contradictions appearing in the affidavits and certifications. Nor did the circuit court provide the requisite legal or factual findings in the August 23 order as prescribed by Rule 137, so that the bases for its actions could be appropriately evaluated." *Id.* at 736-37.

¶ 64 The First District, we note, has not spoken *una voce* on whether a hearing must precede a decision on Rule 137 sanctions. In *Shea, Rogal & Associates, Ltd. v. Leslie Volkswagen, Inc.*, 250 Ill. App. 3d 149, 154-55 (1993), the First District held that "an evidentiary hearing is not always required under Rule 137," and that "[i]f it is apparent from the record as a whole that sanctions under Rule 137 are not warranted, no evidentiary hearing is required in order to support a denial of such relief." Admittedly, *Shea, Rogal & Associates, Ltd.,* dealt with a *denial* of sanctions while both *Berg* and *Baker* dealt a *grant* of sanctions. However, in both *Application of Cook County Collector*, 144 Ill. App. 3d 604, 610 (1986), relied upon by the court in *Shea, Rogal & Associates, Ltd.,* and *Heritage Pullman Bank & Trust Co. v. Carr*, 283 Ill. App. 3d 472, 478 (1996), another decision we have found, the First District upheld a *grant* of sanctions without an evidentiary hearing.[5]

[5] Both cases dealt with Rule 137's nearly identically worded predecessor, section 6-11 of the Illinois Code of Civil Procedure.

Specifically, *Carr* held that "[i]f proof can be made *** on the basis of pleadings or trial evidence, an additional hearing is not required" for a ruling on sanctions. *Carr*, 283 Ill. App. 3d at 478. While we can appreciate why the imposition of sanctions might require more exacting procedures than the denial of sanctions, the First District has not made such a distinction.

¶ 65 In any case, we are not bound by the decisions of our sister districts. See *In re Marriage of Dann*, 2012 IL App (2d) 100343, ¶ 83. We have found no decision in this district recognizing that either the imposition or the denial of sanctions absolutely requires an evidentiary hearing. See *Kellet v. Roberts*, 276 Ill. App. 3d 164, 175 (1995) (affirming grant of sanctions without an evidentiary hearing; holding that the trial court may dispense with a hearing on sanctions if it can decide the motion " 'by looking at the pleadings, trial evidence, or other matters appearing in the record' " (quoting *Beno v. McNew*, 186 Ill. App. 3d 359, 366 (1989)). Rather, we follow our admonishment in *Kellet* that "the parties should be given an opportunity to present any evidence that may be *necessary*." (Emphasis added.) *Kellet*, 276 Ill. App. 3d at 175.

¶ 66 Here, the Village attached some 180 pages of exhibits to its sanctions motion, consisting mostly of transcripts and prior court orders in the case, as well as exhibits submitted with previous motions. The Village filed the motion well in advance of the hearing date (approximately two months), and does not claim that the trial court failed to consider the motion with its attachments. Furthermore, at the proceeding where the court decided the sanctions motion, the Village made no proffers of additional evidence. Consequently, the Village can point to no actual refusal by the court to consider evidence that the Village wanted considered. See *Sekerez v. Rush University Medical Center*, 2011 IL App (1st) 090889, ¶ 68) ("An offer of proof is generally required to preserve for review a question as to whether evidence was properly excluded."); *Shea, Rogal & Associates, Ltd.*

250 Ill. App. 3d at 154 (the defendant's claim on appeal, that the trial court erred in conducting a hearing at which the defendant would have introduced "additional evidence" on sanctions, was forfeited because the sanctions motion mentioned no such additional evidence). Moreover, even if the Village might have reasonably believed that the trial court would not be receptive to proffers of additional evidence, the Village would still not prevail, because it has failed to identify for us what evidence it wanted the court to consider, and so we cannot judge whether that evidence was "necessary" (*Kellett*, 276 Ill. App. 3d at 175) to the Rule 137 determination.

¶ 67 The Village also complains that it was "not given even a brief moment to explain why it should be granted attorneys fees." The Village, however, does not indicate what its oral remarks would have added to its 11-page motion supported by over 180 pages of exhibits. Accordingly, we find no error in the denial of oral argument.

