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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

MICHELLE L. MITCHELL, f/k/a)	Appeal from the Circuit Court
Michelle M. Flannery,)	of McHenry County.
)	
Plaintiff-Appellant,)	No. 01-DV-411
)	
v.)	
)	
KEVIN T. FLANNERY,)	Honorable
)	Gerald M. Zopp, Jr.,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Bowman and Schostok concurred in the judgment.

ORDER

Held: The trial court retained jurisdiction at all times in this matter because none of the judges involved in this case had previously recused him- or herself from this case or a case involving plaintiff. Further, the trial court did not abuse its discretion in modifying plaintiff's child support obligation and not reducing it to zero; likewise, the trial court's imposition of sanctions did not constitute an abuse of discretion. Last, plaintiff forfeited her argument that she should have received free transcripts by not citing to pertinent authority to support her argument.

¶ 1 Plaintiff, Michelle Mitchell, f/k/a Michelle Flannery, appeals the judgment of the circuit court of McHenry County denying her motion to abate child support as well as granting motions of defendant, Kevin Flannery, for sanctions under Supreme Court Rule 137 (eff. Feb. 1, 1994) and

various other orders entered by the trial court. Plaintiff raises a number of arguments, including that the trial court lost jurisdiction over this matter, erred in setting and refusing to abate child support, erred in refusing to sanction defendant for claimed discovery violations, erred in sanctioning her and not defendant pursuant to Rule 137, and violated her rights by not ordering that reports of proceedings be provided free of charge to plaintiff when plaintiff “was impoverished under color of law.” We affirm.

¶ 2 We first attempt to summarize the pertinent facts. Defendant notes (and has filed a motion on this subject) that plaintiff’s preparation of the record on appeal is woefully inadequate because she did not include transcripts of the key hearings or the exhibits admitted during the hearings. Defendant has filed a motion to dismiss the appeal on the basis that the record is insufficient to allow him to respond to her claims or for this court to review. Defendant’s motion to dismiss was ordered to be taken with the case. We deny defendant’s motion to dismiss, and we will resolve deficiencies in the record as necessary and according to the law.

¶ 3 The instant appeal relates to plaintiff’s January 15, 2009, post-dissolution motion to modify child support, and, later, on February 2, 2009, plaintiff filed an amended motion to abate child support. On February 27, 2009, defendant filed a petition for rule to show cause that alleged that plaintiff had not paid child support to defendant. Following the initial motion, plaintiff filed a number of motions and other pleadings, including discovery motions; motions for interim fee awards; petitions seeking to hold defendant and defendant’s counsel in direct criminal contempt of court; a request that the court initiate disciplinary actions against defendant’s attorney; an emergency petition for an injunction against defendant, state court agents, public employees, and others to preclude them from violating plaintiff’s civil rights; motions seeking the trial court’s voluntary

recusal and substitution for cause; and many others. Eventually, March 2011 was fixed for the trial date.

¶ 4 Regarding the recusal and substitution motions, plaintiff filed a motion requesting Judge Zopp's voluntary recusal, and thereafter, filed a motion for substitution for cause. The motion for cause was taken before Judge Sullivan. Before Judge Sullivan, plaintiff moved for a substitution of judge as of right, and the motion for cause was heard by Judge Chmiel. On September 16, 2010, Judge Chmiel denied plaintiff's motion for substitution of judge for cause. Judge Chmiel found that plaintiff left the courtroom when her motion was called, stating that she did not wish to pursue it, and he held that plaintiff abandoned the motion. Judge Chmiel further held that, on the merits of the motion, cause did not exist for the substitution of Judge Zopp.

¶ 5 After the motion for substitution was resolved, defendant filed a motion for attorney's fees and costs, plus a supervisory order. On March 11, 2011, the trial court ruled in favor of defendant and entered a judgment in the amount of \$5,820 in sanctions pursuant to Rule 137 against plaintiff regarding the proceedings on the motion for substitution for cause. The trial court further ordered that, before filing any more petitions or motions, plaintiff was required to seek leave of court.

¶ 6 Finally, on March 15-18 and 21, 2011, trial on the original post-dissolution issues occurred. On April 7, 2011, the trial court ruled on the issues. The trial court modified plaintiff's child support obligation, setting it at \$50 per week effective January 26, 2009, and adding an additional \$10 per week to pay down plaintiff's child support arrearage of \$3,970.53 plus statutory interest. The trial court denied plaintiff's request for child support abatement. The trial court also denied defendant's petition for rule to show cause. Regarding defendant's motions for Rule 137 sanctions, the trial court held that plaintiff's "attacks on the Defendant, his attorney, the Courts and others" were not

well grounded in fact or in law, were egregious, and were not made in good faith, but were raised to harass and delay the proceedings. The trial court awarded defendant his reasonable attorney fees incurred in defending against plaintiff's various pleadings, motions, and petitions in the amount of \$19,800. Plaintiff timely appeals.

