2013 IL App (2d) 130373-U
No. 2-13-0373
Order filed December 23, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE BANK OF NEW YORK MELLON,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CH-2644
	)	
ANNA MASLOWSKI and JACEK	)	
MASLOWSKI,	)	Honorable
	)	Mitchell L. Hoffman,
Defendants-Appellants.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* Because the trial court's decision to deny defendants' motion for sanctions pursuant to Rule 137 flowed logically from the circumstances of the case, its determination was not an abuse of discretion. We further held that the trial court did not abuse its discretion in denying defendants' motion for discovery sanctions under Rule 219. Finally, we held that, to be awarded fees under section 5-1510 of the Foreclosure Law, a party must either prevail with a dispositive motion, successfully assert an affirmative defense or counterclaim, or succeed at trial. Thus, we affirmed.

¶ 2 In 2008, plaintiff, The Bank of New York Mellon, brought a foreclosure action against defendants, Anna and Jacek Maslowski. Plaintiff obtained a default judgment, and the property was subject to a court-ordered judicial sale. In August 2011, defendants appeared through counsel and

filed a motion to set aside the sale, vacate the default judgment, and for leave to file a responsive pleading; and alternatively, to dismiss for want of prosecution. Thereafter, the trial court granted plaintiff's motion to voluntarily dismiss the complaint. The trial court subsequently denied defendants' postjudgment motion to amend the trial court's prior order granting plaintiff's voluntary dismissal motion; ordered plaintiff to remit costs; and denied defendants' motion for fees under Illinois Supreme Court Rule 219(c) (eff. July 1, 2002), or alternatively, for fees pursuant to section 15-1510 of the Illinois Mortgage Foreclosure Law (the Foreclosure Law) (735 ILCS 5/15-1510 (West 2008)). Defendants appeal, contending that the trial court erred by (1) denying their motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994); (2) denying their motion for fees pursuant to Rule 219(c); and (3) denying their request for fees under section 15-1510 of the Foreclosure Law. We affirm.

¶ 3 I. Background

¶ 4 The relevant facts are not in dispute. In 2008, plaintiff brought a foreclosure action against defendants. Plaintiffs obtained a default judgment, and the property was subject to a court-ordered judicial sale held on February 23, 2010.

¶ 5 On August 23, 2011, defendants appeared and filed a motion to set aside the sale, vacate the default judgment, and for leave to file a response pleading; and alternatively, to dismiss for want of prosecution (motion to set aside). The trial court set a briefing schedule and, on October 28, 2011, defendants filed a memorandum of law in support of their motion. Meanwhile, on October 5, 2011, plaintiff moved for the trial court to enter an order approving the sale.

¶ 6 On February 21, 2012, plaintiff, who was then represented by different counsel, responded to defendants' motion to set aside sale. In that motion, plaintiff asserted that its prior counsel had

moved for the order approving the sale prior to defendants filing their motion to set aside. On March 14, 2012, defendants' counsel emailed plaintiff's counsel to advise that defendants had filed their motion to set aside before plaintiff's prior counsel had moved for the trial court to enter an order approving the sale. Defendants threatened to seek sanctions if plaintiff did not correct the error.

¶ 7 On March 22, 2012, plaintiff filed an amended response, which reflected the correct chronology of defendants' motion to set aside and plaintiff's request for an order to approve the sale. In its amended response, plaintiff noted in a footnote that its original response "did not fully detail the sequence of events set forth here" and noted that "the [c]ourt's docket does not include [defendants' motion to set aside]." Plaintiff's amended response included a copy of the court's docket sheet.

¶ 8 On March 26, 2012, prior to receiving plaintiff's amended response, defendants filed a motion to strike and for sanctions. That motion noted that plaintiff moved for approval of the sale 36 days after defendants had filed their motion to set aside. On March 30, 2012, defendants filed a second motion to strike and for sanctions. That motion argued that the trial court's docket attached to plaintiff's amended response did reflect defendants' motion to set aside. Defendants also complained that plaintiff's footnote in its amended response, which claimed that the original response "did not fully detail the sequence of events," was not an unequivocal retraction and was "in essence, false." Finally, defendants' second motion to strike objected to a heading in plaintiff's amended response, which read "Defendants' Motion for Want of Prosecution Should be Denied Because Plaintiff is Continuing Its Efforts to Progress This Action to Its Conclusion." According to defendants, no "efforts to progress" had been made for 19 months.

