

2017 IL App (2d) 150964-U
Nos. 2-15-0964 & 2-15-0982
Order filed March 3, 2017

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
SECOND DISTRICT

RANDALL J. COPPERT,)	Appeal from the Circuit Court
)	of Boone County.
Plaintiff-Appellant,)	
)	
v.)	
)	
CASSENS TRANSPORT COMPANY,)	No. 09-L-9
)	
Defendant-Appellee.)	
)	
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PETER THOMAS SMITH,)	Honorable
)	Brendan A. Maher,
Contemnor-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Hudson and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in awarding the amount of sanctions, albeit with an error in calculation, for fees and costs related to expenses that defendant incurred as a result of filing the false pleadings, including for costs related to prosecuting the Rule 137 motion. We find, however, that the trial court abused its discretion in awarding attorney fees incurred for work done on the appeal because plaintiff and Smith had a partial valid basis for their appeal as they were successful in arguing that the sanction awarded by the trial court was improper. Affirmed as modified; vacated in part.

¶ 2 In *Coppert v. Cassens Transport Company*, 2014 IL (2d) 120877-U (*Coppert I*), we affirmed the trial court's decision to sanction plaintiff, Randall J. Coppert, and his attorney, Peter Thomas Smith, under Supreme Court Rule 137 (eff. July 1, 2013), for making false statements in the verified initial and amended complaints. However, we remanded the cause for a new hearing to determine the amount of reasonable attorney fees and costs, if any, that defendant, Cassens Transport Company, may have incurred as a result of the filing of false pleadings, including the amount, if any, for prosecuting the Rule 137 motion. *Coppert v. Cassens Transport Company*, 2014 IL (2d) 120877-U, ¶¶ 46, 49. Following a hearing on remand, the trial court sanctioned a total of \$105,484.75, which included an award of \$42,869.50 for prosecuting the Rule 137 motion on appeal. Plaintiff and Smith filed separate appeals, and we granted Smith's motion to consolidate the appeals. We affirm, as modified in part, and vacated in part.

¶ 3

I. BACKGROUND

¶ 4 Because the parties are familiar with the facts and because we will incorporate the relevant facts into our analysis of the issues, we lay them out briefly here. Plaintiff got into a physical altercation with an employee and defendant subsequently issued a discharge notice to plaintiff for this physical assault. Plaintiff filed a retaliatory discharge suit, claiming that he was fired by defendant for exercising a claim he previously had filed for workers' compensation. In his initial complaint, plaintiff alleged, *inter alia*, that prior to returning to work after his accident, plaintiff had never been accused by defendant of any offenses or infractions; plaintiff had never been disciplined by or received any adverse employment review from defendant; and, between June 2006 and October 2006, plaintiff was cited by defendant for three minor alleged safety infractions.

¶ 5 Plaintiff certified the complaint in accordance with section 1-109 of the Code of Civil Procedure (Code) (735 ILCS 5/1-109 (West 2008)). Smith also certified the complaint pursuant to Rule 137. However, prior to filing the suit, plaintiff had given his personnel file to the law firm of Smith & Meyer, LLC for their review. The file showed that, before and after his injury, plaintiff had received 23 disciplinary warning notices, reprimands, and suspensions for violating specific rules and regulations. Plaintiff had a copy of the reprimands and suspensions, which were either signed or initialed by him acknowledging receipt of each when the disciplinary measures were issued.

¶ 6 Plaintiff filed an amended complaint in which he modified the amount of damages but made no further modifications to the original complaint. Defendant filed a motion for summary judgment, which was granted.

¶ 7 Defendant also filed a motion for attorney fees and costs pursuant to Rule 137, seeking a combined amount of \$124,166 as sanctions against plaintiff and Smith. The trial court imposed a sanction of \$3,500 and \$1,500, respectively. The court further ordered plaintiff and Smith & Meyer, LLC to jointly pay defendant \$8,965 for the fees incurred in prosecuting the motion for sanctions.

