THIRD DIVISION
November 13, 2013

Nos. 1-12-0393, 1-12-0714, and 1-12-0857 (consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KOSSIWA YEHOUENOU, Plaintiff-Appellant, v. ST. JOSEPH HOSPITAL, KIMBERLEY DAREY, M.D., and MADHURI VERMA, MD., Defendants-Appellants.	)	Appeal from the Circuit Court of Cook County. 11 L 7248 The Honorable Eileen Mary Brewer, Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Mason concurred in the judgment.

ORDER

¶ 1 HELD: (1) The dismissal of a complaint against one defendant doctor was affirmed where it was barred by *res judicata* because the court in a pending case for the same cause

of action had already dismissed that defendant due to the expiration of the one-year statute of limitations after plaintiff's prior voluntary dismissal of that doctor. The dismissal of the other defendant doctor was affirmed because any cause of action against him was barred by the statute of limitations. Dismissal of the defendant hospital on the basis of the other pending action was not abuse of discretion and was affirmed where this action was for the same cause and involved the same parties. (2) The denial of a motion for substitution of judge as of right was appropriate because it was untimely where a hearing on the defendants' motion to dismiss had already commenced and the judge had indicated to plaintiff which way she would rule. (3) The award of costs to defendants in connection with the litigation was affirmed as appropriate under Illinois Supreme Court Rule 219(e) (Ill. S. Ct. R. 219(e) (eff. July 1, 2002)) where the filing of this action after a prior voluntary dismissal was an attempt to circumvent the orders in the prior voluntarily dismissed action. (4) The award of Rule 137 sanctions was affirmed where plaintiff's counsel made numerous allegations in pleadings accusing the court of corruption that were baseless and not well grounded in fact or law but were interposed for an improper purpose to harass the court. (5) The two orders of direct criminal contempt imposing sanctions were affirmed based on plaintiff's counsel's statements about the judge and conduct in the courtroom, including shouting at the judge and waving a Bible.

¶ 2 BACKGROUND

¶ 3 Prior to summarizing the background facts and procedural history of this case, we note that much of plaintiff's statement of facts is improperly argumentative, in violation of Illinois Supreme Court Rule 341. Ill. S. Ct. R. 341 (eff. July 1, 2008). As such, we do not consider these facts alleged by plaintiff in her brief before us and will only consider facts that are without argument and are supported by citations to the record.

¶ 4 The following is a summary of the facts relevant to this appeal:

¶ 5 On July 20, 2009, plaintiff filed a cause of action against St. Joseph Hospital, Dr. Kimberley Darey, M.D., Michael Husseey, M.D., Abdul Husseinian, M.D., Advocate Illinois Masonic Medical Center, and Abrahamm Shashoua, M.D., in case number 09 L 8496. This 2009 complaint alleged medical malpractice regarding the delivery and post-delivery care and treatment provided to the plaintiff, Kossiwa Yehouenou, on July 28, 2007. The operative report

for the "D&C" procedure performed on plaintiff sets forth three names: Dr. Darey, Dr. Verma, and Dr. Hidalgo.

¶ 6 In the 09 L 8496 case, on January 6, 2010, plaintiff filed an amended complaint adding Dr. Raynel Hidalgo as a defendant.

¶ 7 On January 15, 2010, plaintiff voluntarily dismissed the following defendants: Dr. Kimberley Darey, Dr. Michael Hussey, Dr. Abdul Husseinian, Advocate Illinois Masonic Medical Center, and Dr. Abraham Shashoua. The order of voluntary dismissal was entered on January 15, 2010.

¶ 8 On June 17, 2011, 17 months after the voluntary dismissal of Dr. Darey, plaintiff filed an emergency motion before Judge Jennifer Duncan Brice requesting leave to file an amended complaint re-naming Dr. Darey as a defendant.

¶ 9 On June 29, 2011, Judge Duncan Brice denied plaintiff's motion and ruled that plaintiff was barred from amending the complaint to add Dr. Darey because plaintiff's voluntary dismissal was over one year prior and the time to re-file had expired. The order entered on June 29, 2011, denied plaintiff's motion for leave to file the amended complaint. On that same date, June 29, 2011, the judge granted plaintiff leave to file an amended complaint adding Dr. Madhur Verma. Plaintiff did not thereafter file an amended complaint adding Dr. Verma.

¶ 10 Also on June 29, 2011, the judge heard argument on defendants' Motion for Supervised Discovery, which was filed by defendants because of inappropriate conduct by plaintiff's counsel during the discovery deposition of Dr. Darey. The deposition of Dr. Darey was terminated because of plaintiff's counsel's alleged attempts to intimidate Dr. Darey. After hearing argument

on defendants' motion, the court entered an order on June 30, 2011, requiring court-supervised discovery. Judge Duncan Brice ruled that plaintiff's counsel's conduct and false affidavit forfeited and barred any further opportunity to depose Dr. Darey and barred the deposition of Dr. Darey.

¶ 11 Despite the order of June 29, 2011 in the 09 L 8496 case denying leave to add Dr. Darey as a defendant, on July 11, 2011, plaintiff filed this case against St. Joseph Hospital, Dr. Darey and Dr. Verma. The complaint was based on the same allegations as in the 09 L 8496 case. This second action was assigned to Judge Eileen Mary Brewer. On November 2, 2011, defendants filed a motion to dismiss this second action pursuant to section 2-619(a)(3) of the Illinois Code of Civil Procedure because it was the same as the pending 2009 case, which was for the same cause of action. See 735 ILCS 5/2-619(a)(3) (West 2010). The motion was set to be heard on November 8, 2011.

¶ 12 On November 8, 2011, Judge Brewer heard defendants' motion to dismiss, and defendants advised Judge Brewer that this action was duplicative of the pending 2009 action now pending before Judge Marcia Maras. The court had reviewed the motion and questioned plaintiff's counsel Amu about the duplicative nature of the case. Amu was unable to provide responsive answers to the questions posed by the court and asked instead for time to file a written response. Judge Brewer granted Amu's request and gave him seven days to file a response to the motion to dismiss. Amu argued that defendants' brief in support of their motion to dismiss was lengthy and that he was unable to respond to the motion within seven days due to a death in his family and requested 28 days. The record reflects that Amu responded angrily, shouting at the

court and refusing to move away from the bench when asked by the court to do so. The deputy sheriffs were instructed to remove Amu from the courtroom. At some point later, sheriffs at the Daley Center took Amu's sheriff's I.D. The hearing on defendants' motion to dismiss was scheduled for December 9, 2011.

¶ 13 On November 9, 2011, plaintiff's counsel filed three separate emergency motions set before Judge Brewer for November 10, 2011, including: (1) an "Emergency Motion for Judge Eileen Brewer to Cease and Desist The Consistent Pattern and Practice of Abuse towards Attorney Lanre O. Amu or Voluntarily Recuse Herself from Attorney Lanre O. Amu's Cases"; (2) an "Emergency Motion for Substitution of Judge"; and (3) an "Emergency Motion for 28 Days to File Written Response to Defendants' Motion to Dismiss this Medical Malpractice Case with Prejudice." These motions did not cite any case law, court rules, or statutes. Plaintiff's counsel did not file any response to defendants' motion to dismiss.

¶ 14 In the "Emergency Motion for Judge Eileen Brewer to Cease and Desist The Consistent Pattern and Practice of Abuse towards Attorney Lanre O. Amu or Voluntarily Recuse Herself from Attorney Lanre O. Amu's Cases," Amu stated to the court: "the fact that you are a judge does not make you God. God is fair and impartial." In this motion, Amu also stated that the sheriff's deputies' removal of him from the courtroom "could lead to physical altercation, escalation and even gun shots being fired, and criminal charges being brought against me for disorderly conduct, battery of law enforcement officers, or even worse." Amu also alleged that Judge Brewer "manipulate[s] the hearing and the creation of transcripted record by the court reporter to achieve [her] end by frustrating my attempt to make any meaningful record or be

heard in [her] courtroom."

¶ 15 On November 9, 2011, Amu wrote and sent a five-page letter to the Cook County Sheriff, Thomas Dart regarding his "detainment" and asking Sheriff Dart to "reconsider" the "[c]onfiscation" of Amu's Sheriff's I.D. Amu "pledge[d]" that he does not pose a physical threat to anyone's safety.

