

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).

FILED

January 20, 2015
Carla Bender
4th District Appellate
Court, IL

2015 IL App (4th) 140252-U

NO. 4-14-0252

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE CITY OF VIRGINIA,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Cass County
TERRY D. MITCHELL,)	No. 12OV107
Defendant-Appellant.)	
)	Honorable
)	Bob G. Hardwick,
)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's judgment denying defendant's request for sanctions under Illinois Supreme Court Rule 137 (eff. July 1, 2013) is affirmed as the court did not abuse its discretion. Further, the City's request for sanctions under Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) is denied.
- ¶ 2 In March 2011, plaintiff, the City of Virginia, Illinois (City), filed a five-count complaint against defendant, Terry D. Mitchell, alleging violations of the City Code of Virginia (City Code) for failure to register a vacant building and maintaining a nuisance relating to a vacant property located at 220 East Beardstown Street, Virginia, Illinois (the property). On June 20, 2012, the trial court found defendant guilty of the Code violations and ordered him to pay, *inter alia*, \$3,750 in fines. On July 9, 2012, defendant appealed, arguing he was not proved to be the owner of the property during the time period alleged in the City's complaint. *City of Virginia*

v. Mitchell, 2013 IL App (4th) 120629, ¶ 2, 991 N.E.2d 936.

¶ 3 On July 27, 2012, the City filed a second complaint against defendant, alleging defendant was liable for failure to register a vacant building, the property, in violation of the City Code for the period of June 20, 2012, to July 27, 2012. On December 11, 2012, the trial court found in favor of the City but deferred setting the fine owed until the appellate court reached its decision on the appeal from the June 2012 order. On June 28, 2013, this court reversed, finding the City "failed to establish defendant owned, occupied, or possessed the property during the period alleged in the complaint." *Id.* ¶ 37, 991 N.E.2d 936. On December 10, 2013, defendant filed an amended motion to reconsider the December 11, 2012, order and an amended motion for sanctions and attorney fees under Illinois Supreme Court Rule 137 (eff. July 1, 2013). On March 19, 2014, the court vacated its December 11, 2012, order but denied defendant's motion for sanctions and attorney fees. Defendant appealed.

¶ 4 On appeal, defendant argues the trial court erred in denying his motion for sanctions and attorney fees under Rule 137 because (1) the City filed its complaint with an intent merely to harass defendant, to increase his litigation costs, and to delay proceedings; (2) the court relied on invalid reasons in denying his motion; (3) the court's reasoning did not follow logically from the circumstances of the case; and (4) no reasonable person would agree with the court's decision to deny defendant's motion for sanctions and attorney fees. The City requests sanctions under Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994), asserting defendant's appeal is frivolous. We affirm the trial court's denial of defendant's amended motion for sanctions and attorney fees. Further, we deny the City's request for sanctions.

¶ 5

I. BACKGROUND

¶ 6 In March 2011, the City filed a five-count complaint against defendant, alleging he was liable for failure to register a vacant building, the property, and maintaining a nuisance in violation of the City Code. On June 20, 2012, the trial court found defendant guilty of the ordinance violations and ordered him to pay \$3,750 in fines for the violations, \$750 in attorney fees, and the costs of suit. On July 9, 2012, defendant appealed, arguing he was not proved to be the owner of the property during the time period alleged in the City's complaint. *City of Virginia v. Mitchell*, 2013 IL App (4th) 120629, ¶ 2, 991 N.E.2d 936.

¶ 7 On July 27, 2012, the City filed a 37-count complaint against defendant, alleging he was liable for failure to register the property, in violation of the City Code for the period of June 20, 2012, to July 27, 2012. On August 13, 2012, defendant was timely served with a summons and a copy of the complaint. The summons notified defendant he was required to appear and if he failed to do so, a warrant may be issued for his arrest. On August 24, 2012, defendant filed a motion to dismiss or stay and to conduct proceedings by telephone or Internet conference. Defendant's motion (1) alleged deficiencies in the City's complaint, including the failure to include a prayer for a penalty range requested; (2) highlighted the distance between Virginia, Illinois, and where defendant and his attorney resided, Rochelle, Illinois; and (3) indicated if defendant was successful in proving he is not the owner of the property on appeal, the City's 37-count complaint would be moot. On September 25, 2012, the trial court granted defendant's motion to dismiss; however, it also granted the City leave to file an amended complaint *instantly*, which was served upon defendant in open court. The amended complaint included a prayer for relief, asking the court to impose a fine against defendant in the amount of up to \$750 per count, for a total of up to \$27,750 for the 37 counts of failing to register the

property for the period from June 20, 2012, to July 27, 2012. Further, the court denied defendant's motion to stay proceedings and his motion to conduct proceedings by telephone or Internet conference.

