2024 IL App (2d) 230221-U
No. 2-23-0221
Order filed April 19, 2024

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MACIEJ WISNIEWSKI, Plaintiff-Appellant, v. JESSICA KELLENBERGER, FOX VALLEY SADDLE ASSOCIATION, and WHITNEY SINCLAIR, Defendants (Fox Valley Saddle Association, Defendant-Appellee).	)	Appeal from the Circuit Court of Kane County. No. 22-LA-384 Honorable Susan Clancy Boles, Judge, Presiding.

PRESIDING JUSTICE McLAREN delivered the judgment of the court.
Justices Jorgensen and Kennedy concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not abuse its discretion in awarding attorney fees and costs to horse riding club that plaintiff sued for injuries he sustained from a runaway horse, where a reasonable inquiry by plaintiff would have revealed that the club had no connection to the horse or the accident. (2) The amount of the sanction was reasonable. (3) The club was entitled to sanctions for plaintiff's frivolous appeal of the sanctions order.

¶ 2 Plaintiff, Maciej Wisniewski, sued defendants, Fox Valley Saddle Association (FVSA), Jessica Kellenberger, and Whitney Sinclair, after he was injured when a horse owned by Sinclair

and boarded by Kellenberger collided with the car he was driving. FVSA moved to dismiss and sought sanctions under Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018), arguing that it was improperly named as a defendant. The trial court dismissed FVSA; granted the motion for sanctions; awarded FVSA $11,733.19 in attorney fees and costs; and entered a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), noting that there was no just reason to delay either the enforcement or appeal of the order. Plaintiff timely appealed, arguing that the trial court abused its discretion in (1) granting FVSA's motion for sanctions and (2) awarding FVSA $11,733.19 in attorney fees and costs. FVSA argues that this appeal is frivolous and, thus, it asks for leave to file a motion for sanctions under Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) and a supporting fee petition. For the following reasons, we affirm the order granting sanctions, affirm the amount of the award, and direct FVSA's attorney on appeal to file an affidavit and billing records for work and expenses incurred in this appeal.

¶ 3 I. BACKGROUND

¶ 4 Shortly after midnight on Thursday, September 8, 2022, a horse named Laredo escaped from his stable, ran onto Illinois State Route 47, and collided with a car driven by plaintiff. Laredo was killed and plaintiff, who was in a coma after the accident, sustained several severe external and internal injuries.

¶ 5 Police arrived at the scene and prepared an accident report. The report provided that the accident happened at 12:40 a.m. on September 8, 2022, and that Kellenberger owned Laredo. FVSA was not named in the report. The accident happened about two miles from Kellenberger's farm, which was across the street from FVSA's property.

¶ 6 On September 22, 2022, Brian J. McManus & Associates, Ltd. (McManus) filed a complaint on plaintiff's behalf. The complaint alleged that Kellenberger violated section 16 of the

Animal Control Act (see 510 ILCS 5/16 (West 2020)), and both Kellenberger and FVSA were negligent. The count brought against FVSA alleged that Kellenberger owned Laredo, FVSA was in control of Laredo when the accident happened, and FVSA was negligent in that it knew or reasonably should have known that Laredo needed to be properly confined and attended to so that he could not run freely on a public roadway. Plaintiff sought $5 million in damages.

¶ 7 On September 26, 2022, FVSA was served with the complaint. The next day, Linda Holzrichter, FVSA's attorney, wrote a letter to McManus. Holzrichter asked McManus to dismiss FVSA with prejudice because FVSA did not board horses and Laredo was not on FVSA's property before or during the time of the accident. Holzrichter advised McManus that she would move to dismiss FVSA and seek sanctions if FVSA was not dismissed immediately.

¶ 8 On October 4, 2022, Holzrichter phoned McManus to discuss the letter and reiterate that FVSA was improperly named as a defendant. McManus told Holzrichter that FVSA was named because Kellenberger was a member of FVSA. According to Holzrichter, McManus also indicated that discovery would reveal whether FVSA was a proper party.

¶ 9 On October 14, 2022, Country Mutual Insurance Company (Country Mutual) filed a complaint for declaratory judgment against plaintiff and Kellenberger. Country Mutual asserted that its policy with Kellenberger, who boarded Laredo for financial compensation, did not cover the accident. FVSA was not mentioned in this pleading.

¶ 10 On October 31, 2022, plaintiff filed a motion to file a first amended complaint to add Sinclair.

