NOTICE
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2015 IL App (4th) 140264-U

NO. 4-14-0264

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 17, 2015
Carla Bender
4th District Appellate
Court, IL

SEAN YOUNGBLOOD,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	McLean County
ATTORNEY RORY McGINTY and THE LAW	)	No. 14L24
OFFICE OF RORY McGINTY,	)	
Defendants-Appellees,	)	
and	)	
ATTORNEY THOMAS HOWARD and THE LAW	)	Honorable
OFFICE OF HOWARD & HOWARD,	)	Paul G. Lawrence,
Defendants.	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court dismissed the appeal for lack of jurisdiction and awarded defendants sanctions pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994).

¶ 2 In March 2014, plaintiff, Sean Youngblood, filed a complaint alleging defamation *per se* and "false light *per se*" against defendants, attorney Rory McGinty and his law office. Later that month, defendants filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137(b) (eff. July 1, 2013). Following a hearing, the trial court granted defendants' motion but deferred calculating the amount of the sanctions until such time as defendants filed a fee petition.

¶ 3 On appeal, plaintiff argues the trial court erred by granting defendants' Rule 137 motion for sanctions. While plaintiff's appeal was pending, defendants filed in this court a

motion for sanctions pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994). We dismiss the appeal and award defendants sanctions under Rule 375(b).

¶ 4 I. BACKGROUND

¶ 5 On March 3, 2014, plaintiff and his wife, Kira Youngblood, *pro se* filed a complaint alleging defendants made tortious statements during a hearing before the United States Bankruptcy Court for the Central District of Illinois, in which Kira was the debtor. (Kira is not a party to this appeal as she did not sign the notice of appeal.) Specifically, plaintiff's complaint alleged defendant McGinty made statements to the bankruptcy court that were defamatory (count III) and placed plaintiff in a false light (count IV). (In counts I and II of the complaint, plaintiff filed similar claims against attorney Thomas Howard and his law firm. Plaintiff's claims against Howard and his firm are not at issue in this appeal.)

¶ 6 Plaintiff based counts III and IV on two statements made by defendant McGinty in response to questioning from one of Kira's creditor's attorneys, requesting McGinty describe previous and ongoing state-court litigation between Kira's towing company and one of its competitors, who was McGinty's client. In the first statement, defendant McGinty was describing a citation proceeding during which plaintiff "burst" into a conference room in which Kira was being questioned, said "this is finished," and was escorted out of the room by a court deputy. (The citation proceeding was in relation to an order granting sanctions in a previous state-court action against Kira's towing company, which was the basis for Kira's bankruptcy filing.) Plaintiff stated this allegation was false and imputed the commission of a felony, disorderly conduct (720 ILCS 5/26-1 (West 2012)). In the second statement, defendant McGinty was describing one count of a complaint filed in April 2012 by his client against Kira's towing company and plaintiff, among others. Defendant McGinty explained count III of the April 2012

complaint was based on a video posted to Kira's towing company's Facebook page, which featured plaintiff and "show[ed] individuals wearing Joe's Towing uniforms, using Joe's Towing trucks, committing violent acts towards [*sic*] customers." Plaintiff asserted no such video existed and defendant McGinty's statement implied the commission of a felony, aggravated assault (720 ILCS 5/12-2 (West 2012)). Additionally, plaintiff alleged these statements placed him and Kira in a false light and prejudiced Kira's bankruptcy case.

¶ 7 That same day, defendants sent a letter to plaintiff informing him his complaint was brought in violation of Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)). Defendants' letter informed plaintiff Rule 137 required him, before signing and filing his complaint, to conduct a reasonable inquiry to determine whether it was well-grounded in fact and warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. In their letter, defendants informed plaintiff his claims were barred by the "absolute litigation privilege," which allows an attorney, party, or witness to publish defamatory matter concerning another during the course of a judicial proceeding as long as it has some relation to the proceeding. Defendants provided citations to the Restatement (Second) of Torts and several cases in which courts had found an absolute privilege for relevant statements made during judicial proceedings. Defendants asserted a reasonable inquiry as required by Rule 137 would have informed plaintiff his complaint was not warranted by existing law and urged plaintiff to dismiss his complaint, warning they would seek sanctions under Rule 137 if he did not do so. Later that day, by e-mail, plaintiff informed defendants he would not withdraw his complaint and would pursue it until he succeeded in court.

