2012 IL App (5th) 110340-U

NO. 5-11-0340

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

GARY L. WIEDLE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Marion County.
	)	
v.	)	No. 07-CH-35
	)	
ROBERT J. BARTON and KRISTINE BARTON,	)	Honorable
	)	Michael D. McHaney,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Donovan and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court denying the plaintiff's motion for summary judgment and granting the defendants' motion for summary judgment is proper as a matter of law because there is no genuine issue of fact as to whether the defendants entered into an oral contract for the transfer of mineral rights to the plaintiff. Additionally, the trial court did not abuse its discretion in deciding that the defendants did not make judicial admissions or in granting Rule 137 sanctions against the plaintiff and his attorney. Finally, the trial court properly struck the three affidavits attached to the plaintiff's motion to strike.

¶ 2 This case involves the claim of the plaintiff, Gary L. Wiedle, that the defendants, Robert J. Barton and Kristine Barton, made an oral agreement through the plaintiff's real estate agent to transfer to the plaintiff the mineral rights underlying a parcel of real estate that the plaintiff purchased from the defendants in 1996. The plaintiff filed his first complaint on March 30, 2007, almost 11 years after he purchased the real estate. On March 26, 2008, the trial court dismissed the plaintiff's

second amended complaint with prejudice. This court affirmed that dismissal as to three counts of the second amended complaint and reversed as to count IV, which alleged the imposition of a constructive trust. See *Wiedle v. Barton*, No. 5-08-0189 (2010) (unpublished order under Supreme Court Rule 23).

¶ 3 On remand, the trial court granted the defendant's motion for summary judgment, finding that the right of the defendants to judgment as a matter of law was "totally, completely and overwhelmingly free from any doubt." In the same order, filed on April 29, 2011, the court denied the plaintiff's motion for summary judgment, which was based on the plaintiff's argument that, before the first appeal, the defendants had made binding judicial admissions during the course of filing and arguing various motions to dismiss. The court denied the plaintiff's motion for summary judgment because it determined that the statements referred to and relied upon by the plaintiff were not judicial admissions. On July 18, 2011, the court granted the defendants' motion for sanctions pursuant to Supreme Court Rule 137 (eff. Feb. 1, 1994) and entered a judgment in favor of the defendants and against the plaintiff and his attorney jointly and severally in the amount of $5,196.50. This appeal followed.

¶ 4 BACKGROUND

¶ 5 After the trial court dismissed with prejudice the plaintiff's second amended complaint, this court found that in count IV, the plaintiff had sufficiently pled a constructive trust that avoided the application of the statute of limitations. *Wiedle*, No. 5-08-0189, order at 11. On remand, in the remaining count of the complaint, the plaintiff alleged that, during the negotiations for his purchase, the defendants represented that they did not own but might be able to acquire the mineral rights underlying the property. The plaintiff alleged that he instructed his real estate agent,

Kenneth Bauer, to suspend negotiations for the purchase of the property until Bauer could obtain an agreement from the defendants to convey to the plaintiff the mineral rights if they ever acquired them. The plaintiff further alleged that Bauer later told him that the defendants had agreed to use their best efforts to obtain the release of the mineral rights from the bank that owned them, and if they were successful, they would convey those mineral rights to the plaintiff who would then bear all costs associated with obtaining the release of the mineral rights.

¶ 6 The plaintiff further alleged that "said agreement pertaining to the mineral interest was never reduced to writing and, further, did not specify any time for performance or delivery of a deed to the mineral interest." The plaintiff continued, alleging that he instructed Bauer to advise the defendants that his purchase of the property was "expressly contingent" upon the transfer to him of any mineral interest the defendants "subsequently acquired." The plaintiff alleged that the defendants "secretly acquired ownership of the mineral estate on May 8, 1996, but fraudulently concealed this fact" from the plaintiff on May 10, 1996, when the parties entered into a "Binding Purchase Contract" (Purchase Contract). The plaintiff also alleged that "[w]hen the terms of the oral agreement pertaining to the mineral estate were established, Plaintiff could not have discovered Defendants' ownership of the mineral estate."