¶7 On appeal, plaintiff contends that the trial court lost its jurisdiction when Judge Chmiel heard plaintiff's motion for substitution for cause because he had previously recused himself from another case because he worked with judges who were being subjected to other litigation. Next, plaintiff contends that the trial court erred in its modification of child support and its failure to abate child support. Plaintiff also contends that defendant should have been sanctioned for discovery violations and violations of Rule 137. Last, plaintiff argues that her constitutional rights were infringed because the trial court did not agree to provide her with transcripts of the proceedings at no cost to her, when she had been "impoverished under color of law." We address each contention in turn.

¶8 Plaintiff first contends that the trial court lost its jurisdiction over this matter. We disagree. Plaintiff argues that the trial court lost its jurisdiction because Judge Chmiel had previously recused himself from hearing a case because his judicial colleagues were in litigation. Plaintiff contends that this recusal should also apply to the instant case because Judge Chmiel could not be fair to the parties because of the litigation against his judicial colleagues.

¶9 We note that the recusal order cited by plaintiff was in the case of *Mannix v. Sheetz*, No. 08-OP-499, and not the instant case. Thus, the recusal was in a case involving different parties. Judge Chmiel had not previously stated that he could not be fair to the parties in this case. A trial judge is presumed to be fair and impartial, and it is the responsibility of the party alleging judicial bias to overcome this presumption. *Leshner v. Trent*, 407 Ill. App. 3d 1170, 1176 (2011). Plaintiff has failed

to overcome the presumption of fairness to the parties. We hold that a recusal from a different case involving different parties simply cannot show that the trial court believes that it cannot be fair to the parties in front of it in the instant case. Accordingly, we reject plaintiff's argument.

¶ 10 Plaintiff next argues that Judge Zopp was biased and should have been substituted for cause. Unfortunately for plaintiff, the record does not support her claim. At most, it shows that Judge Zopp entered rulings that were adverse to plaintiff. It is well established that the trial court's alleged bias and prejudice must stem from an extrajudicial source and that its rulings will generally not constitute a basis from which to claim bias or prejudice. *Williams v. Estate of Cole*, 393 Ill. App. 3d 771, 777 (2009). Here, there is simply no showing of bias other than the adverse rulings entered by the trial court. Further, the record contains no report of proceedings for the challenged hearing, so we cannot review any remarks by the trial court that plaintiff may have believed indicated its bias against her. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (doubts caused by inadequacies in the record will be resolved against the appellant). Accordingly, we reject plaintiff's argument.

¶ 11 Next, plaintiff contends that the trial court lost its jurisdiction due to the misconduct of Judges Chmiel and Zopp, defendant's attorney, the state's attorney's office, and the sheriff's department. Plaintiff appears to allege that Judges Chmiel and Zopp along with others engaged in perpetrating a fraud on the court itself and in persecuting her. Plaintiff contends that, because of their actions, they deprived the court of jurisdiction. We disagree.

¶ 12 In this rambling and less-than-coherent argument, plaintiff accuses a number of people with serious misconduct. These accusations are supported by citation to plaintiff's pleadings, in which she makes similar accusation. Nowhere in the underlying pleadings, however, is there anything remotely resembling evidence to support her accusations. The trial court (both judges, in fact)

determined that plaintiff did not provide any evidence in support of her claims, leading the trial court to impose sanctions for frivolous and unsupported-in-fact pleadings. Our review of the record confirms the trial court's determination that plaintiff's claims have no basis in evidence. Accordingly, we reject plaintiff's contention.

¶ 13 Next, plaintiff argues that the trial court abused its discretion in modifying her child support obligation from \$133 per week to \$50 per week. Plaintiff argues that her child support obligation should have been abated (meaning, apparently, set to \$0) because the trial court had given her leave to proceed as a poor person, erroneously attributed to her income gifts from her parents including cash, her residence, and access to a car. Plaintiff also contends that, if the trial court were properly making attributions to her income, then it should have included in her income the public aid she receives, as well as the gifts from her parents. Because the trial court did not, plaintiff concludes that its reasoning was flawed when it imputed to her income the gifts she received from her parents.

¶ 14 We see no necessary connection between the trial court granting her leave to proceed as a poor person (*i.e.*, forgiving the litigation costs paid to the court) and its determination that plaintiff was capable of making \$250 per week from a minimum-wage job and the gifts from her parents. Rather, plaintiff's argument is a *non sequitur* because there is no relationship between being allowed to proceed as a poor person in the litigation and the calculation of income for purposes of assessing a child support obligation. Accordingly, we reject her contention on that point.

¶ 15 Regarding the income computation, the trial court's decision to include the gifts of cash, housing, and transportation given to plaintiff by her parents is fully supported by *In re Marriage of Rogers*, 213 Ill. 2d 129, 137 (2004). We see no abuse of discretion or error in the court's reasoning regarding plaintiff's receipt of gifts from her parents. Further, plaintiff cites to nothing to

demonstrate that the amount of \$250 per week was erroneous (especially when the trial court apparently included in this total the wages plaintiff would receive each week if she were working in a minimum-wage job). Accordingly, we reject plaintiff's contention on this point. Regarding plaintiff's contention that the trial court's reasoning was flawed or inconsistent because it did not include her public aid benefits in its calculation of her weekly income, we note that plaintiff offers no authority to suggest that public aid benefits should be included in the income calculation for purposes of fixing a child support obligation, and has forfeited this specific point on appeal. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Thus, we reject plaintiff's contentions on the reduction of her child support obligation from \$133 per week to \$50 per week.