¶ 68 C. The Merits of the Trial Court's Denial of Sanctions

¶ 69 Tracking its sanctions motion, the Village particularizes the conduct it deems sanctionable, dividing it generally into (1) the filing of the lawsuit; and (2) the conduct during the litigation. We address these in turn.

¶ 70 1. Initiation of the Quiet Title Action

¶ 71 The Village submits that plaintiffs' complaint was frivolous, being based on the "premise *** that if one wishes to acquire title to real property, one simply deeds it to one's self and/or spouse." We agree that the complaint violated Rule 137.

¶ 72 An action to quiet title has the following elements:

> " 'It is a fundamental requirement in an action to quiet title *** that the plaintiff must recover on the strength of his own title, although it is not required that a perfect title be established.'

> [Citations.] To prevail in a quiet title action, plaintiffs must establish title superior to that of defendants. [Citation.] Moreover, where a plaintiff has no title in himself, he cannot maintain an action for quiet title." *Marlow v. Malone*, 315 Ill. App. 3d 807, 812 (2000).

"The law is that if plaintiff has no title himself, he can not complain that there is a cloud upon the title[,] for the presence of such can be no concern of his." *Ford v. Witwer*, 383 Ill. 511, 514 (1943). See also *Joseph v. Evans*, 338 Ill. 11, 19 (1943) ("One of the necessary elements to sustain a bill to quiet title is that the complainant must be the owner, either legal or equitable, of the title sought to be quieted.").

¶ 73 In their complaint, plaintiffs—Margaret and Frank Haney—alleged that they had title "[p]ursuant to" the August 2010 quitclaim deed in which Margaret was grantor as well as co-grantee with her husband Frank. There are two disturbing facets here. The first arises from the face of the complaint itself. There are no allegations placing the deed in the chain of title. The allegation that plaintiffs had title "[p]ursuant to," or by operation of, the quitclaim deed was legally baseless. The deed simply assumed title in Margaret Haney, and the complaint, by failing to contextualize the deed, did not cure the question-begging. Plaintiffs could have just as easily asserted title to the Taj Mahal or (to use the Village's hometown example) the Sears Tower. Even a cursory inquiry into the law of quiet title actions would have shown the abysmal inadequacy of plaintiffs' allegations.

¶ 74 While the complaint was, in and of itself, in violation of Rule 137, surrounding details paint the action in an even worse light. Plaintiffs, the record reveals, clearly never were in the chain of title for the Property. Moreover, there are suggestions that the August 2010 quitclaim deed was part of a machination to obtain title.

¶ 75 The trial court nonetheless denied sanctions, reasoning that plaintiffs had (if they chose to bring it) an "arguable claim," namely a claim of "color of title on adverse possession." But even here, the court noted, a "key element" would have been missing, namely the possibility of taking the Property, since public lands cannot be had by adverse possession. See *Russell v. City of Lincoln*, 200 Ill. 511, 522 (1902) ("A street and all its parts are held for a public use, and title to no part thereof can be obtained against the public by adverse possession."); *City of Rochelle v. Suski*, 206 Ill. App. 3d 497, 501 (1990) ("adverse possession cannot be asserted against a public body"). The Village, urging us to reject the trial court's approach, claims that "[t]here is no precedent under Rule 137 for the trial court to look for other potential causes of action that a party may have *** , so as to substitute for a meritless suit ***." We need not decide whether the trial court's approach was sound. As the court itself recognized, the alternative cause of action would have failed. Moreover, contrary to the trial court, we believe that the futility of a lawsuit based on adverse possession would have been evident upon the reasonable inquiry required by Rule 137.

