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NO. 4–10–0884

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WOODBINE PARK PRAIRIE ESTATES HOMEOWNERS ASSOCIATION, an Illinois Not-for-Profit Corporation, Plaintiff-Appellee, v. DAVID J. FLETCHER, Individually, and SALLY FLETCHER, Individually, Defendants-Appellants, and JULIE A. CURRY, J. BRET MASON, KEVIN R. BUCKLEY, and CHRISTOPHER M. ELLIS, Intervenors-Appellees.	)	Appeal from Circuit Court of Macon County No. 08CH394 Honorable Theodore E. Paine, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Cook concurred in the judgment.

ORDER

¶ 1 *Held*: Where the record shows plaintiff's legal action was not baseless and plaintiff did not file suit for an improper purpose, the trial court did not abuse its discretion in denying defendants' requests for sanctions under Illinois Supreme Court Rule 137.

¶ 2 In October 2009, plaintiff, Woodbine Park Prairie Estates Homeowners Association, an Illinois not-for-profit corporation (hereinafter Homeowners Association), filed its third-amended complaint, asserting four counts against defendant, David J. Fletcher, who was the developer of the Woodbine Park Prairie Estates subdivision (Subdivision), and two counts against defendant Sally Fletcher, David's sister and the owner of 12 lots in the Subdivision. In April 2010, the Macon County circuit court dismissed with prejudice three of the counts against

David. David and Sally each filed (1) a motion for summary judgment on the remaining counts and (2) a motion for sanctions under Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). The Rule 137 motions were expressly directed at intervenors Julie A. Curry, J. Bret Mason, and Kevin R. Buckley, the Homeowners Association's directors during most of the litigation, and Christopher M. Ellis, the Homeowners Association's attorney. At a September 2010 hearing, the court dismissed the Rule 137 motions as to Mason and Buckley, denied them as to Curry, and took the matter under advisement as to Ellis and the Homeowners Association. In October 2010, the court granted the motions for summary judgment and denied the Rule 137 motions.

¶ 3 David and Sally appeal, asserting the trial court erred by denying their request for Rule 137 sanctions. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In October 2008, the Homeowners Association filed a one-count complaint for specific performance against David. The complaint sought to have David perform his obligations under the Subdivision's declaration and plat by delivering title to the Subdivision's common areas to the Homeowners Association and by building all roads, bridges, and culverts in the Subdivision in compliance with the specifications of the Illinois Department of Transportation (IDOT).

¶ 6 The next month, the Homeowners Association filed a proposed first-amended complaint against both David and Sally. Count I of the first-amended complaint was a specific-performance claim against David and sought the same relief as in the original complaint. Count II was a preliminary-injunction claim against Sally. The count noted David had deeded 12 of the Subdivision's unsold lots to Sally on November 7, 2008. On November 25, 2008, Sally sent an

e-mail to all members of the Homeowners Association, calling a special meeting for all property owners in the Subdivision. In the e-mail, Sally claimed to be a member of the Homeowners Association who was entitled to 12 votes (one-fourth of the membership) and noted the purpose of the meeting was to discuss, *inter alia*, removal and replacement of the board members and the pending litigation. The Homeowners Association sought a preliminary injunction, preventing Sally from calling special meetings of the Homeowners Association and from voting any interests she allegedly received from the transfer of the 12 lots. The Homeowners Association also filed a motion for preliminary injunction against Sally, seeking the same relief as complaint. At a March 2009 hearing, the trial court granted the Homeowners Association leave to file its first-amended complaint and heard arguments on the preliminary-injunction motion. The court denied the injunction motion, finding (1) several of the facts alleged in count II and in the preliminary-injunction motion were on information and belief and (2) the properly pleaded facts did not establish that irreparable injury would result if the court did not grant the motion.

¶ 7 Also, in March 2009, David filed a motion to dismiss count I of the first-amended complaint. After a hearing on the dismissal motion, the trial court granted the motion in part and ordered the Homeowners Association to make the allegation concerning the failure of the roads, bridges, and culverts to meet IDOT regulations more definite and certain within 30 days. The court denied the motion in all other respects.

