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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

TERESA JAGIELLO and KATARZYNA)	Appeal from the Circuit Court
JAGIELLO,)	of Du Page County.
)	
Plaintiffs-Appellees,)	
)	
v.)	No. 18-CH-509
)	
BEVERLY GLEN HOMEOWNERS')	
ASSOCIATION,)	Honorable
)	Bonnie M. Wheaton
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in granting plaintiffs' motion to voluntarily dismiss the case, where plaintiffs had not paid defendant's costs as required by statute. We therefore reversed and remanded. This determination rendered defendant's other arguments on appeal moot.

¶ 2 Plaintiffs, Teresa Jagiello and her daughter, Katarzyna Jagiello, brought a four-count complaint against defendant, the Beverly Glen Homeowners' Association, alleging a violation of plaintiffs' right to park in common areas of the development. Defendant moved to dismiss the case and requested sanctions against plaintiffs and their counsel. Plaintiffs moved to voluntarily

dismiss the case without prejudice. The trial court granted plaintiffs' motion and denied defendant's motions as moot. Defendant thereafter sought costs, and the trial court denied its request.

¶ 3 Defendant challenges the trial court's rulings on appeal. We reverse the trial court's grant of plaintiffs' motion to voluntarily dismiss the case, and we remand the cause.

¶ 4 I. BACKGROUND

¶ 5 Plaintiffs filed their complaint on April 19, 2018, alleging as follows. In 1999, they became the legal owners of a townhouse in Downers Grove that was part of defendant. Plaintiffs lived in the home along with Teresa's husband and son. Defendant was governed by a declaration which stated that the members' right to park in common area parking spaces was appurtenant to and passed with the title to each unit. For the almost 20 years that plaintiffs had occupied their unit, parking in the common areas was not restricted. However, on March 16, 2018, defendant's board decided to limit parking in the common areas to one vehicle per unit, and it informed residents that unauthorized vehicles would be towed. Plaintiffs and their family had four vehicles registered to their address and could not park all of their vehicles overnight on or near their property.

¶ 6 Plaintiffs sought to prohibit defendant from enforcing the parking restrictions via a temporary restraining order in count I, a preliminary injunction in count II, and a permanent injunction in count III. In count IV, plaintiffs sought permanent injunctions preventing defendant from removing trees and shrubs without the intent to replant them and without proper notice and voting by members.

¶ 7 On April 23, 2018, defendant filed a motion pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2016)) to dismiss Katarzyna as a plaintiff on

all counts. The motion alleged, among other things, that she lacked standing because she was not a title holder of the unit. Defendant filed a separate motion to dismiss Teresa as a plaintiff on all counts. The motions sought dismissal under both sections 2-615 (735 ILCS 5/2-615 (West 2016)) and 2-619 of the Code (735 ILCS 5/2-619 (West 2016)). See 735 ILCS 5/2-619.1 (West 2016) (allowing combined motions to be filed together as a single pleading).

¶ 8 The following day, the trial court held a hearing on plaintiffs' request for a temporary restraining order, which it denied. The trial court ordered plaintiffs to respond to defendant's motions to dismiss by May 22, 2018, with defendant to reply by June 5, 2018, and a hearing on the motions to take place on June 12, 2018.

¶ 9 Plaintiffs did not file a response to the motions to dismiss by the deadline. On June 1, 2018, defendant filed a motion for sanctions against plaintiffs and their counsel pursuant to Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018). Defendant argued, *inter alia*, that Katarzyna lacked standing because she did not have legal title to the unit when she filed suit.

¶ 10 Also on June 1, 2018, plaintiffs filed a motion to voluntarily dismiss the case under section 2-1009 of the Code (735 ILCS 5/2-1009 (West 2016)). They additionally filed a motion for an extension of time to respond to defendant's motions to dismiss.

¶ 11 Plaintiffs' motions were noticed for a hearing on June 6, 2018. On that date, the trial court entered and continued them to June 12, 2018, on which date it heard all outstanding motions. Plaintiffs argued as follows at the hearing. They were entitled to dismiss the action at any time before trial by providing notice to defendant, which they did. The initial hearing date of June 6, 2018, was provided by the trial court's secretary. They did not receive defendant's motion for sanctions until after filing and providing notice of their motion for a voluntary dismissal. In the alternative, plaintiffs had filed a request for an extension of time to respond to

defendant's motions to dismiss. Plaintiffs stated that they had "already established" that Katarzyna was a title holder "and ha[d] been before the suit was filed," in that they had presented a deed in court.