¶ 8 On December 11, 2012, a trial was held on the City's amended complaint. The trial court entered judgment in favor of the City, concluding, based on its previous ruling defendant was the owner of the property, the City had met its burden on all 37 counts. The court withheld from setting the fine owed until the appellate court reached its decision on the appeal from the first case. After several continuances, a case-management conference was set for 11:30 a.m. on August 27, 2013.

¶ 9 On June 28, 2013, this court issued an opinion in the first case reversing the trial court's judgment, concluding the City failed to establish defendant owned, occupied, or possessed the property during the period alleged in the complaint. *Mitchell*, 2013 IL App (4th) 120629, ¶ 37, 991 N.E.2d 936. On August 26, 2013, the City filed a timely petition for leave to appeal to the supreme court. The City did not notify defendant of the petition. On that same date, defendant filed a motion to reconsider the December 11, 2012, order and a motion for sanctions and attorney fees pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013).

¶ 10 On August 27, 2013, around 9:20 a.m., the City's attorney appeared before the trial court on an unrelated matter. At this time, the court asked the City's attorney about the scheduled 11:30 a.m. hearing with defendant. The City's attorney indicated a petition for leave to appeal the decision of the appellate court had been filed. The court asked the City's attorney, "as a matter of courtesy," to contact defendant's attorney and notify her not to come to the scheduled conference. The City's attorney sent defendant's attorney an e-mail at 10:30 a.m.,

notifying her of the petition for leave to appeal. As it would take three hours to arrive in Virginia from Rochelle, defendant and his attorney had already left by the time the City's attorney sent the e-mail. Defendant's attorney did not read the e-mail prior to the conference. Defendant and his attorney arrived at the scheduled 11:30 a.m. conference. The City was not present. Defendant's motion to reconsider and motion for sanctions was set for a telephone status conference on a later date. Thereafter, the matter was continued until a decision was made by the supreme court to grant or deny the City's petition. On November 27, 2013, the supreme court denied the City's petition for leave to appeal.

¶ 11 On December 10, 2013, defendant filed an amended motion to reconsider the December 11, 2012, order and an amended motion for sanctions and attorney fees. As to his amended motion for sanctions and attorney fees, defendant alleged the City filed its complaint with (1) the knowledge that it was not well grounded in fact and (2) the improper purpose of harassing defendant and increasing his litigation costs. (On appeal, defendant does not argue the complaint was not well grounded in fact.) Defendant presented several instances of conduct that he argued demonstrated the complaint was filed for an improper purpose, including (1) the City's attorney stated to defendant he would "ruin" him through the litigation process; (2) the City filed the complaint regardless of the fact a reversal of the case on appeal would render the present case moot, thereby potentially increasing litigation costs; (3) the conduct of the City's attorney on August 27, 2013; (4) the City threatened arrest in the summons; and (5) the City's repeated demands to collect fees outside the litigation process.

¶ 12 On March 19, 2014, the trial court heard argument on defendant's motions. Based on the appellate court's ruling, the court vacated its December 11, 2012, order. As to defendant's

¶ 16

A. Rule 137

¶ 17

"Rule 137 allows a court to impose sanctions against a party or attorney who files a pleading which is not well grounded in fact, is not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, or is interposed for any improper purpose." *Pritzker v. Drake Tower Apartments, Inc.*, 283 Ill. App. 3d 587, 590, 670 N.E.2d 328, 330 (1996). Specifically, Rule 137 provides, in relevant part:

"Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated.

*** 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 document 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 document, including a reasonable attorney fee." Ill. S. Ct. R. 137 (eff. July 1, 2013).