¶ 11 On November 2, 2022, McManus entered his appearance for plaintiff in Country Mutual's declaratory judgment proceeding.

¶ 12 On that same date, FVSA filed a combined motion to dismiss plaintiff's complaint (see 735 ILCS 5/2-619.1 (West 2020)) and for sanctions (see Ill. S. Ct. R. 137 (eff. Jan. 1, 2018)). In the motion, FVSA argued that it must be dismissed, and was entitled to sanctions, because it was not involved with or connected to Laredo or the accident. The motion indicated that FVSA was a not-for-profit riding club formed 77 years ago and was funded by collecting members' dues, organizing shows and clinics, and renting its facilities to third parties. The motion stated that FVSA members were not employees, subcontractors, or agents of FVSA. To keep their memberships, FVSA members volunteered to maintain FVSA's facilities and run FVSA's events. The motion asserted that plaintiff would have discovered that FVSA was not a proper party if McManus had conducted a reasonably adequate investigation before filing the complaint.

¶ 13 Attached to FVSA's motion was the affidavit of Julie Kneip, the president of FVSA. Kneip attested that FVSA was a private riding club that offered its members a place to ride horses and enjoy horse-related activities. Kneip attested that FVSA did not own, manage, or board horses. Rather, members brought their horses to FVSA's property to ride. Although horses could stay overnight on FVSA's property on rare occasions by special arrangement or if they were entered in a show or clinic, no horses, including Laredo, were on FVSA's property around the time the accident occurred. Moreover, FVSA's facilities were locked and vacant when the accident happened. Kneip stated that Laredo was not, and never was, owned or controlled by FVSA.

¶ 14 Also attached to FVSA's motion was FVSA's calendar of events, which revealed that no activities were held on September 7 or 8, 2022. FVSA also included Holzrichter's invoice, which showed that her fees and costs for representing FVSA totaled $2727.69.

¶ 15 On November 3, 2022, the trial court granted plaintiff's motion to file the first amended complaint. The first amended complaint alleged that Kellenberger and Sinclair violated the

Animal Control Act and that Kellenberger, Sinclair, and FVSA were negligent. The count against FVSA did not materially differ from the original complaint. The court set a briefing schedule, which required plaintiff to respond to FVSA's combined motion to dismiss and for sanctions by December 1, 2022.

¶ 16 On November 15, 2022, plaintiff filed a motion to file a second amended complaint and extend the briefing schedule on the motion to dismiss and for sanctions. The second amended complaint added claims against Kellenberger for *res ipsa loquitur* and violating the Illinois Domestic Animals Running at Large Act (510 ILCS 55/1 (West 2020)). The sole count brought against FVSA, a negligence claim, alleged that FVSA's agents, servants, and employees caused or contributed to the accident involving Laredo, a horse owned by Sinclair and controlled by Kellenberger. Nowhere was it clearly alleged that Kellenberger was FVSA's agent, servant, or employee. Plaintiff sought to extend the briefing schedule because McManus felt he needed to depose Kellenberger, Kneip, and Sinclair before responding to FVSA's combined motion to dismiss and for sanctions.

¶ 17 On November 17, 2022, Holzrichter sent an e-mail to McManus, indicating that, once the depositions were taken, FVSA would file another combined motion to dismiss and a motion for summary judgment. Holzrichter reiterated that FVSA should not have been named as a defendant, citing statements made in Kneip's affidavit. Holzrichter also questioned why McManus continued to needlessly incur litigation costs when FVSA would likely be dismissed.

¶ 18 On November 18, 2022, McManus's associate e-mailed Holzrichter, stating, "Just to clarify, yes we can voluntarily dismiss FVSA based upon the affidavit [of Kneip] you provided and [McManus's] agreement to do so provided you withdraw your Motion for Sanctions as well." Holzrichter responded that same day. She again asserted that FVSA should never have been

named, demanded that FVSA be dismissed with prejudice, and questioned the conditional request that FVSA withdraw its motion for sanctions in return for plaintiff's dismissing FVSA.

¶ 19 On November 22, 2022, plaintiff moved to voluntarily dismiss FVSA without prejudice and asked that each party pay their own fees and costs. Plaintiff also sought to revise the second amended complaint to remove the negligence count pending against FVSA.