¶ 76 Nonetheless, we uphold the denial of sanctions against Frank and Margaret Haney themselves. There is no suggestion that they provided their counsel, Matthew Coppedge, with false information material to the complaint. It was ultimately Coppedge's responsibility to judge the legal adequacy of the facts before him and advise his clients accordingly. Therefore, the Village would have served itself better by seeking sanctions against Coppedge. At it stands, however, Coppedge was no longer in the litigation when sanctions were sought: he had been permitted to withdraw more than a year before. The larger part of the sanctions motion concerned discrete events occurring after Coppedge was discharged. Though citing the complaint as sanctionable in its own right, the Village did not seek the particular remedy of a sanction against a long-absent attorney. Notably, when the

court denied sanctions, the Village did not press the issue by arguing that the woeful inadequacy of the complaint might be excused in a layperson but not in a lawyer, and that at least Coppedge deserved sanction. Consistently, the considerable pique that the Village continues to express on appeal for having been forced to defend against a frivolous complaint is directed at the Haneys themselves, and Coppedge himself is not targeted. Accordingly, we do not consider whether Coppedge himself should be sanctioned, and we hold that the trial court did not err in declining to sanction plaintiffs themselves for the October 2010 complaint.

¶ 77 2. Plaintiffs' Conduct During the Litigation

¶ 78 The Village identifies, as deserving of sanction, several instances of conduct during the litigation.

¶ 79 First, the Village argues that plaintiffs' motion to disqualify Smoron was not brought in good faith because plaintiffs could not establish that Smoron "had served as counsel to both parties in the litigation," but rather asserted, without supporting case authority, that Smoron's representation of third parties, namely the Miller heirs, disqualified him. The Village says:

> "The absence of any case law in support of [plaintiffs'] position in the matter is due to common sense and the likelihood that another court not having been asked to rule before on a motion like that of [plaintiffs]. After all, what legitimate concern of [plaintiffs] would be implicated even if the Village attorney represented the Village and third parties who were not made parties to the suit by [plaintiffs]? And why would [plaintiffs] even have standing to assert a purported conflict of interest which did not involve them?"

The Village's argument fails. As for the supposed "absence of case law," plaintiffs' motion to disqualify cited *LaPinska*, which recognizes "[t]he serious impropriety of an attorney accepting

private employment with respect to matters in which he has substantial responsibility as a public official." 72 Ill. 2d 461 at 470. *LaPinska* holds that such dual representation cannot be legitimated even by client consent. *Id.* at 471. The Village, we are careful to note, neither admits nor denies that Smoron represented the Miller heirs in connection with the quitclaim deeds. The Village's only point is that plaintiffs would have had no right, in any case, to object to that representation. The Village, however, fails to cite any case law in support of its contention. Particularly, we are directed to no authority by which to doubt *LaPinska*'s apparent applicability to these facts or to hold, as the Village asserts, that plaintiffs lacked standing to object to Smoron's representation of the Miller heirs. Accordingly, the Village has forfeited its contention that plaintiffs had no legal basis for the motion to disqualify. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (failure to cite authority in support of a contention results in forfeiture on appeal).

¶ 80 Next, the Village complains of plaintiffs' discovery requests. The Village's argument proceeds as follows:

> "As the trial court itself commented in open court, the facts in this case were straightforward and uncontested. [Plaintiffs] relied on [the August 2010 quitclaim deed], the Village on the acceptance certificate from the McHenry Township Road District and its subsequent annexation of such area including the road. Nonetheless, [plaintiffs] embarked on a course of unnecessarily extensive discovery despite their claim being premised upon a deed that they themselves signed and recorded. [Plaintiffs] issued sixty nine requests to admit upon the Village. They conducted deposition after deposition of the heirs of the subdividers[,] subjecting them to nonsensical questions. [Plaintiffs] sent their requests to produce documents to the Village requiring the Village to turn over 1,110 documents to

> [plaintiffs] dating back to 1977 as specifically requested by [plaintiffs]—43 years prior to the suit being instituted by [plaintiffs]. Notwithstanding all of this discovery, none of it conferred any legitimacy to the deed that [plaintiffs] manufactured and foisted upon the trial court."

The Village does not specify why any particular discovery request was meritless (such judgments as "unnecessary" and "nonsensical" are merely conclusory)—except in as much as it protracted an obviously meritless lawsuit. We agree (see *supra* ¶¶ 70-76) that the complaint was frivolous, but we do not condemn the *pro se* plaintiffs for continuing the lawsuit after Coppedge withdrew. We reject the Village's portrayal of plaintiffs as instigators who, though fully aware of the hopelessness of their cause, pressed onward out of spite. We think it is equally probable that plaintiffs proceeded in ignorance and, more unfortunately, false hope induced by the erroneous legal advice that they had obtained title "[p]ursuant to" the August 2010 quitclaim deed.

