NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 110425-U

Filed 4/3/12

No. 4-11-0425

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

PATRICK O'KEEFE,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Macoupin County
DAVID HAGAN, HELEN HAGAN, ANDREW	)	No. 09LM130
HAGAN and GIRARD AUTO SALES, INC.,	)	
Defendants-Appellees,	)	
and	)	
EDMOND H. REES and BRANDENBURG-REES &	)	Honorable
REES,	)	James W. Day,
Intervenors-Appellees.	)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Turner concurred in the judgment.
Justice Appleton specially concurred.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in denying plaintiff's request for sanctions under Illinois Supreme Court Rule 137.

¶ 2 The sole issue presented in this appeal is whether the trial court abused its discretion by failing to grant Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994) sanctions against defendants, Andrew Hagan, David Hagan, Helen Hagan, and Girard Auto Sales, Inc. (hereinafter referred to as Girard Auto Sales), and their counsel, Edmond H. Rees and Brandenburg-Rees & Rees, in the underlying action. Edmond H. Rees and Brandenburg-Rees & Rees are intervenors in the action. For the reasons that follow, we affirm the trial court's decision.

¶ 3 I. BACKGROUND

¶ 4 In 2004, plaintiff purchased an English Mastiff puppy from a southern Missouri breeder for $1,400. He named the puppy Boomer. On February 22, 2005, plaintiff had the Sangamon County Animal Control embed into Boomer's skin a microchip containing his registration and ownership information.

¶ 5 On June 7, 2009, Boomer escaped from plaintiff's custody. Boomer was not wearing identification tags. According to plaintiff, Boomer had escaped from him on at least three prior occasions. In 2005, Boomer was missing for at least seven weeks.

¶ 6 On June 26, 2009, Girard police sergeant Harold Gist received a call that a stray dog was at the Girard Dollar General. Officer Gist contacted the Macoupin County Animal Control Office concerning the dog, but he did not take the dog to the animal control office to have him scanned for a microchip. Officer Gist then brought the dog to the Girard police station. After receiving a call from David concerning the dog, Officer Gist gave the dog to David's son, Andrew.

¶ 7 In their respective depositions, Helen and David testified that when they initially saw Boomer he was underweight and had fleas. Helen further stated that she did not let Boomer into the family’s home until he was rid of the fleas. Andrew also testified that Boomer was "very dehydrated and in just poor health."

¶ 8 On July 6, 2009, Andrew took the dog to see Duane Chappell, a veterinarian at Auburn Veterinary Service. After examining the dog, the veterinarian rated him as having a body condition score of three out of five. He testified that the score was normal. However, the veterinarian also noted that the dog had hair regrowth over his pelvis from fleas, three "super ball

size lumps" located in his abdomen and chest, and a dry and brittle coat.

¶ 9 Around July 24, 2009, a friend of plaintiff's informed him that Boomer might be at a car dealership in Girard. Subsequently, plaintiff traveled to Girard and spoke with the chief of police, David Campbell, who told him that Boomer might be at Girard Auto Sales. Girard Auto Sales is owned by David and Helen. The next day, plaintiff went to Girard Auto Sales where he saw Boomer; however, no one was present on the premises. On July 26, 2009, plaintiff telephoned David and requested Boomer's return. David told plaintiff that the dog belonged to his son, Andrew, and plaintiff could come to the dealership the following day to discuss the matter with him.

¶ 10 The next day, plaintiff went to Girard Auto Sales to retrieve Boomer. Because Andrew was not present, plaintiff met with David. During the meeting, plaintiff repeatedly demanded the return of Boomer and attempted to show a certificate that he had a microchip embedded in the dog. According to David, plaintiff began using profanities and he asked him to leave. As a result, plaintiff left the premises. David then contacted the Girard police because he was "afraid of [plaintiff] coming back."