¶ 7 On remand, the defendants filed an answer and affirmative defenses to count IV of the plaintiff's second amended complaint.[1] In their answer, they alleged that all of their negotiations concerning the sale of their real estate to the plaintiff occurred

[1]We note that the answer also included a counterclaim requesting compensatory and punitive damages against the plaintiff, but the court granted the defendants' voluntary motion to withdraw their counterclaim without prejudice.

with Bauer and that neither of them "ever talked to or met Plaintiff." The defendants denied that any agreement pertaining to the mineral interest ever existed, denied that they ever agreed that the plaintiff's purchase was contingent on transferring any subsequently acquired mineral interest to the plaintiff, and denied that "there ever was an agreement or representation to Plaintiff or his agent that Defendants would at any time convey the minerals to Plaintiff."

¶ 8 In their affirmative defenses, the defendants alleged that the plaintiff was barred from any relief by the statute of limitations (735 ILCS 5/13-205 (West 2010)) and the statute of frauds (740 ILCS 80/2 (West 2010)). The defendants also asserted the affirmative defense of *laches* on the basis that the plaintiff had "full and complete knowledge, both actual and constructive, on and prior to June 28, 1996, and at all times subsequent thereto, that Defendants had acquired title to the mineral estate and had recorded their deed so evidencing" on May 13, 1996.

¶ 9 To their answer, the defendants attached certain exhibits. Exhibit A is a copy of the Purchase Contract the parties signed on May 10, 1996, which includes the following notation: "The following articles are also to be included with the property: *all items listed on fact sheet-first right to purchase mineral rights*." The italicized text is handwritten. The plaintiff has continually argued in the trial court and in this appeal that the words "first right to purchase mineral rights" cannot be understood except by reference to the parties' oral agreement that the defendants agreed through Bauer to convey to him the mineral rights if they later acquired them.

¶ 10 Exhibit B is a copy of the warranty deed, dated June 28, 1996, of the surface only of the real estate the defendants sold to the plaintiff. Exhibit C is a copy of the mineral deed, which was recorded at the Marion County clerk's office on May 13, 1996, and by which the defendants obtained ownership of the mineral rights

underlying the property that they later conveyed to the plaintiff.

¶ 11 On March 18, 2010, the defendants filed their motion for summary judgment, to which they attached their sworn answers to interrogatories, the plaintiff's sworn answers to interrogatories, and a transcript of Bauer's deposition testimony. In their interrogatory answers, the defendants each swore that they had never entered into an oral contract to convey mineral rights to the plaintiff, had never met the plaintiff, had never made any contract with any agent of the plaintiff, and had never authorized any agent to enter into any contract.

¶ 12 In the plaintiff's interrogatory answers, he swore that he "had no direct conversation with either Defendant with respect to formation of the oral contract." He stated that Bauer would testify as to the circumstances and events culminating in the oral contract pertaining to the mineral interest, as well as his "insistence that the mineral estate be included" in his purchase of the property. The plaintiff also swore that his agreement to purchase the surface of the defendants' real estate was "expressly contingent upon" the defendants' promise to transfer to him any after-acquired mineral rights.

¶ 13 In his deposition, Bauer testified that he was a real estate agent in 1996 but that he recalled very little about the plaintiff's purchase of the defendants' real estate. He identified the Purchase Contract but said that he remembered nothing about the transaction except those matters specified in the Purchase Contract. He noted that the plaintiff's attorney had contacted him two or three years earlier and had asked him questions, but he did not remember the questions, and he was sure that he did not remember any more about the transaction then than he did during the deposition. He stated that he may have also met with the plaintiff's attorney "many, many years ago," but he specifically denied that the earlier conversation with the plaintiff's attorney

dealt with the terms of the original 1996 agreement or any oral agreement beyond the terms of the Purchase Contract. Bauer testified that he did not remember any oral contract between the parties being part of the plaintiff's purchase of the real estate. The remainder of Bauer's testimony was as follows:

"Q [Eric Terlizzi, the defendants' attorney]: As you sit here today, then, are you able to testify under oath as to any oral agreements, any side agreements, any representations or oral representations or promises of the Bartons with respect to this sale that is not noted in [the Purchase Contract]?