¶ 8 On March 20, 2014, defendants filed a motion for sanctions pursuant to Rule 137. Plaintiff filed a response to defendants' Rule 137 motion. Plaintiff's response contains a file

stamp indicating it was filed on March 19, 2014, and defendants' motion contains a file stamp indicating it was filed March 20, 2014. During the March 28, 2014, hearing on defendants' motion, defendants' attorney explained he and plaintiff, as a matter of course, had been serving each other with pleadings "through normal means," as well as by e-mail. Therefore, plaintiff had a copy of defendants' Rule 137 motion before it was filed with the circuit clerk.

¶ 9 On March 28, 2014, the trial court held a hearing on defendants' Rule 137 motion. Following this hearing, the court entered a written order granting defendants' motion. The court found plaintiff's claims against defendants were barred by the absolute litigation privilege, as defendant McGinty's statements were related to the bankruptcy proceedings. As part of its order, the court reserved ruling on the specific sanctions to be imposed until defendants filed a fee petition. In other words, the court found sanctions were appropriate but did not set the amount which plaintiff would be required to pay. As no motion to dismiss had been filed by defendants, the court's order did not dismiss plaintiff's complaint.

¶ 10 This appeal followed. In April 2014, after plaintiff filed his notice of appeal, defendants sent a letter to plaintiff informing him they would seek sanctions pursuant to Rule 375(b) (Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994)) if he did not dismiss his appeal without further proceedings. The letter asserted plaintiff's claims on appeal were (1) not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; (2) frivolous; and (3) filed with the purpose of delaying, harassing, or causing needless expense to defendants.

¶ 11 In September 2014, having received no response to the letter from plaintiff, defendants filed in this court a motion pursuant to Rule 375(b), seeking sanctions against plaintiff for pursuing a frivolous appeal. We ordered defendants' motion to be taken with the

case. Later that month, plaintiff filed a "motion to quash defendants['] motion for Rule 375 sanctions," which we have treated as plaintiff's response to defendants' Rule 375(b) motion.

¶ 12 II. ANALYSIS

¶ 13 On appeal, plaintiff contends the trial court erred by granting defendant's motion for Rule 137 sanctions. Specifically, plaintiff contends the court erred where (1) its findings were "false"; (2) defendants' Rule 137 motion "was not per Illinois civil procedure"; (3) the court's finding "was not part of defendants' argument"; and (4) his complaint was well grounded in fact and "the absolute immunity privilege was wrongfully applied to defendants." However, we must first address our jurisdiction to consider plaintiff's appeal.

¶ 14 A. Jurisdiction

¶ 15 Plaintiff's notice of appeal asserts his appeal was brought pursuant to Illinois Supreme Court Rule 304(b)(5) (eff. Feb. 26, 2010). In his brief, plaintiff asserts this court has jurisdiction pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). In a later filing to this court, plaintiff asserted this court had jurisdiction over the matter under Illinois Supreme Court Rule 303 (eff. June 4, 2008). Accordingly, we will analyze this case under both Rules 303 and 304 to determine whether we have jurisdiction over plaintiff's appeal.

¶ 16 Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) provides a final judgment of the trial court is appealable as of right. The appeal is commenced by filing the notice of appeal. *Id.* Rule 303 provides the notice of appeal must be filed within 30 days of the final judgment or order disposing of a timely filed postjudgment motion. Ill. S. Ct. R. 303(a) (eff. June 4, 2008).

