2018 IL App (1st) 18-0858-U

THIRD DIVISION
December 5, 2018

No. 1-18-0858

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

FIRST PEEK ULTRASOUND L.L.C. d/b/a INTERNAL IMAGING, L.L.C.,	)	Appeal from the Circuit Court of Cook County, Illinois,
Plaintiff-Appellant,	)	Law Division.
v.	)	No. 17 L 2139
ALICIA WEIDEMAN,	)	The Honorable James E. Snyder,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in *sua sponte* entering judgment in favor of the defendant. The trial court was well within its authority to construe the defendant's response to the plaintiff's motion for summary judgment as a cross-motion for summary judgment, and upon the parties' stipulation as to the facts of the case, to enter judgment in favor of the defendant on a purely legal basis. The trial court properly concluded that the employment agreement was unconscionable and therefore unenforceable in its entirety.

¶ 2 This cause of action stems from a breach of contract claim brought by the plaintiff-appellant, First Peek Ultrasound L.L.C. d/b/a Internal Imaging, L.L.C. (First Peek) against its former employee, the defendant-appellee, Alicia Weideman (Weideman). The plaintiff appeals from the

circuit court's *sua sponte* order entering judgment in favor of the defendant. The plaintiff contends: (1) that the circuit court lacked authority to *sua sponte* enter judgment in favor of the defendant; and (2) that regardless, judgment in favor of the defendant on the basis that the employment agreement was unconscionable was improper, where the agreement contained a severability clause. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The record before us is incomplete, but from those documents that are before us, we have been able to glean the following undisputed facts and procedural history. First Peek is an Illinois company engaged in the business of providing elective 3D- and 4D-ultrasound services to pregnant mothers. On April 20, 2016, Weideman entered into an employment agreement with First Peek.

¶ 5 That 12-page form agreement is divided into 30 unnumbered sections, separated by capitalized and bolded titles. The first section, titled "Initiation of Employment" notes that Weideman will be employed beginning on April 20, 2016, and that her signature on the contract confirms that her employment begins on that date. The second section of the agreement, titled "Length of Contract," provides that the employment is for "a minimum of one year," after which, Weideman is free to leave First Peek "for any reason with one month's notice." Another section of the agreement, titled "Terms of Employment" explains that Weideman is only a "part-time employee," and is therefore not entitled to any "health insurance, health care, 401k or other retirement plans, sick days, [and] vacation pay."

¶ 6 With respect to wages, yet another section of the employment agreement, titled "Salary" provides that Weideman will be paid on an hourly basis, with the time spent performing the work rounded to the nearest 15 minutes. According to the agreement, the hourly rate of pay is "$28 an

hour" if the employee is certified and registered with the American Registry for Diagnostic Medical Sonography (ARDMS), but only "$20 an hour" if and while the employee remains uncertified.

¶ 7 The agreement further contains a section titled "Training," according to which First Peek will provide Weideman with training required to operate the ultrasound machines, and other equipment related to the job. According to the agreement, the training is to be accomplished by "shadowing" experienced ultrasound technicians, for which Weideman is to be paid only $10 per hour. While training is "expected" to last two weeks, the agreement provides that First Peek allows for "less or more time," depending on the "skill level, sincerity, and aptitude of the ultrasound technician and her willingness to learn." Only once Weideman becomes "proficiently capable of completing all the tasks necessary to service customers," can she be paid a "regular wage."

¶ 8 Relevant to this appeal, under "Training," the agreement further provides:

> "**If you leave our company for any reason within 12 months, you are required to repay all wages given to you for time spent training** as well as costs associated with training, including cost of your travel to obtain training that we pay for, cost of paying for any instructors and training sessions, costs of salaries of other employees that we pay to have them train you, costs of gaps in the schedule that we make in order to allow time for training, and payments and freebies given to test customers we use for training, not to exceed $4,000." (Emphasis in original.)

¶ 9 The employment agreement further contains a section titled "Probationary Period," which reads in full:

"***The first six months of your employments is a probationary period***. Through this evaluation period, you will be informed of your progress. Please note that your continued employment during this period is not guaranteed. You may be terminated during this time for any reason, without notice." (Emphasis in original.)