¶ 9 On May 22, 2012, following a hearing, the trial court denied defendants' motion for sanctions. In ruling, the trial court concluded:

"I read the briefs despite the response sanctions. I also read the response briefs and it is clear there was a misstatement as to what the procedural posture of this case was. *** There were emails back and forth and there was an acknowledgment by plaintiff's counsel that the sequence was incorrect. And, in fact, it appears that whatever went on passed in the mail as far as their amended responsive filing and [defendants'] motions for sanctions.

I think, to be quite frank with you two guys, I'm going to be very blunt, you [have] some personality issues between the two of you. I mean you wanted a certain response, they gave you a response, and albeit it corrected misstatements, but it was legalese ambiguous. It wasn't. We wouldn't be here if you would said 'you know what, we screwed up, we missed the sequence in the docket.' I don't think it was intentional. I don't think it was such a mistake where the [c]ourt was misled, but I also saw what [defendants' attorney] wanted [plaintiff's attorney] to say. The point is to get it corrected, not to have it done exactly the way you want it, otherwise you're going to file a motion.

To be honest with you, I can't paraphrase it any other way. It got to be very petty on both parts, and the [c]ourt is not here for that. Your clients don't expect that from you. You're wasting time and money. I understand [defendants' attorney's] position. You want a clear record for the [c]ourt.

Frankly, as I looked at the briefs, even though there were those mistakes, it was clear to the [c]ourt what the sequencing of chronology of the events were. I don't think it was an

intentional mischaracterization of what the chronology was. Therefore, I'm going to deny your motion for sanctions."

¶ 10 On September 12, 2012, the trial court granted defendants' motion to set aside, vacated the default judgment, and denied its motion for dismissal for want of prosecution. The next day, defendants filed a notice to depose Keri Selman. Plaintiff responded to defendants that the deposition was premature because defendants had not yet filed a responsive pleading. On October 5, 2012, defendants filed a motion to compel and a motion to dismiss the complaint pursuant to section 2-615 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615 (West 2010)). The motion to compel argued that Selman was a "reputed 'robosigner,' " *i.e.*, a person who signs affidavits in a wholesale manner in foreclosure cases without possessing the requisite level of personal knowledge. On November 7, 2012, at a hearing on defendants' motion to compel and motion to dismiss, plaintiff orally moved to voluntarily dismiss the complaint. Defendants did not object, and the trial court entered an order dismissing the case.

¶ 11 On November 30, 2012, defendants filed a motion to amend the trial court's November 7 order. The motion sought attorney fees and costs, and a monetary penalty under Rule 219; and alternatively, sought attorney fees and costs pursuant to section 15-1510 of the Foreclosure Law. At a hearing, defendants again moved for sanctions pursuant to Rule 137. Defendants argued that plaintiff dismissed the case to evade discovery; defendants had prevailed by vacating a judgment of foreclosure; and forced dismissal of the suit through a deposition notice. The trial court awarded defendants costs but concluded that defendants waived the other aspects fo their motion by failing to object to plaintiff's voluntarily dismissal. Defendants timely appealed.

¶ 12 II. Discussion

¶ 13 A. Supreme Court Rule 137

¶ 14 The first issue on appeal is whether the trial erred in denying defendants' motion for sanctions pursuant to Rule 137. Defendants argue that they should receive attorney fees for correcting false statements in the record and that plaintiff's response and amended response "are demonstrably sanctionable" because the majority of the response consisted of a "deliberate mischaracterization of the events."

