

No. 1-15-0561

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re: G.A.K., a minor,</i>)	
)	
(MARK AGUILAR,)	Appeal from the
)	Circuit Court of
Petitioner,)	Cook County.
)	
v.)	
)	
KERINDA KNEE,)	
)	
Respondent).)	
)	No. 12 D 10357
)	
KERINDA KNEE and KERRY SMITH, PH.D.,)	
)	
Plaintiffs-Appellees,)	
)	
v.)	Honorable
)	Pamela E. Loza,
MARK AGUILAR and MICHAEL T. TRISTANO,)	Judge Presiding.
)	
Defendants-Appellants.)	

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court abused its discretion in imposing Supreme Court Rule 137 sanctions on attorney who filed, on behalf of his client, a motion to strike the report of a court-appointed custody evaluator, in an action over child custody matters.

¶ 2 This appeal arises from the January 27, 2015 order of the circuit court of Cook County, which granted separate motions for Rule 137 sanctions filed by plaintiffs Kerinda Knee (Kerinda) and Kerry Smith, Ph.D. (Dr. Smith) against defendants Mark Aguilar (Mark) and his counsel, Michael T. Tristano (Attorney Tristano). On appeal,¹ Attorney Tristano argues that the trial court abused its discretion in imposing Rule 137 sanctions upon him and challenges the amount of those sanctions. For the following reasons, we reverse the judgment of the circuit court of Cook County.

¶ 3 **BACKGROUND**

¶ 4 Mark and Kerinda were never married but are parents of their minor son, G.A.K., who was born on March 4, 2010. Kerinda is a Canadian citizen and the Chief Executive Officer (CEO) of Flirty Girl Fitness, a fitness and social club for women with locations in both Toronto and Chicago. In 2012, after the parties' relationship ended, Kerinda filed a petition in the circuit court of Cook County, seeking full custody of G.A.K., and later filed a petition seeking to remove the child to Canada. Mark also petitioned the court for custody of the minor. On February 25, 2013, the trial court appointed Dr. Smith, a psychologist, as a custody evaluator pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/604(b) (West 2012)).²

¹ The Rule 137 sanctions imposed against Mark Aguilar, which required him to pay \$3,060 to the child's representative, Jerry S. Goldberg, are not the subject of this appeal.

² Section 604(b) of the Act states in pertinent part that in child custody cases, "[t]he court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel. Counsel may examine, as a witness, any professional personnel consulted by the court, designated as a court's witness. Professional personnel consulted by the court are subject to subpoena for the purposes of discovery, trial, or both. The court shall allocate the costs and fees of those professional personnel between the parties based upon the financial ability of each party and any other criteria the court considers appropriate." 750 ILCS 5/604(b) (West 2012).

¶ 5 On September 17, 2013, Dr. Smith submitted a written custody evaluation report to the court, in which she recommended, based on interviews, observations, and psychological testing, that Kerinda obtain sole custody of G.A.K., but that Kerinda continue to live in Chicago rather than move to Canada and that Mark be allowed to have substantial parenting time with G.A.K.

¶ 6 On November 22, 2013, Attorney Tristano, as counsel for Mark, filed a motion to strike Dr. Smith's report (motion to strike), alleging that Dr. Smith was paid as the court-appointed custody evaluator; that Kerinda's counsel told Attorney Tristano only about five or six weeks prior to the filing of the motion that Dr. Smith had attended and worked out at Flirty Girl Fitness in Chicago; that at no time did Dr. Smith reveal to anyone that she had been a customer of Kerinda prior to her court appointment; that Dr. Smith's omission was a violation of professional ethics and should be reported to the Department of Financial and Professional Regulation; that Mark would never have agreed to Dr. Smith performing a custody evaluation if he had known Dr. Smith had prior contact with Kerinda or her company; that "the minor child has his finger and toe nails painted in a facility that teaches women to swing around a pole dressed in revealing clothes with their legs spread and that serves alcohol and markets hypersexuality is at issue in this case"; that if Dr. Smith went to Flirty Girl Fitness "to learn pole dancing or experience pole dancing or even explore pole dancing, this fact should have been disclosed prior to her engagement as the 604(b) [evaluator] and in her report"; and that either Dr. Smith was "so insensitive as not to realize that would, at a minimum, give the appearance of impropriety, or so desperate for funds or so desirous of doing a favor for her companion pole dancer Kerinda Knee that she failed [to] make any acknowledgment."