¶ 11 While plaintiff was driving home, he was pulled over by police in Virden, Illinois, and told that a Girard police officer would like to speak with him concerning the Hagans. Shortly thereafter, police chief Campbell arrived and accompanied plaintiff back to Girard. Police chief Campbell then contacted Buzie Bertagnolli, Macoupin County's animal control officer, to scan the dog. After arriving at Girard Auto Sales, the animal control officer scanned the dog and confirmed that he was embedded with a microchip. The microchip number from the scanner matched plaintiff's ownership documentation. After receiving the results of the scan,

plaintiff again demanded the return of his dog. The animal control officer told plaintiff that animal control could not transfer possession of the dog, because it was a civil matter. At trial, Andrew and police chief Campbell testified that Andrew offered to return the dog to plaintiff in exchange for the payment of the dog's expenses; however, the testimony concerning the stated amount of the expenses varied from $200 to $600.

¶ 12 On August 3, 2009, plaintiff sent a letter to defendants requesting the return of Boomer and offering to pay for all "necessary expenses" incurred by defendants in caring for Boomer. In the letter, plaintiff threatened to pursue legal recourse if Boomer was not returned by August 5. Defendants did not respond to the letter.

¶ 13 On August 20, 2009, plaintiff filed a four-count complaint against David, Andrew, Girard Auto Sales, and the City of Girard. Count I sought replevin of Boomer from David, Andrew, and Girard Auto Sales. Count II was a conversion claim against David, Andrew, and Girard Auto Sales. Count III was a conversion claim against the City of Girard. Count IV sought damages for intentional infliction of emotional distress from each of the defendants included in the complaint. A hearing was scheduled for September 3, 2009.

¶ 14 On August 26, 2009, plaintiff sent a letter to David demanding the return of Boomer plus damages. In the letter, plaintiff stated that he was unwilling to settle unless he received compensation for his legal fees. The letter provided in relevant part:

> "Through no fault of his own, Mr. O'Keefe has now incurred relatively substantial legal fees, just to pursue lawful relief that is unquestionably due him. For that reason, he is not inclined simply to dismiss the lawsuit against you at this time,

> without some amount of compensation being provided. The opportunity existed on and around August 3 to settle this matter without a demand for compensation, but you rejected that opportunity, and it is too late now."

Defendants did not respond to the letter.

¶ 15 On August 27, 2009, David sent a letter to the trial court requesting that the September 3, 2009, hearing be continued. David was going to be in Ireland for his father's funeral. The hearing was eventually rescheduled for November 2, 2009. At that hearing, defendants requested a continuance. Andrew also filed a motion for leave to file a counterclaim. In the counterclaim, Andrew alleged that plaintiff "abandoned or otherwise gave up ownership of the English Mastiff dog in question." Specifically, Andrew alleged that plaintiff (1) neglected Boomer by failing to provide proper care, food, and water, (2) failed to control and protect Boomer, (3) failed to maintain Boomer on his residential premises, (4) failed to properly provide veterinary care, (5) failed to properly display ownership of Boomer to the public, (6) allowed Boomer to become a community nuisance, and (7) failed to properly recover Boomer when he had an opportunity to do so. Andrew also asked to be declared Boomer's owner. The trial court allowed filing of the counterclaim but denied the motion for a continuance. However, prior to the conclusion of evidence, the judge had to recuse herself and the case was reassigned.

¶ 16 On March 10, 2010, a hearing was held pursuant to section 19-107 of the Code of Civil Procedure (735 ILCS 5/19-107 (West 2008)). Under section 19-107, an order for replevin is authorized if the plaintiff (1) establishes a *prima facie* superior right to possession of the disputed property and (2) demonstrates to the court the probability that the underlying claim to

possession will ultimately prevail on final hearing. *Novak Food Service Equipment, Inc. v. Moe's Corned Beef Cellar, Inc.*, 121 Ill. App. 3d 902, 903, 460 N.E.2d 443, 444 (1984). At the hearing, defendants requested another continuance. The continuance was denied. On March 15, 2010, the trial court held that plaintiff established "a prima facie case to a superior right to possession of Boomer." At that time, the court also granted plaintiff's motion to voluntarily dismiss the City of Girard. Two days later, Boomer was returned to plaintiff.

¶ 17 On April 12, 2010, plaintiff filed an amended complaint adding Helen Hagan as a defendant. The amended complaint also included a claim for civil conspiracy against each of the defendants.

