

Nos. 1-16-0306 & 1-16-2238
Consolidated

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</i> PARENTAGE OF E.H.;)	Appeal from the
)	Circuit Court of
STANLEY L. HILL, II,)	Cook County.
)	
Petitioner-Appellant,)	
)	
v.)	
)	No. 14 D 79117
RACHEL A. STRAUS,)	
)	
Respondent.)	
)	
(THE BARCLAY LAW GROUP, P.C.,)	Honorable
)	Sharon O. Johnson,
Appellee.))	Judge Presiding.

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

ORDER

¶ 1 *Held:* The trial court's order awarding attorneys' fees to Barclay is affirmed where the fee petition issue did not fall under the arbitration clause of the parties' agreement, and the trial court's finding that the fees were reasonable was not an abuse of discretion. This court also affirms the trial court's denial of Barclay's motion for sanctions against Hill.

¶ 2 The trial court below awarded appellee The Barclay Law Group, P.C. (Barclay), \$16,687.99 pursuant to Barclay's petition for attorneys' fees against appellant, Stanley L. Hill, II. Hill filed a motion to reconsider and later filed a supplement to the motion. Barclay objected to the supplement and filed a motion to strike the supplement and a motion for Illinois Supreme Court Rule 137 (eff. July 1, 2013) sanctions. The trial court granted Barclay's motion to strike but denied the motion for sanctions, and denied Hill's motion to reconsider. Both parties appealed the trial court's judgment, and this court consolidated their appeals. On appeal, Hill contends that the trial court erred in awarding Barclay attorneys' fees where the contract signed by the parties requires resolution of the issue through binding arbitration. Barclay contends on appeal that the trial court erred in denying its motion for sanctions against Hill because Hill filed the supplement only to harass Barclay. For the following reasons, we affirm both judgments.

¶ 3 JURISDICTION

¶ 4 The trial court granted Barclay's petition for attorney fees on May 8, 2015. On January 13, 2016, the trial court denied Hill's motion to reconsider the attorney fee judgment and also denied Barclay's motion for Rule 137 sanctions. Hill filed his notice of appeal on February 1, 2016. The trial court denied Barclay's motion to reconsider the denial of sanctions on July 26, 2016. Barclay filed its notice of appeal on August 11, 2016. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. Jan. 1, 2015) governing appeals from final judgments entered below.

¶ 5 BACKGROUND

¶ 6 The following facts are relevant to this appeal. Hill and respondent, Rachael A. Straus, had a son ("E.H.") born January 5, 2014, but subsequently ended their relationship. On January 29, 2014, Hill retained Barclay to file a petition to establish Hill's parental relationship with E.H.,

and to set child support, custody, and visitation privileges. The agreement signed by Hill and Barclay stated that "legal services to be provided by [Barclay] to [Hill] are as follows: representation of [Hill] through Judgment regarding paternity, parenting schedule and child support – Domestic Relations Division." It further provided that "[Barclay] will submit an invoice to [Hill] at least once each month, or whenever the fees for the legal services rendered equal or exceed \$1,000. [Hill] shall pay all monies immediately upon receipt of the invoice." The agreement contained the following arbitration clause:

"14. **Malpractice Claim Subject to Arbitration.** If you claim that our firm performed any legal services improperly, negligently, or incompetently, then you hereby agree to submit the dispute to binding arbitration. By agreeing to this provision, you understand that you waive the right to bring an action against the firm in a court of law and further waive the right to a jury trial. The cost of any such arbitration shall be borne equally by you and the firm."

¶ 7 Barclay and Hill discussed a motion for custody at a meeting on March 14, 2014. Hill expected the motion to be delivered to the court on March 31, 2014, but discovered that as of April 17, 2014, it had not been delivered. In an email, Hill expressed his frustration stating, "I'm saddened that one month has passed since we initially discussed this motion and nothing has been delivered to the court. That is another month I am not with my son and I cannot get this lost time back with my son." On April 30, 2014, Barclay filed a petition for joint custody on behalf of Hill. The petition alleged that Straus took E.H. out of state for visits without notice to Hill, and that she would abruptly cancel Hill's scheduled parenting time. It also alleged that Straus engaged in disrespectful and threatening conduct toward Hill and Hill's mother. The petition stated that Hill currently resides with his parents so that his mother, a retired elementary school

teacher, could assist in caring for E.H. Hill argued that it would be in E.H.'s best interests if he resided primarily with Hill, with frequent shared parenting time for Straus. On May 22, 2014, Hill received his first invoice from Barclay for services performed March 14, 2014, to May 16, 2014, totaling \$8,923.50.

