

2016 IL App (2d) 160178-U  
No. 2-16-0178  
Order filed December 12, 2016

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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LLOYD GIORDANO,	)	Appeal from the Circuit Court
	)	of Boone County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 10-TX-17
	)	
GREGORY TRZASKA,	)	Honorable
	)	C. Robert Tobin III,
Respondent-Appellee.	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Justices McLaren and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* Appellant has forfeited his claims on appeal, because he has failed to comply with the Illinois Supreme Court Rules regarding the content and formatting of appellate briefs. In any event, appellant's arguments are without merit, and the trial court properly sanctioned appellant. Affirmed.

¶ 2 Appellant, Lloyd Giordano, appeals the trial court's: (1) denial of his petition for substitution of judge; (2) denial of his 2015 section 2-1401 petition (735 ILCS 5/2-1401 (West 2014)) to vacate a \$24,678 judgment against him, which was part of a 2013 trial court order that had already been subject to an appeal before this court (*Giordano v. Trzaska*, 2014 IL App (2d) 130778-U); and (3) grant of appellee's, Gregory Trzaska's, motion for sanctions and award of

\$61,727. Giordano has forfeited his arguments on appeal for failure to comply with the Illinois Supreme Court Rules regarding the content and formatting of appellate briefs. In any event, appellant's arguments are without merit. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 In 2013, the trial court issued a judgment with three components relevant to the instant appeal: (1) it vacated its issuance of a tax deed to Giordano, because Giordano had procured the tax deed based on fraud and deception in that he made false representations of his effort to notify Trzaska, the property owner; (2) it denied Trzaska's motion for sanctions, wherein Trzaska sought to be reimbursed for over \$200,000 in legal fees that he incurred defending against Giordano's fraudulent actions, because, beyond the obvious negligence of not paying his taxes, Trzaska's negligence greatly increased the legal work necessary; and (3) it reversed the transactions that occurred during Giordano's improper possession of the property, including a reinstatement of Trzaska's 2002 deed to the property, an order to return to Giordano the taxes that he paid on the property, and an order to return to Trzaska the revenue generated from the land. The parties stipulated that, after off-setting the taxes Giordano had paid, Giordano owed Trzaska a remaining \$24,678 in revenue.

¶ 5 In May 2014, this court affirmed the trial court's 2013 judgment. *Giordano*, 2014 IL App (2d) 130778-U, ¶ 1. Specifically, we affirmed the trial court's decision to vacate the tax deed and its denial of sanctions. *Id.* Giordano did not challenge the remedy to reverse the transactions that occurred during his improper possession, including the resulting \$24,678 judgment. *Id.*

¶ 6 On July 1, 2015, Giordano petitioned pursuant to section 2-1401 to vacate the parties' 2013 stipulation that, after off-setting the taxes Giordano had paid, Giordano owed Trzaska

\$24,678. Giordano argued that the taxes he paid and the revenue he (wrongfully) generated from the land were “logically separate and independent” “action amounts.” In Giordano’s view, the court should not have allowed for their interrelation. Giordano also appeared to be arguing that the trial court should not have vacated the tax deed, an argument this court already directly rejected in *Giordano*, 2014 IL App (2d) 130778-U.

¶ 7 On July 16, 2015, Giordano’s attorney moved to withdraw, stating that Giordano made it “difficult for [him] to carry out the employment effectively.” The trial court later granted the motion.

¶ 8 On July 27, 2015, Trzaska moved to dismiss Giordano’s section 2-1401 petition pursuant to section 2-615 of the Code of Civil Procedure and for Illinois Supreme Court Rule 137 sanctions. 735 ILCS 5/2-615, 2-1401 (West 2014); 735 ILCS 5/2-615 (West 2015); Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

¶ 9 On August 19, 2015, Giordano, acting *pro se*, petitioned for substitution of judge (Judge C. Robert Tobin). 735 ILCS 5/2-1001 (West 2015). The basis is not entirely clear from the petition, which appears to allege favoritism and bias. Later, at a hearing, Giordano clarified that substitution was proper where a judge has deep-seated antagonism for a litigant, and Giordano did not like the way Judge Tobin appeared to react to his section 2-1401 petition. Giordano asserted that he was “pretty good at reading people.” Judge Tobin denied the petition and a subsequent motion to reconsider. Judge Tobin did not refer the petition to another judge.

¶ 10 On September 30, 2015, the trial court heard and granted Trzaska’s motion to dismiss the section 2-1401 petition and for Rule 137 sanctions. It explained that Giordano had forfeited the claims set forth in his section 2-1401 petition, because he could have raised them in the 2014 appeal of the 2013 judgment but did not. The court further stated that Giordano’s argument that

a set-off cannot be proper consideration was “foolish,” and, on the whole, “there’s absolutely nothing I found—neither a basis in law nor fact” to support the section 2-1401 petition. The court concluded that the section 2-1401 petition was frivolous and subject to Rule 137 sanctions. The court would determine the sanction amount at a later hearing.