¶ 81 We also cannot ignore the very real possibility that plaintiffs were emboldened by the seriousness with which the Village took their case. Rather than move immediately for dismissal of the complaint for a basic failure to satisfy the elements of a quiet title action, the Village answered the complaint and, over the following several months, engaged in substantial discovery. For instance, in February 2011, the Village served the following request to admit on plaintiffs: "You sought to purchase the Property in 1996 from Martha Freund."[6] Of course, whether plaintiffs had sought to purchase the Property from Martha Freund had little to do with whether the August 2010 quitclaim deed could, in and of itself, confer title on plaintiffs. To use the Village's own words (quoted above), an attempted purchase from Freund could neither deny nor grant "legitimacy to the

[6] This request was repeated nearly two years later.

deed that [plaintiffs] manufactured and foisted upon the trial court." Eventually, the Village produced the quitclaim deeds from the Miller heirs and submitted them as proof of chain of title. This belt-and-suspenders approach, taken in lieu of a simple attack on the adequacy of plaintiff's complaint, was fodder for plaintiffs' creative conspiracy theorizing. They became fixated on the Miller quitclaim deeds, not only questioning why such deeds were necessary if indeed Maple Avenue had been platted as a public road decades ago, but also claiming the deeds were fraudulent.

¶ 82 Notably, even after it filed for summary judgment based on the Miller deeds, the Village continued to seek discovery in hopes of proving that plaintiffs were aware, as early as 1996, that they did not own the Property. In fact, plaintiffs objected to some of this discovery, *i.e.*, the request for their submissions to the ARDC, and the trial court agreed that the material was confidential and protected. Again, whether plaintiffs believed they owned the Property was irrelevant to the effectiveness of the August 2010 quitclaim deed. The Village frequently complained to the trial court that plaintiffs' discovery requests to the Miller heirs were irrelevant because the case was "strictly" about the August 2010 deed, which the Village condemned as patently ridiculous. It was the Village, however, who first made a legal issue of the Miller heirs, using them to prove a chain of title that was unnecessary to show the futility of the August 2010 quitclaim deed. As the trial court noted, the Village extended the life of this ill-conceived lawsuit by filing a counterclaim for a declaratory judgment.

¶ 83 We do not suggest that the Village's unnecessary complication of this litigation somehow rendered the action legitimate *ab initio*. Our point is that, where a *pro se* plaintiff's opponent forgoes a quick termination of the lawsuit, extending its life with considerable discovery requests and a counterclaim, the *pro se* litigant may understandably believe that the suit has merit. We have set

forth in detail the tortured, two-year history of this litigation. See supra ¶¶ 3-51. Blame for the unfortunate delay cannot be placed squarely on the *pro se* plaintiffs.

¶ 84 We recognize that, at one point in the litigation, the trial court accused plaintiffs of consistent, deliberate attempts to delay resolution of the action. Nonetheless, the court ultimately relented from imposing sanctions. Evidently, the court believed that plaintiffs were not maliciously delaying what they recognized to be legally inevitable, but in fact honestly believed that their lawsuit had promise.

¶ 85 The Village further argues that plaintiffs deserved sanction because, following the grant of summary judgment on their single count quiet-title complaint, they filed an amended complaint, count I of which alleged, as in the prior complaint, that the August 2010 quitclaim deed gave them title. In this connection, we recognize that late in the proceeding—at the October 2012 hearing—plaintiffs acknowledged that their complaint was "deficient" and that they had discharged Coppedge for this reason. Presumably, however, plaintiffs did not believe that the deficiency was precisely the inability of the August 2010 quitclaim deed to confer title, for their proposed amended complaint continued to rely on that deed. The Village submits, however, that this very persistence shows plaintiffs' intent merely to vex, for the summary judgment against them should have pressed home the futility of relying on the August 2010 quitclaim deed. We disagree.