¶ 8 Plaintiff and Smith appealed the orders granting sanctions against them, and defendant cross-appealed the order rejecting defendant's request for attorney fees and costs incurred in defending the suit from its inception and from the trial court's reduction of the fees it sought for prosecuting the Rule 137 motion.

¶ 9 On appeal, we agreed that both plaintiff and Smith violated Rule 137 by filing pleadings that were not well grounded in fact. *Coppert I*, 2014 IL App (2d) 120877-U, ¶ 44. We also agreed with the trial court that the false statements were not the basis of the entire lawsuit.

Coppert I, 2014 IL App (2d) 120877-U, ¶ 45. However, in assessing the penalty, we determined that the trial court abused its discretion by ferreting out, on its own, a specific penalty from the “multitude of bills provided by defendant’s counsel,” without identifying or segregating in any rational or meaningful way billing entries or sets of billing entries that reasonably could be considered to be the result of, or required by, the sanctionable pleadings. *Coppert I*, 2014 IL App (2d) 120877-U, ¶ 46. Accordingly, we vacated that part of the judgment imposing fees and remanded for a hearing to determine the amount of reasonable attorney fees and costs, if any, that defendant may have incurred as a result of the filing of the false pleadings, including the amount, if any, for prosecuting the Rule 137 motion. *Coppert I*, 2014 IL App (2d) 120877-U, ¶ 49.

¶ 10 On remand, after reviewing the pleadings, briefs, affidavits, and exhibits, and in light of the evidentiary hearing held, the trial court found the sanctionable conduct time frame attributable to plaintiff and to Smith, respectively, differed slightly. As to plaintiff, the court found that he had personal knowledge that the pleadings regarding his work history contained in the original complaint in the circuit court were false, and that he nevertheless hired an attorney to pursue his court case based on those false pleadings, which remained a part of the case when he definitively admitted the existence of the 23 disciplinary actions he received while employed by defendant. Based on the exhibits admitted, the court found that the fees and costs directly attributable to plaintiff to be the result of the sanctionable pleadings totaled \$22,749.

¶ 11 As to Smith, the court found he definitively engaged in sanctionable conduct leading defendant to incur fees and costs resulting in the sanctionable pleadings on the date in which Smith appeared in open court and asked that his motion for leave to amend the original complaint be granted, resulting in the filing of an amended complaint that continued to include

the false pleadings of “ ‘exemplary conduct.’ ” At that time, Smith, through discovery, had been in possession of plaintiff’s entire personnel file for nearly one full year. Based on the review of the exhibits, the court found that the fees and costs attributable to Smith during this time period totaled \$15,529.50.

¶ 12 The trial court found that the appropriate fees and costs summarized in the exhibit submitted by attorney, R. Ian Hunter, and paralegal, Janice Szalay, were appropriate fees and costs for prosecuting the Rule 137 motion, totaling \$35,401.25. The court found that the attorney fees and costs summarized in the exhibit of the firm of Heyl, Royster, Voelker & Allen, were appropriate fees and costs for prosecuting the Rule 137 motion. Those fees totaled \$4,465.

¶ 13 The trial court also awarded \$42,869.50 attorney fees and costs incurred for work done on appeal. This represented the entire amount of fees and costs for defendant’s participation in the appellate process regarding the Rule 137 motion. In total, the trial court sanctioned plaintiff \$105,484.75, and Smith \$98,454, joint and several with plaintiff. Plaintiff and Smith timely appeal.

¶ 14 II. ANALYSIS

¶ 15 Both plaintiff and Smith have presented numerous arguments on appeal, some of which overlap, some of which have been forfeited, and some of which previously have been ruled on by this court in *Coppert I*. The failure to raise an issue in the trial court results in forfeiture of that issue on appeal. See *People v. Enoch*, 122 Ill. 2d 176, 185-86 (1988). The law-of-the-case doctrine limits relitigation of a previously decided issue in the same case (*Village of Ringwood v. Foster*, 2013 IL App (2d) 111221, ¶ 33 (citing *Krautsack v. Anderson*, 223 Ill. 2d 541, 552 (2006))), and encompasses not only the court’s explicit decisions, but those issues decided by necessary implication (*Reich v. Gendreau*, 308 Ill. App. 3d 825, 829 (1999)). The doctrine

applies to questions of law on remand to the trial court, as well as on subsequent appeals to the appellate court. *Radwill v. Manor Care of Westmont, IL, LLC*, 2013 IL App (2d) 120957, ¶ 8. As the application of the law-of-the-case doctrine is a question of law, our standard of review is *de novo*. *Rommel v. Illinois State Toll Highway Authority*, 2013 IL App (2d) 120273, ¶ 14.

