2016 IL App (1st) 152399-U

FIRST DIVISION
June 13, 2016

No. 1-15-2399

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DR. MARK INGWER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 L 8682
	)	
MURPHY KNOTT PUBLIC RELATIONS, INC., an Illinois Corporation,	)	Honorable
	)	Thomas R. Mulroy, Jr.,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Connors concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm the judgment of the circuit court where its denial of defendant's petition for sanctions and fees was not an abuse of discretion.

¶ 2 Defendant Murphy Knott Public Relations, Inc. (Murphy Knott) appeals from the trial court's denial of its petition for sanctions and fees under Supreme Court Rules 137 (eff. July 1, 2013) and 219(e) (eff. July 1, 2002). On appeal, Murphy Knott contends that the trial court

abused its discretion in declining to impose sanctions and attorney fees against plaintiff Dr. Mark Ingwer (Ingwer) as Ingwer filed a frivolous lawsuit against the company, refused to comply with discovery and filed false verified pleadings. We affirm.

¶ 3 The record shows that Insight Consulting Group, LLC (Insight), of which Ingwer was its managing partner and founder, filed a verified complaint for breach of contract against Murphy Knott on August 19, 2014. The complaint alleged that Insight and Murphy Knott executed an agreement whereby Murphy Knott agreed to act as Insight's public relations counsel to promote a book authored by Ingwer, from August 15, 2012 to December 15, 2012, in exchange for $8,500 and reimbursement for out-of-pocket expenses. The complaint further alleged that Insight promptly paid all invoices under the agreement totaling $8,848.78, but, despite Murphy Knott's promise to aggressively promote Ingwer and his book, Murphy Knott only obtained one speaking engagement for Ingwer and Insight, and failed to obtain even a single story placement. In reliance on Murphy Knott to act as its public relations counsel, Insight lost crucial time in promoting Ingwer's book, resulting in over $50,000 in lost profits. Insight thus requested that the trial court enter judgment in its favor and against Murphy Knott in an amount in excess of $50,000, and such other and further relief as the trial court deemed just. The parties' agreement and invoices received from Murphy Knott were attached to the petition. Ingwer, acting as the managing partner and founder of Insight, signed the verification affidavit also attached to the complaint.

¶ 4 A "motion for leave to file amended complaint and motion to correct misnomer" and the verified first amended complaint were filed by Ingwer individually. In the amended complaint, Ingwer replaced Insight as the plaintiff because the contract between the parties upon which the

complaint was based was executed by Ingwer individually. Ingwer again signed the verification affidavit, and the cause proceeded.

¶ 5 As relevant to this appeal, Murphy Knott served interrogatories and a request to produce documents to Ingwer. It also served a subpoena for records to the publisher of the book, seeking all documents and records relating to Ingwer and Insight, including all contracts, bills, statements, invoices, agreements and correspondence. Additionally, Murphy Knott served subpoenas to Insight and Ingwer's attorney. On November 21, 2014, Murphy Knott filed a motion to compel Ingwer to answer its discovery requests. On December 11, 2014, the trial court granted Murphy Knott's request to compel and ordered Ingwer to respond to discovery by December 31, 2014.

¶ 6 On January 9, 2015, Murphy Knott filed the first of three motions for Rule 219 sanctions against Ingwer. All three motions essentially alleged that Ingwer failed to answer the outstanding discovery requests. As relief, Murphy Knott requested an order from the trial court prohibiting Ingwer from presenting witnesses or evidence at the trial in this matter, ordering that Ingwer pay the costs and expenses of these motions, and requiring Ingwer to answer discovery requests.

¶ 7 On April 2, 2015, the trial court entered an order on Murphy Knott's third motion for sanctions, finding that Ingwer could not produce at trial any additional documents not already tendered, and that Murphy Knott could file a petition for attorney fees regarding its motions for sanctions after trial.