¶ 18 On November 22, 2010, plaintiff filed a motion for partial summary judgment on his claims for replevin, conversion, and civil conspiracy. Defendants did not respond to the motion.

¶ 19 On December 13, 2010, the trial court granted summary judgment to plaintiff on his replevin claim. Andrew withdrew his counterclaim. Plaintiff then voluntarily dismissed his claim for intentional infliction of emotional distress. The following day, the matter proceeded to a jury trial on the conversion and civil conspiracy claims. During closing argument, defendants' attorney, Rees, stated that the Hagans "never intended to actually claim the dog. " At trial, a similar statement of intent was made by Andrew. In his closing argument, Rees also stated that the Hagans dismissed the counterclaim because they "couldn't negotiate." On December 16, 2010, the jury held in favor of defendants on both counts.

¶ 20 On January 14, 2011, plaintiff filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994) against defendants and their counsel. In the motion,

plaintiff urged the court to order defendants and their counsel to pay over $100,000 (including $4,740.63 in costs and $92,817.50 in attorney fees for work performed before the sanctions motion), because Rees proceeded in bad faith by maintaining a defense to plaintiff's replevin action and filing Andrew's counterclaim. In an order dated April 21, 2011 (no transcript of the hearing was provided on appeal), the trial court denied the motion for sanctions. The court entered the following order:

¶ 21 "The court has reviewed 'PLAINTIFF'S RULE 137 MOTION FOR IMPOSITION OF SANCTIONS', plaintiff's supplement, defendants' response, plaintiff's reply to response, all documents attached to the various pleadings and oral argument.

The court finds that the evidence is insufficient to require granting of plaintiff's motion. The plaintiff's rule 137 motion for imposition of sanctions is denied."

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, the only issue raised by plaintiff is whether the trial court erred in denying his motion for sanctions under Rule 137. Plaintiff argues that sanctions should have been imposed because defendants' abandonment argument lacks any basis in fact or law and was made for the improper purpose of harassing plaintiff and delaying Boomer's return.

¶ 25 Rule 137 authorizes the trial court to impose sanctions on a party or attorney for "filing a pleading, motion, or other paper that is not well grounded in fact and warranted by existing law or which has been interposed for any improper purpose." *In re Marriage of Adler*,

271 Ill. App. 3d 469, 476, 648 N.E.2d 953, 957 (1995). "The purpose of Rule 137 is to prevent abuse of the judicial process by penalizing claimants who bring vexatious and harassing actions." *Sundance Homes, Inc. v. County of Du Page,* 195 Ill. 2d 257, 285-86, 746 N.E.2d 254, 271 (2001).

¶ 26 In ruling on a Rule 137 motion, the trial court must determine what was reasonable at the time of filing and should not engage in hindsight. *Lewy v. Koeckritz International, Inc.*, 211 Ill. App. 3d 330, 334, 570 N.E.2d 361, 364-65 (1991). In order to escape sanctions under Rule 137, a party need only present an objectively reasonable argument for their views, regardless of whether they are correct. *Shea, Rogal & Associates, Ltd. v. Leslie Volkswagen, Inc*., 250 Ill. App. 3d 149, 154, 621 N.E.2d 77, 80 (1993).

¶ 27 On review, a trial court's ruling denying a motion for sanctions under Rule 137 should not be reversed absent an abuse of discretion. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487, 693 N.E.2d 358, 372 (1998). 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, 818 N.E.2d 1214, 1222 (2004). An abuse of discretion only occurs when no reasonable person would agree with the trial court's decision. *Benjamin v. McKinnon*, 379 Ill. App. 3d 1013, 1022, 887 N.E.2d 14, 22 (2008).

¶ 28 Plaintiff argues a *de novo* standard of review should apply in this case because the trial court applied a standard other than its sound discretion in denying plaintiff's motion for sanctions. In support of his argument, plaintiff points to the portion of the court's April 21, 2011, order stating that "the evidence is insufficient to require granting of plaintiff's motion." We disagree. The language that plaintiff relies upon is not sufficient to show that the court applied

the wrong standard in denying sanctions.