¶ 20 On November 29, 2022, the trial court granted plaintiff's motion to extend the briefing schedule on FVSA's combined motion to dismiss and for sanctions, setting December 13, 2022, as the date for plaintiff to file a response. The court also granted plaintiff leave to file the second amended complaint, which, because FVSA had not been dismissed, still contained the negligence count against it. The court continued plaintiff's motion to voluntarily dismiss FVSA without prejudice pending resolution of FVSA's combined motion to dismiss and for sanctions.

¶ 21 On December 2, 2022, plaintiff filed an amended motion to extend the briefing schedule. Although Kneip's deposition was set for December 9, 2022—before plaintiff's response was due—no date to depose Kellenberger or Sinclair had been set because the parties disagreed about the scope of Kellenberger's deposition, and Sinclair's recently obtained counsel was still reviewing documents and had not entered an appearance.

¶ 22 On December 8, 2022, Kellenberger answered Country Mutual's complaint for declaratory judgment and filed a counterclaim. Kellenberger admitted that she was boarding Laredo for financial compensation when the accident happened. FVSA was not mentioned in this pleading.

¶ 23 On that same date, the trial court granted plaintiff's amended motion to extend the briefing schedule, stayed briefing on FVSA's combined motion to dismiss and for sanctions, and set January 31, 2023, as the date to set a new briefing schedule on FVSA's motion. The court also set the scope of Kneip's, Kellenberger's, and Sinclair's depositions.

¶ 24 As planned, Kneip's deposition was taken on December 9, 2022. Kneip confirmed that FVSA was a not-for-profit, members-only organization. Members did all work at and for FVSA. Three members, including Kellenberger, lived in the vicinity of FVSA. One of those members, not Kellenberger, rode horses on FVSA's property daily. Although FVSA had over 100 stables, FVSA did not board horses. Horses were allowed on FVSA's property only during events. During events over the weekend, FVSA provided stables for participants' horses. On those occasions, participants, not FVSA, cared for the horses. FVSA did not provide participants with stables for events during the week. Kellenberger was a member of FVSA and volunteered as a secretary for two events. Kellenberger never served on FVSA's board of directors or acted on FVSA's behalf in any official capacity. During Kneip's deposition, McManus mentioned that he knew about horses because he cleaned stalls as a youth and his father bred and trained horses and was involved with the Barrington Hills Riding Association.

¶ 25 On January 11, 2023, Kellenberger's deposition was taken. She stated that she boarded Laredo for Sinclair, who owned the horse. Kellenberger, who never told the police she owned Laredo, theorized that the police thought she owned him because she was at the scene of the accident while they were there. Kellenberger boarded Laredo on her farm. FVSA, which did not board horses, never hired Kellenberger to board, maintain, or care for any horses on FVSA's behalf. The accident happened about two miles away from Kellenberger's farm. FVSA's property was a little east and south of Kellenberger's farm. Kellenberger stated that she had been a member of FVSA for nine years. As a member, Kellenberger had volunteered to serve as a secretary for FVSA's "mini event committee" and once posted on FVSA's Facebook page a reply to a question about an event FVSA hosted. Additionally, on its Facebook page, FVSA reposted a video and posted a comment about Kellenberger reading to children at Gail Borden Library, where

Kellenberger worked. Kellenberger asserted that Sinclair was not a member of FVSA and that Laredo was never on FVSA's property.

¶ 26 Sinclair's deposition was taken on January 20, 2023. She confirmed that she owned Laredo and rode him in various competitions. She stated that she retired Laredo in 2019. At that time, she boarded Laredo with Kellenberger. Laredo remained in the care of Kellenberger until September 8, 2022, when he was killed in the accident. Sinclair, who did not know where FVSA's property was located, confirmed that she was never a member of FVSA, never rode a horse at that facility, and never participated in any of the events FVSA hosted.

¶ 27 Besides Kneip, Kellenberger, and Sinclair, McManus deposed Kellenberger's neighbor on February 16, 2023, and Kellenberger's husband on February 27, 2023. Neither of the depositions addressed FVSA's involvement in the accident. After deposing Kellenberger's husband, the parties visited Kellenberger's farm. There, Holzrichter suggested that FVSA be dismissed with prejudice. McManus agreed.

¶ 28 On March 6, 2023, the trial court entered the parties' agreed order to dismiss FVSA with prejudice and set a briefing schedule for FVSA's motion for sanctions. The agreed order provided that a hearing on FVSA's motion for sanctions would be held on April 20, 2023.