¶ 8 Hill's petition was set for a hearing on July 24, 2014. Prior to the hearing, Hill was to be deposed by Straus's attorney. However, due to the illness of Hill's attorney, the deposition was cancelled. Straus's attorney requested a continuance of the hearing as it relates to Hill's parenting time since she was unable to conduct the deposition of Hill. She also filed a motion for appointment of a guardian *ad litem*, a verified petition for sole custody, and a motion for sanctions and costs and fees, for presentation at the July 24, 2014, hearing. Following the hearing, the trial court entered an order outlining Hill's support payments and other payments to Straus, and Hill's petition to establish paternity was continued to October 24, 2014. However, the court also *sua sponte* ordered temporary supervised parenting time for Hill while his petition is pending. Straus filed a motion to reconsider, which the trial court denied. In the order, the trial court stated that at the July 24, 2014, hearing, it made a finding that "the situation was too prejudicial to [Hill] in not allowing him parenting time until the October 24, 2014 hearing and that supervised visitation would permit [Hill] some contact with his child."

¶ 9 On August 21, 2014, Belle Lind Gordon filed a substitution of attorney to appear for Hill, and for Barclay to withdraw as Hill's attorney. The trial court granted the substitution and withdrawal. On October 14, 2014, Barclay filed a petition for final attorneys' fees in the amount of \$16,687.99. Gordon subsequently requested leave to withdraw as Hill's attorney, which the trial court granted.

¶ 10 Proceeding *pro se*, Hill filed a motion to dismiss Barclay's petition for final attorneys' fees. Hill's petition alleged that Barclay "acted improperly and negligently by not submitting an invoice at least once each month or whenever fees for services rendered equaled or exceeded \$1,000" and "services render [sic] were not on information and belief properly performed and therefore I dispute the reasonableness of the attorney's invoice for legal services." Hill argued that the matter must be submitted to arbitration pursuant to paragraph 14 of their agreement because he alleged malpractice. On November 12, 2014, the trial court entered an order stating that "[t]he parties have agreed to submit this matter to binding arbitration and this matter is referred to the Chicago Bar Association Matrimonial Fee Arbitration Project."

¶ 11 On November 19, 2014, Barclay filed a motion to amend the November 12, 2014, order, because the Chicago Bar Association no longer operated the Matrimonial Fee Arbitration Project. Barclay was informed that the Center for Conflict Resolution is now the referral agency for mediation/arbitration of fee disputes. Barclay requested that the trial court amend the order to state that the matter "is being sent to the Center for Conflict Resolution for mediation along with an executed copy of the Center for Conflict Resolution mediation referral form." On December 11, 2014, the trial court entered an order stating that Barclay's petition for attorneys' fees and Hill's motion to dismiss the petition and request for arbitration "shall be referred to the Center for Conflict Resolution." Barclay and Hill signed the order.

¶ 12 The parties submitted to mediation on February 4, 2015, but could not agree on a resolution. The trial court therefore conducted a hearing on the fee petition on May 8, 2015. At the hearing, the trial court found that the parties attended mediation but did not come to an agreement. At the hearing, Barclay acknowledged that Hill may not have received a bill every month because during that time they moved their offices. Barclay argued, however, that while

they represented Hill, they never missed a court appearance and handled every matter before the court. Barclay attached to its petition exhibits showing the itemized billing that comprised the total fee. Hill was represented by an attorney at the time of this hearing, and his attorney argued that Barclay breached their agreement when it failed to send an invoice to Hill in accordance with paragraph 5 of that agreement. He also argued that the fee matter should be subject to binding arbitration.

¶ 13 In ruling on Barclay's fee petition, the trial court found that "[t]here is no dispute as to whether the services were actually rendered or as to the billing for those specific services, meaning, the amount that was billed for each specific service." It noted that "[m]uch of the billing statement has been redacted, so this Court has to rely upon the party's argument with respect to whether or not those fees were necessary and reasonable and whether they were actually performed. There was no argument to that effect." The court also noted that Hill submitted a letter he sent to Barclay indicating his dissatisfaction with the results, but the letter did not specify any issue with respect to individual charges. Regarding the arbitration issue, the court found that paragraph 14 of the contract "addresses a situation where a legal malpractice claim is filed." Since the proceeding before the court was not a malpractice proceeding, but a fee petition proceeding, the arbitration clause was not applicable. The trial court granted Barclay's petition for fees in the amount of \$16,687.99.

