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2012 IL App (3d) 110800-U

Order filed July 23, 2012

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IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
SABINE CHAPMAN, n/k/a SABINE	)	of the 12th Judicial Circuit,
GOURGUE,	)	Will County, Illinois
	)	
Petitioner-Appellee,	)	Appeal No. 3-11-0800
	)	Circuit No. 02-D-1979
v.	)	
	)	
TODD CHAPMAN,	)	Honorable
	)	Dinah L. Archambeault,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices Holdridge and McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court correctly found that respondent's request for Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994) sanctions was time-barred and properly granted the motion of petitioner's former attorney for directed finding on respondent's request for sanctions. The appellate court, therefore, affirmed the trial court's judgment.

¶ 2 Respondent filed a motion for Rule 137 sanctions against petitioner's former attorney, David L. Choate. After a hearing, the trial court initially found that a *prima facie* case for sanctions had been established and denied Choate's motion for a directed finding. Choate filed a motion to reconsider, alleging that the trial court failed to consider the other basis for his motion for directed

finding, that Rule 137 sanctions were time-barred because the request for sanctions had been made more than 30 days after final judgment was entered. Upon reconsideration, the trial court agreed with Choate and granted Choate's motion for directed finding. Respondent appeals, arguing that: (1) the trial court had no jurisdiction to reconsider its prior ruling; and (2) the trial court erred in granting Choate's motion for directed finding on the basis of timeliness. We affirm the trial court's judgment.

¶ 3

### FACTS

¶ 4 A judgment for dissolution of petitioner and respondent's marriage was entered in March 2005. In December 2006, petitioner filed a motion for rule to show cause against respondent, alleging, among other things, that respondent failed to pay child support. Petitioner's attorney at the time later withdrew, and attorney David L. Choate represented petitioner from July 2007 until December 2009.

¶ 5 In September 2008, respondent filed a criminal contempt petition in the instant case against petitioner, alleging that petitioner's rule to show cause against respondent contained knowingly false statements regarding respondent's payment of child support. The trial court dismissed the petition for criminal contempt on its own motion and directed respondent to file the petition for criminal contempt under a separate case number, which respondent did.

¶ 6 On August 14, 2009, an agreed order was entered that resolved all of the pending issues in both the instant case and the criminal contempt case. The caption of the agreed order contained the case number for both the instant case and the criminal contempt case and the written order provided, among other things, that the criminal contempt charge was dismissed with prejudice, respondent's support obligation was paid in full, respondent's support payments were to be based on his

unemployment benefits, and respondent was required to maintain a job diary and notify the trial court when he obtained employment.

¶ 7 On April 8, 2010, respondent moved for Rule 137 sanctions against Choate. The motion alleged that sanctions were warranted against Choate because Choate allowed the petition for rule to remain pending despite his knowledge that the assertions contained in the petition for rule were false. A bench trial was held on the matter in August 2010. After respondent rested his case, Choate moved for a directed finding, arguing that: (1) respondent failed to establish a *prima facie* case for Rule 137 sanctions; and (2) respondent's request for Rule 137 sanctions was time-barred because respondent failed to make the request within 30 days of the August 14, 2009, agreed order.

¶ 8 The trial court took the motion under advisement, and, on October 25, 2010, denied the motion for directed finding, ruling that respondent had established a *prima facie* case. Within 30 days, on November 16, 2010, Choate filed a motion to reconsider pursuant to section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2010)), arguing that the trial court failed to consider or rule upon his second basis for a directed finding, that the request for Rule 137 sanctions was time-barred. The trial court took the motion for reconsideration under advisement.

¶ 9 In January 2011, upon reconsideration, the trial court entered an order granting Choate's motion for directed finding. In so doing, the trial concluded that respondent's request for Rule 137 sanctions was time-barred because it had not been made within 30 days of the August 14, 2009, agreed order. Respondent filed a motion to reconsider, which the trial court denied. Respondent appealed.

¶ 10 ANALYSIS

¶ 11 On appeal, respondent argues first that the trial court lacked jurisdiction to grant Choate's

motion to reconsider with respect to the non-final order entered in this case on October 25, 2010 (the order finding that a *prima facie* case for sanctions had been established), or the order entered on August 14, 2009 (the agreed order), which respondent characterizes as being entered solely in the criminal contempt case. While we agree with respondent that Choate's motion was not properly made under section 2-1203 of the Code and should have been titled differently, there is no question that the trial court had jurisdiction to hear the motion. The motion was made during the course of a bench trial on the issue of sanctions and was properly brought to call the trial court's attention to a possible error in its prior ruling. During the course of the bench trial, the trial court clearly had jurisdiction to make clear its prior ruling or to correct its failure to consider Choate's other basis for directed finding, regardless of the title that was placed upon Choate's motion. See *Brigando v. Republic Steel Corp.*, 180 Ill. App. 3d 1016, 1020 (1989) (in general, the trial court retains jurisdiction over a case pending before it until a final judgment is entered and the litigation is effectively terminated between the parties). Therefore, we reject respondent's argument on this point.

¶ 12 Out of an abundance of caution, we will also address whether the trial court correctly granted a directed finding for Choate on respondent's request for Rule 137 sanctions, although it is not quite clear from respondent's brief on appeal whether respondent is raising that issue. The trial court found that the request for sanctions was time-barred because it was not made within 30 days of the August 14, 2009, agreed order. We agree with that conclusion.

¶ 13 Although a trial court's ruling on Rule 137 sanctions is generally reviewed for an abuse of discretion (see *Carus Chemical Co. v. Calciquest, Inc.*, 341 Ill. App. 3d 897, 901 (2003)), we will review this issue under a *de novo* standard of review because it appears that the trial court's ruling

was made under the first prong of the analysis used for evaluating a motion for directed finding in a bench trial (see *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003)). A motion for directed finding should be granted if the plaintiff failed to establish a *prima facie* case. See *People ex rel. Sherman*, 203 Ill. 2d at 275.

¶ 14 Rule 137's purpose is to prevent the filing of frivolous and false lawsuits. *Peterson v. Randhava*, 313 Ill. App. 3d 1, 7 (2000). "Under Rule 137, a court may impose sanctions against a party or counsel who files a motion or pleading that fails to have a well-grounded factual basis, that is not supported by existing law or lacks a good-faith basis for a modification, reversal, or extension in the law, or that is interposed for any improper purpose." *Peterson*, 313 Ill. App. 3d at 6-7. "A party requesting sanctions bears the burden of proving both that the statements in the pleadings are untrue and that they were made without reasonable cause." *Carus Chemical Co.*, 341 Ill. App. 3d at 901. A request for sanctions must be brought within the same civil action in which the pleading in question took place and must be filed within 30 days of the entry of final judgment or the ruling upon a post-judgment motion, if such a motion is made. Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

¶ 15 In the present case, the agreed order that was entered on August 14, 2009, was a final judgment, which applied to both the civil case and the criminal contempt proceeding. Respondent's motion for sanctions was not filed until April 2010, several months after the final judgment was entered. Respondent's motion was not filed within the 30-day period as required by Rule 137 and was, therefore, time-barred. See *In re Marriage of Barmak*, 276 Ill. App. 3d 83, 86 (1995). The trial court properly granted Choate's motion for directed finding on respondent's request for Rule 137 sanctions. See *People ex rel. Sherman*, 203 Ill. 2d at 275.

¶ 16 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 17 Affirmed.