¶ 8 On April 7, 2015, Ingwer filed a motion to voluntarily dismiss this cause without prejudice under section 2-1009 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1009 (West 2014)). Ingwer stated in the motion that because a trial had not begun in this matter, section 2-1009 of the Code allowed him to dismiss the cause without prejudice upon payment of costs to

Murphy Knott. On April 20, 2015, the trial court stated that Ingwer had tendered costs to Murphy Knott, and allowed him to voluntarily dismiss the cause without prejudice.

¶ 9 On May 19, 2015, Murphy Knott filed a petition for fees and sanctions. In the petition, Murphy Knott alleged that, during the course of discovery, Ingwer failed to identify any witnesses or produce any documents concerning damages. In addition, Ingwer failed to provide copies of the purported payments he made to Murphy Knott for its services. Despite this lack of support, the original complaint alleged that Insight paid for Murphy Knott's services, and the amended complaint indicated that Ingwer paid for them. Murphy Knott asserted that both plaintiffs could not have paid for its services, particularly where no copies of the checks written to Murphy Knott were ever provided. According to Murphy Knott, Ingwer was not telling the truth in either pleading. Murphy Knott thus requested that the trial court enter sanctions under Supreme Court Rules 137 (eff. July 1, 2013) and 219(e) (eff. July 1, 2002)), against Ingwer in the amount of $12,000.

¶ 10 Ingwer replied that he had not been previously found to have engaged in misconduct, and thus should not be subject to a new sanction requiring payment of any new fees or expenses. Ingwer maintained that no discovery deadlines were pending at the time of the dismissal, and his decision to voluntarily dismiss the cause of action was not based on avoiding any deadline. Ingwer also stated that he reimbursed Murphy Knott for appearing in this matter.

¶ 11 In Murphy Knott's response, it maintained that, despite Ingwer's contention to the contrary, the trial court did enter a discovery sanction against him in its order entered on April 2, 2015. The order specifically stated that Ingwer could not produce at trial any additional documents not already tendered. On that date, the court also granted Murphy Knott leave to file a petition for attorney fees regarding its motions for sanctions. Therefore, Murphy Knott stated

that the court had already found misconduct by Ingwer in failing to comply with discovery orders prior to his voluntarily dismissal of the action. Moreover, Ingwer's conduct throughout the discovery proceedings established a pattern of failing to comply with deadlines, orders, and Illinois Supreme Court Rules.

¶ 12 On July 22, 2015, the trial court held a hearing on Murphy Knott's petition for fees and sanctions. At the hearing, counsel for Murphy Knott argued that both verified pleadings could not be truthful where one identified the plaintiff as a corporation, *i.e.*, Insight, and the other identified the plaintiff as an individual, *i.e.*, Ingwer. Moreover, although Ingwer alleged damages in his pleadings, he never produced evidence of such during discovery. The court interjected, stating "[m]aybe that's why they are dismissing [the claim]." Defense counsel responded that this was not a new case, and that Ingwer had time to accumulate the necessary discovery documentation. The court indicated that it understood the allegations and then denied Murphy Knott's petition without prejudice. The court stated that the allegations in the petition for fees and sanctions could be raised again if the case was refiled. This appeal followed.

¶ 13 On appeal, Murphy Knott first contends that the trial court abused its discretion in denying its petition for sanctions and fees under Supreme Court Rule 137 (eff. July 1, 2013).

¶ 14 Pursuant to Rule 137, litigants and attorneys have a duty to conduct a reasonable inquiry into the facts and existing law prior to filing a complaint. Ill. S. Ct. R. 137 (eff. July 1, 2013). Rule 137 authorizes the imposition of sanctions against a party or his attorney for filing a pleading or motion that is not well-grounded in fact or warranted by existing law, or which has been interposed for any improper purpose. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 7. The rule is penal and must be strictly construed. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). We review the trial court's ruling denying a motion for sanctions for an abuse of

discretion. *Arnold*, 2015 IL 118110, ¶ 16. An abuse of discretion occurs when no reasonable person would agree with the court's decision. *Id*. In reviewing the trial court's denial of a motion for sanctions, this court should focus on whether the record provides an adequate basis for affirming the trial court's decision to deny sanctions, not on the court's specific reasons for doing so. *Id*.