The purpose of Rule 137 is to prevent the filing of false and frivolous lawsuits without a factual or legal foundation. *Elledge v. Reichert*, 250 Ill. App. 3d 1055, 1059, 620 N.E.2d 543, 547 (1993). The purpose is not to penalize litigants and their attorneys because they were unsuccessful in pursuing an action. *Elledge*, 250 Ill. App. 3d at 1059, 620 N.E.2d at 547. "The standard to be used in determining whether a [Rule 137] violation has occurred is an objective standard of what was reasonable under the circumstances existing at the time of the filing." *Elledge*, 250 Ill. App. 3d at 1060, 620 N.E.2d at 547. The party bringing a motion for Rule 137 sanctions bears the burden of proof. *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 243, 732 N.E.2d 1129, 1134 (2000).

¶ 18 The decision whether to impose or deny Rule 137 sanctions rests in the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *Elledge*, 250 Ill. App. 3d at 1060, 620 N.E.2d at 547. An abuse of discretion occurs where the trial court "acted arbitrarily, without employing conscientious judgment, or whether, in view of all the circumstances, the court exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." *State Farm & Casualty Co. v. Levertton*, 314 Ill. App. 3d 1080, 1083, 732 N.E.2d 1094, 1096 (2000). "A trial court exceeds its discretion on sanctions only where no reasonable person would take the view adopted by it." *American Service Insurance v. Miller*, 2014 IL App (5th) 130582, ¶ 13, 20 N.E.3d 476. "When reviewing a decision on a motion for sanctions, the primary consideration is whether the trial court's decision

was [(1)] informed, [(2)]based on valid reasoning, and [(3)] follows logically from the facts."

Technology Innovation Center, Inc., 315 Ill. App. 3d at 244, 732 N.E.2d at 1134.

¶ 19 B. Trial Court's Ruling

¶ 20 1. *Was the Trial Court's Decision Informed?*

¶ 21 Defendant concedes the trial court's decision was properly informed. We likewise conclude the court's decision was an informed one as the court conducted an evidentiary hearing on the issue and made a detailed oral ruling addressing defendant's arguments.

¶ 22 2. *Was the Trial Court's Decision Based on Valid Reasoning?*

¶ 23 Defendant asserts the trial court's decision to deny his motion was not based on valid reasons. We disagree.

¶ 24 Defendant contends the trial court improperly relied on "nonexistent testimony of some kind of fraud involving one Leo Reich" and testimony of Luke Swan that was never given at the hearing in denying his motion. The record of the sanctioning hearing does not contain any testimony about the fraud involving Leo Reich or testimony from Luke Swan. However, the trial judge, in commenting on defendant's lack of credibility, referred to defendant's admission in a prior hearing to participating in a fraud with Reich to conceal property from Reich's wife. At that same hearing, the trial judge heard testimony from Swan, who stated defendant never informed him the property was in violation of the City Code prior to his conveyance of the property to Swan. This testimony is referenced in this court's prior opinion. See *Mitchell*, 2013 IL App (4th) 120629, ¶ 10, 991 N.E.2d 936. In effect, the court was taking judicial notice of evidence it previously heard in proceedings involving the same issues and the same parties when assessing defendant's credibility. Moreover, although the court mentioned defendant's admission

of participation in a fraud with Reich and the prior testimony of Swan, the record indicates the court relied primarily on defendant's prior conviction in discrediting his testimony, stating, "[s]o I have got lack of good character on behalf of [defendant], and that's evident by the fact that he's a convicted felon, so I am going to believe [the City's attorney]," who the court stated was an attorney who was sworn to tell the truth.

¶ 25 Defendant further alleges the trial court improperly discredited his testimony based on his previous felony conviction because defendant testified his guilty plea was obtained under duress. Defendant presents no authority for the proposition the trial judge was required to rely on defendant's self-serving testimony when no other evidence was presented to dispute his conviction.

¶ 26 Defendant also contends the trial court improperly denied his motion based on the judge's prior determination in December 2012 the City's complaint was well grounded in fact, rather than any finding plaintiff's complaint actually complied with Rule 137. Contrary to defendant's argument, although the court mentioned its previous finding the City's complaint was well grounded in fact, it made this finding a second time after hearing all of the evidence presented and when considering whether Rule 137 sanctions were appropriate and stated, "[w]hat [defendant] may consider harassment, another party could consider trying to attempt to collect a debt, so I do think the complaint was well grounded in fact, and the whole purpose was not to harass [defendant]."