¶ 7 A hearing on Mark's motion to strike was originally scheduled for December 19, 2013, but was later changed to December 18, 2013 by agreement of the parties. On December 16,

2013, Kerinda filed a motion for sanctions pursuant to Supreme Court Rule 137 (eff. Feb. 1, 1994) (Rule 137 motion), alleging that, prior to filing the motion to strike, Attorney Tristano had telephoned Dr. Smith and specifically inquired whether she had attended a class at Flirty Girl Fitness, to which Dr. Smith responded she had not; that, subsequent to this telephone call with Dr. Smith, Attorney Tristano "knew or should have known that there was no basis to disqualify Dr. Smith," but persisted in filing the motion to strike anyway; and that Mark and Attorney Tristano should be sanctioned under Rule 137 where the motion to strike was not well grounded in fact or law.

¶ 8 On December 18, 2013, at the hearing date for Mark's motion to strike, the following individuals appeared before the court: (1) Kerinda; (2) Mark; (3) Attorney Tristano; (4) Kerinda's counsel, Jason Adess (Attorney Adess); (5) Jerry Goldberg, a representative for the minor child; and (6) Jonathan Nye (Attorney Nye), who appeared as counsel on behalf of Dr. Smith. Attorney Tristano initially objected to the fact that Attorney Nye had not filed an appearance, to which the trial court granted Attorney Nye leave to do so *instanter*. The trial court then noted that, "I assumed Dr. Smith was going to be here because I wanted to hear some testimony, because I think it's fact based, based on the allegations. The allegations in and of themselves are serious, but the allegations that she attended Flirty Girl [Fitness] were also ambiguous as to who, what, where, when, why and how, okay?" In response, Attorney Tristano acknowledged that he did not serve a subpoena to Dr. Smith, stating that because he had understood Attorney Nye to be appearing on Dr. Smith's behalf, that he had "misinterpreted that [Attorney Nye] would have her here." The trial court then rescheduled the hearing on the motion to strike to January 6, 2014, and ordered that Dr. Smith be present in court on that day.

¶ 9 On December 24, 2013, Dr. Smith filed a response to Mark's motion to strike, in which she denied ever having been a customer of Kerinda's fitness center either prior to, during, or after her appointment by the court to be the custody evaluator. She asserted that she had only entered the fitness center on one occasion, in January 2010, with a friend who was going to exercise there, but that Dr. Smith had only looked around the club, had checked in at the front desk as required by the fitness club, but did not participate in any workouts nor paid any money. On December 26, 2013, Kerinda filed a response to Mark's motion to strike, claiming that she had never met Dr. Smith prior to her court appointment as custody evaluator and Dr. Smith had never attended, nor paid for, any classes or services at Flirty Girl Fitness.

¶ 10 On January 2, 2014, Mark filed an emergency motion for a continuance of the January 6, 2014 hearing on his motion to strike, alleging that Dr. Smith had "made herself unavailable" for a deposition during the time leading up to the hearing. In response, the trial court ordered Dr. Smith to appear for a one-hour deposition in the courthouse immediately prior to the hearing on January 6, 2014. However, because Attorney Tristano eventually withdrew his subpoena for deposition, no deposition of Dr. Smith ever took place on January 6, 2014 or at any time prior to the hearing on the motion to strike, which was rescheduled to January 9, 2014 and then later rescheduled again by agreement of the parties to January 28, 2014.

¶ 11 On January 28, 2014, a hearing on the motion to strike was held. Dr. Smith testified that in January 2010, she went to the Flirty Girl Fitness location in Chicago to meet a friend to go to dinner. She checked in at the front desk upon her arrival, stayed on the premises for about 15 to 20 minutes, but did not spend any money or participate in a class. This was the only time she had ever been to the fitness establishment. Prior to her appointment as custody evaluator in February 2013, she had never met Kerinda nor heard of her. After being appointed, Dr. Smith

neither told Mark, the court, nor the child's representative that she had once visited the Flirty Girl Fitness location, and she did not include the information in her written custody evaluation report. Dr. Smith testified to being a member of the American Psychological Association and stated that she subscribes to its guidelines for conducting custody evaluations. There is no American Psychological Association guideline prohibiting a custody evaluator from visiting a place of business where one of the parties who is subject to the evaluation works. Dr. Smith further testified that, sometime in the fall of 2013, she had a telephone conversation with Attorney Tristano, during which she informed him that she had been to Flirty Girl Fitness only once about four years prior to their conversation, but did not spend any money at the facility nor participated in any classes while she was there. Dr. Smith clarified that she was never deposed by Attorney Tristano at any time in connection with this case.