¶ 16 Also on November 9, 2011, plaintiff's counsel wrote and sent an "Open Letter" to the Federal Bureau of Investigation, the Attorney General, the United States Department of Justice, the Illinois Judiciary Inquiry Board, the Illinois Supreme Court, Chief Judge Timothy Evans, Judge William Maddux, the Attorney Registration and Disciplinary Commission, and the Sheriff of Cook County, titled "My Side of the Story: An Open Letter From Attorney 'Lanre O. Amu" and the below following caption, "I AM NOT A TERRORIST!!!", Amu stated:

> "Your Honors:
>
> I am sorry to contact you once again, but based on the latest developments in my saga, I hereby earnestly Renew My Call for a Thorough Open Transparent and Honest Investigation to My Complaints of Corruption, and Corrupt Schemes Designed to Destroy Me for speaking up against unfairness that I experienced in some of our courtrooms.
>
> Specifically, on November 8, 2011, Judge Eileen Brewer orchestrated yet another scheme to get me in deep trouble with the law, to get me arrested, to be criminally prosecuted and convicted. Thank God I did not take the bait, as such, the malicious plot aborted midstream. *** I call for an Honest, Open Investigation into this unfortunate incident. Judge Brewer needs to come clean with her true motive in this orchestration. I

am not a Terrorist. I am non-violent. I stand for Peace and Justice. I pose no threat of physical harm to anybody anywhere anytime. If anyone wants to pull my law license for Speaking Truth to Power, then, so be it. If it happens, I still will not resort to Terror.

I Call for an End to My Persecution.

I Call for an End to My Persistent Harassment.

I Call for an End to Intimidation. As an Advocate, I have a Right to Advocate Strongly for my Clients more so when we are being unfairly railroaded. I cannot be intimidated. I Must Confront Evil, Not Run from Evil- Regardless of Cost. I Have Done Nothing Wrong.

The Cook County Sheriffs had no reasonable cause to take me into custody on 11/8/11. ***"

¶ 17 On November 10, 2011, the parties appeared before Judge Brewer on plaintiff's three emergency motions. Judge Brewer denied all three motions. Judge Brewer denied the "Emergency Motion for Judge Eileen Brewer to Cease and Desist The Consistent Pattern and Practice of Abuse towards Attorney Lanre O. Amu or Voluntarily Recuse Herself from Attorney Lanre O. Amu's Cases," finding the allegations therein "contemptuous, slanderous, and outrageous."

¶ 18 Judge Brewer denied the "Emergency Motion for Substitution of Judge" as of right, finding that plaintiff could not bring the motion at that point because she had already indicated which way she would rule at the hearing on defendant's motion to dismiss held on November 8, 2011. Judge Brewer informed Amu that a motion for substitution of judge would have to be for

cause, and suggested to Amu that he make an oral motion for substitution of judge for cause and she would send the matter to another judge for a hearing. Judge Brewer then specifically asked Amu to make an oral motion for substitution of judge for cause. Amu refused to orally move for substitution of judge for cause and stated he would "never" make such a motion because, in his opinion, Judge Brewer "ha[d] not really made any substantive ruling as far as I'm concerned."

¶ 19 Judge Brewer also denied plaintiff's "Emergency Motion for 28 Days to File Written Response to Defendants' Motion to Dismiss this Medical Malpractice Case with Prejudice." Judge Brewer told Amu that defendants' motion to dismiss was "an 11-page motion filed which took me 15 minutes to read" and did not require 28 days to respond. The court also noted that, instead of responding to defendants' motion, Amu filed about 20 pages of his emergency motions. The court again ordered that plaintiff had seven days to respond.

¶ 20 Amu failed to file a response to the defendants' motion to dismiss within the seven days he was granted for response. The matter was up for a status hearing on November 23, 2011, but Amu failed to appear. Judge Maras presided instead of Judge Brewer that day. The matter was set for hearing on December 9, 2011.

¶ 21 On that date, Amu attempted to present several motions which were noticed the day before, December 8, 2011: (1) "Plaintiff's Concise Renewed Motion for Substitution of Judge as of Right"; (2) "Plaintiff's Concise Motion to File Response to Defendants' Motion to Dismiss *Instanter*" and "Plaintiff's Concise Response to Defendant's Motion to Dismiss"; and (3) "Plaintiff's Concise Motion to Consolidate 11 L 7248 under Existing Case # 09 L 8496 Which is Pending Before Judge Maras on [sic] Courtroom 2006."

¶ 22 In Plaintiff's Concise Response to Defendant's Motion to Dismiss, plaintiff argued that plaintiff originally named Dr. Hidalgo as a defendant for the negligent procedure on plaintiff pursuant to an expert's review of the medical reports. Plaintiff then dismissed Dr. Darey because plaintiff could not obtain a section 2-622 report (735 ILCS 5/2-622 (West 2008)) against Dr. Darey. Dr. Hidalgo, at his deposition, denied that he performed the procedure on plaintiff and, instead, testified that the operation was actually performed by Dr. Darey and Dr. Verma. Plaintiff argued that the involvement of Verma and Darey could not have reasonably been discovered previously. At this time, the statute of limitations had run in 2009, but, according to plaintiff, "[t]he statute of repose was yet to run in a few months in 2011," and that plaintiff commenced this 2011 action against Darey and Verma prior to the expiration of the four-year statute of repose. We note, as defendants argued in their motion to dismiss, the operative report for plaintiff's procedure in 2007 was in plaintiff's possession and clearly listed Dr. Darey and Dr. Verma as assistants in the procedure.

¶ 23 On the date of the hearing, December 9, 2011, Judge Brewer entered an order striking all three motions (plaintiff's renewed motion for substitution of judge as of right, plaintiff's motion to consolidate the 2009 case and this case, and plaintiff's response to defendants' motion to dismiss) as untimely.

¶ 24 The court entered another order that same date granting defendants' motion to dismiss and dismissing the complaint with prejudice, and granting defendants their costs for their preparation of their motion to dismiss and court appearances, totaling $2,127.

¶ 25 Following her review of both the 2009 case and this case, Judge Brewer had found that

the 2009 case was a pending action for the same cause between the same parties, as reflected in the record in the transcript of the hearing. Regarding defendants' motion to dismiss, Judge Brewer specifically found as follows:

> "This case has already been decided upon by Judge Duncan-Brice and by Judge [Marcia] Maras. This is the same complaint as was filed in the original case here, the 2009 case in front of Judge Duncan-Brice, which is included here. I've read the Court Orders and I've read the Complaints. They are the same. These are the same matters, and you have no right under the law to bring this lawsuit here because it's already been brought."

¶ 26 Amu responded that "[o]n the 8th of November it was clear to me that you had read the Motion to Dismiss before I even got it and I told you I wanted to respond in writing." The court questioned defense counsel, who indicated the motion to dismiss was hand-delivered to Amu on November 2, 2011. Judge Brewer also indicated she reviewed the motion to dismiss on the bench on November 8, 2011. Amu became belligerent and falsely accused the court of having engaged in *ex parte* communications with defense counsel prior to the November 8, 2011 hearing. Defense counsel stated:

> "For the record, your Honor, I did not provide you copies of this before any hearing, and I take offense that he is implying that I'm giving you things behind his back. That is not true."

¶ 27 Amu continued to argue about getting only seven days to respond to the motion to dismiss, whereupon Judge Brewer stated as follows:

"Counsel, there was nothing to respond to, sir. I think it has been explained to you over and over again. Somehow or another you appear not to understand Illinois law. You do not understand the Rules of Civil Procedure. ***

* * *

The law is clear that you cannot file a Complaint for the identical, the identical incident [sic] that occurred ***.

* * *

You filed a Complaint, sir, It's over. It's simple. It's collateral estoppel. It's *res judicata*. It's one concept after another that you don't appear to have a grasp of, sir. So this case is gone in my courtroom. You have another venue where it's being heard and that's in front of Judge Maras ***."

¶ 28 The court repeatedly cautioned Amu to stop insulting the court. The court further explained to Amu that, given his "emotional state," she has "been very, very lenient with you, sir."

¶ 29 Judge Brewer then awarded defendants their costs as a sanction in relation to the time and expense spent appearing and responding to plaintiff's complaint in this case as duplicative litigation after taking a prior involuntary dismissal in the 2009 case, including their costs preparing and presenting their motion to dismiss, as they requested in their motion to dismiss.