¶ 29 On March 7, 2023, plaintiff responded to FVSA's motion for sanctions. Plaintiff claimed that McManus reasonably inquired into the facts surrounding the accident and identified FVSA as a responsible party because FVSA's event information from the spring of 2019 and summer of 2021 and FVSA's Facebook postings from May and June 2021 indicated that Kellenberger was an apparent agent of FVSA. Specifically, the 2019 event, the details of which were listed on FVSA's letterhead, asked participants to make checks payable to FVSA but mail the entries and payment to Kellenberger at her address. Participants were also asked to contact Kellenberger with any

questions. Similarly, the 2021 event, the details of which were listed on FVSA's letterhead, directed participants to contact Kellenberger with any questions about the event. In the May 2021 Facebook post, Kellenberger responded to a question about an FVSA event. In the June 2021 post, FVSA reposted a video Gail Borden Public Library posted of Kellenberger reading to children with some of her animals. When FVSA reposted the video, it referred to Kellenberger as one of "[its] own." Plaintiff stated that it also named FVSA as a defendant because, when the original complaint was filed, McManus believed that FVSA's property was closer to the location of the accident than Kellenberger's farm. Plaintiff claimed that this led McManus to reasonably believe that Kellenberger was an apparent agent of FVSA and that Laredo had escaped from FVSA's property.

¶ 30 On March 28, 2023, FVSA replied in support of its motion for sanctions, arguing that McManus, acting on plaintiff's behalf, failed to perform a reasonably adequate investigation into the facts before suing FVSA. FVSA argued that two old posts on FVSA's Facebook page and two old FVSA showbills that mentioned Kellenberger or listed her as a secretary receiving entries for FVSA's events did not show that Kellenberger was FVSA's agent or that Laredo was ever on FVSA's property. Holzrichter's invoice indicated that her fees totaled $11,733.19.

¶ 31 On April 12, 2023, the trial court granted FVSA's motion for sanctions without holding an evidentiary hearing. The court noted that none of plaintiff's complaints "explicitly allege[d] or even implie[d] that FVSA was responsible based on an agency relationship with Kellenberger at the time of the accident." The court concluded that the "outdated" FVSA event information, old Facebook posts, and the mere fact that the accident happened near FVSA's property amounted to nothing more than pure speculation about FVSA's involvement in the accident and, thus, was insufficient to support a reasonable belief that the allegations against FVSA were well grounded

in fact. The court determined that the fact that McManus may have honestly believed otherwise was not enough to avoid sanctions, especially when McManus was presented with numerous facts indicating that FVSA was not involved. The court then found that Holzrichter's fees and costs were reasonable, considering all the circumstances and especially considering that there was never a warranted reason for plaintiff to file suit against FVSA in the first place. The court granted Holzrichter the entire $11,733.19 in fees and costs, finding that the amount was reasonable.

¶ 32 Plaintiff timely moved the court to reconsider. He argued that the sanction award should be vacated or reduced to $2727.69, which was the amount Holzrichter had initially requested in FVSA's combined motion to dismiss and for sanctions. Plaintiff never argued that the court erred in failing to hold an evidentiary hearing. FVSA responded, noting that Holzrichter's $200-per-hour rate was well below the market rate. FVSA also asked for an additional $2800, which represented the fees and costs Holzrichter incurred in responding to the motion to reconsider.

¶ 33 The trial court denied both plaintiff's motion to reconsider and FVSA's request for additional fees and costs.

¶ 34 This timely appeal followed.

¶ 35 II. ANALYSIS

¶ 36 The three issues raised on appeal are: (1) whether the trial court abused its discretion in granting FVSA's motion for sanctions under Rule 137; (2) whether, if the trial court did not abuse its discretion, the amount of the sanction award, *i.e.*, $11,733.19, is excessive and must be reduced; and (3) whether this court should impose sanctions under Rule 375(b). We consider each issue in turn.

¶ 37 Before considering these issues, we address FVSA's motion to strike a factual misstatement in plaintiff's reply brief. The alleged misstatement is that "Kneip testified that

Kellenberger rode horses at FVSA's premises on a daily basis." Because the record reflects that another neighbor, not Kellenberger, rode on FVSA's premises daily, we grant FVSA's motion to strike this misstatement.

¶ 38 Turning to the merits, the first issue we address is whether the trial court abused its discretion when it granted FVSA's motion for sanctions under Rule 137. Rule 137(a) provides, in pertinent part, that an attorney's signature on a pleading or motion certifies

> "that to the best of his knowledge, information, and belief formed after reasonable inquiry [the pleading] 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." Ill. S. Ct. R. 137(a) (eff. Jan. 1, 2018).

