

**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).

**FILED**

January 27, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 160409-U

NO. 4-16-0409

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

CHRISTIE CLINIC LLC,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
BECKY A. MONSON,	)	No. 15CH148
Defendant-Appellant.	)	
	)	Honorable
	)	Michael Q. Jones,
	)	Judge Presiding.

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JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Appleton and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err by denying sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013).

¶ 2 Following the voluntary dismissal of a complaint seeking injunctive relief and damages, defendant, Becky A. Monson, sought sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013) against plaintiff, Christie Clinic LLC (Christie Clinic). Defendant appeals the trial court's denial of her motion for sanctions, arguing Christie Clinic failed to engage in the research and investigation required by Rule 137 prior to filing its complaint.

¶ 3 I. BACKGROUND

¶ 4 From 2004 to 2014, defendant, a licensed esthetician, was an employee of

Christie Clinic, a Champaign-based medical practice offering services in many specialties. As a condition of her employment, defendant agreed to maintain patient confidentiality upon cessation of her employment and signed at least two written agreements to that effect. Specifically, the confidentiality agreements required defendant to surrender, upon cessation of her employment, any information belonging to Christie Clinic, including patients' protected health information. Pursuant to the confidentiality agreement, protected health information is defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191 (August 21, 1996)) (HIPAA). Thus, for purposes of the confidentiality agreements at bar, protected health information constitutes any data "identifiable to an individual \*\*\* maintained in any form or medium, including oral, paper, or electronic."

¶ 5 On October 30, 2014, Christie Clinic terminated defendant's employment. In February 2015, defendant opened her own skin care business, providing similar services to those she provided at Christie Clinic. Shortly after defendant's employment was terminated, Christie Clinic was contacted by several of its patients, who stated defendant had contacted them to solicit their business. These patients asked why defendant had their contact information and expressed their dislike of being solicited by defendant.

¶ 6 Following these reports, counsel for Christie Clinic spoke to a Christie Clinic employee who stated defendant would store patient contact information in her personal cellular phone while she was employed with Christie Clinic. Counsel for Christie Clinic then sent a letter to defendant demanding she destroy or return all patient information—namely contact information for Christie Clinic patients that defendant obtained while employed by Christie Clinic—and sign an acknowledgement form agreeing to cease using such contact information.

¶ 7 Defendant's attorney responded to the letter, stating defendant's contact with Christie Clinic patients "was the result of those patients providing [defendant] with their contact information" because those patients were personal friends of defendant. Defendant's counsel indicated defendant denied possessing any patient information belonging to Christie Clinic, and defendant refused to sign the acknowledgment form.

¶ 8 Christie Clinic then filed its complaint against defendant, requesting injunctive relief and damages for violation of both the Illinois Trade Secrets Act (765 ILCS 1065/1 to 9 (West 2014)) and the employment agreement between defendant and Christie Clinic—namely the confidentiality agreements signed by defendant. Christie Clinic later voluntarily dismissed its complaint.

¶ 9 Prior to the voluntary dismissal of plaintiff's complaint, defendant was deposed and testified as follows. Defendant had contact information for patients of Christie Clinic stored on her personal cellular phone, and she did not delete that contact information upon the termination of her employment. This contact information was given to defendant by patients of Christie Clinic during the course of defendant's performance of her duties as an employee of Christie Clinic. After her employment was terminated, defendant contacted these patients using the information she had obtained during her employment with Christie Clinic.

¶ 10 Following the voluntary dismissal of the complaint, defendant filed a motion for sanctions; arguing Christie Clinic violated Rule 137 by failing to conduct the requisite investigation and research prior to filing its complaint. According to defendant, the complaint was entirely baseless in fact or law. Christie Clinic responded by outlining the events leading up to the complaint and the investigatory actions taken by Christie Clinic attorneys, including

speaking to Christie Clinic employees about these incidents and corresponding with defendant. Attached to Christie Clinic's response was an affidavit by its attorney attesting to his actions prior to filing the complaint as well as copies of the confidentiality agreements signed by defendant, the correspondence between Christie Clinic and defendant and her attorney, and portions of defendant's deposition, all of which tend to confirm many factual allegations contained in the original complaint.

¶ 11 The trial court denied defendant's motion for sanctions, concluding Christie Clinic had an objectively reasonable basis for filing its complaint. This appeal followed. During the pendency of this appeal, Christie Clinic filed its motion for sanctions pursuant to Illinois Supreme Court Rule 375 (eff. Feb. 1, 1994), which we took with the case.