¶ 8 In April 2009, the Homeowners Association filed a second-amended complaint. Count I of the second-amended complaint again raised a specific-performance claim against David, demanding title to the common areas. Counts II through IV were breach-of-contract claims against David. Count II asserted David did not have specific design plans for the roads,

bridges, and culverts and, without such plans, the contractors working on the Subdivision lacked specific direction outlining what applicable IDOT specifications were to be followed. Count III addressed the bridges and stream crossings. It listed the defects in the design and construction of the bridges and stream crossings and alleged David failed to note on the lot descriptions that the existing drainage system could only handle a two-year storm. Count IV addressed the roads and listed the design and construction defects with the roads. It also alleged David failed to follow Subdivision rules and did not inform the Homeowners Association that the Township Highway Commissioner signed off on the Subdivision's plat with the understanding the Subdivision's roads would never become township roads. Count V was a permanent-injunction claim against Sally, seeking a permanent injunction that prohibited her from calling special meetings of the Homeowners Association and from voting any interests she allegedly received from the transfer of the 12 lots. Count VI was a declaratory-judgment claim against Sally, seeking a declaration that she be treated as a developer under the Subdivision's declaration because the transfer of the 12 lots to her was not an arm's-length transaction.

¶ 9 In May 2009, Sally filed (1) an answer to count VI and (2) a motion to dismiss count V. In July 2009, David filed a motion to dismiss counts I through IV under section 2–615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2–615 (West 2008)). In July 2009, David filed a motion to dismiss count I under section 2–619 of the Procedure Code (735 ILCS 5/2–619 (West 2008)), noting he had transferred title of the common grounds to the Homeowners Association on July 2, 2009. In August 2009, the trial court denied Sally's motion to dismiss. That same month, the court held a hearing on David's motions to dismiss. The court denied David's section 2–619 motion and allowed in part David's section 2–615 motion. The

court granted the Homeowners Association 28 days to file a third-amended complaint, "containing more specific citations of what IDOT specifications were not followed in construction of the roads and bridges." In September 2009, the Homeowners Association gave notice that it would be conducting limited core drilling on certain roads in the Subdivision.

¶ 10 In October 2009, the Homeowner's Association filed its third-amended complaint, which raised the same claims as the second-amended complaint. As to the IDOT specifications, the Homeowners Association again asserted David failed to follow any IDOT standards and then listed the typical IDOT specifications for roadway and bridge construction. It explained the difficulty in identifying a specific IDOT provision that had been violated due to David's failure to make specific design plans before constructing the infrastructure.

¶ 11 In November 2009, Sally filed a counterclaim for injunctive relief, seeking relief from the Homeowners Association's refusal to allow her to exercise the property rights she received when she purchased 12 lots in the Subdivision. Sally also filed a motion for a preliminary injunction.

¶ 12 In December 2009, David filed a section 2-615 motion to dismiss the Homeowners Association's third-amended complaint with prejudice. That same month, the trial court commenced a two-day hearing on Sally's motion for a preliminary injunction. On January 15, 2010, the trial court granted Sally's motion for a preliminary injunction. The court found Sally had presented sufficient evidence showing her purchase of the 12 lots from David was a *bona fide* arm's-length transaction. It also concluded Sally had presented sufficient evidence showing (1) she had protected rights in connection with her purchase and ownership of the 12 lots to vote and participate in the Homeowners Association as an owner, not as a developer; (2) she would

suffer irreparable harm if injunctive relief was not granted; (3) her remedy at law was inadequate; and (4) she was likely to be successful on the merits. The Homeowners Association filed a motion to reconsider, asserting Sally had not shown she would likely be successful on the merits.

¶ 13 In March 2010, Curry filed a petition to intervene to address a discovery matter and sought to file her own motion to quash a subpoena *duces tecum*. On March 8, 2010, the trial court held a hearing. It first addressed Curry's petition to intervene, which it granted without objection. The court heard arguments on the discovery matter and took it under advisement. It also heard David's motion to dismiss and took it under advisement. Last, the court heard arguments on the motion to reconsider and denied it. The court also refused to stay the preliminary injunction. On April 9, 2010, the court entered an order, allowing David's motion to dismiss the third-amended complaint except for the portion of count I that alleged failure to deliver title to the common areas and requested specific performance. The court noted the Homeowners Association had not specified which provisions of the IDOT standard specifications for road and bridge construction were not complied with and in what way or ways the roads and bridges were not constructed in accordance with those provisions. The court also allowed Curry's motion to quash because its ruling on the motion to dismiss made the documents irrelevant.