¶ 39 "[Rule 137] is designed to discourage frivolous filings, not to punish parties for making losing arguments." *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 15. "The purpose of Rule 137 is to prevent parties from abusing the judicial process by imposing sanctions on litigants who file vexatious and harassing actions based upon unsupported allegations of fact or law." *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217 (2007). The rule is penal in nature and, therefore, must be strictly construed, reserving sanctions for the most egregious cases. *Patton v. Lee*, 406 Ill. App. 3d 195, 202 (2010).

¶ 40 "In deciding whether the imposition of sanctions is appropriate, the court must determine what was reasonable for the attorney to believe at the time of filing, rather than engaging in hindsight." *Watkins v. Ingalls Memorial Hospital*, 2018 IL App (1st) 163275, ¶ 82. However, implicit in Rule 137 is the requirement that " 'an attorney promptly dismiss a lawsuit once it becomes evident that it is unfounded.' " (Internal quotation marks omitted.) *Arnold*, 2015 IL

118110, ¶ 13 (quoting *Rankin v. Heidlebaugh*, 321 Ill App. 3d 255, 267 (2001)). Appropriate sanctions against counsel for violating the rule may include an order to pay the other party's reasonable attorney fees incurred because of the frivolous filing. Ill. S. Ct. R. 137(a) (eff. Jan. 1, 2018).

¶ 41 The party seeking sanctions under Rule 137 bears the burden of proof. *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 243 (2000). " 'Although an evidentiary hearing should always be held when a sanction award is based upon a pleading filed for an improper purpose, a hearing is unnecessary if the sanction award is due to the unreasonable nature of the pleading based on an objective standard.' " *Garlick v. Bloomingdale Township*, 2018 IL App (2d) 171013, ¶ 54 (quoting *Hess v. Loyd*, 2012 IL App (5th) 090059, ¶ 26).

¶ 42 We review a trial court's ruling on a Rule 137 motion for sanctions under the abuse-of-discretion standard. *Arnold*, 2015 IL 118110, ¶ 16. A court abuses its discretion when no reasonable person would agree with its decision. *Id.*

¶ 43 Plaintiff argues that the trial court abused its discretion in awarding FVSA attorney fees and costs because McManus conducted a reasonable investigation before bringing the negligence claim against FVSA. In determining what constitutes a reasonable investigation under Rule 137, we find it helpful to look to Rule 11 of the Federal Rules of Civil Procedure (Fed. R. Civ. P. 11). See *People v. Stefanski*, 377 Ill. App. 3d 548, 551 (2007) ("Because Rule 137 is almost identical to Rule 11 of the Federal Rules of Civil Procedure [citation], we may seek guidance from the federal courts' interpretation of that rule."). Illinois courts interpreting that rule have determined:

> "What is crucial under [Rule 11 of the Federal Rules of Civil Procedure] is not who makes the inquiry, but whether as a result the *attorney* has acquired knowledge of facts

> sufficient to enable him to certify that [the pleading] is well-grounded in fact. If the rule is to have meaning, those facts must consist of admissible evidence or at least be calculated to lead to such evidence. They need not be undisputed or indisputable but they must be sufficiently substantial to support a reasonable belief in the existence of a factual basis for the [pleading]. Suspicion, rumor or surmise will not do." (Emphasis in original.) *Chicago Title & Trust Co. v. Anderson*, 177 Ill. App. 3d 615, 624 (1988).

¶ 44 Here, plaintiff sued FVSA for negligence because McManus discovered that (1) Kellenberger was a member of FVSA; (2) Kellenberger served as the secretary for two events FVSA hosted; (3) Kellenberger replied to a question on FVSA's Facebook page about an event FVSA hosted; (4) FVSA reposted and commented on a video of Kellenberger, with her animals, reading to children at the Gail Borden Public Library; and (5) FVSA's property was located near to the site of the accident. Plaintiff argues that this evidence provided McManus with a reasonable basis for bringing a negligence claim against FVSA. We disagree.