¶ 15 Murphy Knott argues that the trial court abused its discretion in not awarding it Rule 137 sanctions against Ingwer as the verified pleadings were certified by the same person (Ingwer) and filed by the same attorney (Julie Wiorkowski), yet the pleadings "directly conflicted with the other." It appears Murphy Knott is complaining that Insight was listed as the plaintiff in this first complaint, and Ingwer was substituted as the plaintiff in the amended complaint. Murphy Knott maintains that because Ingwer signed off as the managing partner and founder of Insight in his first complaint, it follows that Ingwer individually did not suffer damages and did not pay for Murphy Knott's services. Moreover, Ingwer was unable to allege any actual damages or provide supporting documentation for said damages, and thus the lawsuit was frivolous, not grounded in fact, not warranted by existing law, and should never have been filed.

¶ 16 Except for remarking that Ingwer may have voluntarily dismissed his claim against Murphy Knott because he could not prove damages, the trial court did not explain its reasoning for denying Murphy Knott's motion for sanctions. Nevertheless, our supreme court has held such reasoning unnecessary. See *Arnold*, 2015 IL 118110, ¶ 19 (holding that Rule 137 imposes no requirement on a trial court to explain its reasons for denying a motion for sanctions). Significantly, the record provided an adequate basis for the trial court's decision to deny Murphy Knott's petition requesting that sanctions be imposed against Ingwer. Nothing in the record indicates that Ingwer's original or amended complaints were not based on well-grounded facts or

exiting law, or were filed with an improper purpose. Moreover, we find Ingwer's amendment substituting himself as the plaintiff was not an action so egregious that it required the trial court to impose sanctions or that the failure to do so constituted an abuse of discretion. This is particularly true where the amendment was made prior to any responsive pleading by Murphy Knott.

¶ 17 In so finding, we note that *Rynn v. Owens*, 181 Ill. App. 3d 232, and *Konstant Products, Inc. v. Liberty Mutual Fire Insurance Co.*, 401 Ill. App. 3d 83 (2010), relied on by Murphy Knott in support of its position that Ingwer's amended complaint failed to cure any defects in his first complaint, is distinguishable from the case at bar. In *Rynn*, the plaintiff filed two contradicting verified complaints. The first complaint alleged that the defendant was a joint tenant in bank accounts, but the amended complaint stated that the defendant was only a joint custodian. *Id*. at 234. The *Rynn* court held that:

> "Verified pleadings remain part of the record and any admissions not the product of mistake or inadvertence become binding judicial admissions. [Citations omitted]. Here the original complaint alleged joint tenancies in the back accounts. Because the amended complaint did not assert that the allegations in the original complaint of joint tenancies were the product of mistake or inadvertence, they stand as judicial admissions." *Id*. at 235; see also *Konstant Products, Inc.*, 401 Ill. App. 3d at 86 (agreeing with the circuit court's finding that an allegation in an original complaint was a binding judicial admission that 'did not go away' merely by filing an amended complaint).

Here, unlike in *Rynn* or *Konstant Products*, Ingwer's substitution of himself individually as the plaintiff in the amended complaint did not change a material element of his breach of contract claim. This is particularly true where Ingwer, who identified himself as the managing partner and

founder of Insight, signed the contract. Therefore, it was arguably ambiguous as to whether Ingwer was acting in his individual capacity or as managing partner when he contracted with Murphy Knott. The amended complaint was merely a clarification regarding the named plaintiff and did not constitute a departure from the substantive allegations in the first complaint. We thus find that the trial court did not abuse its discretion in declining to impose Rule 137 sanctions upon Ingwer.

¶ 18 Murphy Knott also contends that the trial court abused its discretion in denying his petition for sanctions and fees under Supreme Court Rule 219(e) (eff. July 1, 2002).