¶ 86 First, we are not convinced that plaintiffs themselves ever quite grasped the elements of a quiet-title action. Second, the August 2010 quitclaim deed figured far less prominently in the amended complaint, being mentioned in but 1 of the 26 paragraphs in count I. The main theme of that count was the Village's allegedly fraudulent means of claiming ownership of the Property.

¶ 87 "When relief under Rule 137 is sought, the petition must meet certain specificity requirements." *In re Marriage of Adler*, 271 Ill. App. 3d 469, 476 (1995). "[The petition] must identify: (1) the offending pleading, motion, or other paper; (2) which statements in the document were false; and (3) the fees and costs that directly resulted from the untrue allegations." *Id.* "Such specificity is necessary to afford the responding party an opportunity to challenge and defend the allegations alleged to be untrue and to enable the trial court to make a determination of the reasonable expenses incurred as a consequence thereof." *Id.* The Village's sanctions motion did not meet this specificity requirement, as the Village failed to detail what fees associated with count I were ascribable to the renewed allegation concerning the August 2010 quitclaim. Moreover, the sanctions motion did not address the merits of the remaining three counts in the amended complaint, and failed to apportion the fees related specifically to count I.

¶ 88 We note that, while the specificity rule is not applicable "where *** the allegedly baseless allegations are the cornerstone of the entire lawsuit" (*Edward Yavitz Eye Center, Ltd. v. Allen*, 241 Ill. App. 3d 562, 570 (1993)), the August 2010 quitclaim deed was a relatively small part of plaintiffs' proposed amended complaint.

¶ 89 Next, the Village contends that plaintiffs violated Rule 137 by filing "hundreds of pages of documentation that simply consisted of gibberish, ranging from accusations that the McHenry County Recorder was engaging in illegal acts to citing from a report from the Chicago Crime Commission." The Village goes on:

> "[Plaintiffs'] filings seemingly addressed everything except the issue at hand: how the Haney Deed [*i.e.*, the August 2010 quitclaim deed] would have conveyed them title to a

> roadway. More often than not, [plaintiffs'] filings had to be hand-delivered to the Village attorney's office because of their weight. ***
>
> * * *
>
> These filings by [plaintiffs] were simply designed to run up the costs in the matter. These were not pleadings, nor were most of them really motions. Rather, they were just monologues of verbiage from [plaintiffs]. The apparent idea was that such filings' weight and volume would overcome the absence of any merit in [plaintiffs'] complaint.
>
> [Plaintiffs'] filings were engineered to overwhelm the trial court, run up costs, and delay resolution of the litigation."

¶ 90 The Village further observes that the trial court itself "warned" plaintiffs about its pleadings. We note, however, that the court's admonishments and reprimands concerned not the substance or quantity of the pleadings, but rather the fact that plaintiffs attached documents that were already on file. Moreover, the Village' argument to us singles out no particular pleading, but seems to suggest that the filings were all in vain because they could not repair the basically false premise undergirding the quiet title action. Again, we condemn the filing of the lawsuit (by an attorney who should have known better), but believe that reasonable minds can differ over whether the *pro se* plaintiffs should be condemned for continuing the suit after discharging their attorney. Significantly, plaintiffs did not continue to rely narrowly on the August 2010 quitclaim deed, but submitted a proposed amended complaint with additional substance, including a claim for adverse possession. While this complaint, too, lacked promise, it was a departure from the unmitigated facial absurdity of the initial complaint.