¶ 12 II. ANALYSIS

¶ 13 A. Standard of Review

¶ 14 "A circuit court's decision to deny a motion for sanctions is reviewed for abuse of discretion. [Citation.] A court has abused its discretion when no reasonable person would agree with its decision. [Citations.]" *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16, 39 N.E.3d 992. Defendant erroneously argues this case calls for *de novo* review.

¶ 15 Defendant cites *Zagorski v. Allstate Insurance Co.*, 2016 IL App (5th) 140056, ¶ 21, 54 N.E.3d 296, for the proposition that where "the facts are uncontroverted and the issue is the trial court's application of the law to the facts, or the issue involves the applicability of a statutory privilege, the standard of review is *de novo*." However, *Zagorski* dealt with discovery rulings (*id.*) not Rule 137 sanctions. Rule 137 expressly delegates the question of whether sanctions are warranted to the trial court's discretion. Ill. S. Ct. R. 137 (eff. July 1, 2013) ("the

court \*\*\* may impose \*\*\* the appropriate sanction." (Emphasis added.)) As Christie Clinic notes, there are few exceptions to the general rule requiring abuse-of-discretion review of Rule 137 motion for sanctions, none of which are applicable here. See, e.g., *Lake Environmental*, 2015 IL 118110, ¶ 12, 39 N.E.3d 992 (reviewing *de novo* a trial court's interpretation of the language of Rule 137). Here, abuse of discretion is the proper standard of review.

¶ 16

#### B. Rule 137 Sanctions

¶ 17

Illinois Supreme Court Rule 137 (eff. July 1, 2013) states:

"Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record[.]

\*\*\* 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 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. \*\*\*

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."

"The purpose of Rule 137 is to prevent abuse of the judicial process by penalizing claimants who bring vexatious and harassing actions[.]" *Sundance Homes, Inc. v. County of Du Page*, 195 Ill. 2d 257, 285-86, 746 N.E.2d 254, 271 (2001). Rule 137 does not "penalize litigants and their attorneys simply because they were unsuccessful in the litigation." *Elledge v. Reichert*, 250 Ill. App. 3d 1055, 1059, 620 N.E.2d 543, 547 (1993). "The standard to be used in determining whether a violation has occurred is an objective standard of what was reasonable under the circumstances existing at the time of the filing." *Id.* at 1060, 620 N.E.2d at 547.

¶ 18 Defendant argues, without citing authority, that Christie Clinic had the burden to prove defendant "took confidential or proprietary information in an attempt to get an unfair advantage." Christie Clinic responds to this assertion by stating defendant has confused the burden of proof on a Rule 137 motion with that of a trial on the merits. Defendant contends she has not confused the burden of proof on a Rule 137 motion but then argues Christie Clinic did not satisfy its burden of production because Christie Clinic failed to "produce any competent evidence" proving the factual assertions contained in the complaint.

¶ 19 We agree with Christie Clinic and conclude defendant has confused the burden associated with a motion for sanctions with plaintiff's burden at trial. The question on a motion for sanctions is not whether the nonmoving party has offered evidence proving the allegations in its complaint—that is plaintiff's burden at trial; rather, the question is whether the nonmoving party's argument was *objectively reasonable* at the time the complaint was filed. See Ill. S. Ct. R. 137 (eff. July 1, 2013); *Elledge*, 250 Ill. App. 3d at 1060, 620 N.E.2d at 547 ("The standard to

be used in determining whether a violation has occurred is an objective standard of what was reasonable under the circumstances existing at the time of the filing.").

¶ 20 Our review of the record reveals a thoughtful, informed analysis by the trial court. The court first determined patient contact information was protected health information within the meaning of the confidentiality agreements. The court then determined Christie Clinic had an objectively reasonable basis for believing defendant violated the confidentiality agreements and the Illinois Trade Secrets Act by improperly using this protected health information. Thus, the trial court determined, after appropriate consideration, Christie Clinic had *objectively reasonable* arguments that defendant's actions with respect to Christie Clinic patients' contact information violated (1) the confidentiality agreements and (2) the Illinois Trade Secrets Act because of the level of confidentiality and secrecy afforded to such information by Christie Clinic. Implicit in this conclusion is the determination Christie Clinic satisfied its Rule 137 burden to investigate and research because its decision to file the complaint was objectively reasonable at the time of the filing of the complaint. Ample evidence in the record supported this decision, including the confidentiality agreements, the affidavit submitted by Christie Clinic's attorney, and defendant's own admissions in her deposition and at the hearing on the motion for sanctions.