¶ 15 Rule 137 provides, in relevant part, that every pleading and motion shall be signed by the attorney of record, which constitutes a certificate by the attorney that he or she has read the pleading or motion, and that, to the best of his or her knowledge, the pleading or motion was grounded in fact and warranted by existing law or a good-faith argument for the extension of existing law. Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). Rule 137 further provides that, if a pleading, motion, or other court paper is signed in violation of the rule, a court may impose sanctions on the person who signed it, including an order to pay the other party's attorney fees. *Id.* Rule 137 is aimed to prevent parties from abusing the judicial process by imposing sanctions on attorneys who file vexatious and harassing actions based on unsupported allegations in fact or law. *Burrows v. Pick*, 306 Ill. App. 3d 1048, 1050 (1999). "The party requesting the imposition of Rule 137 sanctions bears the burden of proof and must show that the opposing party made untrue and false allegations without reasonable cause for the mere purpose of invoking harassment or undue delay of the proceedings." *Mina v. The Board of Education for Homewood-Flossmoor*, 348 Ill. App. 3d 264, 279 (2004). Rule 137 should be strictly construed because it is punitive in nature. *Sadler v. Creekmur*, 354 Ill. App. 3d 1029, 1045 (2004). In reviewing a trial court's ruling on a motion pursuant to Rule 137, reviewing courts consider whether the trial court's ruling was informed, based on valid reasons that fit the case, and

followed logically from the stated reasons to the particular circumstances of the case. *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020 (2004). The decision to impose Rule 137 sanctions lies within the sound discretion of the trial court, and we cannot disturb its decision absent an abuse of discretion. *Mina*, 348 Ill. App. 3d at 279. Accordingly, we will afford "considerable deference" to the trial court's decision (*id.*), because an abuse of discretion occurs where no reasonable person would adopt the same view as the trial court (*Gonzalez v. Nissan North America, Inc.*, 369 Ill. App. 3d 460, 463-64 (2006)).

¶ 16 In *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238 (2008), the reviewing court addressed a forcible entry and detainer case that morphed into a "rancorous" Rule 137 sanctions proceeding "that took on a life of its own." *Id.* at 239. In that case, the court addressed whether the plaintiff and its attorney should have been sanctioned for averring in a second amended complaint that the defendants had received 30-day notice to vacate a premises, while knowing that the notice was deficient under the Forcible Entry and Detainer Act (735 ILCS 5/9-207 (West 1992)) because the December 1, 1993, letter had not been delivered until December 2, 1993. *Technology Innovation Center,* 315 Ill. App. 3d at 245. The trial court had denied the defendants' motion for sanctions. *Id.* at 243. The reviewing court noted that neither the plaintiff nor its attorney offered a sensible explanation for filing the pleading when it was apparent that the notice was deficient, and therefore, it "seem[ed] clear" that part of the plaintiff's second amended complaint was a false or erroneous pleading. *Id.* The reviewing court further noted that, while the plaintiff and its attorney might not have subjectively acted in bad faith, the court should measure attorney conduct by an objective standard. *Id.* Therefore, it was of "little consequence" that the attorney honestly believed that his case was well grounded in either fact or law. *Id.*

¶ 17 Nonetheless, the reviewing court concluded that "[t]he question remains *** whether sanctions should be awarded to the filing of this pleading." *Id.* In answering this question, the reviewing court emphasized that it could "be sure" that the trial court was fully aware of all claims of sanctionable conduct because the deficient pleading had been included in the materials submitted to the trial court. *Id.* at 246. The reviewing court also noted that the trial court gave serious consideration to the charges of misconduct and, being aware of the entire history of the case, denied sanctions because it found, "in balance," that any wrongdoing did not warrant sanctions. *Id.* The reviewing court concluded "[t]hat decision did not constitute an abuse of the trial court's discretion." *Id.*

¶ 18 The reasoning in *Technology Innovation Center* applies to this case. Here, plaintiff's initial response to defendants' motion to set aside contained an inaccurate factual statement—that plaintiff had moved for the order approving the sale prior to defendants filing their motion to set aside. Neither plaintiff nor its counsel have offered a sensible explanation for filing this pleading when it was clear from the record that defendants had filed their motion to set aside on August 23, 2011, several weeks before plaintiff had moved for an order approving the sale. Thus, it is clear that plaintiff's pleading was factually erroneous in that respect.