¶ 10 This provision is immediately followed by a section titled "Termination," which details the circumstances under which First Peek and Weideman may terminate the employment agreement. According to this section "during the 6-month probationary period" First Peek may terminate Weideman "at will without prior notice." After the first six months, Weideman "may be terminated" upon two weeks' notice. However, if during that "one-year term of her employment contract," Weidman receives four customer complaints, First Peek need not provide any notice prior to termination. In addition, First Peek may provide less than two weeks' notice "in the unlikely event of *dissolution* or *bankruptcy* of the company, the *sale of the company*, or in the case of *breach* of any of the terms of [the employment agreement]." (Emphasis in original). With respect to Weideman's ability to terminate the agreement, this section only provides: "*After one year*, you may leave this company for any reason by providing one month's notice to us." (Emphasis in original).

¶ 11 The employment agreement further contains a "Severability" clause which states in full:

"If any provision of this agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of the State of Illinois, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby."

¶ 12 The record establishes, and the parties do not dispute that Weideman was employed by First Peek for about six months between April 2016, and October 25, 2016, at which point she informed First Peek by email that she was resigning.

¶ 13 As a result of this resignation, on February 28, 2017, First Peek filed a two-count complaint against Weideman, alleging breach of contract and defamation *per se*. That complaint was amended on August 8, 2017. On November 1, 2017, the trial court dismissed the defamation count and First Peek proceeded solely on its breach of contract claim.

¶ 14 The breach of contract claim alleged that under the employment agreement Weideman had agreed to work for First Peek for a minimum of one year in exchange for valuable and unique training, but that contrary to the express terms of that agreement, she suddenly and unexpectedly left her employment after only six months. According to the first amended complaint, as a result of this "breach of a material term of the agreement," First Peek suffered damages, including, *inter alia*, lost profits and significant time and expense in identifying, interviewing and finding a replacement. Accordingly, First Peek sought compensatory damages in excess of $50,000.

¶ 15 On August 18, 2017, Weideman filed her answer to the first amended complaint admitting that she resigned from her employment only six months after executing the employment agreement, but denying that she breached the agreement. In her answer, Weideman also made broad "affirmative statements" that "First Peek breached the agreement," but without providing any further details.

¶ 16 The parties subsequently proceeded with discovery, which included the deposition of both Weideman and First Peek owner Asiya Salejee (Salejee). Unfortunately, the record on appeal does not contain a full transcript of either deposition.

¶ 17 On January 29, 2018, First Peek filed a motion for summary judgment contending that there were no genuine issues as to any of the material facts concerning the parties' conduct with respect to the validity of and the terms of the employment agreement. Specifically, First Peek argued that in her answer the defendant had admitted: (1) that she had entered into the

employment agreement effective April 20, 2016 and shortly thereafter commenced her employment with First Peek; (2) that she spent four months training and subsequently performing ultrasounds and was paid accordingly pursuant to the agreement; and (3) that she resigned from her employment only six months into the 12-month term. In support, First Peek attached to its summary judgment motion a copy of the employment agreement, Weideman's answer to the first amended complaint and an affidavit by Salejee attesting to the execution of the agreement and Weideman's employment with First Peek.

¶ 18 In its summary judgment motion, First Peek also argued that there was no material dispute that First Peek was damaged as a result of the defendant's breach of the employment agreement, in the sum of $56,283.25. These damages included: (1) $4,000 in costs for Weideman's training; (2) $2,232 for Weideman's canceled appointments; (3) $5,535 for loss of appointment availability in other technician's shifts; (4) $160 for services or upgrades that were provided free of charge to customers whose appointments were canceled; (5) $1380.25 for costs of hiring a replacement on an unexpected and expedited basis; and (6) $42,976 for loss of revenue resulting from being short-staffed from the date of Weideman's resignation to the date her replacement was trained and able to independently perform ultrasounds. In support of this argument, First Peek attached an affidavit of its medical director and accountant Dr. Beezer Moolji (Dr. Moolji), as well as screenshots of First Peek's email accounts showing a search result for all appointments that had been scheduled with Weideman after her resignation date, and a calendar of First Peek's appointments between October 25, 2016 and November 30, 2016.

