

2017 IL App (1st) 161815-U
No. 1-16-1815
September 29, 2017

SECOND DIVISION

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 DISTRICT

PIOTR WOJTANOWICZ,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 15 M2 02570
)	
ANDRZEJ S. LOBROW and ALL)	The Honorable
UNKNOWN OCCUPANTS,)	Roger G. Fein,
)	Judge Presiding.
Defendants-Appellants.)	

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court cannot find that the circuit court abused its discretion when it imposed sanctions against an attorney for filing pleadings which contained untrue statements if the appellant failed to include in the record the documents which formed the basis for the sanctions.

¶ 2 Piotr Wojtanowicz filed an eviction action against Andrezej Lobrow and obtained a judgment for possession and \$3,200 in rent. When Lobrow's motion for reconsideration was denied, Wojtanowicz filed a Rule 137 motion for sanctions against Lobrow and his attorneys, Rifkind Patrick LLC, Sean Patrick and Aaron Rifkind. Wojtanowicz maintained in his

motion that Lobrow and his attorneys filed a second amended counterclaim that misrepresented the fact and pleadings and motions with the intent to harass, cause delay and increase litigation costs. Lobrow's attorneys elected not to file a response to Wojtanowicz's motion for sanctions. After a hearing, the court granted Wojtanowicz's motion for sanctions but only against Lobrow's attorneys.

¶ 3 We find that the Lobrow's attorneys failed to file a record that included the pleadings referenced in the motion for sanctions or a transcript from the sanctions hearing. Therefore, without a complete record, we are unable to find that the circuit court abused its discretion when it granted the Rule 137 motion for sanctions.

¶ 4 Background

¶ 5 Wojtanowicz filed an eviction action against Lobrow, and on September 30, 2015, Lobrow's counsel, Rifkind Patrick LLC, filed an appearance and filed an amended verified answer, affirmative defenses, and counterclaims in the eviction case. The case was set for trial on October 27, 2015, but at 5:00 p.m. on October 26, 2015, Patrick, Lobrow's counsel, contacted Wojtanowicz's counsel, requested a change of the trial date, and plaintiff's counsel agreed to continue trial date to November 13, 2015.

¶ 6 On November 6, 2015, Lobrow filed a second amended verified answer, affirmative defenses, and counterclaims. At 5:00 p.m. on November 12, 2015, Patrick contacted Wojtanowicz's counsel again and requested a change in the trial date because Lobrow had just informed him that he was in St. Louis, Missouri and would be unable to attend the hearing the following morning. On November 13, 2015, Lobrow's motion for a continuance

was denied and the court entered a judgment for Wojtanowicz for possession, \$3200.00 in rent and \$483.00 in court fees.

¶ 7 On December 11, 2015, Lobrow filed a motion to reconsider, and supported the motion with an affidavit. In the affidavit, Lobrow averred that on November 5, 2015, he informed his attorney that he would be unavailable to attend the November 13, 2015 hearing because he would be in St. Louis, Missouri attending a business conference. On January 8, 2016, the court heard arguments on Lobrow's motion to reconsider and found that Lobrow's trip to St. Louis, Missouri was planned and that Lobrow informed his attorney of his plans on November 4, 2015, and not on November 12, 2015. The court also found that the purpose of the trip was not to attend a business conference as Lobrow's counsel had represented, but was a trip to obtain medication for his sick wife. The trial court denied the motion on February 5, 2016, and Lobrow filed a notice of appeal, pro se, referencing the November 13, 2015 order.

¶ 8 On February 5, 2016, Wojtanowicz filed a Rule 137 motion for sanctions against Lobrow, Rifkind Patrick LLC, Sean Patrick, and Aaron Rifkind. He argued that Lobrow, along with his attorneys, misrepresented facts in a second amended counterclaim and filed pleadings and motions with the intent to harass, cause unnecessary delay, and increase litigation costs for Wojtanowicz.

¶ 9 On March 16, 2016, the court held a hearing on Wojtanowicz's motion for sanctions. On March 22, 2016, the court entered an order and found that Lobrow's counsel had filed pleadings and motions (i) without first making a reasonable inquiry as to the statements therein which, the court found, were not well grounded in fact nor warranted by existing law;

and (ii) for an improper purpose, specifically with the intent to harass and cause unnecessary delay and increase the costs of the litigation. The court also found that Lobrow's counsel made misrepresentations to the court during the November 13, 2015 hearing when they argued that they had just learned of Lobrow's unavailability the day before trial, even though they had been informed a week prior. The court further found that Lobrow's counsel should have withdrawn the September 30, 2015 counterclaim prior to the original trial date of October 27, 2015 and that the November 6, 2015 amended counterclaim contained false and untrue statements. Finally, the court found that the aforementioned conduct caused the court to needlessly expend time reviewing pleadings and motions, listening to the arguments of counsel, and ruling on motions, and imposed a sanction of \$450.00 against Lobrow's attorneys for violating Rule 137.