¶ 14 Hill filed a motion to reconsider on May 13, 2015. In his motion, he argued that the amount of fees awarded to Barclay should be reduced due to Barclay's failure to timely send an invoice to Hill. Hill argued that "[a]fter crediting the above deductions" he owes Barclay "at most \$4807." On July 27, 2015, Hill filed a supplement to his motion to reconsider supporting his position that he had filed a malpractice claim. The supplement included a letter dated July 24,

2015, which Hill sent to the Attorney Registration and Disciplinary Commission (ARDC) regarding a complaint he filed with the ARDC on June 3, 2015. Barclay filed an objection to the motion for reconsideration, a motion to strike the supplement, and a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013), against Hill.

¶ 15 At a hearing on January 13, 2016, the trial court granted Barclay's motion to strike the supplement finding that the letter was not newly discovered evidence. The court concluded that the supplement "appears to be an attempt to create additional evidence. It is a self-serving letter from Mr. Hill to the ARDC." There was also a letter addressed to the court without notice of filing that would be considered improper *ex parte* communication. The trial court struck these documents from the pleading.

¶ 16 The trial court also addressed Hill's motion to reconsider, and his argument that the court's May 8, 2015, ruling granting Barclay's fee petition was error and misapplied the law. The court stated that it "heard the case from the day of its initial appearance" and "was keenly aware of the complexity of the case." The trial court clarified that "[a]t the time of the hearing, there was no dispute as to the fees, meaning there was no dispute as to whether or not the services had been provided as indicated in the itemization of fees. Further, [Hill] was not present to orally dispute the fees." Therefore, the court concluded at the hearing that "those fees were undisputed and were necessary and reasonable given the complexity of the case." The trial court did not err or misapply the law. Regarding Hill's argument that it did not consider Barclay's failure to send a bill in a timely manner, the trial court found that the issue was not raised until after Barclay filed its fee petition. Further, it found that a failure to bill should not "result in a waiver of any payment or total payment for services rendered." The court also found no violation of paragraph 14 of the agreement. The trial court reasoned that the arguments and evidence presented on the

motion to reconsider were available to Hill at the time of the original hearing and denied Hill's motion to reconsider.

¶ 17 The trial court next addressed Barclay's motion for sanctions against Hill for filing the supplement. Although the court found the supplement "woefully legally insufficient," it did not believe Hill's actions "rise[] to the level of 137 sanctions." The court noted that at the time Hill filed the pleading, "there was argument regarding the arbitration and whether or not there was a malpractice complaint pending." The court "believe[d] that the ARDC complaint was presented in an effort to substantiate" Hill's objection to the attorneys' fees. Therefore, the trial court found that Hill did not file the supplement in bad faith, or with the intent to use it "to sully counsel's name," and that "they have made substantial argument that it is relevant to their defense to the Petitions for Attorneys' Fees." The trial court, however, found the filing in "poor taste, to say the least" and admonished Hill and his counsel that in the future "there be substance to every pleading that's filed." The trial court denied Barclay's motion for sanctions, but granted alternative relief by striking the matter from the record. Also, to minimize potential damage to Barclay, the court ordered the record sealed. Barclay filed a motion to reconsider which the trial court denied.

¶ 18 Hill and Barclay appealed from the respective judgments against them, and this court consolidated both appeals on September 12, 2016.

¶ 19 ANALYSIS

¶ 20 I. Hill's Appeal

¶ 21 On appeal, Hill contends that the trial court erred in awarding Barclay attorneys' fees where the agreement for legal services required them to submit the issue to binding arbitration. An agreement to arbitrate is a matter of contract. *United Cable Television Corp. v. Northwest*

Illinois Cable Corp., 128 Ill. 2d 301, 306 (1989). Therefore, "[t]he parties to an agreement are bound to arbitrate only those issues they have agreed to arbitrate, as shown by the clear language of the agreement and their intentions expressed in that language." *Salsitz v. Kreiss*, 198 Ill. 2d 1, 13 (2001). Where the language in the agreement is clear, this court determines the intent of the parties solely from the plain language of the agreement. *Premier Title Co. v. Donahue*, 328 Ill. App. 3d 161, 164 (2002). If the issue clearly does not fall within the arbitration clause, this court "should decide the arbitrability issue in favor of the opposing party, because there is no agreement to arbitrate." *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 124 Ill. 2d 435, 445 (1988). In finding that the attorney fee issue did not fall within the arbitration clause of the agreement, the trial court below interpreted the agreement as a matter of law. As such, our standard of review is *de novo*. *Wiczer v. Wojciak*, 2015 IL App (1st) 123753, ¶ 33.