¶ 27 Defendant alleges the trial court improperly denied his motion based on a finding the *ex parte* conversation between the judge and the City's attorney on December 27, 2013, was appropriate because it related to scheduling. Illinois Supreme Court Rule 63(A)(5)(a) (eff. July

1, 2013) permits a judge to consider *ex parte* communications for "scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues," provided "the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication" and "the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication and allows an opportunity to respond." Here, after asking about the 11:30 a.m. conference for scheduling purposes, the court was informed counsel had filed a petition for leave to appeal. The court asked the City to inform defendant of the same. Therefore, the court properly found the *ex parte* communication was appropriate as it was solely for scheduling purposes. Moreover, at the hearing on defendant's motion, the court separately addressed whether the failure of the City to properly inform defendant of the petition was sanctionable, concluding it was not.

¶ 28 Finally, defendant alleges the trial court improperly denied his motion based on the judge's irritation at being reversed. Although the judge compared the appellate court's reasoning with his own, this was after the court addressed the "sanctionable" conduct defendant raised. It was done to recount the evidence the court relied on when finding defendant was in violation of the City Code and in turn to demonstrate the complaint was brought in good faith. Nothing demonstrates the court denied Rule 137 sanctions based on being reversed. Therefore, the court's decision to deny defendant's motion for sanctions was based on valid reasons.

¶ 29 *3. Did the Trial Court's Decision Follow Logically From the Facts?*

¶ 30 Defendant asserts the trial court's decision did not follow logically from the facts. Based on the court's decision and the evidence the court had before it, we disagree.

¶ 31 Defendant first argues the trial court's decision did not follow logically from the

facts for the same reasons highlighted above in subsection (2). As addressed above, we have held those specific findings were appropriate. Defendant further argues the court's decision, in essence, did not follow logically from the facts as no reasonable person would adopt the court's finding the City did not file its complaint for an improper purpose. Defendant argues the evidence in the record, when taken together, indicates the City filed its complaint with the intent to harass defendant, increase the cost of litigation, and delay proceedings.

¶ 32 Defendant asserts the following incidents of conduct indicate an improper purpose for filing the complaint: (1) after the defendant appealed the trial court's decision in the first case, the City filed a 37-count complaint against defendant, alleging he was liable for failure to register a vacant building in violation of the City Code for the period of June 20, 2012, to July 27, 2012, with a potential fine of up to \$27,750; (2) the original complaint was poorly drafted despite the City attorney's years of experience in prosecuting ordinance violations; (3) the summons contained improper language a warrant may be issued if defendant failed to appear; (4) the City made multiple oral and written demands for money during the course of the pending proceedings; (5) the City demanded payment for time periods not referenced in the City's complaints; (6) defendant's testimony indicated the City's attorney asserted if defendant paid \$500 it would "clear it all," only to accept payment and then file suit; (7) defendant faced health problems, missed work, and ultimately lost his job due to the ongoing litigation; (8) defendant's testimony indicated the City's attorney asserted he would "ruin" him through litigation; (9) the City made no effort to inform defendant of the "last-minute" petition for leave to appeal to the supreme court; and (10) after the City's attorney had an *ex parte* communication with the court, informing it he filed a petition for leave to appeal and would not be in court for a scheduled

conference with defendant, it failed to notify defendant, leading defendant to incur attorney fees and costs for traveling to the scheduled conference.

¶ 33 In response, the City contends the trial court properly concluded its complaint was not interposed for an improper purpose. The City addresses several of the instances of conduct defendant argues should have led the court to grant sanctions and attorney fees. Those include the following: (1) the City filed the 37-count complaint because it faced significant safety concerns as defendant was leaving the property, which contained an open underground well that posed a risk of injury, vacant and accessible; (2) any deficiencies in a summons are not chargeable to the City or its attorney under Rule 137 as neither could sign the summons, and regardless, the summons issued was simply advising defendant of the contents of Illinois Supreme Court Rule 575(b) (eff. Dec. 7, 2011) ("In the event the defendant fails to appear at any proceeding for which the Court has not excused the defendant's appearance, an arrest warrant may issue, or default judgment may be entered."); (3) the billing statements were properly sent as the court had previously determined defendant to be the owner of the property; (4) the court properly weighed the credibility of the testimony and the witnesses during the hearing on defendant's motion, finding the City attorney's testimony to be more credible than that of a convicted felon, and gave little weight to defendant's self-serving allegation his conviction was based on duress; and (5) its failure to appear at the one scheduled conference on August 27, 2013, did not support sanctions considering the various instances of professional courtesies extended to defendant's attorney throughout the course of the proceedings.