¶ 14 In April 2010, Ellis filed a motion to withdraw as counsel for the Homeowners Association, asserting the Homeowners Association no longer had an acting board and thus he had not received any communication or direction from the Homeowners Association. Ellis explained Sally had called a special meeting of the Homeowners Association and made a motion that the Homeowners Association find an attorney to proceed with the cause on a contingency basis within 30 days or dismiss the action with prejudice. The motion passed, and the Home-

owners Association's acting directors resigned. No other members agreed to serve on the board. David filed (1) a motion to strike Ellis's reasoning for withdrawal and (2) a motion opposing the withdrawal. After a June 2010 hearing, the trial court granted Ellis leave to withdraw as counsel.

¶ 15 Also, in June 2010, Sally filed a motion for summary judgment on counts V and VI of the third-amended complaint. That same month, David filed his motion for Rule 137 sanctions. David asserted the former Homeowners Association directors and Ellis completely disregarded the court's orders as to the need to specify the IDOT standards they claim had been violated and failed to initiate any investigation to ensure its complaints were well grounded in fact and warranted by existing law. David sought $169,995.35 in attorney fees, costs, and expenses.

¶ 16 In August 2010, Sally filed her motion for Rule 137 sanctions. Sally asserted the Homeowners Association's board and its attorney never had any evidence Sally had not acquired the 12 lots in a *bona fide* arm's-length transaction for fair-market value and did not have a basis for refusing to allow her to exercise her rights. Sally sought $179,351.18 in attorney fees. That month, Sally also filed a motion for entry of a permanent injunction on her counterclaim. On September 2, 2010, under section 2–301 of the Procedure Code (735 ILCS 5/2–301 (West 2008)), Buckley and Mason filed a special and limited appearance for the purpose of objecting to the trial court's exercise of jurisdiction over them. The appearance noted neither of them were parties to the case and requested the Rule 137 motions be dismissed as to them.

¶ 17 On September 9, 2010, the trial court held a hearing on Sally's summary-judgment motion and motion for a permanent injunction, Buckley and Mason's special and limited appearance, and David's and Sally's Rule 137 motions. The court first heard Sally's summary-

judgment and permanent-injunction motions. The court took the matters under advisement pending the filing of the proof of service for the order allowing Ellis's withdrawal. The court next heard Buckley and Mason's special and limited appearance and sustained it. Last, the court heard the Rule 137 motions. The court denied the motions as to Curry and took under advisement the motions as to Ellis and the Homeowners Association.

¶ 18 On October 5, 2010, the trial court entered a written order, (1) granting summary judgment in Sally's favor on count V and VI, (2) granting Sally a permanent injunction prohibiting the Homeowners Association from refusing to allow her to exercise her rights in the association, (3) denying David's Rule 137 motion, and (4) denying Sally's Rule 137 motion.

¶ 19 On October 13, 2010, David filed a motion for summary judgment on count I of the third-amended complaint. At an October 28, 2010, hearing, the trial court granted the motion, noting nothing was filed in opposition to the motion. After the grant of summary judgment in David's favor on count I, no other matters remained pending.

¶ 20 On November 3, 2010, David and Sally filed a joint notice of appeal from the trial court's October 5 and 28, 2010, orders in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008). The notice of appeal does not list the court's September 9, 2010, order that sustained the special and limited appearance of Mason and Buckley and denied the Rule 137 motions as to Curry. While a reviewing court generally does not have jurisdiction to review orders not listed in the notice of appeal, an unspecified order is reviewable when "it is a step in the procedural progression leading to the judgment specified in the notice of appeal." (Internal quotation marks omitted.) *In re Marriage of O'Brien*, 393 Ill. App. 3d 364, 371-72, 912 N.E.2d 729, 737 (2009) (quoting *Jiffy Lube International, Inc. v. Agarwal*, 277 Ill. App. 3d 722, 726,

661 N.E.2d 463, 467 (1996)). Thus, we have jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) over all of the court's rulings related to the two Rule 137 motions, including those on September 9, 2010. On appeal, the Homeowners Association is the only party that did not file a brief.

¶ 21 II. ANALYSIS

¶ 22 David and Sally assert the trial court erred by denying their requests for Rule 137 sanctions. In ruling on the motions, the trial court first dismissed them as to Buckley and Mason and denied them as to Curry because the directors were not parties to the litigation. The court then took the Rule 137 motions under advisement as to plaintiff and Ellis and later denied them. We note that, while David and Sally did not expressly seek sanctions against the Homeowners Association, the trial court treated the motions as also being against the Homeowners Association, and thus we also do so.