¶ 21 Furthermore, despite defendant's contentions to the contrary, we find nothing in the record indicating Christie Clinic filed its complaint to harass defendant or to run her out of business. The prayer for relief merely sought (1) to enjoin defendant from further use of the Christie Clinic patients' contact information that was obtained by defendant during the course of her employment with Christie Clinic and (2) damages resulting from the misappropriation of this information. Christie Clinic has maintained throughout this litigation the reason for filing the

complaint was to protect its clients' confidentiality. Indeed, Christie Clinic voluntarily dismissed its complaint to prevent its patients from becoming involved in litigation. Additionally, the authorities cited by defendant fail to convince us otherwise.

¶ 22 Defendant cites *Heckinger v. Welsh*, 339 Ill. App. 3d 189, 193, 790 N.E.2d 904, 907 (2003), to argue sanctions may be awarded in cases where the offensive pleading was voluntarily dismissed. We do not disagree. However, this undisputed point does not support defendant's argument that sanctions were warranted in this case. Here, we agree with the trial court's finding that plaintiff's pleadings were appropriate. Thus, any guidance provided by *Heckinger* regarding the appropriateness of sanctions following the dismissal of an offensive pleading is not applicable.

¶ 23 The cases cited by defendant for the proposition HIPAA does not create a private cause of action also fail to change our resolution of this matter. Christie Clinic did not assert a private cause of action under HIPAA, Christie Clinic asserted a breach-of-contract claim, arguing defendant misappropriated protected health information, a term defined under HIPAA and incorporated into the confidentiality agreements signed by defendant.

¶ 24 Defendant cites a comment to the Restatement of Torts for the proposition that plaintiff could not establish the existence of competition between plaintiff and defendant, a required showing to establish a trade secret claim. Restatement of Torts § 757 cmt. b. Defendant asserts this demonstrates that plaintiff failed to engage in the necessary research and investigation before filing its cause of action. First, we note this comment to the Restatement of Torts is not binding authority. More important, as noted by the trial court, the inquiry as it relates to the motion for sanctions was not whether plaintiff could ultimately prevail, but was

instead whether Christie Clinic was objectively reasonable in concluding it had a cause of action for a violation of the Trade Secret Act. We find no fault with the court's finding that in light of Christie Clinic's efforts to maintain the secrecy and confidentiality of the information, it could not find Christie Clinic's actions objectively unreasonable.

¶ 25 Finally, defendant cites *Kopolovic v. Shah*, 2012 IL App (2d) 110383, ¶ 41 967 N.E.2d 368, for the proposition Christie Clinic should have determined, prior to filing its complaint, how defendant obtained the patients' contact information and if that information matched the information in their files. However, Christie Clinic was aware, through its own employee, that defendant obtained the information by placing patient contact information in her personal cellular phone during the course of her employment with Christie Clinic. Whether the contact information matched Christie Clinic records is irrelevant because defendant has not been accused of copying or physically taking Christie Clinic records; rather, she has been accused of contemporaneously placing patient contact information in her personal cellular phone while acting on behalf of Christie Clinic as a medical professional and then keeping and using that contact information for her private professional purposes after her employment with Christie Clinic was terminated.

¶ 26 Defendant makes a number of additional contentions assigning error to the trial court's decision but cites no authority supporting these assertions. Illinois Supreme Court Rule 315(c)(5) (eff. Mar. 15, 2016) and Illinois Supreme Court Rule 341(h)(7) (eff. Jan 1, 2016) require citation to authority supporting the various contentions argued in the appellant's brief. "Moreover, this court is not a depository into which the appellant can dump [her] burden of argument and research." *People v. Snow*, 2012 IL App (4th) 110415, ¶ 11, 964 N.E.2d 1139.

Points not properly argued in appellant's brief are forfeited and may not be argued in the appellant's reply brief or at oral argument. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). We conclude defendant's remaining arguments are not in compliance with our supreme court's rules and are therefore forfeited. Finally, in our discretion, we deny Christie Clinic's motion for sanctions pursuant to Rule 375.

¶ 27

### III. CONCLUSION

¶ 28 For the foregoing reasons, we affirm the trial court's judgment. In doing so, we want to compliment and thank the trial court for its detailed, straightforward recitation of its reasoning in this matter, which we found extremely helpful.

¶ 29

Affirmed.