¶ 12 Kerinda testified that she is the CEO of Flirty Girl Fitness and that she sets the policies and procedures for the business. During her first custody evaluation interview with Dr. Smith, Dr. Smith told her that she had visited the facility prior to October 2013.

¶ 13 Mark testified that he was not aware at all that Dr. Smith had visited Flirty Girl Fitness prior to October 2013, and that, if he had known this information, he would never have agreed to Dr. Smith's court appointment as a custody evaluator in this case.

¶ 14 Kerinda's counsel, Attorney Adess, then moved for a directed finding, arguing that Mark has failed to establish a *prima facie* case for disqualifying Dr. Smith as a court-appointed custody evaluator and for striking her written report. Attorney Tristano argued that Dr. Smith's failure to reveal her previous visit to the fitness facility to either Mark or the child's representative shows that she could not maintain impartiality. The trial court then granted the motion for a directed finding and thus, denied Mark's motion to strike Dr. Smith's report, noting that he failed to make

a *prima facie* case to establish that Dr. Smith's custody evaluation was in any way inappropriate or biased against Mark. The trial court concluded that the fact that Dr. Smith entered the premises of Flirty Girl Fitness on one occasion for 15 to 20 minutes did not impugn her credibility, professionalism, or ability to conduct a fair and equitable section 604(b) evaluation.

¶ 15 On February 25, 2014, Attorney Tristano, on behalf of Mark, filed a response to Kerinda's Rule 137 motion, denying the absence of a basis to file his motion to strike, and alleging that it was Kerinda's counsel who brought Dr. Smith's previous association with Flirty Girl Fitness to Attorney Tristano's attention and that it could be inferred from Dr. Smith's attending such a workout facility that "she was accustomed to a highly-sexualized atmosphere to the point where it became normative, and thus could not properly assess whether it was a healthy environment for the minor child."

¶ 16 On March 5, 2014, Dr. Smith filed a separate Rule 137 motion for sanctions against Mark and Attorney Tristano, alleging that Mark's November 22, 2013 motion to strike her written report was presented without reasonable inquiry and lacked legal or factual basis, and that the facts alleged therein were defamatory in nature.

¶ 17 In March 2014, a bench trial commenced on the issues of custody, visitation, and removal of G.A.K. to Canada. In May 2014, the trial court entered judgment awarding sole custody of G.A.K. to Kerinda, with the right to remove the child from Illinois to Canada, setting out a visitation schedule for Mark and addressing child support issues. Thereafter, Mark appealed and this court affirmed the trial court's judgment. See *In re G.A.K.*, 2014 IL App (1st) 141768-U.

¶ 18 On January 2, 2015, Attorney Tristano, on his own behalf, filed a memorandum of law and argument in opposition to the pending Rule 137 motions for sanctions against him.

¶ 19 On January 27, 2015, the trial court entered an order granting Kerinda's and Dr. Smith's separate Rule 137 motions against Mark and Attorney Tristano. The trial court specifically found that the issue at hand was not whether Mark or Attorney Tristano believed their allegations against Dr. Smith to be true. Rather, the trial court found, the issue was whether Attorney Tristano conducted a reasonable investigation of the facts prior to the filing of the motion to strike and whether, based on the then existing knowledge and existing law and circumstances, it was reasonable for him to file the motion. The trial court concluded that the claims made against Dr. Smith in the motion to strike "were made without reasonable cause, contained allegations which were known and should have been known to be untrue and were made without any inquiry under the circumstances and those allegations were untrue and not warranted by law as evidenced by existing law. Even when given the opportunity to investigate, [Attorney Tristano] refused." The trial court further found that the motion to strike was brought for the improper purpose of creating conflicts and trying to disqualify Dr. Smith because Attorney Tristano and Mark did not like her ultimate written recommendation regarding custody of G.A.K. The trial court then imposed Rule 137 sanctions against both Mark and Attorney Tristano, by ordering Mark to pay \$3,060 to the child's representative, Goldberg, as attorney's fees incurred as a direct result of the Rule 137 violation. The court also ordered Attorney Tristano to pay Dr. Smith \$4,390 for her attorney's fees and to pay Kerinda \$9,062.50 as attorney's fees incurred in defense of the motion to strike, for a total of \$13,452.50.