¶ 17 "A final order or judgment is a determination by the [trial] court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties to the litigation." *Naperville South Commons, LLC v. Nguyen*, 2013 IL App (3d) 120382,

¶ 14, 995 N.E.2d 534. Stated differently, "[a] judgment is final if it determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with execution of the judgment." *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501, 504-05, 916 N.E.2d 886, 889 (2009).

¶ 18 In this case, we have no final judgment before us. At this time, plaintiff's complaint remains pending in the trial court, as defendants have yet to file their motion to dismiss. Additionally, while the trial court granted defendants' Rule 137 motion, it did not fix the parties' rights such that the only thing remaining is to proceed with execution of the judgment. Here, the court's order does not set the amount of sanctions that has been awarded to defendants; rather, the order expressly deferred the matter of monetary or other sanctions and the entry of an order setting forth the basis of the sanctions. We liken these circumstances to a case in which an order finds a defendant liable but does not fix the amount of damages. Such orders are neither final nor appealable. See *Lindsey v. Chicago Park District*, 134 Ill. App. 3d 744, 746, 481 N.E.2d 58, 60 (1985) ("Here the trial court found that defendants were liable for terminating plaintiff without a hearing, but specifically reserved the issue of damages for later determination. *** Thus, *** the trial court's order was not a final order and was not appealable ***.").

¶ 19 In his brief, plaintiff asserts we have jurisdiction under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). Rule 304(a) provides, in pertinent part:

> "If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims *only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both*. *** In

> the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties." (Emphasis added.) Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

¶ 20 In this case, plaintiff's action contained multiple claims against multiple parties. Defendants' Rule 137 motion was one such claim. See Ill. S. Ct. R. 137(b) (eff. July 1, 2013) (proceedings under Rule 137 "shall be considered a claim within the same civil action"). As discussed above, the trial court's March 28, 2014, order granting defendants' Rule 137 motion but deferring the determination of specific sanctions is not a final judgment on that claim. Neither did the court enter an express written finding that there was no just reason to delay enforcement or appeal or both. Consequently, we conclude this court does not have jurisdiction under Rule 304(a).

¶ 21 Having found we lack jurisdiction under subsection (a) of Rule 304, we will address whether we have jurisdiction pursuant to subsection (b). In his notice of appeal, plaintiff asserted this court has jurisdiction to hear his appeal under Rule 304(b)(5). Subsection (b)(5) provides:

> "(b) Judgments and Orders Appealable Without Special Finding. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:
>
> * * *

(5) An order finding a person or entity in contempt of court which imposes a monetary or other penalty." Ill. S. Ct. R. 304(b)(5) (eff. Feb. 26, 2010).

¶ 22 In this case, the trial court's order granting defendants' Rule 137 motion did not find plaintiff in contempt of court or impose a monetary or other penalty. Rather, the court's order found only that plaintiff was liable to defendant for sanctions pursuant to Rule 137. Accordingly, we conclude we do not have jurisdiction to hear plaintiff's appeal under Rule 304(b)(5).

¶ 23 Defendant has not asserted any other basis for our jurisdiction and has therefore forfeited any such argument. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived ***."). Seeing no other basis on which we may exercise jurisdiction, we dismiss plaintiff's appeal.

¶ 24 B. Defendants' Motion for Appellate Sanctions

¶ 25 While this appeal was pending, defendants filed a motion in this court for sanctions pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994). In *Gilkey v. Scholl*, 229 Ill. App. 3d 989, 993, 595 N.E.2d 183, 186 (1992), the Second District held the appellate court may address the issue of sanctions even though an appeal has been dismissed for want of jurisdiction. Thus, we will address defendants' motion for appellate sanctions despite our dismissal of plaintiff's appeal.

¶ 26 "Supreme Court Rule 375 states if an appeal is frivolous, not taken in good faith, or taken for a[n] improper purpose such as to harass or to cause unnecessary delay or needless increase in the costs of litigation, an appropriate sanction may be imposed upon any party or the attorney of the party." *Penn v. Gerig*, 334 Ill. App. 3d 345, 356, 778 N.E.2d 325, 335 (2002).