¶ 30 On January 13, 2012, defendants presented a motion to enforce the December 9, 2011 order granting them costs. During this hearing, Amu stated that Judge Brewer has committed "the highest abuse of office" by scheming to "keep certain segments" out of the courthouse.

Judge Moira S. Johnson presided in Judge Brewer's absence and continued the matter until January 24, 2012, when Judge Brewer would be present.

¶ 31 On January 24, 2012, Judge Brewer heard the defendants' motion to enforce its December 9, 2011 granting them costs. Amu filed and attempted to present an order in a federal case, which was a minute order from a separate federal case where he was representing a plaintiff, that consolidated two cases, and indicated he wished to consolidate the 2009 case with this case. The court struck the order as improperly brought under any rule or statute. Amu then asked Judge Brewer to recuse herself and transfer the case to Judge Maras so that Amu "can go to Judge Maras and resolve whatever is pending on this case because there is a companion case which pre-dates this case." Judge Brewer explained that this action was already dismissed. Amu then complained about the presence of a sheriff six feet behind him and accused Judge Brewer of asking the sheriff to seize his I.D. Amu stated that the use of sheriffs is "harassing" and affecting his health and stated he was not a "terrorist." Amu was shouting at the court at this point and waiving his Bible. Judge Brewer requested that Amu not raise his voice or waive the Bible in her courtroom. The court had instructed Amu four or five times previously to put his Bible down and not waive either the Q'uran or the Bible in the courtroom.[1]

¶ 32 During this hearing on January 24, 2012, Amu also presented "Plaintiff's Concise Reply

[1] At past appearances, Amu had attempted to read passages from the Bible and the Q'uran to the court. Prior to Amu's interactions with Judge Brewer in this case, Amu had been before Judge Brewer as counsel in *Ibrahim v. Reproductive Genetic Institute*, Case No. 09 L 12831, in which Amu had engaged in similar conduct and similarly maligned Judge Brewer.

to Defendant's Motion to Enforce Court Order," which contained allegations that the court was "not fair and impartial," that the order was "an abuse of the judge's authority," that the court's true motive in imposing sanctions on him was "retaliation," and that the court "merely followed a script." Judge Brewer recited the allegations Amu made against her contained in plaintiff's numerous motions, including that the court was "usurping and fermenting trouble with [Amu] without cause," that the court manipulated a hearing and a transcript, that the court engaged in a "vendetta against plaintiff's counsel," and Amu's statement to the court that, "the fact that you are judge does not make you God." Judge Brewer then stated as follows:

> "I have had dozens of examples from the papers that you have filed in this court, which consist of scandalous, libelous and lying statements about me; and I will no longer – I will no longer allow you to abuse this court the way you have. You already have abused other courts, other judges in this building such as Jennifer Duncan Brice as well as other judges. The list goes on. And I will halt it in my court.
>
> I am now finding you in [direct criminal] contempt of court and fining you $500 to be paid within seven days to the Clerk of the Circuit Court, the Honorable Dorothy Brown. I want that paid within seven days, and I am now setting a hearing for sanctions under Supreme Court Rule 137 by making countless statements that are not based in fact, not well-grounded in fact, not warranted by existing law, nor are they a good faith argument for the extension, modification, or reversal of existing law.
>
> They have been interposed for the improper purpose of harassing this judge and causing unnecessary delay and needless increase in the costs of litigation. You have

violated Rule 137, which as you might know is patterned on the Federal Rule of Civil Procedure 11, allowing this court to impose sanctions upon counsel or clients who file papers that are not well-grounded in fact.

Rule 137 also allows me to sanction attorneys for oral statements made in court that are not well-grounded in fact. The standard for assessing a party's culpability under 137 is one of objective reasonableness. I'm going to set a hearing on this."

¶ 33 The hearing for Rule 137 sanctions was set for February 15, 2012. The court entered an order directing plaintiff's counsel to pay the balance of defendants' costs previously entered on December 9, 2011.

¶ 34 On January 25, 2012, plaintiff's counsel issued a subpoena compelling Judge Brewer to appear and provide testimony in the "criminal contempt hearing," although there was no hearing for the contempt and no hearing was scheduled, as the court had already found Amu in direct criminal contempt. The Illinois Attorney General appeared on behalf of the circuit court and moved to quash the subpoena.

¶ 35 On February 15, 2012, Judge Brewer entered a written order setting out her bases for finding plaintiff's counsel in direct criminal contempt in relation to the January 24, 2012 hearing. In its order, the court reiterated Amu's statements in court and in his letter. The court found that Amu's statements in open court on January 24, 2012, and in Plaintiff's Concise Reply to Defendants' Motion to Enforce Court Order were contemptuous. The written order entered on February 15, 2012, found Amu in direct criminal contempt for his conduct on January 24, 2012, as well as his pleadings, including "Plaintiff's Concise Renewed Motion for Substitution of Judge

as of Right" and his November 9, 2011 letter, and fined Amu $500.

¶ 36 On February 15, 2012, Amu appeared in court before Judge Brewer for the hearing for Rule 137 sanctions. Judge Brewer specifically found plaintiff's motion to consolidate, filed December 9, 2011, in violation of Rule 137 for statements made therein that Judge Brewer was acting out of improper motive in indicating which way she would rule on defendants' motion to dismiss on November 8, 2011, and that she was acting on *ex parte* extrajudicial information. Amu was waving what Judge Brewer believed to be either the Bible or the Q'uran and Judge Brewer asked Amu to put it down. Judge Brewer stated Amu had no basis in law or fact to make the allegation of improper extrajudicial conduct and stated she was sanctioning Amu under Rule 137 for that statement in the pleading. Amu objected to Judge Brewer's statement that he comes to court with the Q'uran, turned around to face the courtroom and asked all the attorneys for a show of hands as to whether anyone had seen him with a copy of the Q'uran and upon a showing of no hands then stated to Judge Brewer, "You're lying. With all due respect, Judge, you are lying." Upon Amu stating to Judge Brewer that she is "lying," Judge Brewer found Amu in direct criminal contempt and fined Amu $500.

¶ 37 On April 27, 2012, the court entered an order imposing a Rule 137 sanction in the amount of $500 against Amu for filing numerous false pleadings.

¶ 38 Also on April 27, 2012, the court entered its written order finding Amu in direct criminal contempt as stated orally on February 15, 2012 at the hearing on Rule 137 sanctions, based on Amu's statements made in open court on February 15, 2012, and for the filing and presentation of "Plaintiff's Concise Response to the Illinois Attorney General's Motion to Quash Subpoena."

Judge Brewer found Amu's conduct to be the "most bizarre, shocking, abusive, and disrespectful behavior ever witnessed by this Court."

¶ 39 Plaintiff filed three separate appeals: number 1-12-0393, filed January 9, 2012; number 1-12-0714, filed February 21, 2012; and number 1-12-0857, filed March 14, 2012.

¶ 40 In his notice of appeal filed January 9, 2012, plaintiff appealed "from the orders entered by Judge Eileen Brewer in this Cause on 12/9/11." The order of December 9, 2011 granted defendants' motion to dismiss plaintiff's new 2011 complaint, and also ordered plaintiff to pay costs to defendants in the amount of $2,127. The other order entered on December 9, 2011 struck three motions filed by plaintiff: plaintiff's motion to consolidate the 2009 action and the newly-filed 2011 action; plaintiff's renewed motion for substitution of judge; and plaintiff's motion to file a response to the defendants' motion to dismiss, *instanter*.

¶ 41 In his notice of appeal filed on February 21, 2012, plaintiff appealed from the circuit court's order of January 24, 2012, which granted defendants' motion to enforce the prior December 9, 2011, order for fees and costs, and also found plaintiff's counsel to be in direct criminal contempt.

¶ 42 In his notice of appeal filed on March 14, 2012, plaintiff appealed from the circuit court's order of February 15, 2012, ordering plaintiff's counsel to pay the balance of costs previously entered on December 9, 2011, entering a Illinois Rule 137 sanction for filing numerous false pleadings, and also the oral ruling by the court finding plaintiff's counsel in direct criminal contempt based on statements he made in open court on February 15, 2012[2] and in his pleadings.

[2] The court's written order entering its finding of direct criminal contempt was not

¶ 43 On January 31, 2012, we consolidated plaintiff's appeals.