¶ 19 However, whether defendants should be awarded sanctions due to plaintiff filing a factually erroneous pleading still remains. See *id.* It is clear that the trial court was fully aware of defendants' claim of sanctionable conduct. See *id.* at 245. The trial court noted at the May 22, 2012, hearing that it had read the briefs; it was clear that plaintiff had made a misstatement about the procedural posture of the case; the parties had exchanged emails; and plaintiff's counsel had acknowledged that its original response had incorrectly stated the sequence of events. After reviewing the trial court's

comments, we believe that the trial court was aware of the history of this case and, after carefully considering plaintiff's erroneous factual statement, decided that, on balance, sanctions were not warranted. Like *Technology Innovation Center*, the trial court's decision here did not constitute an abuse of its discretion. See *id.* at 246.

¶ 20 In reaching our determination, we recognize that the trial court remarked that it did not believe that plaintiff's erroneous pleading was intentional. However, contrary to defendants' assertion, we do not believe that the trial court concluded that it lacked authority or was otherwise unable to impose sanctions because of its determination that plaintiff's erroneous pleading was unintentional. Rather, as we read the trial court's comments in their totality, the trial court merely noted that the mistake was not intentional. Important, the trial court also found that plaintiff's counsel had acknowledged that the sequence of events in its original pleading was incorrect, corrected the misstatement, and that it understood the chronology of events. Based on that, it is clear to us that the trial court's ruling was informed, based on valid reasons that fit the case, and followed logically "from the stated reasons to the particular circumstances of the case." See *Sanchez*, 352 Ill. App. 3d at 1015.

¶ 21 In closing, although we are affirming the trial court's determination to deny defendants' motion for sanctions, we note that we are troubled by plaintiff's attorneys' insistence before us that their mistake was "objectively reasonable." Plaintiff's attorneys maintain that their mistake was excusable because the docket sheet reflected defendants' motion to set aside as "MOTION" and "NOTICE OF MOTION," without specifying that motion's title. Plaintiff's attorneys are admonished that Illinois law is well settled that licensed attorneys have "an obligation to objectively review all information and if any discrepancies, inconsistencies[,] or gaps appear, he [or she] must

investigate further before filing." *A&A Acoustics v. Valinksy*, 202 Ill. App. 3d 516, 522 (1990). The obligation to investigate includes reviewing a case file or common law when the docket sheet is unclear as to a motion's title and substance.

¶ 22 Nonetheless, the issue here is whether the trial court abused its discretion in denying defendants' motion for sanctions, *not* whether we would have reached a different conclusion from the trial court. See *In re Marriage of Nuechterian*, 225 Ill. App. 3d 1, 8 (1992) ("The mere fact that reasonable persons could reach different conclusions on the facts of the case is insufficient to find that the trial court abused its discretion *** ."). Because the trial court was familiar with the history of the case, aware of the parties' arguments regarding sanctions, and its determination flowed logically from the circumstances of this case, we find no reason to disturb its determination. See *Sanchez*, 352 Ill. App. 3d at 1020.

¶ 23 B. Supreme Court Rule 219

¶ 24 Defendants next contend on appeal that the trial court erred in not awarding them payment of expenses pursuant to Supreme Court Rule 219(e) and attorney fees and a monetary penalty under Supreme Court Rule 219(c). Defendants maintain that plaintiff's conduct was sanctionable under Rule 219 because "[t]here is, of course, no plausible interpretation of [p]laintiff's voluntarily dismissal except as a ruse to evade discovery."

¶ 25 Supreme Court Rule 219(c) provides that, if any party unreasonably fails to comply with discovery rules, the court may enter remedial orders, including a monetary penalty. Ill. S. Ct. R. 219(c) (eff. July 1, 2002). The purpose of Rule 219(c) is to coerce compliance with discovery rules and orders, not to punish the offending party. *Rosen v. The Larkin Center, Inc.*, 2012 IL App (2d) 120589, ¶ 17. Supreme Court Rule 219(e) prohibits a party from avoiding compliance with