A: No.

Q: Should this case go to trial, do you believe you will be able to testify as to any such oral agreement, oral representation, side agreement of the Bartons to Mr. Wiedle that are not contained in this [Purchase Contract]?

A: No.

Q: To your best knowledge and belief, subsequent to the closing of this transaction in 1996, did you ever advise Mr. Wiedle that you had knowledge of an oral agreement, oral representation, any kind of side oral agreement that the Bartons had entered into with you?

A: Not that I remember."

¶ 14 Bauer also testified that he did not remember ever telling the plaintiff's attorney about any side or oral agreement with the Bartons that was not listed on the Purchase Contract. He testified about the words, "first right to purchase mineral rights," and stated that he wrote that phrase, that the plaintiff had requested that he add the phrase to the Purchase Contract, and that he thought it meant that the plaintiff would have the first right to purchase the mineral rights if and when the defendants ever obtained title to them. Bauer reiterated that he could not testify about anything not specifically

included in the Purchase Contract.

¶ 15 On October 29, 2010, the plaintiff filed a motion for summary judgment, alleging that the "record will clearly reflect" that the defendants' attorney made statements, "both personally in open court and within motions filed herein which, in the opinion of the undersigned, constitute binding, judicial admissions against the interests of his own clients and, further, remove any obstacle before this Court which would prevent it from entering judgment in favor of the Plaintiff and against both Defendants." The plaintiff argued that the defendants' case was "doomed" when attorney Terlizzi "made repeated, unequivocal admissions that both of his clients 'breached their agreement and representation to Plaintiff' to convey the mineral estate to him." The "admissions" to which the plaintiff refers are taken from the defendants' motions to dismiss the plaintiff's complaint and from attorney Terlizzi's arguments on those motions. The plaintiff argued, "The bottom line is that, if Defendants' attorney's statements constitute judicial admissions which bind the Defendants thereto, then this Motion for Summary Judgment must be granted, and Defendants' Motion for Summary Judgment must be denied."

¶ 16 On April 29, 2011, the trial court granted the defendants' motion for summary judgment, finding that, for the plaintiff to prevail, he had to prove the existence of an oral agreement between the defendants and Bauer, but that Bauer had denied entering into any such oral agreement. The court also denied the plaintiff's motion for summary judgment, finding that the defendants' attorney had not made any judicial admissions.

¶ 17 On May 19, 2011, the defendants filed a motion for sanctions pursuant to Supreme Court Rule 137 arguing that the plaintiff's entire lawsuit was based upon allegations that both the plaintiff and his attorney knew were false when they filed the

original complaint. The defendants argued that the plaintiff knowingly and falsely alleged that the defendants and Bauer had entered into an oral agreement outside the terms of the Purchase Contract and that the defendants had secretly acquired the mineral interest and fraudulently concealed that fact from the plaintiff. The defendants explained that they and Bauer had all denied under oath having any agreement about the mineral rights, that the plaintiff had stated under oath that he had never spoken to either of the defendants, and that he affirmatively stated that only Bauer had talked to and entered into the alleged oral agreement with the defendants. The defendants pointed out that there was nothing secret about their ownership of the mineral rights because the deed conveying those rights to them had been recorded in the Marion County clerk's office, which gave the plaintiff constructive notice, and because "the title commitment the plaintiff received before he ever purchased the land" gave him actual notice. We note that, before the first appeal, when the defendants filed their motion to dismiss the second amended complaint, they attached to that motion copies of the title commitment and policy of title insurance provided to the plaintiff as part of his purchase of the defendants' real estate. In both the title commitment and the policy, the plaintiff was provided with the following notification: "Mineral Deed dated May 8, 1996 and filed May 13, 1996 as Document No. 1996R3449, made by Magna Trust Company, Belleville, Il., as Trustee under Trust Agreement No. LT-1418 to Robert J. Barton and Kristine Barton, husband and wife, as joint tenants. For a term of Forever."

