

NOTICE
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2016 IL App (5th) 140451-U

NO. 5-14-0451

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

ROBINSON TOWNSHIP,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Crawford County.
)	
v.)	No. 10-ED-1
)	
THE ESTATE OF GARY L. WILSON,)	Honorable
)	Kimbara G. Harrell,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justice Moore concurred in the judgment.
Justice Cates concurred in part and dissented in part.

ORDER

¶ 1 *Held:* Where the Crawford County circuit court did not err in denying the estate of Gary L. Wilson's motion for summary judgment, we affirm the judgment. Where the circuit court did not abuse its discretion in ordering sanctions, we affirm the order.

¶ 2 The estate of Gary L. Wilson¹ appeals the trial court orders denying its summary judgment motion and granting Robinson Township's motion for sanctions. For the

¹Gary L. Wilson passed away in early 2015. His estate was substituted as the appellant in this appeal. As Wilson actively participated in this case at all relevant times, we refer to the appellant as Wilson throughout this order.

reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4 The underlying facts of this appeal are somewhat confusing in that the parties were involved in separate but interrelated actions—this eminent domain appeal and an earlier appeal of the administrative review decision. Wilson has conflated the two cases by collaterally attacking the eminent domain judgment in the administrative review appeal. We will provide background information on both cases necessary for an understanding of the eminent domain appeal.

¶ 5 This appeal arises from an eminent domain proceeding brought by Robinson Township to acquire .7 acres of land from Wilson to straighten an unsafe section of township road. Robinson Township filed the eminent domain complaint for appropriation of real estate against Wilson on August 4, 2010. On September 9, 2010, Wilson filed a motion to dismiss, contending that Robinson Township's complaint failed to set forth that it had obtained the statutory authority and followed administrative procedure before initiating the eminent domain action. Robinson Township then sought and received an agreement from Wilson to correct the defects before filing an amended complaint rather than pursue the motion to dismiss. Thereafter, before filing its amended complaint, Robinson Township undertook the administrative proceedings pursuant to section 6-303 of the Illinois Highway Code (605 ILCS 5/6-303 (West 2008)). Then on February 18, 2011, Robinson Township filed its unopposed first amended complaint, alleging that it had procured an administrative memorandum of decision from a township

highway commissioner granting the petition to alter the road and had complied with all other statutory procedures before filing the complaint.

¶ 6 On August 2, 2011, Wilson filed a traverse and motion to dismiss raising issues of notice, excessiveness of property sought to be acquired, just compensation, and necessity of project. The trial court denied the motion.

¶ 7 Because the parties were unable to reach an agreement as to the purchase of the property or the amount of damages, Robinson Township moved forward with condemnation proceedings to determine the valuation of the property. Following a bench trial, judgment was entered on April 17, 2012, setting the property valuation. Robinson Township filed a timely motion to reconsider on May 11, 2012. After a hearing, the court redetermined the valuation and entered judgment on August 21, 2012. Neither party appealed this judgment.

¶ 8 Wilson, however, did seek review of the Crawford County Superintendent of Highways' administrative decision granting the petition to alter the township road. Wilson sought judicial review of the superintendent's decision pursuant to section 6-315a of the Illinois Highway Code (605 ILCS 5/6-315a (West 2008)) and the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2008)) by the filing of a complaint, 13-MR-4, in the circuit court of Crawford County. On February 24, 2013, the circuit court affirmed the decision of the Crawford County Superintendent of Highways.

¶ 9 Wilson timely appealed the circuit court decision. Wilson argued on appeal that Robinson Township did not initiate formal proceedings at the township level before bringing the eminent domain action, which rendered the taking of Wilson's land void *ab*

initio. In support of his argument, Wilson cited to *Goldman v. Moore*, which held that a formal action authorizing the condemnation must take place before the filing of an eminent domain action. *Goldman v. Moore*, 35 Ill. 2d 450, 453-54, 220 N.E.2d 466, 468-69 (1966). On appeal, this court found that appellant's arguments were hampered by the filing of an incomplete record; but despite the fact that the record was devoid of any formal action taking place prior to filing the eminent domain action, any error in the administrative proceedings did not render the eminent domain action void *ab initio*. *Wilson v. Robinson Township*, 2014 IL App (5th) 130134-U, ¶¶ 19-20 (citing *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174, 692 N.E.2d 281, 283-84 (1998) (where the court held that civil judgments may be collaterally attacked as void only where there is a total lack of jurisdiction)). The court found that the circuit court had jurisdiction over both the subject matter and the parties in the eminent domain action. *Id.* ¶ 21. The court went on to point out that while the eminent domain judgment may have been voidable in a direct attack, it is not void and cannot be collaterally attacked in the administrative review proceeding. *Id.*