¶ 29 Given our highly deferential standard of review, we find that the trial court did not abuse its discretion in denying plaintiff's motion for sanctions. After reviewing the record provided in this case (plaintiff failed to provide a transcript of the sanctions hearing), we cannot conclude that no reasonable person would take the view adopted by the trial court. In support of defendants' abandonment claim, Andrew, Helen, and David each testified that when they initially saw Boomer he was underweight and suffering from fleas. Andrew also testified that Boomer was "very dehydrated and in just poor health." Consistent with the Hagans' description of Boomer, the veterinarian who examined Boomer on July 6, 2009, described him as having hair regrowth over the pelvis from fleas and a dry and brittle coat. Although the veterinarian described Boomer's overall health as normal, he also observed that Boomer had three "super ball size lumps" in his abdomen and chest. Moreover, the veterinarian did not examine Boomer until more than a week after Boomer had been in Andrew's care. The evidence shows that when Andrew took in Boomer, he was in need of care.

¶ 30 Plaintiff claims that because of defendants' "machinations," what should have been a simple case took over a year to resolve and cost plaintiff more than $100,000 in attorney fees. Contrary to plaintiff's assertions, both parties contributed to the delay and expense of the proceedings. Neither party was working for a speedy resolution of the issue. Defendants made multiple requests to continue the replevin hearing. However, one of the requests was made because David needed to attend his father's funeral in Ireland. Plaintiff's actions also do not indicate a desire to quickly resolve the case without undue expense. Even after Boomer was returned to plaintiff as a result of the section 19-107 hearing, plaintiff filed a civil conspiracy

claim against each of the defendants. At that time, plaintiff also amended his complaint to add another defendant, Helen.

¶ 31 The information provided in the record on appeal did not show that the trial court abused its discretion in denying plaintiff's motion for sanctions.

¶ 32 III. CONCLUSION

¶ 33 For the foregoing reasons, we affirm the trial court's judgment.

¶ 34 Affirmed.

¶ 35 JUSTICE APPLETON, specially concurring:

¶ 36 I write separately to express my opinion as to the disservice done by both parties' counsel to their respective clients as well as to the legal profession.

¶ 37 Of course, it must first be noted that this matter need not have reached the stage of litigation had either the Girard police officer or the Macoupin County animal control officer exerted some effort to restore Boomer to his rightful legal owner, which is something I believe most police officers would have done, rather than washing his or her hands of the situation because "it's a civil matter."

¶ 38 Plaintiff here was determined, without doubt, to be the rightful owner, and the withholding of his property from him, once true ownership was known and given the value of the dog, was a felony criminal offense. 720 ILCS 5/15-3(c) (West 2010). For the law enforcement authorities to ignore this fact precipitated the entirely avoidable and unnecessary litigation borne by the justice system, the taxpayers of Illinois, and the parties.

¶ 39 Plaintiff, who found his lost beloved pet, should have gratefully reimbursed defendant for the veterinarian expenses incurred by defendant. There is some evidence that he offered to do so and, by doing so, he may have prompted defendants to do the right thing. Defendants had no grounds upon which to withhold possession of Boomer once his true owner was ascertained. Rather than one or both parties doing the right thing, they went to their respective lawyers, girded for a protracted battle.

¶ 40 It has been said lawyers have a duty to their clients and the profession to act reasonably with their clients and with each other. To conduct extensive discovery over the known ownership of a $1,400 dog and generate attorney fees for the trial proceedings alone in

excess of $100,000 is overkill. To file a counterclaim asserting abandonment and consequential ownership of Boomer by defendant for the purpose of a "need to ring this guy's bell" and later say to the court "we never intended to actually claim the dog" creates not only an odor of bad faith pleading but the potential for sanctions pursuant to Illinois Supreme Court Rule 137.

¶ 41 The trial judge here exhibited the patience of Job in the face of these shenanigans. To deny either party any relief except for confirming the ownership of Boomer was to say to counsel for both parties—and to the parties themselves—a pox on all your houses.