¶ 44 ANALYSIS

¶ 45 Amu's brief on appeal on behalf of plaintiff is difficult to follow and not coherently organized. Plaintiff's brief on appeal states six issues on appeal, four of which relate to the time given plaintiff to respond to defendants' motion to dismiss: (1) plaintiff's counsel's request for 28 days to respond to the defendants' motion to dismiss; (2) plaintiff's counsel's request to "be allowed to respond in writing to the dispositive motion"; (3) can the judge "by premeditation and guile preempt the responding attorney's ability to substitute that judge as of right by involuntarily compelling and jamming an oral discussion of the merits of the dispositive motion?"; (4) where the judge can impose "a series of $500 fines to avoid triggering the $501 amount that would have mandate[d] giving the attorney his due process right to a full hearing"; (5) whether an attorney has "the right to respond in writing to a dispositive motion"; and (6) "[w]hether a trial judge can be fair and impartial in presiding over an attorney's new case where the same judge recently held that attorney in contempt in a prior case and the hearing on that contempt finding is still pending?"

¶ 46 Plaintiff's notices of appeal set forth that plaintiff appeals only from the following: the orders of December 9, 2011, which granted defendants' motion to dismiss the complaint, ordered plaintiff to pay costs to defendants in the amount of $2,127, and denied and struck plaintiff's motion to consolidate the cases, motion for substitution of judge, and plaintiff's motion to file a response to the defendants' motion to dismiss, *instanter*; the order of January 24, 2012, which

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entered until April 27, 2012.

granted defendants' motion to enforce the prior December 9, 2011, order for costs, and also found Amu to be in direct criminal contempt and fined Amu $500; and the orders of February 15, 2012, ordering plaintiff's counsel to pay the balance of costs previously entered on December 9, 2011, entering a Illinois Rule 137 sanction of $500 for filing numerous false pleadings, and also the oral ruling by the court finding Amu in direct criminal contempt and fining him $500 for his conduct at the February 15, 2012 hearing.

¶ 47 On appeal, plaintiff does not include any argument regarding the denial of the motion to consolidate the cases. Therefore, review of that portion of one of the December 9, 2011 orders has been forfeited and we do not address it. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) ("Points not argued are waived.").

¶ 48 For purposes of clarity, we organize our analysis by issues according to the substance of the orders appealed from. We review the five actions of the circuit court in its orders that plaintiff appeals: (1) dismissal of the complaint and the striking of plaintiff's motion for leave to file a response to defendants' motion to dismiss the complaint; (2) the denial of plaintiff's motion to substitute judge as of right; (3) the award of $2,127 in costs to defendants for appearing and defending this case and filing their motion to dismiss (and the subsequent orders enforcing the initial order); (4) the imposition of the Rule 137 sanction for $500 for filing false or frivolous pleadings; and (5) the two orders of direct criminal contempt against Amu fining him $500 each. We affirm the court's orders dismissing plaintiff's complaint, awarding defendants costs, and imposing Rule 137 sanctions, as well as the two direct criminal contempt orders.

¶ 49 I. Dismissal of the Complaint

¶ 50 First, we address Amu's argument that the court erred in dismissing the complaint in this case in one of the orders entered December 9, 2011. In reviewing the grant of motion to dismiss, we accept as true all well-pleaded factual allegations. *Majca v. Beekil*, 183 Ill. 2d 407, 416 (1998). The standard of review of a dismissal pursuant to section 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)) is *de novo*. *Hoover v. Country Mut. Ins. Co.*, 2012 IL App (1st) 110939, ¶ 31; *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). Additionally, we may affirm a lower court's judgment on any basis supported by the record. *Studt v. Sherman Health Systems*, 2011 IL 108182, ¶ 48 (citing *Water Tower Realty Co. v. Fordham 25 E. Superior, L.L.C.*, 404 Ill. App. 3d 658, 665 (2010)).

¶ 51 The circuit court granted the motion to dismiss primarily on the basis that this action was duplicative of the 2009 action and also orally found that this case was barred by principles of collateral estoppel and *res judicata*. The court stated: "The law is clear that you cannot file a Complaint for the identical, the identical incident [*sic*] that occurred ***." The court also stated: "You filed a Complaint, sir, It's over. It's simple. It's collateral estoppel. It's *res judicata*."

¶ 52 We agree that dismissal of plaintiff's action against defendant Darey was proper on *res judicata* grounds pursuant to section 2-619(a)(4) (735 ILCS 5/2-619(a)(4) (West 2010)). On the other hand, *res judicata* and collateral estoppel do not apply to Verma or St. Joseph Hospital. Rather, dismissal of St. Joseph Hospital was appropriate under section 2-619(a)(3) (735 ILCS 5/2-619(a)(3) (West 2010)), and the dismissal of Verma was proper based on the statute of

limitations.

¶ 53 Under the Illinois Code of Civil Procedure, a motion to dismiss based on section 2-619(a)(4) permits the circuit court to dismiss a cause of action if it is barred by a prior judgment. 735 ILCS 5/2-619(a)(4) (West 2010). A prior judgment may have preclusive effects on a subsequent action under either the doctrine of *res judicata* or the doctrine of collateral estoppel. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001). The doctrine of *res judicata* provides that a final judgment on the merits by a court of competent jurisdiction bars any subsequent action between the same parties or their privies on the same cause of action. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008). In order for *res judicata* to procedurally bar an action, three requirements must be satisfied: (1) a final judgment has been rendered by a court of competent jurisdiction; (2) an identity of the causes of action exists; and (3) the parties or their privies are identical in both actions. *Hudson*, 228 Ill. 2d at 467.

¶ 54 A prior dismissal of a party based on a statute of limitations operates as a final adjudication on the merits. Illinois Supreme Court Rule 273 provides: "Unless the order of dismissal or a statute of this State otherwise specifies, an involuntary dismissal of an action, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join an indispensable party, operates as an adjudication upon the merits." Ill. S. Ct. R. 273 (eff. Jan. 1, 1967). "Supreme Court Rule 273 makes a dismissal based on a general statute of limitations an adjudication upon the merits." *Maller ex rel. Maller v. Cohen*, 176 Ill. App. 3d 987, 989 (1988). It is well settled that once a defendant has been voluntarily dismissed from a case a plaintiff may re-file the lawsuit against the defendant within one year of the voluntary dismissal

or within the remaining period of limitations, whichever is greater. 735 ILCS 5/13-217 (West 2010). Where a plaintiff fails to re-name the defendant within the time permitted, the order of voluntary dismissal becomes a final order of dismissal. *Johnson v. United National Industries, Inc.*, 126 Ill. App. 3d 181, 187 (1984). See also *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 335-36 (1996) ("the trial judge's decision to grant defendants' motion to dismiss the rescission counts in Rein I based on the applicable statute of limitations is a final adjudication on the merits and operates as a final judgment on the merits for purposes of *res judicata*."); *Matejczyk v. City of Chicago*, 397 Ill. App. 3d 1, 6-7 (2009) (holding that after the court dismissed a count on statute of limitations grounds and plaintiff voluntarily dismissed and then refiled its claim, there was an adjudication upon the merits under Rule 273 to bar refiling, and this result was necessary to promote the *res judicata* principles of avoiding the splitting of claims and piecemeal litigation). "[A] plaintiff who splits his claims by voluntarily dismissing and refiling part of an action after a final judgment has been entered on another part of the case subjects himself to a *res judicata* defense." *Hudson*, 228 Ill. 2d at 473 (citing *Rein*, 172 Ill. 2d at 337-39. " 'Whether a subsequent claim is barred by the doctrine of *res judicata* is a question of law which is reviewed *de novo*.' " *Matejczyk*, 397 Ill. App. 3d at 7 (quoting *Northeast Illinois Regional Commuter R.R. Corp. v. Chicago Union Station Co.*, 358 Ill. App. 3d 985, 1000 (2005)).

¶ 55 Here, the court's dismissal of Darey in the 2009 case due to the expiration of the one-year period for refiling after a voluntary dismissal was a final adjudication upon the merits and operates as a bar under *res judicata* in this case as to Darey. All three requirements are met to bar the action under *res judicata* as to defendant Darey. First, there was a final judgment because

plaintiff had voluntarily dismissed Darey and failed to refile against Darey within one year. Second, the causes of action are identical, as plaintiff repled the same allegations in the complaint in this case. Third, the party is identical. Under the doctrine of *res judicata*, once plaintiff failed to refile within one year, any subsequent action against Darey became barred.