¶ 20 On February 25, 2015, Attorney Tristano filed a timely notice of appeal, thus conferring jurisdiction upon this court pursuant to Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. June 4, 2008). As noted, the Rule 137 sanctions requiring Mark to pay \$3,060 to Goldberg are not the subject of this appeal.

¶ 21

ANALYSIS

¶ 22 The relevant inquiry on appeal is whether the trial court erred in imposing Rule 137 sanctions against Attorney Tristano in the amount of \$13,452.50, which we review under an abuse of discretion standard. See *Schneider v. Schneider*, 408 Ill. App. 3d 192, 199 (2011).

¶ 23 Attorney Tristano argues³ that the trial court abused its discretion in granting Kerinda's and Dr. Smith's separate Rule 137 motions for sanctions against him for filing the motion to strike. He argues that the filing of the motion to strike was made with reasonable inquiry and good faith, rather than to harass or delay proceedings. He further argues that because Dr. Smith was not a party to the case at hand at the time the motion to strike was filed, the trial court erred in allowing her to file a Rule 137 motion against him. Attorney Tristano also argues that the amount of sanctions imposed upon him was an abuse of discretion by the court because it stemmed from the court's "emotional response" to the contentious custody battle between the parties.

¶ 24 Kerinda counters that the trial court's imposition of Rule 137 sanctions against Attorney Tristano was appropriate arguing that the allegations in the motion to strike were not made after reasonable inquiry but were made even after Attorney Tristano had reason to know that they were false.

¶ 25 Rule 137 provides in pertinent part as follows:

"Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. *** The signature of an attorney or party constitutes a certificate by him

³ Dr. Smith filed no response brief before us on appeal.

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.

*** If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee." Ill. S. Ct. R.137 (eff. Jan. 4, 2013).

The rule aims to prevent parties from abusing the judicial process by filing vexatious or harassing actions lacking legal or factual support. *Benz v. Department of Children & Family Services*, 2015 IL App (1st) 130414, ¶ 44. However, the rule is not intended to penalize litigants and their attorneys because they were zealous but unsuccessful in pursuing an action. *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 68 (2011). A party's honest belief that his case was well grounded in law and fact is not enough to avoid Rule 137 sanctions. *Schneider*, 408 Ill. App. 3d at 200. Rather, the trial court must employ an objective standard and determine what was reasonable at the time the party filed its pleading. *Benz*, 2015 IL App (1st) 130414, ¶ 44.

The party requesting sanctions bears the burden of showing that sanctions are warranted, in that the opposing litigant made untrue and false allegations without reasonable cause. *Id.*; *Mohica v. Cvejin*, 2013 IL App (1st) 111695, ¶ 47. A circuit court's decision whether to grant Rule 137 sanctions must be informed, based on valid reasons, and follow logically from the circumstances of the case. *Mohica*, 2013 IL App (1st), 111695, ¶ 47. Although it is within the circuit court's discretion to grant a Rule 137 request for sanctions, which we will not disturb absent an abuse of discretion, this deferential standard does not prevent a reviewing court from independently reviewing the record and finding an abuse of discretion where the facts warrant. *Id.*