discovery deadlines, orders, or rules by voluntarily dismissing a lawsuit; and permits a court to award the nondismissing party reasonable expenses incurred in defending the action in addition to costs under section 2-1009(a) of the Code (735 ILCS 2-1009(a) (West 2010)). Ill. S. Ct. R. 219(e) (eff. July 1, 2002)). The purpose of Rule 219(e) is to prevent abuses of the discovery system by encouraging compliance with the entire discovery system; however, the rule does not bar a litigant's statutory right to a voluntary dismissal. *Jones v. Chicago Cycle Center*, 391 Ill. App. 3d 101, 111 (2009). Under both subsections (c) and (e) of Rule 219, the trial court must make a preliminary finding of misconduct. *Id.* (holding that Rule 219(e) requires the trial court to make a preliminary finding of misconduct, analogous to the "unreasonable noncompliance" invoked in Rule 219(c). "The standard for determining whether the conduct of a noncomplying party [was] unreasonable is whether the conduct shows 'a deliberate, contumacious or unwarranted disregard for the court's authority.' " *Id.* at 111-12 (quoting *Scattered Corp. v. Midwest Clearing Corp.*, 299 Ill. App. 3d 653, 659 (1998)). The decision to impose a sanction rests with the discretion of the trial court and only a "clear abuse of discretion" will justify a reversal. *Rosen*, 2012 IL App (2d) 120589, ¶ 17.

¶ 26 The parties dispute whether defendants waived their ability to bring a motion for sanctions under Rule 219 by failing to raise this issue at the November 2, 2012, hearing on plaintiff's motion for a voluntarily dismissal. See generally *Badea v. Phillips*, 389 Ill. App. 3d 292, 297 (2009) (holding that the express language of Rule 219(c) required a nonparty to bring a motion for discovery sanctions before the trial court had entered a dismissal without prejudice order); *Maggi v. RAS Development, Inc.*, 2011 IL App (1st) 091955, ¶ 78 (holding that, in a jury case, Rule 219(c) extended a trial court's jurisdiction to address discovery sanctions after a final judgment only when the motion for sanctions had been pending "prior to the filing of a notice or motion seeking a

judgment or order of dismissal"). The parties also dispute whether defendants' September 13, 2012, notice of deposition to Selman was premature because defendants had not filed a responsive pleading after the trial court vacated the default judgment the prior day.

¶ 27 In this case, however, we need not determine whether defendants' post dismissal-order motion for sanctions was properly before the trial court or whether the notice of deposition to Selman was premature. Even if defendants' notice of deposition and post-dismissal motion for sanctions were proper, we see no basis for awarding sanctions under Rule 219 based on the record before us. See generally *Krautsack v. Anderson*, 223 Ill. 2d 541, 563 (2006) (finding remand unnecessary despite concluding that the trial court erred in requiring the defendants to prove bad faith pursuant to Rule 137, and instead, performing its own review of the defendants' fee petition). Here, there is no evidence that plaintiff's conduct in voluntarily dismissing its case constituted a deliberate, contumacious, or unwarranted disregard for the court's authority. The record reflects that the trial court granted defendants' motion to set aside the default judgment on September 12, 2012, and defendants issued their notice of deposition for Selman the next day. Plaintiff expressed to defendants their belief that deposing Selman was premature until defendants filed a responsive pleading, and on October 5, 2012, defendants filed a section 2-615 motion to dismiss and a motion to compel. At the hearing on defendants' motion, plaintiff orally moved to voluntarily dismiss the case. The trial court granted plaintiff's motion and dismissed defendants' motion to compel as moot. While plaintiff's voluntary dismissal necessarily prevented Selman from being deposed, we find nothing in this sequence of events that evidenced plaintiff's noncompliance with any discovery deadline, order, or applicable rule. See *Scattered Corp.*, 299 Ill. App. 3d at 661.

¶ 28 Moreover, imposing sanctions here would not further the underlying purposes of either Rule 219(c) or (e). The purpose of 219(c) is to coerce compliance with discovery rules and orders, not to punish the offending party. *Rosen*, 2012 IL App (2d) 120589, ¶ 17. To impose sanctions under that rule after plaintiff had voluntarily dismissed its case would serve only to punish plaintiff, which the rule was not designed to do. Likewise, the purpose of Rule 219(e) is to prevent abuses of the discovery system by encouraging compliance. *Jones*, 391 Ill. App. 3d at 111. We do not believe that plaintiff's decision to voluntarily dismiss its case less than two months after the trial court granted defendants' motion to set aside and while defendants had a pending motion under section 2-615 of the Code constituted discovery misconduct. See *In re Marriage of Webb*, 333 Ill. App. 3d 1104, 1112 (2002) (holding that a trial court must make a preliminary finding of discovery misconduct before imposing fees under Rule 219(e)). Therefore, imposing sanctions under Rule 219(e) would not further the purpose that rule was designed to achieve.