¶ 22 As set forth above, under the heading "Malpractice Claims Subject to Arbitration," the parties' agreement provides that if Hill claims "that [Barclay] performed any legal services improperly, negligently, or incompetently, then [Hill] hereby agree[s] to submit the dispute to binding arbitration." In doing so, Hill "waive[s] the right to bring an action against [Barclay] in a court of law and further waive[s] the right to a jury trial." As the trial court determined, this provision applies to claims of malpractice against Barclay that Hill would file in court. At issue here, however, is not a malpractice claim sought by Hill but rather Barclay's petition for attorneys' fees. To the extent Hill alleges any malpractice, he does so to support his motion to dismiss Barclay's fee petition, not as a claim he asks the court to remedy.

¶ 23 Also, Hill's primary argument regarding the fee issue is that Barclay failed to bill him monthly as required by paragraph 5 of the agreement. Even if Hill had filed a claim based on Barclay's improper billing practices, that claim would not fall within the arbitration clause as set

forth in the agreement. The agreement defines "legal services" as "representation of client through Judgment regarding paternity, parenting schedule and child support – Domestic Relations Division." Billing is not a legal service as defined by the plain language of the parties' agreement. This interpretation is also supported by *Continental Casualty Co. v. Donald T. Bertucci, Ltd.*, 399 Ill. App. 3d 775 (2010). In *Continental Casualty*, the court concluded that professional services with respect to attorneys encompassed only acts that required skills typified by the legal profession, not ordinary activities performed by lawyers that could be completed by those lacking legal knowledge and skill. *Id.* at 785-86. The court found that a law firm's billing practice was largely a ministerial process, the performance of which required no rigorous legal training. *Id.* at 786. Accordingly, Hill's claim regarding Barclay's billing practices is not an issue involving legal services subject to the arbitration clause. For these reasons, we find that there was no agreement to arbitrate the attorneys' fee issue and the trial court did not err in refusing to submit the issue to arbitration. *Donaldson*, 124 Ill. 2d at 445.

¶ 24 Hill also contends that the trial court should not have ordered the parties to mediate after they had agreed to arbitrate the fee issue. The trial court entered the order to mediate only after Barclay informed the court that arbitration through the CBA's Matrimonial Fee Arbitration Project was no longer available. Barclay suggested mediation through the Center for Conflict Resolution and there is no indication that Hill objected to the mediation prior to the trial court entering its order. Furthermore, Hill signed the order and submitted to the mediation. A party cannot acquiesce to the manner in which the trial court proceeds and later claim on appeal that the trial court's actions constituted error. *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004).

¶ 25 Hill next challenges the reasonableness of the fees awarded to Barclay. The general rule is that the trial court will award only those fees which are reasonable, and this determination is

within the sound discretion of the trial court. *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 983 (1987). To establish that the fees are reasonable, the petition "must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor." *Id.* at 984. As such, "it is incumbent upon the petitioner to present detailed records *** containing the facts and computations upon which the charges are predicated." *Id.* Other factors the court should consider include the skill of the attorneys, nature of the case, difficulty of the issues involved, importance of the matter, and the customary charges for these services. *Id.* A reviewing court will not overturn the trial court's determination absent an abuse of discretion. *Id.*

¶ 26 Hill contends that the trial court did not review detailed time records but chose to rely solely on the argument of the parties because the billing statements were redacted. As support, Hill points to the transcript of the hearing where the court noted that "[m]uch of the billing statement has been redacted, so this Court has to rely upon the party's argument with respect to whether or not those fees were necessary and reasonable and whether they were actually performed." The fee petition in the record on appeal (and referred to by Hill in his brief) includes the detailed billing records attached as an exhibit. However, these billing records clearly indicate the services performed, by whom they were performed, the time expended thereon and the hourly rate charged. Although the trial court stated that the billing records were redacted, we see no redactions that would impede the trial court's reasonable fees determination and Hill has not cited to where in the record we can find the redacted billing statements relied on by the trial court. Hill, as appellant, "has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record, the reviewing court will presume that the order entered by the trial court was in conformity with the law and

had a sufficient factual basis." *Alpha School Bus Co., Inc. v Wagner*, 391 Ill. App. 3d 722, 734 (2009).

¶ 27 The trial court found that "[t]here is no dispute as to whether the services were actually rendered or as to the billing for those specific services, meaning, the amount that was billed for each specific service." At the hearing on Hill's motion to reconsider, the court clarified that it "heard the case from the day of its initial appearance" and "was keenly aware of the complexity of the case." The trial court reiterated that "[a]t the time of the hearing, there was no dispute as to the fees, meaning there was no dispute as to whether or not the services had been provided as indicated in the itemization of fees. Further, [Hill] was not present to orally dispute the fees." Therefore, the court concluded that "those fees were undisputed and were necessary and reasonable given the complexity of the case."