¶ 26 We conclude that the trial court's decision to sanction Attorney Tristano for filing the motion to strike Dr. Smith's written custody evaluation report, was an abuse of discretion. The record shows that Attorney Tristano filed a motion to strike Dr. Smith's report on behalf of Mark in November 2013, about a month after he had contacted Dr. Smith by telephone about her previous visit to the Flirty Girl Fitness facility. The impetus behind inquiring into Dr. Smith's prior visit to the facility was that opposing counsel had allegedly told Attorney Tristano in October 2013 that Dr. Smith had previously worked out there. In her response to the motion to strike and her testimony at the hearing on the motion, Dr. Smith represented that she had only visited the facility once for about 15 to 20 minutes to meet a friend for dinner almost four years before her appointment as a custody evaluator in this case, that she neither participated in any workouts nor paid any money while she visited the facility, and that she had communicated this information to Attorney Tristano during their telephone conversation in the fall of 2013. However, we find that, despite being informed that Dr. Smith's prior contact with the facility was brief and remote in time during their phone conversation in October 2013, Attorney Tristano did not have to take her word for it—especially in light of the fact that Dr. Smith neither told Mark,

the court, nor the child's representative about this visit to the facility at any time *prior* to her court appointment as the custody evaluator in February 2013, and she certainly did not include such information in her September 2013 written custody evaluation report to the court. It is important to note that Attorney Tristano's heightened sense of suspicions over the neutrality of Dr. Smith is not unreasonable, given that there are numerous fitness clubs in Chicago and scores of neutral psychologists who have had no contact whatsoever with Flirty Girl Fitness and who could have served as court-appointed custody evaluator. The coincident event that the court happened to select a psychologist from the scores available who had previous contact with the fitness club, which was at the heart of the controversy was sufficient to raise the question of neutrality. Indeed, the motion to strike specifically alleged that Mark would never have agreed to allow Dr. Smith to perform the custody evaluation if he had known about her prior contact with Kerinda's company, albeit brief and insubstantial according to Dr. Smith's testimony. Thus, it was objectively reasonable, after becoming aware of this new information concerning Dr. Smith based on reasonable inquiry, for Attorney Tristano to file the motion to strike her written report so that the issue of potential bias could be brought to the court's attention for resolution.

¶ 27 In imposing sanctions, the trial court concluded that the claims made against Dr. Smith in the motion to strike "were made without reasonable cause, contained allegations which were known and should have known to be untrue and were made without any inquiry under the circumstances and those allegations were untrue and not warranted by law as evidenced by existing law." The court found that allegations in the motion to strike stating that Flirty Girl Fitness taught women hypersexuality and described Kerinda as Dr. Smith's pole-dancing "companion" were inflammatory and offensive. Specifically, the court highlighted paragraphs 8 to 11 of the motion to strike in finding that at the time Attorney Tristano signed and filed the

pleading, he *knew* those words were not true. We disagree. Without a doubt, Attorney Tristano's choice of words in parts of the motion to strike was distasteful. However, we find that the essence of the motion to strike raises the legitimate concern that Dr. Smith's impartiality may be at issue in the eyes of Mark and Attorney Tristano. That legitimate concern was not negated by the inflammatory description of pole dancing, "hypersexuality," or any such hyperbole or unnecessary language that was irrelevant to the specific issue of potential bias, which the attorney had a duty to raise. Paragraphs 8 to 11 of the motion to strike alleged that Mark would not have ever agreed to Dr. Smith's court appointment if he had known about her prior contact with the fitness club; that the minor child's presence at the fitness club exposes him to "hypersexuality" attendant to pole dancing at the facility; that *if* in fact Dr. Smith had gone to Flirty Girl Fitness to learn or explore pole dancing, she should have disclosed this fact prior to her court appointment or in her written report; and that Dr. Smith may have failed to disclose this information earlier because she either lacked sensitivity to the "appearance of impropriety" or was biased towards her pole-dancer "companion," Kerinda. First, we note that these allegations were either stated in the hypothetical or as a matter of editorial opinion, rather than as factual statements. Second, we find that the allegations in the motion to strike raising the issue of potential bias, although they later turned out to be tenuous, were grounded in the nugget of fact that Dr. Smith admitted to having had prior contact with Kerinda's company and to actually have visited the facility. This fact was sufficient to have reasonably raised the issue of a potential conflict of interest in Dr. Smith's role as the custody evaluator for the parties. See Ill. S. Ct. R.137 (eff. Jan. 4, 2013). We note that the circuit court's finding that Attorney Tristano already *knew* those statements to be untrue at the time of the filing, required that he take Dr. Smith at her word, during their October 2013 phone conversation, in which she later claimed to have told him