¶ 16 A. Trial Actions in the Circuit Court

¶ 17 Plaintiff and Smith both initially argue that defendant suffered no loss because defendant knew from the outset that plaintiff's pleadings concerning his lack of a disciplinary record were false. In *Coppert I*, we agreed with the trial court and held that the false pleadings were not the cornerstone of the case. *Coppert I*, 2014 IL App (2d) 120877-U, ¶ 45. As such, defendant was not entitled to all of its attorney fees but only those related to the false pleadings. See *Patton v. Lee*, 406 Ill. App. 3d 195, 199 (2010) (complaining party may only seek those costs and fees which have a direct connection to the sanctionable pleadings or statements). Simply because defendant may have known the statements were false did not mean that it did not have to respond to them through written discovery and depositions. As we originally held, any fees expended in response to the false statements are the appropriate basis for the sanction award. *Coppert I*, 2014 IL App (2d) 120877-U, ¶ 46. Moreover, we did not distinguish between defendant's response to false statements that it knew of and those that it did not. In this respect, we may apply the law-of-the-case doctrine to this issue. See *Rommel*, 2013 IL App (2d) 120273, ¶ 15.

¶ 18 Plaintiff claims that the trial court erred by applying an incorrect standard in its fee award. Plaintiff cites to the trial court's finding that defendant made a good faith effort in segregating the attorney fees devoted to responding to the false statements. The trial court did not use this as a standard in applying its fee award. Rather, the court applied the standard we cited in *Coppert I*, wherein we directed that any sanction must be tied to "evidence of the amount

of fees and costs specifically related to those associated with the false statements.” *Coppert I*, 2014 IL App (2d) 120877-U, ¶ 46. The trial court relied on the exhibits that all of the parties agreed the court could consider in lieu of testimony. In reviewing the exhibits, the trial court found that defendant’s attorneys had made a good faith effort in attempting to follow this court’s direction.

¶ 19 In a somewhat related argument, plaintiff maintains that the trial court is required to set forth with specificity the reasons and basis of any sanction imposed in the order or in a separate written order. This argument was addressed in *Coppert I*, in which we held that both plaintiff and Smith were properly sanctioned by filing pleadings that were not well grounded in fact. *Coppert I*, 2014 IL App (2d) 120877-U, ¶ 44. Since this issue was previously decided, it too is governed by the law-of-the-case doctrine.

¶ 20 Plaintiff next raises a disingenuous claim that there was no evidence that he knew that the statements were false. We observe that plaintiff acknowledged in a deposition and admitted in a response that he had received, signed, or initialed 23 reprimands or other disciplinary actions while employed by defendant. *Coppert I*, 2014 IL App (2d) 120877-U, ¶ 21. In any event, the basis for sanctioning plaintiff was affirmed in *Coppert I*, 2014 IL App (2d) 120877-U, ¶ 44, and therefore, it is governed by the law-of-the-case doctrine and cannot be challenged in this appeal.

¶ 21 Plaintiff further argues that defendant should not recover fees for prosecuting the sanction motion in the trial court because it was overturned on appeal. This is not accurate. We affirmed the order imposing the Rule 137 sanction. We vacated the amount awarded and remanded the case for a new hearing on the sanction amount, specifically holding that defendant was entitled to fees for prosecuting the sanction motion if any were, in fact, incurred. *Coppert I*, 2014 IL App (2d) 120877-U, ¶ 49.