¶ 10 Wilson next returned his sights to the eminent domain case. He filed a motion for summary judgment on February 7, 2014, raising the very same issue raised on appeal in the administrative case—that under the rule set out in *Goldman v. Moore*, Robinson Township did not take the appropriate procedural action before filing the condemnation case, rendering the authorizing ordinance invalid. Wilson further contended that the eminent domain case remained pending following the valuation determination orders.

¶ 11 On August 7, 2014, the trial court denied the motion for summary judgment. The court held that its 2012 judgment was a final and appealable order and Wilson did not appeal that judgment. The court further stated, quoting extensively from this court's decision in *Wilson v. Robinson Township*, 2014 IL App (5th) 130134-U, that *Goldman v. Moore* did not apply to this case because *Goldman v. Moore* involved a posttrial motion, whereas the instant case involved an impermissible collateral attack on a voidable judgment. Wilson filed his timely notice of appeal.

¶ 12

LAW AND ANALYSIS

¶ 13

Jurisdiction

¶ 14 Our review of questions of jurisdiction is *de novo*. *Deutsche Bank National Trust Co. v. Hall-Pilate*, 2011 IL App (1st) 102632, ¶ 12, 957 N.E.2d 924.

¶ 15 We preliminarily address the jurisdictional argument raised by Robinson Township. Robinson Township argues that this court does not have jurisdiction to hear the issues on appeal filed by Wilson, excepting the issue of sanctions entered against Wilson. Robinson Township misconstrues the nature of our jurisdiction. This court obtained jurisdiction with the timely filing of a notice of appeal seeking review of the trial court's decision. "No other step is jurisdictional." Ill. S. Ct. R. 301 (eff. Feb. 1, 1994).

¶ 16

Finality of the Judgment

¶ 17 We first address the issue of finality of the judgment as it is outcome determinative of this case.

¶ 18 Illinois Supreme Court Rule 301 provides that "Every final judgment of a circuit court in a civil case is appealable as of right." Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). To be considered a final judgment, "it must dispose of or terminate the litigation or some definite part of it on the merits of the cause." *Joliet Federal Savings & Loan Ass'n v. O'Hare International Bank*, 12 Ill. App. 3d 1012, 1013-14, 299 N.E.2d 350, 351 (1973) (citing *Village of Niles v. Szczesny*, 13 Ill. 2d 45, 147 N.E.2d 371 (1958); *LaVida, Inc. v. Robbins*, 33 Ill. App. 2d 243, 178 N.E.2d 412 (1961)). An order is not final if it leaves for future determination a substantial issue in controversy. *Id.* "The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from ***." Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008). "It is well established that a trial court loses jurisdiction over a case and the authority to vacate or modify its judgment 30 days after the entry of judgment, unless a timely postjudgment motion is filed." *Longo v. Globe Auto Recycling, Inc.*, 318 Ill. App. 3d 1028, 1033, 743 N.E.2d 667, 671 (2001) (citing *Gegenhuber v. Hystopolis Production, Inc.*, 277 Ill. App. 3d 429, 431, 660 N.E.2d 107, 109 (1995)). A trial court loses jurisdiction over an action when 30 days pass from the time it disposes of a timely filed postjudgment motion. *Won v. Grant Park 2, L.L.C.*, 2013 IL App (1st) 122523, ¶ 20, 2 N.E.3d 595; *Bell v. Hill*, 271 Ill. App. 3d 224, 228, 648 N.E.2d 170, 172-73 (1995).

¶ 19 Here, an order determining the valuation of the property was entered on April 17, 2012. Wilson filed a timely posttrial motion which the trial court heard and subsequently entered its order on August 21, 2012. Wilson did not appeal the August 21, 2012, judgment.