that her prior contact with the fitness center was brief and remote in time. On the contrary, the record shows that what was known to Attorney Tristano at the time of the filing of the motion to strike, was that Dr. Smith had visited the premises of Flirty Girl Fitness at some point in the past, that Dr. Smith claimed she was only there briefly and did not take a class while she was there, *and that* Dr. Smith had never disclosed this information to anyone *prior* to or at the time of her appointment as custody evaluator in this case. See *Pritzker v. Drake Tower Apartment, Inc.*, 283 Ill. App. 3d 587 (1996) (the standard for evaluating party's conduct under Rule 137 is one of reasonableness under the circumstances existing *at the time of the filing*). Under these circumstances, particularly Dr. Smith's seeming initial lack of transparency and failure to disclose her past contact with the facility, it was reasonable and not frivolous for Attorney Tristano to file the motion to strike in order to raise the issue of a potential conflict of interest before the court, which would then be in the best position to resolve the issue. In fact, it could be argued that the attorney had a duty to bring the matter to the court's attention once it became known to him as a potential conflict.

¶ 28 Kerinda argues that, even if the filing of the motion to strike was reasonable, Attorney Tristano's conduct subsequent to the filing shows that he had a reckless disregard for the truth. She points out that Attorney Tristano failed to depose Dr. Smith, but instead continued to pursue the motion even after both Dr. Smith and Kerinda filed separate responses to his motion denying that Dr. Smith had ever taken a class at the facility and denying that Kerinda and Dr. Smith knew each other prior to Dr. Smith's involvement in this case. The trial court, in imposing sanctions, likewise stated that Attorney Tristano had a duty to investigate whether Dr. Smith had taken classes at Flirty Girl Fitness, and could have taken a "more formal approach" by issuing interrogatories to Dr. Smith or deposing her on the subject. We disagree. Whether Attorney

Tristano should have deposed Dr. Smith or pursued more "formal" discovery is a red herring, as it would have only memorialized Dr. Smith's reiteration and claim that she only visited the facility for 15 to 20 minutes about four years prior to her involvement in the instant child custody case. This alone would not have resolved the heart of the issue—that is, whether Dr. Smith could serve as an impartial and unbiased custody evaluator for the parties in this case. As noted, there are many psychologists in the Chicago area who have never set foot inside the Flirty Girl Fitness facility, we can say that it was unreasonable for Mark and his attorney to be suspicious of Dr. Smith, who unlike those countless others, knew something about Flirty Girl Fitness *before* she undertook the custody evaluation assignment.

¶ 29 Kerinda further argues that Attorney Tristano's *subjective* belief that Dr. Smith might have been lying about the extent of her prior contact with the facility, was irrelevant and could not serve as a basis for filing the motion to strike. We agree with the proposition that the trial court must employ an *objective* standard and determine what was reasonable at the time the party filed its pleading. See *Benz*, 2015 IL App (1st) 130414, ¶ 44. However, as discussed, the filing of the motion to strike was objectively reasonable under the circumstances known to Attorney Tristano at that time, and we hold that the trial court abused its discretion in imposing Rule 137 sanctions upon Attorney Tristano.

¶ 30 To be clear, this court does not disturb the trial court's January 28, 2014 ruling—at the conclusion of the hearing on the motion to strike during which the court had the opportunity to observe the testimony of Dr. Smith, Kerinda, and Mark—granting directed finding in favor of Kerinda and against Mark on the basis that Mark failed to establish his *prima facie* case for disqualifying Dr. Smith as a court-appointed custody evaluator and for striking her report. Our holding today is strictly limited to the trial court's erroneous decision to take the extra step of

imposing over \$13,000 in sanctions against Attorney Tristano for filing the motion to strike Dr. Smith's written report. See *Benson v. Stafford*, 407 Ill. App. 3d 902, 928 (2010) (in determining sanctions are warranted in a particular case, the court must ascertain what was reasonable at the time the pleading was filed, and should not engage in hindsight).

¶ 31 In light of our holding, we need not address Attorney Tristano's other arguments on appeal regarding Dr. Smith's standing to file a Rule 137 against him and the amount of sanctions imposed by the trial court.

¶ 32 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County.

¶ 33 Reversed.