¶ 29 Accordingly, because we conclude that plaintiff did not engage in any misconduct in voluntarily dismissing this case, sanctions under either Rules 219(c) or (e) would be inappropriate. See *Jones*, 391 Ill. App. 3d at 111 (noting that "unreasonable compliance"' is necessary for sanctions under Rule 219(c) and misconduct is necessary for sanctions under Rule 219(e)).

¶ 30 C. Section 15-1510 of the Foreclosure Law

¶ 31 Defendants' final contention on appeal is that they should receive reasonable attorney fees and costs because they "prevailed" within the meaning of section 15-1510 of the Foreclosure Law. Plaintiff counters that neither defendants' motion to set aside, which vacated the default judgment, nor plaintiff's voluntary dismissal without prejudice rendered defendants a prevailing party under section 15-1510.

¶ 32 The primary objective of statutory interpretation is to give effect to the intent of the legislature, and the most reliable indicator of legislative intent is the language of the statute given its plain, ordinary, and popularly understood meaning. *Gardner v. Mullins*, 234 Ill. 2d 503, 511 (2009). When determining the meaning of a statute, it " 'should be read as a whole with all relevant parts considered.' " *Id.* (citing *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990)). If the statutory language is clear, a reviewing court does not need to resort to extrinsic aids of construction, such as legislative history. *Northern Kane Educational Corp. v. Cambridge Lakes Education Ass'n*, 394 Ill. App. 3d 755, 758 (2009). In such situations, a court may not depart from the plain language of the statute and read into it exceptions, limitations, or conditions that are inconsistent with the express legislative intent. *Lander v. Lander*, 383 Ill. App. 3d 317, 321 (2008). Nonetheless, when reviewing a statute, we also consider the subject it addresses and the legislature's apparent objective in enacting the statute while presuming that the legislature did not intend to create absurd, inconvenient, or unjust results. *Fisher v. Waldrop*, 221 Ill. 2d 102, 112 (2006). The construction of a statute presents a question of law, which we review *de novo*. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 510-11 (2007).

¶ 33 Section 15-1510(a) of the Foreclosure Law provides:

> "The court may award reasonable attorney fees and costs to the defendant who prevails in a motion, an affirmative defense or counterclaim, or in the foreclosure action. A defendant who exercises the defendant's right of reinstatement or redemption shall not be considered a prevailing party for the purposes of this [s]ection." 735 ILCS 5/15-1510(a) (West 2010).

Defendants argue that, because the provision provides that a court may award fees and costs to a defendant "who prevails in a motion," the provision is unambiguous and applied to their motion to

set aside. We find this interpretation reasonable in light of the legislature not qualifying the type of motion that would be eligible for a fee award, which suggests that the provision applies to all motions. Plaintiff counters that, when construing this section in its entirety, the phrase "in a motion" is listed along with "an affirmative defense or counterclaim" and "or in the foreclosure action." By including affirmative defenses and counterclaims, and "in a foreclosure action," plaintiff argues that section 15-1510 applies only to dispositive motions that affect an affirmative defense, counterclaim, or the foreclosure action as a whole. This interpretation is also reasonable.

¶ 34 Because section 15-1510 of the Foreclosure Law is susceptible to two or more reasonable interpretations, we find this provisions to be ambiguous. See *Solon v. Midwest Medical Records Ass'n*, 236 Ill. 2d 433, 440-41 (2010) ("[I]f a statute is capable of being understood by reasonably well-informed persons in two or more different ways, the statute will be deemed ambiguous."). Accordingly, we will resort to extrinsic aids of construction to discern the legislature's intent. *Id.* at 441. In doing so, it is appropriate for us to consider the consequences that would result from construing the section one way or the other, and "we presume that the legislature did not intend absurd, inconvenient, or an unjust result." See *Landis v. Marc Reality*, L.L.C., 235 Ill. 2d 1, 12 (2009).