¶ 22 Both plaintiff and Smith argue that the trial court improperly relied on the Jana Brady affidavit for assessing the customary rate of attorney fees in Boone County. Smith also claims that the trial court improperly relied on the affidavit in lieu of live testimony and denied him the opportunity to cross-examine Brady and Janice Szalay, the paralegal, with respect to the paralegal fees imposed.

¶ 23 Defendant's attorneys, R. Ian Hunter and Jana Brady, each submitted sworn affidavits, to which their respective law firms' invoices were attached, describing the specific legal services related to defending against the false statements of plaintiff's employment, which was the foundation of the trial court's finding that plaintiff violated Rule 137, and defendant's prosecution of its motion for attorney fees. After the parties had filed their briefs, Smith requested an evidentiary hearing, which was granted. The hearing took place as scheduled, and Smith only requested that Hunter be sworn to testify. He did not ask Brady or any other witnesses to testify. In fact, Smith agreed with the trial court that it could consider the pleadings filed on remand and that Smith only wished to examine Hunter. Smith agreed that this would be sufficient for the trial court to make a decision on the issue, subject to argument at the end of the examination.

¶ 24 Smith's direct examination of Hunter was limited to the following: (1) establishing that the false statements were not the sole basis of the suit; (2) confirming that defendant's attorneys' invoices submitted during earlier trial court proceedings were included among the invoices submitted after the remand; and (3) establishing that defendant had possession of the disciplinary notices which disproved the false statements in the original and amended complaints. Neither plaintiff nor Smith questioned Hunter regarding any of the averments regarding the affidavits of Hunter and Brady. Those affidavits addressed the issues of the attorneys' experience, current

hourly rates, and their efforts to specifically meet their “burden of establishing that [defendant] actually incurred fees and expenses by reason of the untrue pleading[s].” Plaintiff and Smith had an opportunity to cross-examine Brady and Szalay and agreed that the affidavits could be considered by the trial court. Thus, any error in the court’s reliance on these affidavits was invited. See *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004) (under the invited-error doctrine, “a party cannot complain of error which that party induced the court to make or to which that party consented”). Moreover, this argument is deemed forfeited, as it was not raised below, and will not be considered. See *In re Marriage of Florence*, 260 Ill. App. 3d 116, 125 (1994).

¶ 25 Plaintiff raises numerous arguments regarding the amount that defendant requested for its fees and costs in prosecuting the Rule 137 motion. Plaintiff asserts that the amount is “speculative, excessive, unfair, and unreasonable,” and that defendant provided insufficient evidence of what work and costs were specifically related to the false pleadings. Plaintiff argues that the trial court erred in failing to scrutinize the invoices for the type of work that counsel billed for, failing to consider that this case was not novel, and for allowing two attorneys and one paralegal to bill for work that could have been done by one attorney. Smith argues that the award of paralegal fees was improper because there was no evidence to support the hourly rate, and the trial court failed to scrutinize the nature of the work that was contained in the invoices. None of these issues were raised before the trial court and accordingly, they are forfeited. See *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 85 (issues not raised in the trial court are deemed forfeited and may not be raised for the first time on appeal).

¶ 26 Smith argues that he should not have been sanctioned at all because: (1) there is no continuing duty under Rule 137 to amend the complaint; (2) the trial court did not consider

whether the sanction would deter others; (3) the trial court failed to consider the “relative merits of the parties’ position;” (4) Smith reasonably relied on the information from plaintiff in certifying the amended complaint; and, (5) the trial court failed to consider other material facts and circumstances in determining whether the pleadings in the amended complaint were made with reasonable cause.

¶ 27 In *Coppert I*, we held that the trial court did not abuse its discretion in determining that Smith violated Rule 137 by filing pleadings that were not well grounded in fact. *Coppert I*, 2014 IL App (2d) 120877-U, ¶ 44. We remanded only for a new hearing on what sanctions are appropriate under the proper standard. *Coppert I*, 2014 IL App (2d) 120877-U, ¶ 45. All the issues raised by Smith above concern whether sanctions were appropriate. Because this issue has been previously decided in the same case, it is governed by the law-of-the-case doctrine.