The defendants argued that they were required to retain counsel and defend this suit, including the first appeal, based on known false pleadings of fact, and consequently, they should be awarded their fees and costs.

¶ 18 On July 14, 2011, the trial court entered an order granting the defendants'

motion for sanctions. The court determined that the only way the plaintiff could ever prove an oral contract to convey the mineral interest to the plaintiff was through Bauer's testimony, but that "Bauer's deposition testimony established not only by a preponderance, not only clearly and convincingly, but beyond any possible doubt that Wiedle could never, under any circumstances, ever prove his case." The court found that the plaintiff's attorney "should have known that his case was over" as soon as he read Bauer's deposition testimony, at the latest. The court stated that it was giving the plaintiff and his attorney the "benefit of the doubt." The court denied the request for sanctions as of the date the original complaint was filed, but the court found that sanctions were appropriate after October 6, 2010, the date of Bauer's deposition, which was the "last possible moment" the plaintiff's attorney should have "stopped, thought and investigated more carefully before filing more pleadings."

¶ 19 On July 18, 2011, the court entered an order finding the plaintiff and his attorney "subject to the imposition of sanctions pursuant to Supreme Court Rule 137," ordering a judgment to be entered in favor of the defendants and against the plaintiff and his attorney, jointly and severally, in the sum of $5,196.50, and finding that there was no just reason to delay enforcement or appeal. This appeal followed.

¶ 20 ANALYSIS

¶ 21 On appeal, the plaintiff continues to pursue his theory that the entire case should be decided on the basis of the "judicial admissions" of the defendants' attorney in written motions to dismiss and oral arguments on those motions. In his brief to this court, the plaintiff sets out the portion of the motions to dismiss in which the defendants' attorney stated that the defendants had "breached their agreement and representation" to the plaintiff. The plaintiff takes these statements out of context, interpreting them in a way that is not reasonable within the context of the entire

pleading. The entire text of the relevant paragraphs of the motions to dismiss is as follows:

"7. Plaintiff is legally chargeable with knowledge and, for purposes of this Motion knew, in fact and in law, that on June 28, 1996, when he paid for the property and accepted a deed which excepted all minerals, that Defendants, in fact, owned all the minerals. As of that date Defendants breached their agreement and representation to Plaintiff, as plead by Plaintiff, to convey the minerals to Plaintiff when they procured ownership of the same. [Emphasis in original.]

8. That under each theory plead by Plaintiff, the applicable Statute of Limitations would be 735 ILCS 5/13-205, (five (5) year statute for all civil actions not otherwise provided for.)

9. Plaintiff's allegations that the cause of action began to accrue only in March, 2005, when Defendants allegedly executed an oil and gas lease to the property is irrelevant surplusage and is spurious. Plaintiff alleges that the agreement was that if Defendants obtained title to the minerals, they would, in fact, convey them to Plaintiff. This agreement was breached commencing June 28, 1996, when Defendants, having admittedly obtained title to the minerals on May 8, 1996, failed to convey them to Plaintiff."

These paragraphs are included in the defendants' motions to dismiss filed on August 9, 2007, and November 13, 2007.