¶ 35 In this case, if we were to adopt defendants' interpretation, a court could potentially award fees when a defendant prevails in *any* motion, no matter how inconsequential that motion is to the outcome of the foreclosure action. For example, a defendant who is granted a motion for a continuance, or for leave to file a brief in excess of a page limitation required by a local circuit court rule, could be awarded fees under section 15-1510 even if that defendant did not ultimately prevail in the foreclosure proceeding. Such an interpretation could serve as an incentive for defendants to

file numerous, and perhaps unnecessary, motions in the hopes of prevailing on an inconsequential motion simply to bring a fee petition under this provision. We do not believe that this was the legislature's intent when enacting section 15-1510. Rather, we believe that it is more reasonable to construe this provision as allowing courts to award fees to a party who is successful in a foreclosure action, by prevailing in either a dispositive motion, by successfully asserting an affirmative defense or counterclaim, or by succeeding at trial. See *id.* (considering the consequences of the plaintiffs' proposed interpretation of a statute, which distinguished between seeking a penalty under a state statute and a local ordinance, and concluding that it was "more reasonable" to treat penalties under a state statute or municipal ordinance the same).

¶ 36 Our interpretation is consistent with how Illinois courts have interpreted "prevailing parties" in other statutes. In the *City of Elgin v. All Nations Worship Center*, 373 Ill. App. 3d 167 (2007), the plaintiff filed a complaint alleging that the defendant, a church, began conducting church services in an area that, by local zoning ordinance, did not permit a church; and defendant brought a counterclaim. *Id.* at 168. The trial court entered an agreed order dismissing the plaintiff's complaint without prejudice and allowing the defendant to occupy the property while the plaintiff considered whether to amend its zoning ordinance, which the plaintiff ultimately did. *Id.* Thereafter, the defendant brought a fee petition under the Illinois Religious Freedom Restoration Act, which provided that a prevailing party in an action to enforce the Act against a government entity was entitled to recover its fees and costs. *Id.* at 168-69 (735 ILCS 35/20 (West 2004)). The defendant claimed that it was a "prevailing party" under the statute. *City of Elgin*, 373 Ill. App. 3d at 169.

¶ 37 The reviewing court rejected the defendant's request for fees. In doing so, it began by reciting the "American Rule," which provides that parties generally pay their own attorney fees,

except under certain statutes that provide for a fee award to prevailing parties. *Id.* Discussing prior case law, the reviewing court noted that being deemed a prevailing party could include obtaining "any type of judicially enforceable settlement agreement as justifying a fee award." *Id.* at 170. However, the settlement agreement must have altered the legal relationship between the parties. *Id.* Thus, the reviewing court concluded that the defendant's "victory" was "temporary and, ultimately, pyrrhic." *Id.* The reviewing court continued:

> "The [court] order provides that [the plaintiff] would dismiss its complaint *without prejudice* and that [the defendant] would continue to occupy the premises while [the plaintiff] considered amending its zoning ordinance. Rather than an 'alteration of the legal relationship of the parties,' the order appears to be just the opposite: an agreement to preserve the status quo. During protracted litigation, any party is likely to win some temporary victory, be it a dismissal of a complaint without prejudice or the defeat of a summary judgment. To hold that a party who wins any type of victory during the course of litigation, no matter how fleeting, is entitled to attorney fees, would expand the definition of 'prevailing party' beyond all meaning." (Emphasis in original.) *Id.*

¶ 38 We find the rationale in *City of Elgin* applicable to this case. Here, the trial court granted defendants' motion to set aside, which vacated a previously entered default judgment. Thereafter, plaintiff voluntarily dismissed its case without prejudice. As the court in *City of Elgin* described, defendants "victories" were temporary and fleeting in nature, and did nothing more than return the parties to their status quo position. While we are cognizant that section 15-1510 of the Foreclosure Law provides that a defendant in a foreclosure action who "prevails in a motion" may be awarded

fees, to adopt defendants' interpretation would expand the definition of "prevails in a motion" beyond all meaning. See *id.*

¶ 39 Accordingly, because defendants did not prevail in a dispositive motion that affected the outcome of this matter or altered the legal relationship between the parties, they were not entitled to fees under section 15-1510 of the Foreclosure Law.

¶ 40 III. Conclusion

¶ 41 For the foregoing reason, we affirm the judgment of the circuit court of Lake County.

¶ 42 Affirmed.