¶ 28 Both plaintiff and Smith maintain that the trial court’s order awarding fees and costs lacks specificity. To the contrary, the trial court’s order shows that the court reviewed the exhibits, which were properly before it by the agreement of the parties, and rendered its decision based on those exhibits. The basis of the trial court’s decision, as set forth in its order, was adequately specific.

¶ 29 A trial court's determination concerning attorney’s fees should not be reversed absent an abuse of discretion. *Mercado v. Calumet Federal Savings & Loan Ass’n*, 196 Ill. App. 3d 483, 493 (1990). “An abuse of discretion occurs only where the trial court’s decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it.” *People v. Rivera*, 2013 IL 112467, ¶ 37. The issue is not whether we would have ruled differently; the trial court was free to factor into its review of the invoices what, in its experience, it believed would be reasonable in responding to the false allegations. See *Verbaere v. Life Investors Insurance*

Co. of America, 226 Ill. App. 3d 289, 299 (1992). The fact that the trial court chose to rely on the invoices that went un rebutted by plaintiff and Smith is not arbitrary or fanciful. Accordingly, we cannot say that the trial court abused its discretion in determining the amount of reasonable attorney fees and costs that defendant incurred as a result of the filing of the false pleadings and for prosecuting the Rule 137 motion.¹

¶ 30 B. Appeal of Motions for Sanctions

¶ 31 Both plaintiff and Smith argue that the trial court should not have awarded attorney fees and costs incurred for work done on the appeal in *Coppert I*. Defendant's counsel segregated the work they performed in response to the false pleadings in the complaints by color coding those entries. The trial court clearly stated that it awarded only those fees concerning the proceedings in the trial court. The appellate fees were not segregated by defense counsel in the same way.

¶ 32 Defendant took the number of pages in its briefs on appeal regarding the Rule 137 sanction issue, compared that to the total pages of its appellate briefs and recommended that percentage of total appellate fees as a sanction award. With a minor reduction, the trial court basically accepted this recommendation.

¶ 33 We find several problems with this portion of the trial court's order. First, defendant included in its page count those pages devoted to its cross-appeal, where it sought all of its attorney fees and costs from the inception of the case. We rejected this argument. *Coppert I*,

¹ We note that the trial court erred in calculating the amount sanctioned Smith as a result of the filing of the false pleadings and for prosecuting the Rule 137 motion in the trial court. The total is \$98,265.25, not \$98,454.

2014 IL App (2d) 120877-U, ¶ 45. Accordingly, this fee request has no basis and plaintiff and Smith should not be required to pay it.

¶ 34 More importantly, in *Coppert I*, plaintiff and Smith were successful in arguing that the sanction award was improper because it was not related in any way to the false pleadings. We vacated the award and remanded for a new hearing based on their successful argument. *Coppert I*, 2014 IL App (2d) 120877-U, ¶ 49. As plaintiff and Smith at least had a partial valid basis for their appeal, it cannot be viewed as a needless continuation of a baseless lawsuit. See *Pielet v. Pielet Brothers Scrap Iron & Metal, Inc.*, 170 Ill. App. 3d 953, 957 (1988). Under these circumstances, sanctioning plaintiff and Smith a total of \$42,869.50 in attorney fees and costs for prosecuting the Rule 137 motion in this court was an abuse of discretion. As such, we vacate this portion of the trial court's order.²

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm, as modified, the judgment of the Circuit Court of Boone County awarding a total of \$105,484.75 in fees and costs to defendant resulting from filing false pleadings and for prosecuting the Rule 137 motion in the trial court. The portion of the judgment awarding defendant fees and costs for prosecuting the Rule 137 motion in the appellate court is vacated. As modified, the sanction against plaintiff is \$62,615.25, and Smith is \$55,395.75, joint and several with plaintiff.

¶ 37 Affirmed as modified in part, vacated in part.

² After vacating \$42,869.50, the sanction against plaintiff is \$62,615.25, and Smith is \$55,395.75, joint and severable with plaintiff.