¶ 19 On March 8, 2018, Weideman filed her response to First Peek's motion for summary judgment arguing: (1) that the employment contract was both unconscionable, and unenforceable under, among other things, the Illinois Wage Payment and Collection Act (820 ILCS 115/4, 9

(West 2014)). In the alternative, Weideman argued that there remained issues of material fact, with respect to whether First Peek provided Weideman with the type of scheduling that was expressly provided for in the employment agreement, and whether in fact it breached that agreement so as to excuse Weideman's performance. In that respect, Weideman also argued that she was constructively discharged. In addition, Weideman asserted that the damages sought by First Peek were: (1) impermissible as liquidated damages; (2) far in excess of lost profits; and (3) outside of the scope of the employment agreement, which itself limited damages to $4000. Weideman also argued that First Peek had both miscalculated and failed to mitigate its damages.

¶ 20 Accordingly, Weideman asked, *inter alia*, that the trial court enter an order, not only denying First Peek's motion for summary judgment, but also finding that the employment agreement was, at least, in part, illegal, unenforceable, and void as against Illinois law and public policy.

¶ 21 In support, Weideman attached a copy of the employment agreement and her own affidavit, wherein, among other things, she averred that before signing the employment agreement she had explained to Salejee that she was interested only in part-time work because she had a toddler. Nonetheless, First Peek repeatedly pressured and scheduled her to work up to and beyond 40 hours per week in direct contravention of the express terms of the employment agreement. Weideman further attested that although she was assured that she would be trained within two weeks, she remained a trainee, earning only $10 per hour for over four months. In addition, Weideman averred that every time she attempted to approach Salejee about her scheduling concerns, or her wages, Salejee would threaten that if she quit she would have to pay back all the "training money." In addition, Salejee repeatedly made reference to the fact that she was an attorney and had previously dealt with employees by way of lawsuits. Weideman stated that she

was repeatedly bullied and continued to work for First Peek only because she was afraid of being sued.

¶ 22 After a hearing on First Peek's "motion for summary judgment and pretrial" matters, on March 13, 2018, the trial court entered an order denying First Peek's motion for summary judgment and continued the matter to the existing trial date of March 26, 2018. Since the record before us does not contain a transcript from this hearing, we have no basis of knowing what all was discussed at that hearing, and why the trial court ruled as it did.

¶ 23 On March 26, 2018, the parties appeared for a bench trial. Prior to trial, First Peek's attorney asked the trial court, *inter alia*, to issue a ruling on "the issue of the waiver of both [affirmative] defenses [raised by Weideman] because they were not properly plead," and which had come up "at the pretrial [hearing]." In response, Weideman's counsel stated:

> "Your Honor, whereas in accordance with our comments from the bench last time, we submitted a proposed stipulation of facts in response to one that was transmitted to us."

First Peek's counsel indicated that she had been given the stipulation that morning, but that she would agree to it, so long as it's entry would not preclude her from "putting on the rest of her case." After Weideman's counsel noted that the trial court had "said last time" there were "no triable issues of fact," the court inquired from First Peek what triable issues it had "now."

¶ 24 In response, First Peek's counsel stated:

> "I guess it's the issue of damages, Your Honor. If we're stipulating—if they're stipulating to the breach, the fact that she quit *** without giving notice, and within the 12-month term of employment, then let's talk about how they were damaged."

After being asked to explain the "type of damages" this would entail, First Peek's counsel first noted that she was aware that they had discussed the "wage [re]payment provision of the

agreement" last time, and that because there was a "severability clause," First Peek was removing that from its damages theory for trial. Nonetheless, she elaborated that First Peek was proceeding on the following damages:

> "We [ar]e talking about the appointments that were cancelled that had been scheduled with the defendant and had to be abruptly cancelled and lost. We [ar]e talking about freebies wh[ich] were given away to customers whose appointments were affected in that matter and either canceled or otherwise rescheduled in order to keep them on board.
>
> And we [ar]e also talking about lost profits. *** [E]mployers or people looking to enforce contracts are entitled to lost profits where there is a notice provision involved, and that notice provision is indeed complied with. And the lost profits had to be limited to what that notice was. Here it's a month. She did not give a month's notice. So we're looking at the damages incurred for that month."