¶ 16 Plaintiff next argues that the trial court erred in ordering her to pay child support because she testified that she had effectively no income. This argument appears to be a variation on the foregoing argument about the improper modification of her child support obligation. We note that the trial court set forth its findings of fact in its order modifying plaintiff's child support obligation, and plaintiff does not challenge the trial court's factual determination by pointing to any contrary evidence or testimony in the record. Accordingly, because there is nothing in the record suggesting that the trial court's factual determination was against the manifest weight of the evidence, and because its conclusion to reduce but not extinguish plaintiff's child support obligation cannot be said to be an abuse of discretion (see *Marriage of Rogers*, 213 Ill. 2d at 135 (a modification of child support is reviewed for an abuse of discretion)), we reject plaintiff's contention.

¶ 17 Next, plaintiff argues that the trial court erred in denying her motion for sanctions against defendant pursuant to Supreme Court Rule 219 (eff. July 1, 2002) for alleged discovery violations. We have carefully reviewed the record. Plaintiff first raised the issue of defendant's purported

discovery violations in her September 4, 2009, verified motion for direct criminal contempt of court, followed by her February 7, 2011, motion for Rule 219 sanctions, and she again raised the issue in her September 24, 2009, motion for disciplinary action against defendant's counsel, a November 12, 2009, motion for rehearing, and a January 4, 2010, motion for a continuance. Plaintiff's motion for criminal contempt was denied, and plaintiff did not provide a transcript of the hearing, so we cannot evaluate the trial court's decision and must presume it was correct and based in the law (*Foutch*, 99 Ill. 2d at 391-92). Similarly, the trial court denied her motion to compel and her motion for disciplinary action against defendant's counsel, holding that defendant's discovery compliance had been satisfied. Plaintiff did not appear for hearing on her emergency motion for disciplinary action against defendant's counsel or the motion to continue. The motion for rehearing was never set for hearing. Last, the February 7, 2011, motion for Rule 219 Sanctions was set to be heard during trial. However, plaintiff has not provided a transcript of the hearing, but the motion was denied on March 15, 2011. Plaintiff has not included any proper citation to the record (only to her own pleadings) to challenge the trial court's determination that defendant complied with his discovery obligations or its ruling on the various motions. We find nothing in the record that would suggest that the trial court abused its discretion in denying her request for Rule 219 discovery sanctions. Accordingly, we reject plaintiff's contention.

¶ 18 Next, plaintiff contends that the trial court erred in imposing sanctions pursuant to Rule 137 on her instead of on defendant. Plaintiff apparently confines her assignment of error to the implied contention that the court erroneously imposed sanctions because she used the phrase, "cottage industries" in accusing various judges, court and state employees, and others of misconduct in the conduct of this case (and others). We disagree.

¶ 19 It is well settled that the imposition of sanctions pursuant to Rule 137 is reviewed for an abuse of discretion. *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 67 (2011). Here, our review of the record indicates that the trial court did not abuse its discretion in imposing Rule 137 sanctions against plaintiff. In its March 11, 2011, order, the trial court noted “at least 28 situations involving [plaintiff’s] filings” in which “she did not know what the content of her own filings contained notwithstanding her verification at the time of the filings.” The trial court further determined that plaintiff’s presentation of her claims “was less tha[n] credible, largely if not completely irrelevant, and where potentially relevant, lacked any credible reference to actual facts.” In addition, in its April 7, 2011, order, the trial court determined that “the Plaintiff has presented no valid basis or evidence for the attacks on the Defendant, his attorney, the courts and others as outlined in her Pleadings, Motions and Petitions,” and concluded that, in addition to ignorance of the basis of her claims, her motive in filing her pleadings, motions, and petitions was delay and harassment. These conclusions are supported in the record or are necessary presumptions where the record is insufficient (see *Foutch*, 99 Ill. 2d at 391-92). Accordingly, we hold that the trial court’s imposition of Rule 137 sanctions against plaintiff did not constitute an abuse of discretion and we reject plaintiff’s contention on this point on appeal.

¶ 20 Last, plaintiff argues that the trial court erred by failing to produce transcripts of certain hearings at no cost to her. Plaintiff’s actual argument is almost impenetrable as she alleges some justification for free transcripts based on unnamed constitutional rights and fairness as a result of having been “impoverished under color of law.” Plaintiff cites neither any supreme court rule, relevant statute, nor pertinent authority in support of her argument on this point. Accordingly, we hold that plaintiff has forfeited this argument on appeal for failure to cite to pertinent authority.

TruServ Corp. v. Ernst & Young LLP, 376 Ill. App. 3d 218, 227 (2007) (the plaintiff forfeited its issue on appeal when it did not cite to any pertinent authority to support its argument).

¶ 21 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 22 Affirmed.