¶ 10 On April 6, 2016, Lobrow's defense counsel, Rifkind Patrick LLC, filed a motion to reconsider the March 22, 2016 order. On May 25, 2016, the court denied Rifkind Patrick LLC's motion to reconsider. On June 23, 2016, Lobrow's attorneys filed a timely notice of appeal.

¶ 11 Analysis

¶ 12 In this appeal, Lobrow's attorneys maintain that the court erred when it imposed sanctions against Lobrow's counsel, Rifkind Patrick LLC, predicated on Rule 137. Because Rule 137 is penal in nature, the rule must be strictly construed. *Dowd v. Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). The decision whether to impose sanctions under Rule 137 is committed to the sound discretion of the circuit court, and that decision will not be overturned absent a

showing of abuse of discretion. *Dowd*, 181 Ill. 2d at 487. A clear abuse of discretion occurs when the circuit court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the court. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009).

¶ 13 Lobrow's attorneys argue that (i) the circuit court sanctioned conduct that falls outside of the scope of Rule 137, (ii) the circuit court erred in finding that Lobrow's attorneys violated Rule 137 in any of the signed papers, and (iii) the sanctions imposed pursuant to Rule 137 were not supported by the evidence.

¶ 14 The *Dowd* court held that Rule 137 addresses the signing of pleadings, motions, and other documents presented in the circuit court, and noted that the rule provided:

"The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after a 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." *Dowd*, 181 Ill. 2d at 486-87 (quoting Ill. S. Ct. R. 137 (eff. July 1, 2013)).

¶ 15 We note that Rule 137 also provides:

"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. July 1, 2013).

Lobrow's attorneys argue that (i) the language found in Rule 137 does not allow the court to sanction all alleged instances of bad-faith conduct by an attorney, and (ii) oral representations made during the November 13, 2015 hearing exceed the scope of Rule 137. They rely on *Krautsack v. Anderson*, 223 Ill. 2d 541, 562 (2006), *Deutsche Bank Nat'l Trust Co. v. Ivicic*, 2015 IL App (2d) 140970, ¶ 27, *Ibe v. Lee*, 264 Ill. App. 3d 800, 806 (1993) as support for their position. We agree with Lobrow's attorneys that Rule 137 does not sanction oral arguments made by an attorney. Therefore, we must determine if the circuit court's sanction was based on written pleadings and other documents filed by the attorneys.

¶ 16 In the circuit court's order, which granted sanctions against Lobrow's attorneys, the court found that the attorneys had "filed pleadings and motions without first making reasonable inquiry as to the statements made therein which are not well grounded in fact nor warranted by existing law..." We note that Rule 137 imposes sanctions if a pleading is filed in violation of the rule. Ill. S. Ct. R. 137 (eff. July 1, 2013). However, the deference given to the circuit court regarding the imposition of sanctions does not preclude the appellate court from independently reviewing the record and finding an abuse of discretion where the facts so warrant. *Pritzker v. Drake Tower Apartments, Inc.*, 283 Ill. App. 3d 587, 590 (1996). Upon our review of the record in this case, we note that it does include (i) Lobrow's September 30, 2015 answer, affirmative defenses or counterclaims, or (ii) Lowbrow's November 6, 2015

amended counterclaims. We also note that Lobrow's attorneys elected not to file a response to the motion for sanctions. Finally, there is no report of proceedings for the March 22, 2016 hearing where an order was entered granting Wojtanowicz's motion for sanctions against Lobrow's attorneys.

¶ 17 We find that the appellant has a burden to file a complete record. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001)(citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). We also find that the record is incomplete in this case. Reviewing courts use the record to determine whether there was error as claimed by the appellant. *Foutch*, 99 Ill. 2d at 391-92. Without a complete record presenting the claimed errors, we must presume that the trial court based its decision on the facts and the law. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 157 (2005). Therefore, without the pleadings filed by the sanctioned attorneys or the report of proceedings containing the arguments at the March 22, 2016 hearing, we cannot find that the circuit court abused its discretion when it imposed sanctions against Lobrow's attorneys.

¶ 18 Conclusion

¶ 19 We find the record incomplete and that prevents this court from finding that the circuit court abused its discretion when it imposed sanctions against Lobrow's attorneys. Because the record was incomplete, we must presume that there was a factual basis for the circuit court's decision. Accordingly, we hold that the circuit court did not abuse its discretion when it imposed sanctions on Lobrow's attorneys.

¶ 20 Affirmed.