¶ 25 After hearing this argument, the trial court *sua sponte* entered judgment in favor of Weideman. As the court explained:

> "So there appears to be no question of fact as regards to the basis of liability of [First Peek]'s claim, that being the contract. The contract provision on its face and by agreement of the parties requires that the cause of action based on [First Peek]'s argument that the contract requires that an employee, who has worked and has been paid wages, must return or be stripped of those wages for failure to continue to work for that person in the future.
>
> The court finds that as a matter of law that contract provision and that contract are unconscionable and the judgment is entered in favor of the defendant."

¶ 26 Following the entry of judgment in her favor, Weideman filed a motion seeking sanctions

against First Peek and its attorneys, pursuant to Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)). In her motion for sanctions, Weideman asserted, among other things that both Salejee, who is a licensed attorney, and her counsel knew or should have known that the employment agreement was unenforceable under both the Illinois Wage Payment Act (820 ILCS 115/9 (West 2014)) and the thirteenth amendment of the United States Constitution (U.S. Const., amend. XIII), but nonetheless pursued the claim against her for the sole purpose of harassing her.

¶ 27 The motion for sanctions further asserted that both Salejee and her counsel should have voluntarily dismissed the complaint after the trial court denied First Peek's motion for summary judgment, because at that point they should have been aware that the employment agreement was unenforceable. In that respect, the motion for sanctions asserted that during the hearing on First Peek's motion for summary judgment, the transcript of which, as already noted above, is not part of the record on appeal, the trial court informed First Peek that its employment agreement was unenforceable and unconscionable, and that First Peek's counsel should inform First Peek that it "should draft a legally compliant contract." According to the motion for sanctions, at that hearing, First Peek's counsel acknowledged in open court that she had suggested this to her client but that nothing had resulted from that suggestion.

¶ 28 In response to the motion for sanctions, First Peek argued, *inter alia*, that the employment agreement was not unenforceable because it contained a severability clause, so that even if the training costs repayment provision of the agreement was found invalid, the remainder of the agreement could be enforced.

¶ 29 On June 20, 2018, the trial court denied Weideman's motion for sanctions. First Peek then filed the instant appeal.

¶ 30 II. ANALYSIS

¶ 31 On appeal, First Peek contends that the trial court erred when it *sua sponte* entered judgment in favor of Weideman. Initially, First Peek argues that the trial court lacked authority to enter such a judgment *sua sponte*. In response, Weideman contends that the trial court acted well-within its authority when it entered such an order. Weideman explains that the trial court simply construed her response to First Peek's motion for summary judgment as a cross-motion for summary judgment, and then upon the parties' stipulation to Weideman's liability under the agreement, immediately prior to trial, entered judgment in her favor, on the basis of that cross-motion. For the reasons that follow, we agree.

¶ 32 The record before us reveals that in her response to First Peek's motion for summary judgment, Weideman argued that the employment agreement was void because it was unconscionable and therefore unenforceable. In that pleading, Weideman explicitly asked the court not only to deny First Peek's motion for summary judgment, but also, to enter an order, finding that the employment agreement was at least in part, unenforceable.

¶ 33 It is well-settled that the character of a pleading is "determined from its content, not its label." *In re Haley, D.*, 2011 IL 110886, ¶ 67 (citing *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 2012 (2002)). Since Weideman's pleading explicitly asked the court to find the employment agreement void, once the parties stipulated to the fact that Weideman breached that employment agreement as written, the trial court was well within its authority to construe Weideman's pleading as a cross-motion for summary judgment, and enter judgment in her favor on a purely legal basis. See *Pielet v. Pielet*, 2012 IL 112064, ¶ 28 ("When parties file cross-motions for summary judgment, they agree that only a question of law is involved and invite the court to decide the issues based on the record.")