¶ 11 On October 14, 2015, Trzaska petitioned for \$35,000 (approximate) in sanctions. He averred that he incurred that amount in attorney fees while defending against Giordano’s frivolous motions. However, before the court could conduct a hearing on the sanction amount, Giordano filed additional pleadings. He moved to reconsider the trial court’s dismissal of his section 2-1401 petition and its grant of sanctions. He again petitioned for substitution of judge.

¶ 12 As to the petition to substitute judge, Giordano alleged that Judge Tobin advocated for Trzaska. Judge Tobin determined, based on the allegation of judicial advocacy, that the petition should be referred to Judge McGraw in Winnebago County. At the hearing, Judge McGraw denied the petition. He explained that nothing in the record showed that Judge Tobin was prejudiced against Giordano and that, although Giordano disagreed with Judge Tobin’s legal wisdom and reasoning, there was no basis to substitute judge.

¶ 13 When the case was returned to Judge Tobin, Giordano continued to file pleadings, such as a “motion to object to [the] proceeding” that Judge McGraw had conducted. The court denied that motion, as well as Giordano’s motion to reconsider the ruling on the section 2-1401 petition.

¶ 14 Trzaska was granted leave to file an amended petition for sanctions, which added attorney fees incurred defending against Giordano’s additional pleadings. The court accepted the stated \$62,000 (approximate) in fees as reasonable, with the exception of less than \$100 for fees related to parking and transportation. The court noted that this had been a “complex matter from

the start” and that it had been reasonable for Trzaska to retain both his longtime Chicago counsel, who had expertise in real estate law, as well as local counsel. This appeal followed.

¶ 15

## II. ANALYSIS

¶ 16 Giordano appeals the trial court’s denial of the petition to substitute judge, the motion to reconsider the section 2-1401 ruling, and the award of sanctions. Giordano has forfeited his arguments on appeal for failure to comply with the Illinois Supreme Court Rules regarding the content and formatting of appellate briefs. In any event, appellant’s arguments are without merit.

¶ 17 A. Forfeiture Due to Noncompliance with Illinois Supreme Court Rules

¶ 18 “The appellate court is not a depository in which the appellant may dump the burden of argument and research.” *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38. The appellate court is entitled to have the issues clearly defined, with citation to relevant authority. *In re Marriage of Winton*, 216 Ill. App. 3d 1084, 1090 (1991); Ill. S. Ct. Rule 341(h)(7) (eff. Feb. 6, 2013). If an appellant does not comply with these rules, his or her claims on appeal are subject to forfeiture. *People v. Ward*, 215 Ill. 2d 317, 332 (2005).

¶ 19 Giordano’s brief contains many failings, including, but certainly not limited to, an inadequate: (1) introductory paragraph (where the introductory “paragraph” is actually 44 separate paragraphs) (Ill. S. Ct. Rule 341(h)(2)); (2) statement of facts (with no references to the pages of the record on appeal) (Ill. S. Ct. Rule 341(h)(6)); and (3) argument section (with no citation to authority, calling upon the court to turn back to the points-and-authorities page to decide for itself which, if any, of the listed cases applies) (Ill. S. Ct. Rule 341(h)(7)).

¶ 20 Giordano admits, in his reply brief, that his opening brief does not comply with the rules concerning appellate briefs. He contends, however, that his method is “different but functionally adequate.” He does not attempt to correct the errors present in his opening brief, and he

continues to make many of these errors in his reply brief. Based on these errors, it would be within our authority to dismiss this appeal. See *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). However, because we are affirming a \$61,727 sanction against Giordano, we choose to briefly explain why Giordano’s appeal is without merit.

¶ 21

B. Petition to Substitute Judge

¶ 22 A party may petition for substitution of judge for cause after a substantive ruling has been made in the case. *In re Marriage of O’Brien*, 2011 IL 109039, ¶ 30. To prevail, a movant must overcome a presumption of impartiality by showing actual prejudice. *Id.* Actual prejudice means prejudicial trial conduct or personal bias. *Id.* The actual-prejudice standard aims to preserve the integrity of the adversarial system by preventing a party from “shopping” for a judge in sympathy with his or her cause. *Id.* Opinions formed by a judge based on events occurring in the course of the proceedings cannot substantiate a claim of bias, unless the opinions display a deep-seated favoritism or antagonism that would make fair judgment impossible. *Id.* ¶ 31 (citing *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002)). The trial court’s determination on the question of actual prejudice shall not be disturbed unless the determination is against the manifest weight of the evidence. *In re Marriage of O’Brien*, 393 Ill. App. 3d 364, 373 (2009).

¶ 23

Here, the trial court did not err in rejecting Giordano’s petitions to substitute judge. Although Judge Tobin made certain negative comments about Giordano’s section 2-1401 petition, calling it “foolish,” these comments were based on what the judge had learned about the case over the course of the proceedings, rather than a deep-seated antagonism toward Giordano. Giordano implies that Judge Tobin coached Trzaska’s attorneys to move to dismiss Giordano’s section 2-1401 petition and to seek sanctions, but nothing in the record supports such an assertion. As we will discuss, Giordano’s section 2-1401 petition was baseless, and it is entirely

predictable that an attorney would move to dismiss it. We will not further indulge Giordano on the issue of substitution.