¶ 34 On appeal, defendant appears to have modified his original argument put forth at the trial court as to how the evidence indicates the City filed its complaint with an improper

purpose. Defendant's amended motion for sanctions and attorney fees, as well as his oral argument during the hearing on the motion, appears to allege several instances of conduct each of which would be sufficient to demonstrate an improper purpose. In its oral ruling, the court addressed each incident of conduct in turn, finding each incident did not warrant sanctions. On appeal, defendant modifies his argument, contending while each individual incident of conduct might not merit sanctions, when taken together, they indicate the City filed its complaint for an improper purpose. Whether we consider each incident of conduct in turn, or all incidents of conduct in the aggregate, we find the court's decision followed logically from the facts and was not an abuse of discretion.

¶ 35 After reviewing the record and considering the arguments on appeal, we conclude only one incident of conduct, by itself, merits our consideration. On August 26, 2013, the City filed a petition for leave to appeal. It is clear the City was aware of the distance defendant and his attorney had to travel to attend court. It is also clear the City was aware of a scheduled conference at 11:30 a.m. on August 27, 2013. The City further knew, or should have known, the trial court would not take further action while there was a pending petition for leave to appeal. The City did not inform defendant of the petition on August 26, 2013. Moreover, even though the City sent an e-mail notifying defendant of the petition one hour prior to the scheduled conference at 10:30 a.m. on August 27, 2013, the City knew, or should have known, defendant and his attorney would have already been in transit to court. While the court had the discretion to impose sanctions based on the City's actions on these dates, it instead found the City's attorney's conduct was discourteous, but sanctions were not merited.

¶ 36 Although the trial court could have imposed sanctions for the City's conduct in

this regard, that is not the question on appeal. On appeal, we must ask whether the trial court abused its discretion in denying sanctions. Defendant has the burden to prove a reasonable person would not take the view adopted by the court. Defendant has failed to meet this burden. The court was in the best position to observe the demeanor and conduct of the parties and then evaluate and determine whether, on balance, sanctions were warranted. The court, aware of the entire history of the case, found this single instance of conduct to be insufficient to warrant sanctions. That decision does not constitute an abuse of the court's discretion.

¶ 37 Moreover, even if we look at the cumulative effect of all the instances of conduct, defendant has failed to demonstrate the trial court abused its discretion in denying his motion for sanctions and attorney fees. Defendant has failed to demonstrate no reasonable person would take the view adopted by the court. Again, the trial court was in the best position to observe the demeanor and conduct of the parties and make a determination of whether, on balance, the City filed its complaint for an improper purpose. Therefore, we find the court's decision followed logically from the facts and was not an abuse of discretion.

¶ 38 C. Rule 375 Sanctions Against Defendant

¶ 39 The City contends defendant's appeal is frivolous and sanctions should be imposed under Illinois Supreme Court Rule 375 (eff. Feb. 4, 1994). Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) allows this court to impose sanctions "[i]f, after consideration of an appeal or other action pursued in a reviewing court, it is determined that the appeal or other action itself is frivolous." Further, "[a]n appeal *** will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994).

In determining whether an appeal is frivolous, we apply an objective standard to determine whether a reasonable, prudent attorney would have brought the case in good faith. *Dreisilker Electric Motors, Inc. v. Rainbow Electric Co.*, 203 Ill. App. 3d 304, 312, 562 N.E.2d 970, 974 (1990).

¶ 40 On appeal, defendant requests this court make a factual determination of whether, when considering several incidents of conduct in the aggregate, the trial court abused its discretion in finding the City did not file its complaint for an improper purpose. Although faced with an arduous abuse-of-discretion standard on appeal, given the evidence presented, we do not find defendant's argument on appeal to be lacking to such a degree as to warrant being labeled frivolous. Therefore, we deny the City's request for sanctions to be imposed against defendant.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the trial court's denial of defendant's motion for sanctions and attorney fees as the court did not abuse its discretion. We deny the City's request for sanctions under Rule 375.

¶ 43 Affirmed.