¶ 34 First Peek's argument that this was procedurally improper because it denied First Peek an opportunity to respond, is not well founded. Weideman clearly articulated her contentions regarding the unenforceability of the employment agreement in her response to First Peek's motion for summary judgment. In addition, in her pleading, she explicitly included a prayer for relief finding the agreement void. As such, First Peek was on notice of the argument and had ample opportunity to respond to it.

¶ 35 First Peek's reliance on *Peterson v. Randhava*, 313 Ill. App. 3d 1 (2000), in this respect, is unavailing. In that case, prior to discovery, the defendant filed a motion for sanctions against the plaintiff under Illinois Supreme Court Rule 137. *Peterson*, 313 Ill. App. 3d at 5 (citing 135 Ill. 2d R. 137). At the hearing on the motion for sanctions, the circuit court *sua sponte* entered summary judgment in favor of the defendant. The appellate court reversed, finding that the trial court acted outside of the scope of its authority. *Peterson*, 313 Ill. App. 3d at 10-11. In doing so, the appellate court noted the stark difference between a motion for summary judgment and a motion for sanctions, including the different standards of review. See *Peterson*, 313 Ill. App. 3d at 10-11. The court in *Peterson* then held that in contravention of section 2-1005 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005 (West 2000)) and the "basic principles" of our legal system, the trial court had deprived the plaintiff of notice and an opportunity to respond, to conduct discovery on the relevant issues, present evidence, and argue against dismissal of its cause. *Peterson*, 313 Ill. App. 3d at 11-12.

¶ 36 Unlike in *Peterson*, however, the trial court here never deprived First Peek of either notice or an opportunity to be heard on the issue of the employment contract's enforceability. The parties here both completed discovery and entered factual stipulations prior to the entry of judgment in Weideman's favor. Since Weideman's response to First Peek's motion for summary judgment

sought, among other things, an entry of an order finding the employment agreement unenforceable First Peek was by no means deprived of its opportunity to present evidence or argue against such a finding, both at the motion for summary judgment hearing and prior to trial.

¶ 37 In this respect, we are perplexed by First Peek's failure to provide us with a transcript from the hearing on its motion for summary judgment, at which these issues were presumably discussed. Without that transcript, or an adequate substitute, we cannot know what transpired during that hearing. As such, we do not know whether during that hearing the trial court stated that if the parties' stipulated to the facts of the alleged execution and breach of the employment agreement, it would treat Weideman's response as a cross-motion for summary judgment. Nor can we know, as Weideman argued in her motion for sanctions, whether at that hearing the trial court already indicated to the parties that it believed that the employment agreement was unenforceable as drafted and that First Peek's counsel should advise its client to redraft it. All we can glean from the transcript of the trial hearing that is before us, is that the trial court believed that there were no issues of material fact, and that it instructed the parties to attempt to stipulate to the breach of the agreement prior to trial.

¶ 38 Our supreme court has repeatedly held that the burden is on the appellant to present a sufficiently complete record of the trial proceedings to support a claim of error on appeal. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005); *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); see also *Dargis v. Paradise Park, Inc.*, 354 Ill. App. 3d 171, 176 (2004). "From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant." *Foutch*, 99 Ill. 2d at 391. Without an adequate record preserving the claimed error, the court of review must presume the circuit court's order had a

sufficient factual basis and that it conforms with the law. *Corral*, 217 Ill. 2d at 157; *Webster*, 195 Ill. 2d at 432; *Foutch*, 99 Ill. 2d at 392. Accordingly, in the absence of a complete record supporting the plaintiff's claim of error, we will resolve "[a]ny doubts which may arise from the incompleteness of the record *** against the appellant." *Foutch*, 99 Ill. 2d at 392. As such, contrary to First Peek's assertion, under the record before us, we must presume that in conformity with the law, the trial court below construed Weideman's response to First Peek's motion for summary judgment as a cross-motion for summary judgment and that after the parties stipulated to Weideman's execution and breach of that agreement, immediately prior to trial, it granted that motion. We therefore conclude that the trial court had authority to *sua sponte* enter judgment in favor of Weideman.