Under Rule 375(b), an appeal is 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.' " *Id.* at 356-57, 778 N.E.2d at 335 (quoting Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994)). In determining whether an appeal is frivolous, we employ an objective standard. *Id.* at 357, 778 N.E. 2d at 335. We ask whether the appeal would have been brought in good faith by a reasonable, prudent attorney. *Id*.

¶ 27 Here, it would have been readily apparent to a reasonable, prudent attorney that no basis existed to challenge the trial court's order granting defendants' Rule 137 motion. Upon even the most cursory inquiry, a reasonable attorney would have determined that (1) plaintiff's underlying claim against defendants lacked any factual and legal merit, and (2) the trial court's order finding sanctions appropriate in this case was not error.

¶ 28 It is well established that statements made during the course of litigation, regardless of their truthfulness, are absolutely privileged where the statement has some relation to the proceedings. See, *e.g.*, *McDavitt v. Boyer*, 169 Ill. 475, 482, 48 N.E. 317, 319 (1897); *Hartlep v. Torres*, 324 Ill. App. 3d 817, 819, 756 N.E.2d 371, 373 (2001). "[A]nything said or written in a legal proceeding, including pleadings, is protected by an absolute privilege against defamation actions, subject only to the qualification that the words be relevant or pertinent to the matters in controversy." *Defend v. Lascelles*, 149 Ill. App. 3d 630, 633, 500 N.E.2d 712, 714 (1986). The absolute privilege has been extended to apply in actions alleging false light invasion of privacy. *Kurtz v. Hubbard*, 2012 IL App (1st) 111360, ¶ 11, 973 N.E.2d 924. Illinois courts have relied upon the Restatement (Second) of Torts (1977) when determining the scope of the absolute privilege. *Bushell v. Caterpillar, Inc.*, 291 Ill. App. 3d 559, 561, 683 N.E.2d 1286, 1288 (1997). Section 588 of the Restatement (Second) of Torts provides, "A witness is

absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding or as part of a judicial proceeding in which he is testifying, if it has some relation to the proceeding." Restatement (Second) of Torts § 588 (1977).

¶ 29 In this case, counts III and IV were based upon statements made by defendant McGinty while acting as a witness in bankruptcy proceedings. Defendant McGinty was called as a witness for the purpose of authenticating documents before the bankruptcy court and explaining the previous and ongoing state-court litigation between plaintiff's wife and one of her creditors, which was the basis for a motion for sanctions in the bankruptcy court. The absolute litigation privilege would bar any action for defamation or false light invasion of privacy based upon these statements.

¶ 30 Plaintiff contends the absolute litigation privilege does not apply to defendant McGinty's testimony because the alleged defamatory statements were not relevant to the proceedings.

¶ 31 In *Hartlep*, the appellate court concluded the absolute litigation privilege applied where a witness's allegedly defamatory statement was made in reply to question put to the witness by counsel or the court. *Hartlep*, 324 Ill. App. 3d at 820, 756 N.E.2d at 374; see also Restatement (Second) of Torts § 588, Committee Comments (1977) ("If the defamatory matter is published in response to a question put to the witness by either counsel or by the judge, that fact is sufficient to bring it within the protection of the privilege, notwithstanding the fact that it is subsequently adjudged to be inadmissible."). The transcript from the bankruptcy proceedings attached to plaintiff's complaint shows defendant McGinty's allegedly defamatory statements were made in response to a line of questioning from one of the creditors' attorney, in which

defendant McGinty was asked to describe previous and ongoing state-court litigation. Further, plaintiff's wife's attorney did not object to McGinty's alleged defamatory testimony on the grounds of relevance. In fact, the bankruptcy court referred to defendant McGinty's testimony regarding the previous and ongoing state-court litigation throughout its opinion. (The bankruptcy court's opinion does not appear in the record but is available at http://www.ilcb.uscourts.gov/sites/ilcb/files/opinions/youngbloodopinion.pdf.) Accordingly, we conclude defendant McGinty's statements were relevant to the proceedings.