¶ 22 The plaintiff initially raised the issue of the alleged judicial admissions in a motion to strike filed on February 21, 2008, but apparently the court did not rule on that motion before the first appeal. The defendants argue that the plaintiff has waived his arguments concerning judicial admissions for failure to raise them in the first appeal. The rule is clear that any issue which was raised or which could have been

raised in a prior appeal on the merits cannot be argued in later appeals. *Kazubowski v. Kazubowski*, 45 Ill. 2d 405, 414 (1970). Issues not raised in the first appeal are considered forfeited. *Id.* "A second appeal brings up nothing except proceedings subsequent to the remandment for the reason that a party will not be permitted to have his cause heard part at one time and the residue at another." *Id.* However, the trial court did not rule on this issue before the first appeal, and the defendants did not object to the trial court considering it after the first appeal. Therefore, although the argument may be technically forfeited, we choose to consider the merits. See *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 504-05 (2002) ("the waiver rule is a principle of administrative convenience, an admonition to the parties"; and courts are free to disregard the waiver rule "in furtherance of its responsibility to provide a just result"). We choose to address the plaintiff's arguments on judicial admissions not because they have merit but to explain the reason these statements do not amount to judicial admissions.

¶ 23 "Judicial admissions are defined as deliberate, clear, unequivocal statements by a party about a concrete fact within the party's knowledge." *Smith v. Pavlovich*, 394 Ill. App. 3d 458, 468 (2009). The party and his or her attorney can be held to have made judicial admissions. Attorneys are the agents of their clients "for the purpose of making admissions in all matters relating to the progress and trial of an action." *Lowe v. Kang*, 167 Ill. App. 3d 772, 776 (1988). Due to the binding nature of a judicial admission, whether a statement amounts to a judicial admission must be carefully considered. "Where made, a judicial admission may not be contradicted in a motion for summary judgment [citation] or at trial." *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998). For a statement to qualify as a judicial admission, it "must not be a matter of opinion, estimate, appearance, inference, or uncertain summary."

Smith, 394 Ill. App. 3d at 468. Most importantly, "[w]hat constitutes a judicial admission must be decided under the circumstances in each case, and before a statement can be held to be such an admission, it must be given a meaning consistent with the context in which it was found." *Id.*; see also *Lowe*, 167 Ill. App. 3d at 776. The statement alleged to be a judicial admission must also be considered in relation to other testimony and evidence presented. *Smith*, 394 Ill. App. 3d at 468.

¶ 24 The trial court's ruling on an issue of judicial admission is a matter for the court's sound discretion. We are to affirm the trial court unless it abused that discretion. *Id.* An abuse of discretion is found only where no reasonable person would take the view adopted by the trial court. *Id.*

¶ 25 In the case at bar, the statements the plaintiff claims as judicial admissions were made within the context of the defendants' motions to dismiss in which they argued that the plaintiff's cause of action was barred by the statute of limitations (735 ILCS 5/13-205 (West 2010)), the statute of frauds (740 ILCS 80/2 (West 2010)), and the doctrine of *laches*. The defendants' motions to dismiss were filed pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)), which provides for involuntary dismissal based upon defects such as the statute of limitations and the statute of frauds. "For purposes of the motion to dismiss, all well-pleaded facts in the pleading as well as reasonable inferences to be drawn from those facts are taken as true." *Wolf v. Bueser*, 279 Ill. App. 3d 217, 221 (1996).

¶ 26 Following that basic rule of law, the defendants' attorney filed pleadings in which he essentially stated, *assuming for the sake of argument that the plaintiff's pleadings are true*, the complaint must still be dismissed because it was filed too late under the statute of limitations and the doctrine of *laches* and it violated the statute of frauds. No reasonable court would construe the defendants' statements as judicial

admissions within that context. Accordingly, the trial court's ruling that the defendants did not make any judicial admissions is not an abuse of discretion.

¶ 27 The real issue in this case is whether the trial court's order granting the defendants' motion for summary judgment and denying the plaintiff's motion for summary judgment is proper as a matter of law. The parties may move for summary judgment "with or without supporting affidavits." 735 ILCS 5/2-1005(a), (b) (West 2010). "The judgment sought shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2010). "While use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit [citation], it is a drastic means of disposing of litigation and therefore should be allowed only when the right of the moving party is clear and free from doubt." *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). The circuit court's rulings on motions for summary judgment are reviewed *de novo*. *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153 (2004).