¶ 39 First Peek nonetheless argues that even if the trial court had such authority, it should have used the severability clause in the employment agreement to sever the "Training" provision and salvage the remainder of the agreement, so that First Peek could proceed with its cause. We disagree, and for the reasons that follow, conclude that the employment agreement was unconscionable in its entirety, and that severance of the "Training" provision was impossible.

¶ 40 Our review of the trial court's decision to grant or deny a cross-motion for summary Judgment is *de novo*. *Pielet*, 2012 IL 112064, ¶ 30. In addition, this case concerns the construction of contracts, which is a question of law we also review *de novo*. *LB Steel, L.L.C. v. Carlo Steel Corporation*, 2018 IL App (1st) 153501, ¶ 53; see also *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010).

¶ 41 An unconscionable agreement is one "which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man could accept, on the other." *Dillman & Associates, Inc. v. Capitol Leasing Co.*, 110 Ill. App. 3d 335, 341 (1982). An unconscionable

contract is usually improvident, wholly one-sided or oppressive. *Dillman*, 110 Ill. App. 3d at 341 (citing *Neal v. Lacob*, 31 Ill. App. 3d 137, 142 (1975)).

¶ 42 Under Illinois law, there are two components to unconscionability—procedural and substantive. *Wigginton v. Dell Inc.*, 382 Ill. App. 3d 1189, 1192 (2008). Procedural unconscionability relates to the circumstances surrounding the formation of the contract, while substantive unconscionability deals with the unfairness of the provision itself. *Id.* "A finding of unconscionability may be based on either procedural or substantive unconscionability[ ] or a combination of both." *Kinkel v. Cingular Wireless, LLC*, 223 Ill. 2d 1, 21 (2006).

¶ 43 "Procedural unconscionability refers to a situation where a term is so difficult to find, read, or understand that the plaintiff cannot fairly be said to have been aware he was agreeing to it ***." *Razor v. Hyundai Motor America*, 222 Ill. 2d 75, 100 (2006). "This analysis also takes into account the disparity of bargaining power between the drafter of the contract and the party claiming unconscionability." *Kinkel*, 223 Ill. 2d at 22.

¶ 44 Substantive unconscionability, on the other hand, " 'concerns the actual terms of the contract and examines the relative fairness of the obligations assumed. [Citation.] Indicative of substantive unconscionability are contract terms so one-sided as to oppress or unfairly surprise an innocent party, an overall imbalance in the obligations and rights imposed by the bargain, and significant cost-price disparity.' " *Kinkel*, 223 Ill. 2d at 28 (quoting *Maxwell v. Fidelity Financial Services, Inc.*, 184 Ariz. 82, 89 (1995)).

¶ 45 In the present case, we find that the employment agreement, and particularly the "Training" provision, which requires Weideman to repay her wages, and be liable for additional costs, if she quits her employment prior to one year, to be substantively unconscionable. The "Training" provision provides that if Weideman leaves the company "for any reason within 12 months" she

must repay "all wages" earned while training, as well as other costs associated with training up to $4,000, and including, costs of travel, instruction, salaries of employees involved in the training, gaps in the schedule, and payments and freebies to customers. For a part-time employee, earning $10 per hour while training, such a provision is tantamount to forced labor as it discourages her from quitting, regardless of her reasons (be it childcare, illness, or other better employment opportunities) by impressing on her the gargantuan burden of having to repay all of her hard earned wages.

¶ 46 The inequities of the "Training" provision are even more apparent when read in context of the remainder of the agreement. Several other essential provisions of the agreement refer to Weideman's inability to resign from her employment within the first year. The "Length of Contract" provision provides that the length of the contract is for "a minimum of one year," after which Weideman may resign with one month's notice. The "Termination" provision similarly provides that Weideman may terminate the agreement only "after one year," and with one month's notice.