¶ 56 There is no *res judicata* preclusive effect as to Verma and St. Joseph Hospital since Verma was never made a defendant, and there was no prior dismissal as to St. Joseph Hospital. Dismissal of Darey in the 2009 case on statute of limitations grounds does not have *res judicata* effect as to St. Joseph Hospital, as the merits of the underlying negligence claims against the defendant doctors was not decided. See *DeLuna v. Treister*, 185 Ill. 2d 565, 587-89 (1999).

¶ 57 The application of collateral estoppel to support dismissal of this case as to Verma and St. Joseph also would not be appropriate, as issues against them have not been decided in the prior 2009 case. The collateral estoppel doctrine bars relitigation of an issue already decided in a prior case. *People v. Enis*, 163 Ill. 2d 367, 386 (1994). This case, filed in 2011, is the same cause of action and is merely duplicate litigation.

¶ 58 Dismissal of the complaint as against defendant Verma in this case is appropriate based on the statute of limitations. Section 13-212(a) provides for a two-year statute of limitations and a four-year statute of repose:

> "§ 13-212. Physician or hospital. (a) Except as provided in Section 13-215 of this Act, no action for damages for injury or death against any physician, dentist, registered nurse or hospital duly licensed under the laws of this State, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 2

> years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought in the action, whichever of such date occurs first, but in no event shall such action be brought more than 4 years after the date on which occurred the act or omission or occurrence alleged in such action to have been the cause of such injury or death." 735 ILCS 5/13-212(a) (West 2006).

¶ 59 "[T]he common-law discovery rule tolls the commencement of the limitations period until the potential plaintiff possesses sufficient information concerning his or her injury and its cause to put a reasonable person on notice to make further inquiries." *Hanks v. Cotler*, 2011 IL App (1st) 101088, ¶ 19 (citing *Lama v. Preskill*, 353 Ill. App. 3d 300, 304 (2004)).

¶ 60 Plaintiff argues that the naming of Verma in the complaint in this case in 2011 was permissible because it was within the four-year statute of repose, and maintains that she could not have reasonably discovered Dr. Verma's involvement prior to Dr. Hidalgo's deposition in 2011. The record indicates otherwise. The July 28, 2007 operative report of plaintiff's procedure clearly names "Dr. Verma" on the report. This is the same report used for plaintiff's doctor's affidavit in filing suit in the 2009 case. Thus, the statute of limitations had expired as to Verma. Plaintiff is clearly barred from naming Verma and dismissal was proper.

¶ 61 As to St. Joseph Hospital, dismissal is fully supported on the ground that this case is the same cause of action that was already pending in the 2009 action. See 735 ILCS 5/2-619(a)(3) (West 2010). Section 2-619(a)(3) "is designed to avoid duplicative litigation and is to be applied to carry out that purpose." *Crain v. Lucent Technologies, Inc*., 317 Ill. App. 3d 486, 495 (2000),

appeal denied 194 Ill. 2d 567 (citing *Kellerman v. MCI Telecommunications Corp.*, 112 Ill. 2d 428, 447 (1986); *Speakers of Sport, Inc. v. U.S. Telephone, Inc.*, 149 Ill. App. 3d 898 (1986)). "No bright-line test exists for determining whether the litigants' interests are sufficiently similar; instead, each case is decided on a case-by-case basis after considering all the relevant facts." *Northbrook Property and Cas. Ins. Co. v. GEO Intern. Corp.*, 317 Ill. App. 3d 78, 81 (2000). "The decision to grant or deny such a motion is discretionary and will not be reversed absent an abuse of that discretion." *Crain*, 317 Ill. App. 3d at 495 (citing *May v. SmithKline Beecham Clinical Laboratories, Inc.*, 304 Ill. App. 3d 242, 246 (1999); *Kellerman*, 112 Ill. 2d at 447).

¶ 62 Although the grant of a dismissal on the basis of section 2-619(a)(3) is discretionary, we hold that the court's dismissal of this lawsuit against St. Joseph Hospital on this basis was not an abuse of discretion. Plaintiff has not shown how or why the court's dismissal on this basis was an abuse of discretion. Although Verma was not yet specifically named in 2009 lawsuit, the same parties requirement for section 2-619(a)(3) is satisfied " ' "where the litigants' interests are sufficiently similar, even though the litigants *differ in name* or number." ' " (Emphasis added.) *Estate of Hoch v. Hoch*, 382 Ill. App. 3d 866, 869 (2008) (quoting *Combined Insurance Co. of America v. Certain Underwriters at Lloyd's, London*, 356 Ill. App. 3d 749, 754 (2005), quoting *Doutt v. Ford Motor Co.*, 276 Ill. App. 3d 785, 788 (1995)). Plaintiff already had named Darey and St. Joseph Hospital in the 2009 case, for the same cause of action, and was explicitly given the opportunity in the court's order of June 29, 2011 to name Verma. The litigants' interests are thus sufficiently similar. The court was well within its discretion in dismissing this case. We affirm the dismissal of both Verma and St. Joseph Hospital based on section 2-619(a)(3).

¶ 63 Plaintiff also argues that the dismissal of the complaint was error where Judge Brewer improperly allowed plaintiff's counsel, Amu, only 7 days to respond to defendants' motion to dismiss, even though counsel informed the court he had a death in his family and needed 28 days to respond, citing to the local rule allowing for a regular briefing schedule of 28 days for response (Circuit Court of Cook County Rule 2.1(d) (eff. Aug. 21, 2000)). Amu argues in his brief that "Judge Brewer had an axe to grind" and that "[a] fair judge would simply have accommodated a 28[-]day briefing schedule." Amu further argues that he "did not have a fair opportunity to respond in writing before the hearing."

¶ 64 There is no merit to Amu's contention. A similar argument regarding a seven-day schedule for response to a motion for summary judgment was rejected in *Federal National Mortgage Association v. Schildgen*, 252 Ill. App. 3d 984, 987-88 (1993), where the party had enough time from the filing of the motion to the date of hearing to respond, and a seven-day briefing schedule for response was held to be sufficient. Similarly here, Amu had enough time to draft and file a response to defendants' motion to dismiss, which alleged the simple fact of a pending case for the same cause of action. Instead, Amu filed several other motions. Thus, Amu was not unable to respond to the motion to dismiss, as he argued. A circuit court has discretion to grant or withhold permission regarding a briefing schedule, and no authority exists to nullify that discretion. *TIG Ins. Co. v. Canel*, 389 Ill. App. 3d 366, 375 (2009). Given the straightforward and relatively simple nature of defendants' motion to dismiss, the court did not abuse its discretion in granting Amu seven days to respond.

¶ 65 Also, one of the orders entered on December 9, 2011, struck plaintiff's motion for leave to

file plaintiff's response to defendants' motion to dismiss, *instanter*. To the extent plaintiff argues the court should have granted the motion for leave to file a response to the motion to dismiss, *instanter*, we hold that the court did not abuse its discretion in refusing to grant the motion. "Generally, decisions granting or denying "leave of court" are reviewed for an abuse of discretion." *People v. Edwards*, 2012 IL 111711, ¶ 30 (citing *People ex rel. Graf v. Village of Lake Bluff*, 206 Ill. 2d 541, 547 (2003)). The arguments presented in plaintiff's response were already before the court and had been argued. The court based its dismissal on the fact that another case for the same cause of action was pending, and on the fact that the statute of limitations had expired as to defendant Darey and the court in the 2009 case had already ruled on that issue and dismissed Darey. The court did not abuse its discretion in striking plaintiff's motion for leave to file plaintiff's response to defendants' motion to dismiss, *instanter*.

¶ 66 II. Substitution of Judge As of Right

¶ 67 Plaintiff appeals from the order entered on December 9, 2011, which also includes the denial of plaintiff's renewed motion for substitution of judge as of right. Because plaintiff's brief contains some argument and authority regarding Judge Brewer's failure to grant a motion for substitution of judge, we review this issue.

¶ 68 Under section 2-1001(a)(2) of the Code, a litigant is allowed one substitution of judge without cause as of right only as follows:

> "(2) Substitution as of right. When a party timely exercises his or her right to a substitution without cause as provided in this paragraph (2).
>
> (i) Each party shall be entitled to one substitution of judge without cause as a

matter of right.

(ii) An application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties.