¶ 32 Plaintiff also argues the absolute litigation privilege does not apply where, as here, the witness abuses the privilege. Plaintiff asserts he is left with no protection from defendant McGinty's abuse of the absolute litigation privilege, which includes defendant McGinty's "lies" and "vicarious/malicious prosecution against them." Plaintiff cites no case law in support of his position and, thus, his contention is forfeited. See *In re Marriage of Parr*, 345 Ill. App. 3d 371, 380, 802 N.E.2d 393, 401 (2003) (failure to cite authority in support of an argument on appeal forfeits review of the issue). Further, our research has revealed no such "abuse" exception to the absolute litigation privilege.

¶ 33 Moreover, to the extent plaintiff is concerned about a lack of protection from defendant McGinty's "abuse" of the absolute litigation privilege, we note the absolute litigation privilege does not allow a witness to lie to the trial court without consequence. See *Bushell*, 291 Ill. App. 3d at 564, 683 N.E.2d at 1289. The privilege does not preclude prosecution *by the appropriate entity* (*i.e.*, the United States' Attorney's office or the State's Attorney's office) for perjury or subornation of perjury. See *id.*

¶ 34 Finally, plaintiff contends defendants prematurely filed their Rule 137 motion. Specifically, plaintiff contends defendants were required to first "answer the *** [c]omplaint,

then file their 2-615 and 2-619 motions, then file a Rule 137 [s]anction motion." On this point, we find *Kellett v. Roberts*, 276 Ill. App. 3d 164, 170-72, 658 N.E.2d 496, 501-02 (1995), instructive. In *Kellett*, the appellate court rejected a similar argument, explaining:

> "To accept [the defendants'] position would preclude the filing of the motion for sanctions until after the frivolous proceedings had been finally terminated. Such an interpretation would further delay the timely disposition of frivolous matters, increase the cost of litigation, and constitute an inefficient use of judicial resources. [The defendants'] interpretation of the rule provides a remedy that is neither plain, nor speedy, nor efficient. We cannot contemplate that the supreme court could have intended such a result." *Id.* at 171, 658 N.E.2d at 502.

¶ 35 We likewise conclude to adopt plaintiff's position would frustrate the purpose of Rule 137, which is to ensure the prompt disposition of frivolous matters. To require defendants to proceed as plaintiff sees fit would unnecessarily increase the cost of litigation and constitute an inefficient use of judicial resources. Instead of quickly disposing of plaintiff's frivolous claims, defendants would be required to answer the complaint and file a motion to dismiss prior to addressing the patent and facial frivolity of plaintiff's complaint. These steps would cost defendants additional time and money and expend ever-valuable judicial resources. We decline to adopt this position.

¶ 36 As demonstrated herein, plaintiff's complaint was not well-grounded in fact and warranted by existing law. The alleged defamatory statements were relevant to the bankruptcy proceedings and the absolute litigation privilege barred any suit based on those statements.

Thus, the trial court acted within its discretion in awarding sanctions under Rule 137 to defendants, as a reasonable inquiry would have informed plaintiff his complaint lacked a legal basis and factual support. Likewise, we find no reasonable, prudent attorney would have brought this appeal, as plaintiff's challenge to the trial court's order granting defendants' Rule 137 motion was not well-grounded in fact or warranted by law. Accordingly, we grant defendants' motion for sanctions and direct defendants to file a statement of reasonable expenses and attorney fees incurred as a result of this appeal within 14 days. Plaintiff shall then have seven days to file a response. This court will then file a supplemental order determining the amount of sanctions. See *Gerig*, 334 Ill. App. 3d at 357, 778 N.E.2d at 336.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we dismiss plaintiff's appeal. Additionally, we grant defendants' motion for sanctions filed in this court pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994).

¶ 39 Appeal dismissed.