¶ 23 Additionally, we note this court will not consider any evidence that was not before the trial court. See *Palmros v. Barcelona*, 284 Ill. App. 3d 642, 645, 672 N.E.2d 1245, 1247 (1996). However, as to the photographs and documents attached to the Homeowners Association's complaints that are in the common-law record, David and Sally cite no authority that such material cannot be considered in analyzing a Rule 137 motion based on the complaint's failure to state a cause of action. Accordingly, David and Sally have forfeited this argument. See *In re Marriage of Wassom*, 352 Ill. App. 3d 327, 333, 815 N.E.2d 1251, 1256 (2004) (noting the failure to cite legal authority in the party's brief forfeits the issue for review (quoting *In re Marriage of Parr*, 345 Ill. App. 3d 371, 380, 802 N.E.2d 393, 401 (2003))).

¶ 24 Rule 137 provides, in pertinent part, the following:

> "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 to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

Our supreme court has noted the decision whether to impose sanctions under Rule 137 rests within the trial court's sound discretion, and a reviewing court will not overturn the trial court's decision unless the trial court abused its discretion. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 579, 739 N.E.2d 1263, 1275 (2000). A trial court abuses its discretion when no reasonable person could take the view it adopted. *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 244, 732 N.E.2d 1129, 1134 (2000). Additionally, we note a reviewing court "must decide whether the trial court's decision was informed, based on valid reasons, and followed logically from the circumstances of the case." (Internal quotation marks omitted.) *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217, 882 N.E.2d 607, 610 (2007) (quoting *Burrows v. Pick*, 306 Ill. App. 3d 1048, 1051, 715 N.E.2d 792, 794-95 (1999)).

¶ 25 Rule 137's purpose is to deter frivolous pleadings or suits with no basis in law, not to penalize an unsuccessful party. *Miller v. Bizzell*, 311 Ill. App. 3d 971, 976, 726 N.E.2d 175, 179 (2000). The party requesting the imposition of sanctions under Rule 137 bears the burden of proof. *Dismuke*, 378 Ill. App. 3d at 217, 882 N.E.2d at 610. This court has held Rule 137

sanctions may be granted under the following circumstances:

> "(1) if either party files a pleading or motion that to the best of the attorney's knowledge, information, and belief is not well grounded in fact and is not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, or (2) if the pleading or motion is interposed to harass or to cause unnecessary delay or needless increase in the cost of litigation." (Internal quotation marks and emphasis omitted.) *Miller*, 311 Ill. App. 3d at 976, 726 N.E.2d at 179 (quoting Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)).

In making the aforementioned determination, the court uses an objective standard and strictly construes Rule 137 because of its penal nature. *Dismuke*, 378 Ill. App. 3d at 217, 882 N.E.2d at 610.

¶ 26 Like the trial court, we will address the Rule 137 motions as to the directors separately from Ellis and the Homeowners Association.

¶ 27 A. Homeowners Association's Directors

¶ 28 As stated, the trial court sustained Buckley and Mason's special and limited appearance and denied the Rule 137 motions as to Curry because they were not parties to the litigation. Without citation to authority in their opening brief, David and Sally assert the directors should be deemed "parties" for the purpose of Rule 137.

¶ 29 Our supreme court has noted that, when beginning to review a case, one of the two most important tasks is to determine which, if any, issues have been forfeited. *People v.*

Smith, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 1059 (2008). The failure to cite legal authority violates Illinois Supreme Court Rule 341(h)(7) (eff. Sep. 1, 2006). "'This court has often stated the failure to cite legal authority in the argument section of a party's brief forfeits the issue for review.'" *Wassom*, 352 Ill. App. 3d at 333, 815 N.E.2d at 1256 (quoting *Parr*, 345 Ill. App. 3d at 380, 802 N.E.2d at 401). We note David and Sally's citing of *Burda v. M. Ecker Co.*, 2 F.3d 769 (7th Cir. 1993), in their reply brief does not cure the defect in the original brief. Thus, we find the trial court did not err by dismissing the Rule 137 motions as to Buckley and Mason and denying them as to Curry.

¶ 30 B. Ellis and the Homeowners Association

¶ 31 1. *David's Rule 137 Motion*

¶ 32 David contends the trial court erred by denying his Rule 137 motion because Ellis and the Homeowners Association had no basis to assert the claims related to the construction of the roads and bridges because various governmental entities had approved their construction. Moreover, he points out Ellis and the Homeowners Association's inability to identify a specific IDOT standard that was not followed.