(iii) If any party has not entered an appearance in the case and has not been found in default, rulings in the case by the judge on any substantial issue before the party's appearance shall not be grounds for denying an otherwise timely application for substitution of judge as of right by the party." 735 ILCS 5/2-1001 (West 2010).

¶ 69 The right to substitution of judge is absolute when properly made, and the circuit court has no discretion to deny the motion. *Cincinnati Ins. Co. v. Chapman*, 2012 IL App (1st) 111792, ¶ 23 (citing *In re Marriage of Abma*, 308 Ill. App. 3d 605, 609-10 (1999)). " 'However, to prohibit litigants from "judge shopping" and seeking a substitution only after they have formed an opinion that the judge may be unfavorably disposed toward the merits of their case, a motion for substitution of judge as of right must be filed at the earliest practical moment before commencement of trial or hearing and before the trial judge considering the motion rules upon a substantial issue in the case.' " *Chapman*, 2012 IL App (1st) 111792, ¶ 23 (quoting *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 245-46 (2006) (citing *In re Estate of Gay*, 353 Ill. App. 3d 341, 343 (2004)). "A motion for substitution of judge may *** be properly denied, even if the judge presiding did not rule on a substantial issue, if the litigant 'had an opportunity to test the waters and form an opinion as to the court's disposition' of an issue." *Chapman*, 2012 IL App (1st)

111792, ¶ 23 (quoting *In re Estate of Hoellen*, 367 Ill. App. 3d at 246).

¶ 70 Plaintiff's counsel's refusal to move for a substitution of judge for cause was based on plaintiff's counsel's mistaken belief that Judge Brewer "ha[d] not really made any substantive ruling as far as I'm concerned." Yet it is apparent in this case that, at the time plaintiff filed the emergency motion for substitution of judge as of right, defendants' motion to dismiss was already before the court and plaintiff had obtained a clear indication that the court was inclined to rule in favor of defendants. The court repeatedly made statements to plaintiff's counsel that it believed this action should be dismissed because it was the same action as the 2009 case. The court made the following statements: "But it's the same operative facts; it's the same malpractice"; "I don't understand how one could bring a case here"; and "this makes obviously no sense. It's warranted neither by fact nor existing law. It's a violation of [Rule] 137." The court further stated: "*** I would like you to put on file if you believe that it is warranted *** and I will impose sanctions *sua sponte* under Supreme Court Rule 137 if the facts are as Mr. Amu has presented to me and [defense counsel] have presented it to me." When defense counsel stated that "[t]here's no reason for this case to be pending in this courtroom," the court stated to defense counsel: "It won't be pending long I assure you." Plaintiff requested 28 days to respond, but the court gave plaintiff seven days to respond. Plaintiff then filed the emergency motion for substitution as of right the day after the hearing, on November 9, 2011. At the hearing on the motion for substitution of judge as of right the following day, on November 10, 2011, the court stated to plaintiff's counsel on the record:

"As of right I cannot grant. Because if you've read the rules, sir, and the caselaw –

and the caselaw that has interpreted the rule, I have already ruled on this case on Tuesday. I have told you in what direction I was going to go."

¶ 71 The record clearly indicates which way the judge was inclined to rule on defendants' motion to dismiss, and the court correctly denied the motion for substitution of judge as of right.

¶ 72 We hold the court correctly determined that the motion for substitution of judge was not timely brought, as the hearing on defendants' motion to dismiss was already commenced and the court had already indicated to plaintiff which way she was inclined to rule on the motion. We affirm the court's order of December 9, 2011 denying plaintiff's renewed motion for substitution of judge as of right.

¶ 73 III. Award of Costs to Defendants

¶ 74 Next, Amu also appeals from the order of December 9, 2011, that granted defendants their costs in connection with this litigation. Plaintiff refers generally to this award of costs as "sanctions" and argues that the complaint in this case was improperly dismissed and there is no basis for sanctions. The court's order of December 9, 2011, dismissed plaintiff's complaint and granted defendants costs in the amount of $2,127. To be clear, the order awarded defendants their costs only, not attorney fees. The costs were solely for defendants' appearance and jury demand, preparation of their motion to dismiss, and the various court appearances, up until the time the complaint was dismissed.

¶ 75 Neither the defendants' prayer for relief in their motion to dismiss nor the court's order of December 9, 2011 indicate on which basis costs were sought or awarded. Plaintiff apparently believes the award was a sanction under Illinois Supreme Court Rule 137. The court, however,

did not state that it was awarding costs on the basis of Rule 137 and did not award attorney fees but only costs for defendants' defense in this case up until the time the dismissal was granted. The court entered a separate Rule 137 sanction for other numerous false and frivolous pleadings in this case in a separate detailed order explaining it imposition of Rule 137 sanctions. Rule 137 requires a written explanation of the imposition of such sanctions:

> "(d) Required Written Explanation of Imposition of Sanctions. Where a sanction is imposed under this rule, the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order." Ill. S. Ct. R. 137(d) (eff. Feb. 1, 1994).

¶ 76 The court in this case did not enter any written explanation of its award of costs to defendants in its order of December 9, 2011. The court entered another, separate order on April 27, 2012, specifically pursuant to Rule 137 imposing a sanction of $500 and, in doing so, entered a written, detailed, order explaining its reasons for doing so, which included numerous other pleadings by plaintiffs' counsel filed after the dismissal of the complaint. The court did not elaborate any reasons in its order of December 9, 2011, awarding costs in granting the motion to dismiss. The costs awarded to defendants in relation for appearing and defending in filing the motion to dismiss therefore cannot be supported on the basis of Rule 137.

¶ 77 Although the court's order did not explain the basis for awarding costs, we may affirm the court's judgment on any basis supported by the record. *Studt*, 2011 IL 108182, ¶ 48 (citing *Water Tower Realty Co.*, 404 Ill. App. 3d at 665). We find that the award of costs is supported by Illinois Supreme Court Rule 219(e). See Ill. S. Ct. R. 219(e) (eff. July 1, 2002). Sanctions

under Rule 219 are not only for abuses of the discovery rules under Rule 219(c). Subsection 219(e) explicitly provides for an award of costs and expenses for abuses in voluntary dismissals and circumventing orders in prior litigation. See Ill. S. Ct. R. 219(e) (eff. July 1, 2002). Rule 219(e) expressly allows for an award of costs against a party voluntarily dismissing a claim as follows:

> "(e) Voluntary Dismissals and Prior Litigation. *A party shall not be permitted to avoid compliance with* discovery deadlines, *orders* or applicable rules *by voluntarily dismissing a lawsuit*. In establishing discovery deadlines and ruling on permissible discovery and testimony, *the court shall consider* discovery undertaken (or the absence of same), any misconduct, and *orders entered in prior litigation involving a party*. The court may, in addition to the assessment of costs, require the party voluntarily dismissing a claim to pay an opposing party or parties reasonable expenses incurred in defending the action including but not limited to discovery expenses, expert witness fees, reproduction costs, travel expenses, postage, and phone charges." (Emphasis added.) Ill. S. Ct. R. 219(e) (eff. July 1, 2002).

¶ 78 The Committee Comments to Supreme Court Rule 219(e) state that the Rule:

> "clearly dictate[s] that when a case is refiled, the court shall consider the prior litigation in determining what discovery will be permitted, and what witnesses and evidence may be barred. The consequences of noncompliance with discovery deadlines, rules or orders cannot be eliminated by taking a voluntary dismissal. Paragraph (e) further authorizes the court to require the party taking the dismissal to pay the out-of-pocket expenses actually

incurred by the adverse party or parties." Ill. S. Ct. R. 219(e), Committee Comments (eff. July 1, 2002).

¶ 79 " '[T]he expenses authorized under Rule 219(e) serve not as a sanction *per se*, but rather as a deterrent to the dilatory and manipulative use of a plaintiff's voluntary dismissal.' " *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 113 (quoting *Scattered Corp. v. Midwest Clearing Corp*., 299 Ill. App. 3d 653, 660 (1998). See also *Morrison v. Wagner*, 191 Ill. 2d 162, 166 (2000).

¶ 80 Although neither the court nor defendants stated which rule the award of costs was based on, defendant's motion to dismiss argued for dismissal because plaintiff's complaint "was filed solely for the improper purpose of attempting to circumvent this Court's previously entered orders in the currently pending 2009 cause of action," and sought costs for "having to appear" in "this 2011 cause of action," thus implicating the sanctions available under Rule 219(e) against a party who avoids compliance with court orders by voluntarily dismissing a case. On appeal, defendants again argue that plaintiff's complaint in this case "was a blatant and inappropriate attempt to avoid and circumvent the *** previously entered court Orders in the concurrently pending 2009 cause of action ***."