¶ 20 Wilson argues that neither the April 17, 2012, nor the August 21, 2012, order was a final judgment because both orders lacked the specific language required by section 10-5-70 of the Eminent Domain Act (735 ILCS 30/10-5-70 (West 2008)) or did not comply with Illinois Supreme Court Rules.²

¶ 21 Section 10-5-70 of the Eminent Domain Act states that after the court determines just compensation, the court "shall proceed to adjudge and make such order as to right and justice shall pertain, ordering that the plaintiff shall enter upon the property and the use of the property upon payment in full compensation as ascertained, within a reasonable time to be fixed by the court." 735 ILCS 30/10-5-70(a) (West 2008).

¶ 22 Wilson contends that the orders were deficient in that they did not provide for identification of the property, determination of compensation, the date by which Robinson Township had to pay the compensation, who was to receive the compensation,

²On appeal, Wilson hired new legal counsel who has attempted to expand the issues on appeal. The motion for summary judgment and the subsequently filed notice of appeal only questioned the validity of the August 21, 2012, judgment. On appeal, counsel for Wilson has also attempted to raise questions associated with the court's earlier April 17, 2012, order that set the price per acre. We confine our analysis in this order to the only issue Wilson raised in his motion and in the notice of appeal. We find that any right to pose questions now regarding other issues has been forfeited on appeal. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 92, 923 N.E.2d 735, 741 (2010).

a statement as to when and how title would vest, and a statement that Robinson Township would have a right to possess the property upon payment.

¶ 23 Robinson Township argues that the order entered on August 21, 2012, was a final judgment for purposes of Supreme Court Rule 301 as it established the valuation of the property and thereby disposed of the litigation on its merits leaving no matter of substantial controversy to be decided. We agree with Robinson Township.

¶ 24 The court had decided the matter of statutory authority to condemn when it denied Wilson's traverse and motion to dismiss. The only remaining matter of substance was the valuation of the property which was resolved when the court set the valuation of the property on August 21, 2012. We agree with Robinson Township that no substantial matter of controversy existed after that date. The alleged deficiencies Wilson points to in his argument were not matters of any substance that were in any way determinative of the outcome as they did not go to the merits of the cause of action. Wilson cites to no case that supports his arguments.

¶ 25 Validity of Eminent Domain Judgment

¶ 26 Having decided that the trial court entered a final judgment which was not appealed, we need not decide whether the trial court having jurisdiction to decide the matter exceeded its authority by entering the eminent domain judgment.

¶ 27 Nevertheless, it is clear from the complete record (which was apparently not filed by Wilson in the earlier administrative appeal) that the memorandum of decision which is the authorizing ordinance, resolution, or other formal action required by our supreme

court in *Goldman v. Moore* was in fact filed prior to Robinson Township's filing of a first amended complaint. *Goldman*, 35 Ill. 2d at 451-52, 220 N.E.2d at 467.

¶ 28 After Wilson filed his motion to dismiss Robinson Township's original complaint, contending that Robinson Township's petition failed to set forth that it had followed statutory authority before initiating the eminent domain action, Robinson Township sought and received an agreement from Wilson to file an amended complaint rather than pursue the motion to dismiss. Thereafter, and before filing its amended complaint, Robinson Township undertook the administrative proceedings pursuant to section 6-303 of the Illinois Highway Code (605 ILCS 5/6-303 (West 2008)). Then on February 18, 2011, Robinson Township filed its unopposed first amended complaint, alleging that it had complied with all of the statutory procedures requisite to the filing of an eminent domain complaint. Wilson agreed to the filing of the amended complaint and did not at any later time call up his earlier motion to dismiss. When an amended complaint does not refer to or incorporate portions of the original complaint, it is considered "complete" and the earlier complaint is considered abandoned and withdrawn. *Tabora v. Gottlieb Memorial Hospital*, 279 Ill. App. 3d 108, 113, 664 N.E.2d 267, 270-71 (1996). We have compared Robinson Township's complaint with its first amended complaint and find that the first amended complaint is "complete" in that it does not incorporate the earlier complaint. Because Robinson Township had abandoned its original complaint, and then obtained the authorizing ordinance, Robinson Township was in compliance with the statutory prerequisites of the Illinois Highway Code and the rule set out in *Goldman v.*

Moore at the time the eminent domain suit was at issue by the filing of the first amended complaint. *Id.*; *Goldman*, 35 Ill. 2d at 451-52, 220 N.E.2d at 467.