¶ 33 While the Homeowners Association did not identify a specific IDOT standard with which the Subdivision's infrastructure did not comply, it set forth the reason for its inability to do so, *i.e.*, the lack of any specific design plans. That argument was raised by both the second-amended and third-amended complaints. The Homeowners Association explained that, without design plans, the contractor could not have utilized the IDOT standards for road and bridge construction. The Homeowners Association's allegations are supported by its expert's report, which stated the following: "Without detailed design plans, the contractor is unable to recognize

what specifications they are to follow." Moreover, photographs were included in the attachments to the third-amended complaint, showing road damage and bridge failure. We find nothing improper or meritless with the argument specific IDOT violations could not be identified because David did not even properly begin the construction process with design plans that were necessary to determine the specific, applicable IDOT provisions. The fact the trial court did not accept that argument does not make the argument frivolous.

¶ 34 Additionally, even if the IDOT counts were baseless, a reasonable person could have found the situation did not warrant sanctions. The Homeowners Association had legitimate problems with David with regard to title to the common grounds and failing infrastructure. When things could not be worked out, the Homeowners Association raised the possibility of litigation, and David started trying to devise a plan to thwart such litigation. David came up with a plan and got his sister Sally to act on his plan. The plan eventually worked as the Fletcher family was able to get the directors of the Homeowners Association to resign. With no one to replace the board, the association collapsed, leaving no one to pursue the litigation. Based on the aforementioned facts, a reasonable person could conclude the Homeowners Association was not acting maliciously or in bad faith.

¶ 35 Accordingly, we find the trial court did not abuse its discretion by denying David's Rule 137 motion for sanctions.

¶ 36 2. *Sally's Rule 137 Motion*

¶ 37 Sally claims entitlement to Rule 137 sanctions because Ellis and the Homeowners Association never had any basis to assert their claims against her and the claims were brought for an improper purpose. We disagree.

¶ 38 In seeking an injunction against Sally, the Homeowners Association asserted she should be treated as a "developer"under the Subdivision's revised second-amended owner's declaration and entitled to only one vote. The Homeowners Association presented evidence the real reason for Sally's purchase of the 12 lots in the Subdivision was for the Fletcher family to take control of the development and thwart any legal action against David. In September 2008, David sent Sally and their father an e-mail suggesting such. Moreover, shortly after Sally purchased the 12 lots, she attempted to call a special meeting of the Homeowners Association to, *inter alia*, discuss the removal and replacement of board members and pending litigation. When the Homeowners Association served Sally with the first-amended complaint that raised a count against her, she sought to sell the lots back to David. Based on the aforementioned facts, the Homeowners Association's argument that Sally should be treated as a developer for purposes of voting in the Homeowners Association was a good-faith interpretation of the owner's declaration or a modification of its terms.

¶ 39 Sally highlights the fact she was granted summary judgment on the two counts of the third-amended complaint that were against her. However, she fails to mention the summary-judgment motion was uncontested because the Homeowners Association had already lost its board of directors. Moreover, the trial court denied her motion to dismiss the injunction count in the second-amended complaint. The record does not show the Homeowners Association's cause of action against Sally was frivolous.

¶ 40 We also disagree the Homeowners Association brought its cause of action against Sally for an improper purpose. As explained, the Homeowners Association had the right to title to the common grounds and problems with the Subdivision's infrastructure existed. When faced

with litigation, David came up with a plan to regain control over the Subdivision and thwart any litigation. David presented the plan to Sally, who acted in accordance with the plan. Sally's purchase of the lots under David's plan, which purportedly gave her majority control of the Homeowners Association, clearly jeopardized the Homeowners Association's litigation against David. The threat was legitimate as demonstrated by the collapse of both the Homeowners Association and its litigation after Sally obtained the 12 votes. We see nothing improper about the Homeowners Association trying to protect its litigation to obtain title to the common grounds that was rightfully its and to attempt to address the failing infrastructure in the Subdivision.

¶ 41 Last, we note that, even if the claims against Sally were baseless, a reasonable person could have found sanctions were not warranted in this case for the same reasons stated (1) with regard to David's motion and (2) in explaining the lack of an improper purpose in the previous paragraph.

¶ 42 Accordingly, we conclude the trial court did not abuse its discretion by denying Sally's Rule 137 motion.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the Macon County circuit court's judgment.

¶ 45 Affirmed.