¶ 81 The court in the previously-filed 2009 case entered an order on June 29, 2011 that barred plaintiff from amending the complaint to add Dr. Darey because plaintiff's voluntary dismissal was over one year prior and the time to re-file after a voluntary dismissal had expired. Also on June 29, 2011, the judge granted plaintiff leave to amend the complaint to add Dr. Verma, but plaintiff did not do so in that case. Instead, plaintiff filed this duplicative action, attempting to

circumvent the court's order in the 2009 case dismissing and barring renaming Darey as beyond the period for refiling under section 13-217. The refiling of this action against defendants after taking a voluntary dismissal was an attempt to avoid compliance with the court's orders in the 2009 case and a violation of Rule 219(e). The only proper basis for the award of costs and, we believe, what was sought by defendants and what was intended by the court, is plaintiff's violation of the court's order in the 2009 case by entering a voluntary dismissal and then improperly filing this case against the same defendant in an attempt to circumvent the prior court order.

¶ 82 Given the record before us, and given the fact that an award of costs can be supported on the basis of Rule 219(e), we affirm the award of costs to defendants on the basis of Rule 219(e). Plaintiff's actions fall squarely within the type of conduct specifically prohibited by Supreme Court Rule 219(e). The court here was well within its discretion in granting defendants their costs in having to defend this case after plaintiff entered a voluntary dismissal in the 2009 case. On this basis, we affirm the court's order of December 9, 2011, granting defendants their costs in the amount of $2,127.

¶ 83 IV. Rule 137 Sanctions

¶ 84 Next, plaintiff appeals from the order of April 27, 2012 imposing sanctions in the amount of $500 under Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)) for numerous false pleadings. Rule 137 requires signature of pleadings and motions by an attorney of record if a party is represented and provides, in relevant part, as follows:

"The signature of an attorney or party constitutes a certificate by him that he has read the

> pleading, motion or other document; 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, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Ill. S. Ct. R. 137(a) (eff. Feb. 1, 1994).

¶ 85 Rule 137 authorizes sanctions against an attorney for pursuing false or frivolous lawsuits. *Cult Awareness Network v. Church of Scientology International*, 177 Ill. 2d 267, 279 (1997). The purpose of Rule 137 is to prevent the 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). Litigants and attorneys who present objectively reasonable arguments, although incorrect or ultimately unpersuasive, should not be sanctioned under Rule 137. *Polsky v. BDO Seidman*, 293 Ill. App. 3d 414, 428 (1997). Instead, the rule seeks to penalize litigants and attorneys who plead frivolous or false matters or bring suit without any basis in law. *Spiegel v. Hollywood Towers Condominium Ass'n*, 283 Ill. App. 3d 992, 1002 (1996). If a party or attorney signs a pleading or other paper in violation of the rule, a court may impose sanctions upon the person who signed it, a represented party, or both. Ill. S. Ct. R. 137(a) (eff. Feb. 1, 1994). The decision whether to impose sanctions under Rule 137 is committed to the sound discretion of the circuit court, and that decision will not be reversed on appeal absent an abuse of discretion. *Morris B. Chapman & Assocs. v. Kitzman*, 193 Ill. 2d 560, 579 (2000) (citing *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill.

2d 460, 487 (1998)).

¶ 86 "The appellate court in reviewing a decision on a motion for sanctions should primarily be determining whether (1) the circuit court's decision was an informed one, (2) the decision was based on valid reasons that fit the case, and (3) the decision followed logically from the application of the reasons stated to the particular circumstances of the case." *In re Estate of Smith v. Smith*, 201 Ill. App. 3d 1005, 1009-10 (1990), *appeal denied*, 136 Ill. 2d 544 (1991). In Illinois, a sanction order should specifically identify the rule under which the order was entered as well as the specific reasons for entry of the sanction order. *Cirrincione v. Westminster Gardens Limited Partnership*, 352 Ill. App. 3d 755, 761 (2004) (citing *In re Estate of Smith*, 201 Ill. App. 3d 1005, 1008 (1990)). Courts must use an objective standard in evaluating what was reasonable under the circumstances as they existed at the time of filing, and "[i]t is not sufficient that the signing party ' " 'honestly believed' " his or her case was well grounded in fact or law.' " *Whitmer v. Munson*, 335 Ill. App. 3d 501, 514 (2002) (quoting *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067, 1074-75 (1995)).

¶ 87 At the hearing on Rule 137 sanctions, the court found plaintiff in violation of Rule 137 specifically for the allegation of extrajudicial conduct and *ex parte* communications by the court. In its detailed written order explaining the imposition of sanctions, the court elaborated on all of plaintiff's counsel's pleadings that were in violation of Rule 137, including "Plaintiff's Concise Renewed Motion for Substitution of Judge as of Right," wherein Amu again alleged "Judge Brewer had prior knowledge of this case before her clerk called the case in open court for the very first time on November 8, 2011." In that pleading, Amu also alleged that "Judge Brewer

had expressed a vendetta against plaintiff's counsel." The court also relied on statements in Plaintiff's Concise Response to Defendant's Motion to Dismiss, wherein Amu stated that Judge Brewer "orchestrated a false scheme and Judge [Duncan-Brice] her buddy bought the whole fabrication line, hook and sinker to plaintiff's prejudice" and accused Judge Brewer of being a "buddy" of defense counsel. Finally, the court also based Rule 137 sanctions on "Plaintiff's Emergency Motion for Judge Eileen Brewer to Cease and Desist The Consistent Pattern and Practice of Abuse Toward Attorney 'Lanre O. Amu or Voluntarily Recuse Herself from Attorney 'Lanre O. Amu's Cases." The court found that this pleading "can only be described as a personal assault on this Court. The angry and insulting tone of this motion is wholly unprofessional and would be unacceptable from a *pro se* litigant, let alone an officer of the Court." Amu alleged that the court "manipulated the hearing and the creation of transcripted record by the court reporter to achieve [the court's] end by frustrating my attempt to meaningfully make a record or be heard in [the court's] courtroom." The court concluded in its written order that:

> "Amu has leveled egregious, untrue charges of corruption, prejudice, and bias against this and other Courts." *** After a lengthy hearing, it has become apparent that the only bases for many of the statements at issue are Amu's dissatisfaction with the Court's rulings and his wild speculation as to the Court's motives. The nature of these accusations of unethical conduct also show that Amu's pleadings were filed for the improper purpose of intimidating and harassing this Court as well as other courts. The Court finds that Amu made these statements without a reasonable inquiry into the truth of the matters asserted and made them for an improper purpose."

¶ 88 We agree with the court's determination that Amu violated Rule 137. The numerous statements regarding Judge Brewer made by Amu were entirely baseless without any reasonable inquiry, were not well grounded in fact or warranted by existing law or any good-faith argument for the extension, modification, or reversal of existing law. Rather, based on the record of the court hearings and the pleadings in this case, the statements in the numerous pleadings filed by Amu appear to have been made wholly for the improper purpose of harassing the court in order to cause a delay in properly granting dismissal of this case, thereby needlessly increasing the cost of litigation. The court's finding that Amu's filings were baseless, without reasonable inquiry, and that they were made for an improper purpose is well-supported. It is reasonable to conclude that Amu's statements were made solely for the improper purpose of harassing the court due to the unfavorable rulings against him and his client in this case. Amu's conduct in making his baseless allegations is the type of conduct specifically prohibited by Rule 137. See Ill. S. Ct. R. 137(a) (eff. Feb. 1, 1994). The circuit court did not abuse its discretion in imposing Rule 137 sanctions in this case. We affirm the Rule 137 sanction order imposing the $500 fine pursuant to Rule 137.