¶ 19 Rule 219(e) prohibits a party from avoiding compliance with discovery, orders, or rules by voluntarily dismissing a lawsuit. The rule authorizes the court to require the party voluntarily dismissing a claim to pay an opposing party's reasonable expenses incurred in defending the action in addition to costs under section 2-1009 of the Code (735 ILCS 5/2-1009(a) (West 2014). Ill. S. Ct. R. 219(e) (eff. July 1, 2002). The purpose of Rule 219(e) is to prevent abuses of the discovery system by encouraging compliance with the discovery process. *Jones v. Chicago Cycle Center*, 391 Ill. App. 3d 101, 111 (2009). However, the rule does not bar a plaintiff's right to voluntarily dismiss a claim. *Id*. In order for Rule 219(e) to apply, the trial court must make a preliminary finding of misconduct, *i.e.*, the noncomplying party's conduct was unreasonable in that it showed " 'a deliberate, contumacious or unwarranted disregard for the court's authority.' " *Id*. at 111-12 (quoting *Scattered Corp. v. Midwest Clearing Corp.*, 299 Ill. App. 3d 653, 659 (1998). Again, the imposition of a sanction rests with the discretion of the trial court and only a clear abuse of discretion will justify a reversal. *Rosen v. The Larkin Center, Inc.*, 2012 IL App (2d) 120589, ¶¶ 16-17.

¶ 20 With regard to Rule 219(e), Murphy Knott argues that the trial court abused its discretion when it allowed Ingwer to voluntarily dismiss his complaint, but failed to award it fees and expenses for his conduct. In particular, Murphy Knott argues that Ingwer did not comply with its discovery requests, including his failure to fully respond to interrogatories and requests to produce. Murphy Knott also maintains that the trial court made an inherent finding of misconduct when it sanctioned Ingwer on April 2, 2015 by not allowing him to produce at trial any additional documents, and allowed Murphy Knott leave to file a petition for attorney fees regarding its motions for sanctions after trial.

¶ 21 Although Murphy Knott is correct that the trial court entered an order on April 2, 2015, finding that Ingwer could not produce at trial any additional documents not already tendered, we do not agree that this decision constituted the required preliminary finding of misconduct necessary for the court to impose sanctions under Rule 219(e). We find *Jones* instructive in showing what constitutes a finding of misconduct by the trial court in the context of Rule 219(e).

¶ 22 In *Jones*, 391 Ill. App. 3d at 115, where this court upheld the trial court's imposition of costs and expenses under Rule 219(e) against the plaintiffs, the trial court made specific findings that the plaintiffs engaged in discovery misconduct. In particular, this court stated that the "upshot of the [trial] court's findings [was] that the plaintiffs' conduct in moving for a voluntary dismissal on the basis of [one plaintiff's] medical condition without having previously notified the court that such might be necessary despite numerous opportunities to do so and only moving for such dismissal after the court limited the scope of the plaintiffs' proposed medical testimony [was] such a great 'abuse' of the discovery system that Rule 219(e) costs and expenses [were] warranted." *Id*. at 114. In this case, however, no such finding was made where the court only entered an order on April 2, 2015, preventing Ingwer from tendering any further documentation

at trial, and never mentioned any misconduct by Ingwer when it denied Murphy Knott's motion for fees and sanctions over three months later. Moreover, the *Jones* court's finding that the trial court properly exercised its discretion to impose sanctions does not connote that a trial court loses the discretion to deny a request for monetary sanctions simply because it has imposed a nonmonetary sanction.

¶ 23 Furthermore, even if the court's refusal to allow Ingwer to produce any additional documents could be considered as a finding of misconduct, the trial court clearly did not find that such misconduct warranted sanctions. We find nothing in the record to upset the trial court's decision denying Murphy Knott fees and expenses pursuant to Rule 219(e), and thus conclude that the trial court did not abuse its discretion in so finding.

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 25 Affirmed.