¶ 29 Summary Judgment and Sanctions

¶ 30 Section 2-1005(c) of the Code of Civil Procedure provides that a party is entitled to summary judgment as a matter of law when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." 735 ILCS 5/2-1005(c) (West 2010). On review of an order granting summary judgment, the court only has to decide if a question of fact exists. *Koziol v. Hayden*, 309 Ill. App. 3d 472, 476, 723 N.E.2d 321, 323 (1999). Our review is *de novo*. *Myers v. Health Specialists, S.C.*, 225 Ill. App. 3d 68, 72, 587 N.E.2d 494, 497 (1992).

¶ 31 A trial court is allowed to award sanctions pursuant to Supreme Court Rule 137(d) (Ill. S. Ct. R. 137(d) (eff. July 1, 2013)). Supreme Court Rule 137 mandates that every attorney who signs a pleading has read the pleading and "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." Ill. S. Ct. R. 137(a) (eff. July 1, 2013). "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. July 1, 2013). The party seeking sanctions bears the burden to show that the opposing party made untrue or false pleadings without reasonable cause. *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill.

App. 3d 238, 243, 732 N.E.2d 1129, 1134 (2000) (citing *Yassin v. Certified Grocers of Illinois, Inc.*, 133 Ill. 2d 458, 467, 551 N.E.2d 1319, 1322-23 (1990)). Subjective good faith in the validity of the pleadings is insufficient. *Mandziara v. Canulli*, 299 Ill. App. 3d 593, 601, 701 N.E.2d 127, 134 (1998). On appeal of an award of sanctions, we review the facts and the order to determine if the trial court abused its discretion. *Rankin v. Heidlebaugh*, 321 Ill. App. 3d 255, 747 N.E.2d 483, 488 (2001).

¶ 32 The trial judge's order awarding sanctions set forth with specificity the reasons and basis for imposing sanctions as follows:

"1. Defendant's prior attorney filed a Motion to Dismiss on September 9, 2010 which presented the same argument Defendant is trying to make now.

2. Upon the filing of the previous Motion to Dismiss, the Township, by agreement of the parties, corrected the defects with its initial Complaint and filed a First Amended Complaint.

3. Upon the filing of the First Amended Complaint, Defendant did not argue that the Township failed to comply with the requirements of *Goldman v. Moore* [citation].

4. This court previously found that the Township had complied with the requirements of *Goldman*.

5. The Appellate Court previously ruled on this same issue on January 15, 2014 in a Rule 23 Order in *Wilson v Robinson Township*, 13-MR-4, and addressed the *Goldman* case ***."

(The court then went on to extensively quote from *Wilson v. Robinson Township*, 2014 IL App (5th) 130134-U, distinguishing *Goldman* which involved a direct attack on a judgment from the instant case which involved an impermissible collateral attack on a voidable judgment.)

"6. The Defendant, knowing the Appellate Court's decision in 13-MR-4, filed a Motion for Summary Judgment on February 7, 2014."

¶ 33 We agree with the trial court's conclusion that the motion for summary judgment was not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Furthermore, given the difficult history of this case, we find that the award of sanctions, for reasonable attorney fees incurred in responding to Wilson's motion for summary judgment, was appropriate and was not an abuse of discretion.

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, we affirm the judgment of the Crawford County circuit court and remand this case for entry of an order awarding the reasonable attorney fees as outlined in ¶ 33 of this order.

¶ 36 Affirmed; remanded with directions.

¶ 37 JUSTICE CATES, concurring in part and dissenting in part:

¶ 38 I concur with my colleagues that the trial court correctly denied Wilson's motion for summary judgment. I do not agree, however, with the trial court's imposition of

sanctions against Wilson's estate. As noted by my colleagues, this litigation was complicated by the fact that Robinson Township did not, at the outset, follow the administrative procedure under section 6-303 of the Illinois Highway Code (605 ILCS 5/6-303 (West 2008)). The attorney on appeal was not the same attorney representing the estate at trial. While I agree with the majority that the history of this case has been difficult, it is for that very reason that I believe sanctions should not have been imposed. Therefore, I dissent regarding the award of sanctions against the estate.