¶ 28 In the case at bar, each party filed motions for summary judgments asking the court to dispose of the case in their favor based on their respective arguments. We consider the court's ruling on the plaintiff's motion for summary judgment first. The sole basis for that motion was that the defendants' attorney made binding judicial admissions, an argument that we have already rejected. Therefore, the trial court's denial of the plaintiff's motion for summary judgment is proper as a matter of law.

¶ 29 The defendants' motion for summary judgment was based on the assertion that there was no evidence in support of the plaintiff's central claim that Bauer had entered into an oral contract on his behalf with the defendants. Under this claim, the

defendants allegedly agreed that they would use their best efforts to obtain the mineral rights, and that if they acquired those mineral rights, they would convey them to the plaintiff. The defendants denied any such agreement. The plaintiff admitted that he never spoke with the defendants and that his claim depended upon the testimony of Bauer as to the terms of the agreement. Bauer denied any knowledge of any agreement with the defendants that was not contained in the Purchase Contract. The Purchase Contract did not set forth any agreement regarding the mineral rights except Bauer's handwritten notation that the plaintiff had the "first right to purchase mineral rights." The plaintiff admitted that Bauer's notation could not be understood without reference to Bauer's testimony, and Bauer testified that the notation simply meant that the plaintiff had the right of first refusal to purchase the mineral rights. Since the plaintiff's cause of action depended upon Bauer's testimony, but Bauer's unrefuted testimony did not support the plaintiff's claim, there was no genuine issue of material fact to support the plaintiff's cause of action, and the trial court correctly granted the defendants' motion for summary judgment.

¶ 30 We next consider the plaintiff's argument that the imposition of sanctions against him and his attorney is an abuse of discretion because it is based on the incorrect ruling that the defendants did not make any judicial admissions. The plaintiff contends: "The alleged judicial admissions were made by the Defendants' counsel over four (4) years ago, and the undersigned has relied upon existing case law on this issue since that time. All subsequent activity in the record, including all pleadings, depositions, affidavits and motions, fail to negate the fact that Defendants' counsel previously admitted that his clients breached the relevant oral agreement with the Plaintiff." According to the plaintiff, we should disregard the fact that there is no evidence in support of his claim that an oral agreement existed and decide this case

solely upon assertions made in support of a motion to dismiss, but which, if taken out of context and considered without regard to any other evidence or pleadings of record, entitle him to a judgment without the need to present any evidence. The plaintiff does not challenge the amount of attorney fees and costs awarded, but only the trial court's decision that sanctions were warranted. The plaintiff's argument is meritless.

¶ 31 Supreme Court Rule 137 provides:

"Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record ***. *** The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; 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 ***. *** 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).

¶ 32 Rule 137 required the plaintiff's attorney to certify that he had read the complaint and other pleadings he signed, that those documents were "well grounded in fact," and that his belief was formed after "reasonable inquiry." The purpose of Rule 137 is to "prevent abuse of the judicial process by penalizing claimants who bring vexatious and harassing actions based upon unsupported allegations of fact or law." *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067,

1074 (1995). Because Rule 137 is penal in nature, courts must strictly construe its provisions. *Shea, Rogal & Associates, Ltd. v. Leslie Volkswagen, Inc.*, 250 Ill. App. 3d 149, 152 (1993). Pursuant to Rule 137, it is the affirmative duty of both litigants and their attorneys to conduct an investigation of the facts and the law before filing an action, pleading, or other court document. *In re Marriage of Schneider*, 298 Ill. App. 3d 103, 108-09 (1998). On review, we are to evaluate the party's conduct by considering whether it was reasonable under the circumstances existing at the time the pleading was filed, and we are not to engage in hindsight. *Shea, Rogal & Associates, Ltd.*, 250 Ill. App. 3d at 153. This is an objective standard, and it is not sufficient that the attorney honestly believed his case was well grounded in fact or law if he conducted no reasonable inquiry in arriving at that conclusion. *Id.* "Furthermore, an attorney has an obligation to promptly dismiss a lawsuit once it becomes evident that it is baseless." *Id.*