¶ 45 First, Kellenberger's membership with FVSA means little. If Kellenberger was a church or health club member, that mere membership would not give rise to a reasonable belief that the church or health club should be held liable for the accident. Moreover, not only was it made clear early in the proceedings that members of FVSA were not agents of FVSA, but plaintiff never clearly alleged an agency relationship between Kellenberger and FVSA. Second, the Facebook posts and Kellenberger's involvement with FVSA's events mean little because those four instances, aside from suggesting that Kellenberger was seldomly involved with FVSA over the nine years she was a member, occurred more than one year before the accident happened. Regarding the video, Kellenberger worked at the library where the video was taken, and the library originally posted it. Kellenberger was just as much the library's "own" as FVSA's "own." Last,

the fact that the accident happened near FVSA's property means little because Laredo, even though a retired horse, could still rapidly travel great distances. Moreover, other people, like Kellenberger and her neighbors, also lived nearby. Considering all the facts McManus relied on, we must conclude that the trial court did not abuse its discretion in granting FVSA's motion for sanctions. As the trial court found, McManus's belief that FVSA was a proper party based on these facts amounted to pure speculation.

¶ 46 Plaintiff argues that the trial court abused its discretion when it granted the motion for sanctions because "[McManus's] conduct was not done for a harassing or improper purpose so as to justify sanctions, but rather was part of his zealous yet appropriate representation of his client." Plaintiff misapplies the law.

> "Rule 137[ ] sanctions may be granted under two different circumstances: (1) when a pleading, motion, or other paper is not 'well grounded in fact' or is not 'warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law,' or (2) when it is interposed for purposes such as to 'harass or to cause unnecessary delay or needless increase in the cost of litigation.' " *Stefanski*, 377 Ill. App 3d at 551 (quoting Ill. S. Ct. R. 137(a) (eff. Jan. 1, 2018)).

Here, sanctions were awarded pursuant to the first circumstance, which has nothing to do with whether McManus protracted the proceedings for an improper purpose or to harass FVSA.[1]

[1]As an aside, to the extent that plaintiff claims he was denied a hearing on the motion for sanctions, we note that he never raised this issue in the trial court and, moreover, a hearing was not necessary. See *Garlick v. Bloomingdale Township*, 2018 IL App (2d) 171013, ¶ 54 (citing *Hess v. Loyd*, 2012 IL App (5th) 090059, ¶ 26).

¶ 47 That said, we comment on the claims of good faith plaintiff raises on appeal. Plaintiff argues that McManus acted in good faith because "[he] attempted to voluntarily dismiss FVSA from the case when he was provided with evidence in the form of Kneip's affidavit showing that FVSA did not have any control over [Laredo.]" McManus, who filed the complaint on plaintiff's behalf 14 days after the accident even though he had two years to do so (see 735 ILCS 5/13-202 (West 2020)), knew early in the proceedings that FVSA's involvement with the accident was tenuous at best. As early as late September 2022, Holzrichter, as an officer of the court, sent a letter to McManus advising him that FVSA did not board horses and that Laredo was not on FVSA's property prior to the accident on Illinois State Route 47. Plaintiff could have dismissed FVSA without prejudice at that time. He did not. Alternatively, plaintiff could have dismissed FVSA without prejudice in early November 2022, after receiving Kneip's affidavit confirming that FVSA was not involved in the accident in any way. Again, he did not. Instead of doing either, McManus indicated on November 18, 2022, that plaintiff would dismiss FVSA *without prejudice if* FVSA dismissed its motion for sanctions and paid its own attorney fees. This was 16 days after FVSA submitted Kneip's affidavit, which McManus intimated was dispositive.

¶ 48 Similarly, plaintiff asserts that "[o]nce [McManus] was able to depose Kneip and confirm under oath that FVSA had no involvement or potential liability, he agreed to the dismissal of FVSA *with prejudice*." (Emphasis in original and emphasis added.) This statement represents another instance in plaintiff's briefs where he overstates or misstates facts.[2] The above statement suggests

[2]There are two other examples. First, plaintiff states that "[e]ven Kneip acknowledged at her deposition that the social media posts could suggest to a person without knowledge of the FVSA that Kellenberger was more than just a member of the club." In actuality, Kneip stated, "I

that FVSA was dismissed with prejudice soon after Kneip's December 9, 2022, deposition. In fact, FVSA was dismissed with prejudice almost three months later, after four other witnesses were deposed and the parties visited Kellenberger's farm. Moreover, FVSA was dismissed with prejudice only because Holzrichter, not McManus, requested the dismissal with prejudice after visiting Kellenberger's farm at the end of February 2023.