¶ 24

C. Section 2-1401 Petition

¶ 25 Section 2-1401 provides for relief from final judgments after more than 30 days have passed. 735 ILCS 5/2-1401 (West 2014). Barring exceptions not applicable here, a section 2-1401 petition must be filed within two years of the final judgment. *Id.* A petitioner must establish by a preponderance of the evidence: (1) a meritorious claim or defense in the original action; and (2) diligence in pursuing both the original action and the petition for relief from judgment. *Mills v. McDuffa*, 393 Ill. App. 3d 940, 946 (2009). Where, as here, the trial court disposed of the section 2-1401 petition on the pleadings, our review is *de novo*. *Id.* at 948.

¶ 26 Giordano can establish neither a meritorious claim nor diligence. As to the merits, Giordano complains of the manner in which the trial court reversed the transactions associated with his wrongful possession. Again, the trial court determined that: (1) Trzaska owed Giordano several hundred dollars for taxes that Giordano paid while possessing the property; and (2) Giordano owed Trzaska approximately \$25,000 for revenue generated from the property. As stipulated by the parties, and as incorporated into the 2013 order, rather than exchange funds back and forth, Giordano would issue to Trzaska a single payment of \$24,678, reflecting revenue generated minus taxes paid. Giordano appears to complain that Trzaska never issued payment for taxes paid, but, as discussed, the taxes were already accounted for in the \$24,678 judgment amount. Giordano argues that it would be “absurd” for him to be bound by his attorney’s earlier stipulation to perform the set-off. To the contrary, a client generally is bound by the acts or omissions of his or her attorney that are within scope of the attorney’s authority. *Sakun v. Taffer*,

268 Ill. App. 3d 343, 351 (1994). Moreover, the agreed-to set-off was a perfectly legitimate approach to effectuate the court order. Giordano simply has no meritorious claim.

¶ 27 As to diligence, there is no reason that Giordano could not have raised this argument in the 2014 appeal of the 2013 judgment. Strangely, Giordano also appears to challenge trial court rulings that occurred as early as 2011: “The Order entered on 30 Jun. 2011 which denied [Giordano’s] motion to dismiss [Trzaska’s section 2-1401 petition to vacate the tax deed] was not consistent with the governing statute and case law and with material facts.” Even if this and other similar arguments had merit, Giordano could have raised the arguments in the 2014 appeal of the 2013 judgment. Giordano cannot demonstrate diligence.

¶ 28 D. Rule 137 Sanctions

¶ 29 Illinois Supreme Court Rule 137 authorizes a trial court to sanction a party who files a pleading that is not grounded in fact, is not supported by existing law or by a good-faith argument for an extension or modification of existing law, or is submitted for an improper purpose. *Koch v. Carmona*, 268 Ill. App. 3d 48, 56 (1994). The trial court must consider the reasonableness of the party’s actions under the circumstances existing at the time of filing. *Id.* A court of review looks to see whether the trial court’s decision to issue sanctions was informed, and reversal is warranted only if the trial court abused its discretion. *Dismuke v. Rand Cook Auto Sales*, 378 Ill. App. 3d 214, 217 (2007).

¶ 30 A brief review of the circumstances of this case shows that sanctions were warranted. In 2013, the trial court vacated the tax deed based on Giordano’s fraud and deception but did not sanction Giordano at that time. This court affirmed. *Giordano*, 2014 IL App (2d) 130778-U, ¶ 1. Despite his relative fortune in avoiding attorney-fee sanctions in 2013, Giordano continued to file what the trial court reasonably determined to be frivolous filings. These include the baseless



motions to substitute judge and the section 2-1401 petitions discussed above. The trial court did not abuse its discretion in sanctioning Giordano.

¶ 31 As to the sanction amount of \$61,727, Giordano argues broadly that the fees are inflated. Ordinarily, a \$61,727 fee to defend against baseless petitions to substitute and baseless section 2-1401 petitions would give us pause. Here, however, the trial court acted reasonably in sanctioning Giordano for Trzaska's entire fee amount. Going back to 2011, Giordano knew that Trzaska employed an attorney to fight against *Giordano's* fraudulent actions. Initially, the court did not order Giordano to reimburse Trzaska. This grace period ended in 2015. Even after the court informed Giordano that he would be paying Trzaska's attorney fees, then at \$35,000, Giordano continued to file frivolous pleadings. The court expressly found that Trzaska reasonably retained both his longtime Chicago counsel and local counsel. The fees pertained to numerous motions filed and hearings conducted over a six-month-plus period from July 2015 to February 2016. We affirm the trial court's award of sanctions.

¶ 32

### III. CONCLUSION

¶ 33 For the aforementioned reasons, we affirm the trial court's judgment.

¶ 34 Affirmed.