¶ 33 The decision of whether to impose sanctions under Rule 137 "rests within the sound discretion of the trial court and that decision is entitled to great weight and will not be disturbed on review absent an abuse of discretion." *In re Marriage of Schneider*, 298 Ill. App. 3d at 109. "A trial court is said to exceed its discretion regarding the imposition of sanctions under Rule 137 only where no reasonable person would take the view adopted by it." *Id.*

¶ 34 In the case at bar, the trial court determined that the plaintiff and his attorney could not have reasonably gone forward with this lawsuit after Bauer's deposition. The court gave the plaintiff the benefit of the doubt by denying the defendants' request to impose sanctions from the date the plaintiff filed his original complaint. The plaintiff has presented no relevant evidence[2] to contradict Bauer's testimony that he

[2]The plaintiff makes an argument that affidavits he attached to a motion to strike are

does not remember entering into any agreement with the defendants regarding mineral rights except for the notation he wrote on the Purchase Contract. The trial court reasonably determined that sanctions were "warranted for all attorney fees and costs incurred after October 6, 2010[,] *** [t]he last possible moment" that the plaintiff's attorney should have stopped and investigated more thoroughly before filing more pleadings. Under the circumstances of this case existing on that date, the trial court did not abuse its discretion by determining that sanctions were warranted.

¶ 35 The plaintiff makes a final argument that the court erred by striking all three affidavits he attached to a motion to strike Bauer's deposition. This argument is forfeited because the plaintiff has failed to cite any authority to support it. Supreme Court Rule 341(h)(7) (eff. July 1, 2008) requires appellants' arguments to include their contentions and "the reasons therefor, with citation of the authorities and the pages of the record relied on." Supreme court rules are mandatory rules of procedure and not mere suggestions. *Menard v. Illinois Workers' Compensation Comm'n*, 405 Ill. App. 3d 235, 238 (2010). When appellants fail to follow Rule 341(h)(7), by failing to cite any relevant authority in support of their contentions or by failing to support their contentions beyond bald assertions and conclusions, those issues are forfeited on appeal. *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1019 (2011). Therefore, the plaintiff has forfeited review of this issue.

¶ 36 Even if the issue were not forfeited, however, we would find it without merit. The trial court properly struck the affidavits to which the plaintiff refers. The affidavits were those of the plaintiff, Floyd Boxx, and Vickie Boxx. The Boxxes are a married couple who also purchased real estate from the defendants and who each averred that they were "completely unaware" that they had been "deliberately misled"

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relevant evidence in support of this lawsuit, and we briefly discuss those next.

by the defendants regarding the mineral estate until they "learned from" the plaintiff that the defendants "had acquired a deed to the mineral estate" underlying the plaintiff's property and that "this discovery" was "[u]nfortunately" not made until the plaintiff filed the present litigation. The court found both Floyd and Vickie Boxx's affidavits to be irrelevant. The court found the plaintiff's affidavit, in which he reiterated the statements he claimed Bauer had made to him during the course of the negotiations for the purchase of the real estate from the defendants, to contain improper hearsay in violation of Supreme Court Rule 191(a) (eff. July 1, 2002). The court granted the defendants' motion to strike all three affidavits. We agree with the defendants' arguments that Floyd and Vickie Boxx's affidavits "asserted facts that had nothing to do with the transaction which is the subject of this suit," that the plaintiff's affidavit "incorporated the allegations of his prior pleadings and hearsay about the alleged oral agreement," and that all three were properly stricken as being in violation of Supreme Court Rule 191(a).

¶ 37 CONCLUSION

¶ 38 For all of the reasons stated, we affirm the trial court's orders denying the plaintiff's motion for summary judgment, granting the defendants' motion for summary judgment, granting the defendants' motion for sanctions, and entering judgment against the plaintiff and his attorney.

¶ 39 Affirmed.