¶ 28 Even on appeal, Hill does not argue that Barclay failed to perform the services stated in its billing. Rather, Hill challenges the charges based on the fact Barclay failed to bill him according to the terms of their agreement, and that Hill was disappointed in the visitation granted by the trial court and dissatisfied with Barclay's handling of his case. However, the issue in a fee petition award is whether the amount granted by the trial court was reasonable given the work performed. Hill does not dispute that Barclay actually performed the work detailed in its billing statements, and he makes no argument that the fees are unreasonable for the work performed. Although Hill argues that the total amount of fees awarded should be reduced as a remedy for Barclay's alleged billing and representation issues, he provides no authority to support his position in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) (argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the

authorities and the pages of the record relied on"). We find that the trial court did not abuse its discretion in awarding Barclay \$16,687.99 in attorneys' fees.

¶ 29 In his reply brief, Hill argues for the first time that this court should impose sanctions on Barclay pursuant to Illinois Supreme Court Rule 375 (eff. Feb. 1, 1994). As sanctions, he requests a "[c]omplete denial of attorneys' fees" where Barclay allegedly engaged in unprofessional conduct. Without addressing the merits of Hill's contention, we note that Hill's failure to argue this point in his opening brief results in forfeiture under Rule 341(h)(7). *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 23. Rule 341(h)(7) provides that points not argued in the appellant's brief "are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." These rules are mandatory rules of procedure and "not mere suggestions." *People v. Garstecki*, 382 Ill. App. 3d 802, 811 (2008). Although Hill is *pro se* on appeal, *pro se* appellants are not relieved from compliance with the Illinois Supreme Court rules. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. Therefore, we find that Hill has forfeited this claim for review.

¶ 30 II. Barclay's Appeal

¶ 31 Barclay appeals the trial court's denial of its motion for Rule 137 sanctions. Rule 137 allows a court to impose sanctions on litigants who file vexatious and harassing actions based upon unsupported allegations of fact or law. *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217 (2007). The purpose of Rule 137 is to prevent parties from abusing the judicial process. *Id.* To prevail, the petitioner must show that the opposing party, without reasonable cause, filed a pleading that was "not well grounded in fact and warranted by existing law" or for any improper purpose. *Baker v. Daniel S. Berger, Ltd.*, 323 Ill. App. 3d 956, 962 (2001). The court evaluates a party's conduct under this rule based on what is reasonable under the existing

circumstances at the time of the filing. *Id.* at 963. Whether to impose Rule 137 sanctions is within the discretion of the trial court and a reviewing court will not overturn the trial court's determination absent an abuse of discretion. *Id.* An abuse of discretion occurs when no reasonable person would have taken the trial court's view. *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 67-68 (2011). Given that Rule 137 is penal in nature, we narrowly construe its provisions. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998).

¶ 32 Barclay argues that Rule 137 sanctions against Hill are warranted because: 1) Hill's motion to reconsider "provided no newly discovered evidence" but rather realleged prior arguments on the arbitration issue; and 2) Hill filed the ARDC letter as a supplement only to harass Barclay and to unnecessarily delay the proceedings. Barclay points to the trial court's grant of his motion to strike the supplement, finding that the "self-serving" letter was not newly discovered evidence, and was "woefully legally insufficient."

¶ 33 However, Rule 137 "is not intended to penalize litigants and their attorneys because they were zealous but unsuccessful in pursuing an action." *Yunker v. Farmers Automobile Management Corp.*, 404 Ill. App. 3d 816, 824 (2010). Here, although the trial court found the supplement "woefully legally insufficient" and "self-serving," it did not believe Hill's actions "r[ose] to the level of 137 sanctions." The court noted that at the time Hill filed the pleading, "there was argument regarding the arbitration and whether or not there was a malpractice complaint pending" and Hill presented the ARDC letter to support his position that he was claiming malpractice. The trial court therefore found that Hill did not file the supplement in bad faith, or with the intent to use it "to sully counsel's name," and that "[Hill's counsel] made substantial argument that it is relevant to their defense to the Petitions for Attorneys' Fees." The court did not condone Hill's actions, but informed Hill that the filing was in "poor taste, to say

the least" and admonished him that in the future "there be substance to every pleading that's filed." We find that the trial court did not abuse its discretion in denying Barclay's motion for Rule 137 sanctions against Hill.

¶ 34 In its reply brief, Barclay argues for the first time on appeal that in filing the supplement, Hill improperly disclosed confidential information in violation of Illinois Supreme Court Rule 766 (eff. June 14, 2006). As discussed above, points not argued in an opening brief on appeal are forfeited and may not be raised in the reply brief. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 35 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 36 Affirmed.