¶ 49 Also troubling to us is the fact that McManus represented that he and his family were involved with horses in various ways in Northern Illinois at a time when FVSA existed. Given this involvement, we are flummoxed that McManus did not understand very early in the proceedings that FVSA should not be named as a defendant, as FVSA was merely a riding club that never boarded horses.

¶ 50 Having determined that the trial court did not abuse its discretion when it granted the motion for sanctions, we next consider whether the amount of the sanction award, *i.e.*, $11,733.19 in attorney fees and costs, is excessive. "In general, a petition for attorney fees must present the court with detailed records containing facts and computations upon which the charges are predicated and specifying the services provided, by whom they were performed, the time expended, and the hourly rate charged." *Cretton v. Protestant Memorial Medical Center, Inc.*, 371 Ill. App. 3d 841, 867 (2007).

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can't—I don't know" what a layperson would think. Additionally, plaintiff states that Kellenberger was "actively involved" and "heavily involved" with FVSA and its operations. We find this characterization extremely generous given that the only evidence before us is that Kellenberger volunteered for two of FVSA's events in the nine years she was a member, and those events took place in 2019 and 2021, one year before the accident.

> "In assessing the reasonableness of fees, the trial court should consider a variety of factors, including the skill and standing of the attorneys employed, the nature of the case, the novelty and difficulty of the issues involved, the degree of responsibility required, the usual and customary charge for the same or similar services in the community, and whether there is a reasonable connection between the fees charged and the litigation. [Citation.]" *Id.* at 867-68.

¶ 51 As with the decision to grant a motion for sanctions, the amount of a sanction award is reviewed under the abuse-of-discretion standard. See *id.* at 867. " '[T]he circuit court's acceptance of unrebutted affidavits of counsel as to fees, in the absence of an evidentiary hearing, is within its discretion.' " *Garlick*, 2018 IL App (2d) 171013, ¶ 54 (quoting *Hess*, 2012 IL App (5th) 090059, ¶ 26). We may not disturb the amount of attorney fees and costs awarded merely because we might have reached a different conclusion. *Id.* Rather, we will disturb the amount of the award only if "no reasonable person could take the view that the [trial] court adopted." *Cretton*, 371 Ill. App. 3d at 864-65.

¶ 52 Plaintiff argues that the amount of attorney fees and costs awarded is excessive because:

> "The vast majority of [Holzrichter's final] invoice are attorney[ ] fees that were incurred *after* [p]laintiff attempted to voluntarily dismiss FVSA as a party in November[ ] 2022. FVSA would not have incurred any of these attorney[ ] fees if it had agreed to allowing FVSA to be voluntarily dismissed in November[ ] 2022, and any attorney[ ] fees after that date are unreasonable.
>
> Furthermore, [Holzrichter's final] invoice includes time entries for work unrelated to the claim against FVSA, including the hours spent reviewing Kellenberger and Sinclair's motions to dismiss and attending depositions and a site visit. Some of the additional time

> entries appear bloated and unreasonable, including [0].5 hours for 'researching [the] voluntary dismissal statute 735 ILCS 5/2-1009' on November 23, 2022, and the 1.5 hours for preparing and filing the agreed order dismissing FVSA with prejudice on [M]arch 1, 2023." (Emphasis in original.)

¶ 53 We disagree. First, as noted, plaintiff's November 2022 motion to voluntarily dismiss was made after FVSA filed a combined motion to dismiss and for sanctions. Plaintiff agreed to dismiss FVSA *without prejudice* and *only if* FVSA agreed to dismiss its motion for sanctions and pay its own attorney fees. We cannot conclude that the trial court abused its discretion when it awarded FVSA fees incurred after this one-sided "offer" was made. Second, McManus, not FVSA, wanted to depose various witnesses before responding to FVSA's motion for sanctions. FVSA had the right to be represented by counsel at those depositions—all of which took place before FVSA was dismissed with prejudice—because evidence about FVSA's involvement could have been addressed. Likewise, the site visit and review of Kellenberger's and Sinclair's motions to dismiss occurred before FVSA was dismissed with prejudice, when FVSA had the right to representation. See *Rios v. Valenciano*, 273 Ill. App. 3d 35, 41 (1995) (court determined that the plaintiff was entitled to recover attorney fees incurred for the entire proceedings because "[p]laintiff was required to go through unnecessary proceedings and incur needless expense because of [the attorney's] violation of [Rule 137] from the outset of the proceedings"). We also find unavailing plaintiff's claim that some of Holzrichter's fees appear "bloated." Not only is Holzrichter not required to account for each minute of her services (see *Ashley v. Scott*, 266 Ill. App. 3d 302, 306 (1994)), but the trial court found nothing inappropriate in Holzrichter's detailed invoice. As a court of review, we will not disturb the trial court's determination unless we conclude that no

reasonable person would accept the court's view. We cannot conclude that no reasonable person would award FVSA the fees and costs it incurred.