¶ 91 Next, the Village contends that the multiple continuances sought by plaintiffs "were meant simply to harass the Village and delay the resolution of the matter." As the Village notes, plaintiffs filed for three continuances in 2011 (September 26, October 26, and December 15) and five in 2012 (January 4, March 5, March 30, May 25, and July 23). The Village acknowledges, however, that these were granted "[a]lmost without exception." Indeed, at the hearing on the sanctions motion, the trial court recognized that it had been liberal in allowing plaintiffs additional time. The court evidently was reluctant to punish plaintiffs for continuances that the court had granted, and we agree that such a sanction would have been unjust under the circumstances. See *Sadder v. Creekmur*, 354 Ill. App. 3d 1029, 1048 (2004) (where the trial court permitted the filing of an amended complaint, it was error for the court later to find the amended complaint sanctionable because the cause of action was moot: "If Sadler's entire cause of action was moot after August 20, 1997, the court should not have allowed her to file her amended pleading"); *National Wrecking Co. v. Midwest Terminal Corp.*, 234 Ill. App. 3d 750, 768-69 (1992) (where the trial court had earlier directed plaintiff to submit a supplemental answer to interrogatories identifying specifically which of plaintiff's employees answered which interrogatory, it was error for the court to sanction defendant for filing a subsequent motion to compel on the ground that the supplemental answer was nonresponsive). It appears the trial court denied only the motion for continuance filed July 23, 2012, and the Village does not specify why this particular motion was sanctionable.

¶ 92 The Village further contends that sanctions were appropriate because plaintiffs never sat for their depositions. We agree with the First District Appellate Court that Rule 137 applies only to submissions to the court and does not authorize a sanction for failure to appear. See *Stewart v. Lathan*, 401 Ill. App. 3d 623, 628-29 (2010). There are separate sanctions available for

noncompliance with discovery requests, such as Supreme Court Rule 219 (eff. July 2, 2002). See *Adler*, 271 Ill. App. 3d at 476.

¶ 93 Finally, the Village argues that plaintiffs should have been sanctioned for making knowing misrepresentations. First, the Village claims that Margaret Haney perjured herself based on her inconsistent assertions—at her deposition and her discovery admissions—as to whether she attempted to purchase the Property from the Miller heirs. Second, the Village maintains that plaintiffs intentionally misrepresented in their amended complaint that they paid the 2011 taxes on the Property.

¶ 94 The Village did not assert in its sanctions motion that Margaret Haney perjured herself. Therefore, this contention is forfeited for review. See *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 85 ("[I]ssues not raised in the trial court are deemed forfeited and may not be raised for the first time on appeal.").

¶ 95 Furthermore, it is not clear that plaintiffs knowingly misrepresented that they paid the 2011 taxes. The Village attached to its sanctions motion a document from the McHenry County Treasurer's Office indicating that the Village had paid the 2011 taxes on the Property in two installments in June and September 2012. Plaintiffs, however, attached to their proposed amended complaint a notice of assessment of 2011 taxes for the Property. The notice is addressed to plaintiffs, and it acknowledges, by stamp and handwritten notation, receipt of payment of the taxes in June and September 2012. The record does not indicate how plaintiffs would have acquired this receipt if they had not paid the taxes. Perhaps the County's practice was to send the receipt to the assessed party regardless of who paid the assessment. It is entirely possible that the receipt,

combined with a faltering memory, may have led plaintiffs to the honest but mistaken belief that they themselves paid the 2011 taxes.

¶ 96 The Village cites two other documents in the record to prove that plaintiffs were aware that the Village paid the 2011 taxes. Neither document is helpful to the Village. The first document is plaintiffs' June 2011 FOIA request to the Village seeking information as to which Village officials were involved in paying the 2010 taxes on the Property. The claimed misrepresentation, however, concerns *2011* taxes. Second, the Village cites a photocopy of a newspaper article in which plaintiffs complained that the Village paid taxes on the Property. The article, the date of which is not indicated in the photocopy, does not specify which year's taxes were allegedly paid by the Village. Therefore, we hold that the Village has not established that plaintiffs made a knowing misrepresentation concerning 2011 taxes on the Property.

¶ 97 III. CONCLUSION

¶ 98 To summarize, we hold that the Village's sanctions motion did not seek sanctions against plaintiffs' former attorney, Matthew Coppedge, for filing plaintiffs' action, even though such sanctions may have been appropriate. Moreover, we hold that the record does not clearly disclose "sufficiently egregious circumstances" *(Parkway Bank and Trust Co.,* 2013 IL App (1st) 130380, ¶ 85) that would justify sanctions against a *pro se* litigant. Therefore, the trial court did not abuse its discretion in denying sanctions against plaintiffs themselves.

¶ 99 The judgment of the circuit court of McHenry County is affirmed.

¶ 100 Affirmed.