¶ 89 V. Direct Criminal Contempt

¶ 90 Last, plaintiff appeals from the circuit court's two findings of direct criminal contempt. Direct criminal contempt may be imposed by a court pursuant to section 1-3 of the Illinois Criminal Code of 1961. 720 ILCS 5/1-3 (West 2010). "Direct contempt is contemptuous conduct which occurs in the presence of a judge. It is strictly limited to actions seen and known by the judge." *In re Marriage of Betts*, 200 Ill. App. 3d 26, 47 (1990) (citing *People v. L.A.S.*,

111 Ill. 2d 539, 543 (1986)). "The most readily recognizable examples of direct contempt are criminal contempts consisting of outbursts during court proceedings or other disruptions of judicial proceedings." *In re Marriage of Betts*, 200 Ill. App. 3d at 47. "Criminal sanctions are *retrospective* in nature; they seek to punish a contemnor for past acts which he cannot now undo." (Emphasis in original.) *In re Marriage of Betts*, 200 Ill. App. 3d at 46. "A finding of direct contempt may be made in a summary manner immediately after the contemptuous conduct occurs. This is the practice followed if the purpose of imposing sanctions is to restore order in the courtroom or to maintain control over proceedings in the courtroom." *In re Marriage of Betts*, 200 Ill. App. 3d at 49 (citing *Johnson v. Mississippi*, 403 U.S. 212, 214 (1971); *Illinois v. Allen*, 397 U.S. 337, 344-45 (1970)).

¶ 91 A court may summarily punish criminal contempt if all relevant facts are before the court and within the judge's personal knowledge. *People v. Simac*, 161 Ill. 2d 297, 306 (1994). "The conduct which may be punished by means of criminal contempt proceedings covers the entire gamut of disrespectful, disruptive, deceitful, and disobedient acts (or failures to act) which affect judicial proceedings." *In re Marriage of Betts*, 200 Ill. App. 3d at 45. Statements that are "[s]pecifically punishable as criminal contempt are statements made in open court which suggest that trial judges are guilty of criminal conduct." *In re Marriage of Betts*, 200 Ill. App. 3d at 45 (citing *People v. Kelleher*, 116 Ill. App. 3d 186, 192 (1983), *cert. denied*, 466 U.S. 907 (1984)). "A finding of direct contempt may be made in a summary manner immediately after the contemptuous conduct occurs. This is the practice followed if the purpose of imposing sanctions is to restore order in the courtroom or to maintain control over proceedings in the courtroom." *In*

re Marriage of Betts, 200 Ill. App. 3d at 49 (citing *Johnson v. Mississippi*, 403 U.S. 212, 214 (1971); *Illinois v. Allen*, 397 U.S. 337, 344-45 (1970)).

¶ 92 Amu argues that both of the direct criminal contempt orders required a hearing and were improperly entered. We disagree. The facts in the record for both of the criminal contempt instances show that the entry of direct criminal contempt was well supported.

¶ 93 A. Direct Criminal Contempt Based on Amu's January 24, 2012 Conduct

¶ 94 During the hearing on January 24, 2012, Amu presented his "Plaintiff's Concise Reply to Defendant's Motion to Enforce Court Order," which contained allegations that the court was "not fair and impartial," that the order was "an abuse of the judge's authority," that the court's true motive in imposing sanctions on him was "retaliation," and that the court "merely followed a script." Judge Brewer recited the allegations Amu made against her contained in plaintiff's numerous motions, including that the court was "usurping and fermenting trouble with [Amu] without cause," that the court manipulated a hearing and a transcript, that the court engaged in a "vendetta against plaintiff's counsel," and Amu's statement to the court that, "the fact that you are judge does not make you God."

¶ 95 According to Judge Brewer's statements on the record in the transcript of this hearing, Amu was yelling and waiving his Bible at the court. Judge Brewer requested that Amu not raise his voice or waive the Bible in her courtroom. Further, Amu's pleadings can be "deemed to have occurred within the constructive presence of the court," and can be the basis for a direct criminal contempt. *In re Marriage of Betts*, 200 Ill. App. 3d at 48. From our review of the record, Amu disrupted the orderly proceedings of the courtroom and ignored Judge Brewer's repeated

admonitions to cease his conduct. Amu's statements and conduct before Judge Brewer justified the imposition of direct criminal contempt. We therefore affirm this contempt order and the $500 fine imposed by that order.

¶ 96 B. Direct Criminal Contempt Based on Amu's February 15, 2012 Conduct

¶ 97 As to the contempt order for Amu's conduct at the February 15, 2012 hearing, the court's written order entering its finding of direct criminal contempt was not entered until April 27, 2012. Defendants argue that, since plaintiff did not appeal the written order entered on April 27, 2012, this court does not have jurisdiction to address plaintiff's argument concerning the direct criminal contempt order. Defendants argue, "[i]t is a well-established proposition that jurisdiction only arises in the appellate court when a party timely files a notice of appeal," citing to *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 538 (1984). This was the general rule for quite some time, but Illinois Supreme Court Rule 303 was amended in 2008 and Rule 303(a)(1) now expressly provides the following:

> "A notice of appeal filed after the court announces a decision, but before the entry of the judgment or order, is treated as filed on the date of and after the entry of the judgment or order." Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008).

¶ 98 Thus, we treat plaintiff's notice of appeal from the court's finding of direct criminal contempt on February 15, 2012, as though it were filed on the date the written order was entered, April 27, 2012. Accordingly, we have jurisdiction to review this order.

¶ 99 The court's entry of an order finding direct criminal contempt entered on February 15, 2012, was based on "Amu's oral statements and physical conduct" during the hearing on February

15, 2012, and statements made in his "Concise Response to the Illinois Attorney General's Motion to Quash Subpoena." At the February 15, 2012 hearing on Rule 137 sanctions, Judge Brewer ruled that she would sanction Amu for the allegation of improper extrajudicial conduct in his numerous pleadings. Amu objected to Judge Brewer's statement that he comes to court with the Q'uran, turned around to face the courtroom and asked all the attorneys for a show of hands as to whether anyone had seen him with a copy of the Q'uran and upon a showing of no hands then stated to Judge Brewer, "You're lying. With all due respect, Judge, you are lying." Upon Amu stating to Judge Brewer that she is "lying," Judge Brewer entered a direct criminal contempt and fined Amu $500.

¶ 100 In the written contempt order, Judge Brewer found the allegations therein to be "the most bizarre, shocking, abusive and disrespectful behavior ever witnessed by this Court." Judge Brewer further found Amu's oral and written statements about her to be "defamatory and patently false," and that they "derogated this Court's authority and dignity, thereby bringing the administration of justice into disrepute." Judge Brewer reiterated Amu's statements calling her a liar for stating that she witnessed Amu bring a Q'uran to court, and his statements in his pleadings alleging that Judge Brewer schemed and conspired in a pattern of harassment against Amu. Judge Brewer included as "[o]ther contemptuous conduct" Amu's complaint of lack of notice of the Rule 137 hearing when it was clear Amu had notice that the February 15, 2012 court date was for a hearing for Rule 137 sanctions. Judge Brewer also recounted Amu's physical behavior in the courtroom, stating in the order that Amu "shouted at the Court on several occasions," turned his back to the court, pointed his fingers "disparagingly," placed his

hand on the bench, and waived his Bible at the court.

¶ 101 Like the direct criminal contempt of January 24, 2012, the direct criminal contempt of February 15, 2012 was appropriate, as Amu disrupted the courtroom and continued shouting, even after Judge Brewer warned him to cease his conduct. We therefore also affirm the contempt criminal contempt order of February 15, 2012 and the fine of $500 for that contempt.

¶ 102 CONCLUSION

¶ 103 We affirm the court's order of December 9, 2011, dismissing the complaint in this case. We hold the dismissal as to Darey was appropriate based on *res judicata* because Darey had already been dismissed by court order in a pending case for the same cause of action as beyond the one-year refiling limitations period after voluntary dismissal. Dismissal as to defendant Verma was appropriate because any action against Verma was barred by the statute of limitations. Dismissal as to St. Joseph Hospital was appropriate based on the fact that the same cause was currently pending in another case.

¶ 104 We affirm the court's order of December 9, 2011, denying plaintiff's motion for substitution of judge without cause as of right based on untimeliness because a hearing on defendants' motion to dismiss had already commenced and the court had indicated to plaintiff which way she was inclined to rule.

¶ 105 The award of $2,127 in costs to defendants in connection with this litigation is affirmed as appropriate under Illinois Supreme Court Rule 219(e). Ill. S. Ct. R. 219(e) (eff. July 1, 2002).

¶ 106 The award of Rule 137 sanctions in the amount of $500 for Amu's numerous false and frivolous pleadings is affirmed.

¶ 107 The two orders of direct criminal contempt and imposing sanctions of $500 each are affirmed.

¶ 108 Affirmed.