¶ 54 The last issue we consider is whether Rule 375(b) sanctions are proper here. "The purpose of Rule 375(b) is to condemn and punish the abusive conduct of litigants and their attorneys ***." (Internal quotation marks omitted.) *Jaworski v. Skassa*, 2017 IL App (2d) 160466, ¶ 18. "Appropriate sanctions for violation of this [rule] may include an order to pay the other party or parties damages, the reasonable costs of the appeal or other action, and any other expenses necessarily incurred by the filing of the appeal or other action, including reasonable attorney fees." Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). "The imposition of sanctions under Rule 375(b) is discretionary." *Jaworski*, 2017 IL App (2d) 160466, ¶ 18.

¶ 55 "Rule 375(b) allows us to impose an appropriate sanction if the appeal is frivolous, not taken in good faith, or taken for an improper purpose, such as to harass or cause unnecessary delay or needless increase in litigation costs." *Id.* "An appeal is frivolous when '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.' " *In re Marriage of Lindell*, 2023 IL App (2d) 220055, ¶ 25 (quoting Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994)). " 'In determining whether an appeal is frivolous, we apply an objective standard; the appeal is considered frivolous if it would not have been brought in good faith by a reasonable, prudent attorney.' " *Id.* (quoting *Thompson v. Buncik*, 2011 IL App (2d) 100589, ¶ 21).

¶ 56 Plaintiff claims that FVSA is not entitled to sanctions under Rule 375(b) because (1) "the [t]rial [c]ourt's ruling should be reversed, and a successful appeal is by definition not frivolous"; (2) "[p]laintiff's appeal is supported by the factual record and case law, and there is no basis to even suspect that it was brought in bad faith or with some sort of malicious intent"; (3) "[p]laintiff

has an absolute right to appeal sanction orders entered by the [t]rial [c]ourt, and this right should not be hindered by threats of sanctions in the Appellate Court"; and (4) a sanction should be treated as a fee-shifting provision, which is contrary to the American legal system's position that each party should bear his own expenses. None of these arguments are persuasive.

¶ 57 First, plaintiff's appeal was not successful. Second, plaintiff's appeal is not supported by the record. Indeed, as noted, plaintiff has distorted the record at times to support his position. Third, although we agree that plaintiff has an absolute right to appeal final sanction orders, we also believe that FVSA, a party that made clear on many occasions that it was improperly named as a defendant and supported its position with evidence, should not be hindered from seeking to recoup the expenses it incurred on appeal because plaintiff insisted on prolonging the proceedings. Last, sanctions are not synonymous with fee-shifting provisions. See *Toland v. Davis*, 295 Ill. App. 3d 652, 657-58 (1998). To suggest otherwise and advance unsupported policy reasons why they should be treated similarly is unconvincing.

¶ 58 Given all the above, we must conclude that a reasonable and prudent attorney would not have brought this appeal in good faith. "Sanctions must be levied where cases 'drain valuable resources intended to benefit those who accept the social contract of living under a law-based system of government.' " *In re Marriage of Lindell*, 2023 IL App (2d) 220055, ¶ 28 (quoting *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 88).

¶ 59 Although FVSA has asked for leave to file a motion for fees under Rule 375(b) and a supporting fee petition, we will spare the parties from incurring further needless fees and costs and instead direct Holzrichter, who has represented FVSA on appeal, to submit to this court, within 14 days after the issuance of this order, an affidavit and billing records for work and expenses she incurred in this appeal. Plaintiff's attorney shall have 14 days to file a response. We will thereafter

file an order determining the amount of sanctions that will be imposed. See *Magee v. Garreau*, 332 Ill. App. 3d 1070, 1078 (2002).

¶ 60 III. CONCLUSION

¶ 61 For the reasons stated, we affirm the judgment of the circuit court of Kane County and impose Rule 375(b) sanctions against plaintiff.

¶ 62 Affirmed; sanctions imposed.