¶ 47 While the agreement prohibits Weideman from resigning within one year, without incurring a severe penalty (paying back her earned wages and additional costs), it unfairly permits First Peek to terminate Weideman for any reason whatsoever, and without any notice, within the first six months of her "probationary" employment, and with only two weeks' notice after the expiration of those six months. As such, while the employment agreement purports to be a term of year contract as to Weideman, in reality it permits First Peek to hire and fire part-time (no-benefit) employees at-will. There can be no doubt that such an oppressive and one-sided contract is unconscionable.

¶ 48 Accordingly, contrary to First Peek's position, the severability clause in the employment

agreement does nothing to salvage remainder of the contract. While it is generally true that the presence of a severability clause in a contract strengthens the case for the severance of unenforceable provisions because it indicates that the parties intended for the lawful portions of the contract to be enforced in the absence of the unlawful portions, the presence of the severability provision is not dispositive. *Wigginton*, 382 Ill. Appl. 3d at 1198. Rather, where the unenforceable provision is "so closely connected" with the remainder of the contract that to enforce the valid provisions of the contract without it "would be tantamount to rewriting the agreement," the unenforceable provision will render the entire contract void, even if the contract contains a severability clause. *Wigginton*, Ill. App. 3d at 1198 (quoting *Abbott–Interfast Corp. v. Harkabus*, 250 Ill. App. 3d 13, 21 (1993)).

¶ 49 Here, severability is not possible. The unconscionable provisions that would be severed (*i.e.*, the requirement that Weideman repay her wages, and additional costs if she left her employment prior to the expiration of a year) would leave the contract an empty shell. First Peek's position that if we were to sever the "Training" provision and the repayment requirement, and permit it to proceed on a claim of breach of contract based solely on Weideman's failure to provide them with one months' notice of termination is unavailing. In numerous provisions, the agreement explicitly prohibits Weideman from resigning from the company in the first year of her employment, for any reason at all, and the one month's notice requirement is specific to termination after the expiration of that one year term. The contract nowhere requires one months' notice, or for that matter, any notice, for resignations prior to the one year term, since it does not contemplate that type of resignation at all. The entire contract is written with the distinct purpose of permitting First Peek to bully untrained part-time at-will employees into believing that they cannot resign from their employment within the first year without incurring

serious financial consequences. As such, the unconscionable terms of this employment agreement are so closely connected to the entire contract that to sever them would be tantamount to rewriting the entire contract. See *Wigginton*, 382 Ill. App. 3d at 1198. We therefore conclude that the trial court did not err when it found the entire contract unconscionable and entered judgment in favor of Weideman.

¶ 50 On appeal, Weideman finally asks that we impose sanctions upon First Peek under Supreme Court Rule 137 Ill. S. Ct. R. 137 (eff. July 1, 2013)) arguing that the appeal was filed for an improper purpose and is not well-grounded in law. In support, Weideman notes that First Peek was placed on notice more than once, dating back to the denial of its motion for summary judgment, that the contract under which it was pursuing its claim and this appeal was unenforceable.

¶ 51 Weideman, however, is not seeking review of the trial court's order denying her petition for Rule 137 sanctions entered below. Nor could she, since she has not filed either a cross-appeal or sought to supplement the record on appeal with a transcript from that proceeding. Since our review of the trial court's order denying those sanctions would be for an abuse of discretion (*Peterson*, 313 Ill. App. 3d at 9), without a transcript of that proceeding, or an adequate substitute we must presume that the trial court's order had a sufficient factual basis and that is conforms with the law (*Corral*, 217 Ill. 2d at 157).

¶ 52 To the extent that Weideman is seeking sanctions because this *appeal* is frivolous, she should have moved for sanctions under Supreme Court Rule 375(b) (Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994)), not Rule 137 (Ill S. Ct. R. 137 (eff. July 1, 2013)). Regardless, while we are dismayed by First Peek's continued pursuit of this cause of action in light of the clear disparity in the parties' resources, we decline to impose sanctions because we do not believe First Peek's appeal

to be frivolous, patently without merit, or brought in bad faith, in light of the procedural posture of the trial court's *sua sponte* grant of judgment in favor of Weideman.

¶ 53 III. CONCLUSION

¶ 54 For the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 55 Affirmed.