¶ 12 The trial court stated as follows. Defendant's motions to dismiss were not case dispositive because even if it granted the motions on the section 2-615 grounds, plaintiffs could replead the action. The section 2-619 portion of the motions were premised on the idea that there was an order entered by another court, but that was not a final judgment because the matter was still pending there. The motion for sanctions was not a dispositive motion because it could not be resolved until there was a decision on the merits, so the motion did not preclude granting a voluntary dismissal. In the trial court's discretion, it was granting "a voluntary dismissal without prejudice upon the payment of costs." Its written order stated that it denied defendant's motions to dismiss and its motions for sanctions as moot. The written order also stated: "Costs are to be paid to Defendant upon re-filing of the suit, if applicable."

¶ 13 On June 29, 2018, defendant filed a motion to assess costs to plaintiffs under section 5-109 of the Code (735 ILCS 5/5-109 (West 2016)), arguing that such payment was a condition precedent to a voluntary dismissal. The trial court denied the motion on July 9, 2018. Defendant timely appealed.

¶ 14 **II. ANALYSIS**

¶ 15 We begin by noting that plaintiffs have not filed an appellees' brief in this case. However, we may reach the appeal's merits because the record is simple and the claimed errors are such that we can easily decide them without the aid of an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 16 On appeal, defendant argues that the trial court erred in granting plaintiffs' motion to voluntarily dismiss their case under section 2-1009 and in denying defendant's motions as moot. A grant of a voluntary dismissal is typically reviewed for an abuse of discretion. *Carolina Casualty Insurance Co. v.* 2015 IL App. (3d) 130294, ¶ 18. However, in this case our ultimate resolution of the issue is based on statutory construction. In construing a statute, our primary objective is to ascertain and give effect to the legislature's intent, which is best indicated by the statute's language, when given its plain and ordinary meaning. *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, ¶ 24. The construction of a statute presents a question of law that we review *de novo*. *Sperl v. Henry*, 2018 IL 123132, ¶ 23.

¶ 17 Section 2-1009 of the Code provides, as pertinent here:

“(a) The plaintiff may, at any time before trial or hearing begins, *upon notice to each party* who has appeared or each such party's attorney, *and upon payment of costs*, dismiss his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause.

(b) The court may hear and decide a motion that has been filed prior to a motion filed under subsection (a) of this Section when that prior filed motion, if favorably ruled on by the court, could result in a final disposition of the cause.” (Emphasis added.) 735 ILCS 5/2-1009 (West 2016).

“When a party complies with the requirements of section 2-1009(a), her right to a voluntary dismissal without prejudice is, with very limited exceptions, unfettered.” *Smith v. Bartley*, 364 Ill. App. 3d 725, 727 (2006). Section 13-217 of the Code (735 ILCS 5/13-217 (West 2016)) permits a plaintiff to re-file a voluntarily-dismissed action within one year of the dismissal date.

¶ 18 Defendant argues that the trial court erred in granting plaintiffs a voluntary dismissal, because plaintiffs did not give proper notice and did not pay costs. Regarding notice, defendant cites *Crawford v. Schaeffer*, 226 Ill. App. 3d 129, 135 (1992), where the court reversed and remanded because it was unable to determine whether the plaintiff complied with the notice requirement of the local court rules. Defendant cites local court rule 6.04(d), which provides:

“Except for emergency motions or notice by personal service as defined by Supreme Court Rule 11(c)(1), *hearing on a motion shall proceed not less than five (5) court days after the effective date of service* as defined by Supreme Court rule 12(c). If notice of motion is by personal service delivered by 4:00 p.m., hearing on the motion shall proceed not less than the second court day following personal service.” 18th Judicial Cir. Ct. R. 6.04(d).

Defendant points out that plaintiffs filed the motion on June 1, 2018, and noticed it for a hearing on June 6, 2018, which was three court days after the filing.

¶ 19 Defendant is correct that plaintiffs should not have scheduled the hearing on their motion to voluntarily dismiss the case just three court days after filing the motion, pursuant to local court rule. However, defendant filed a written response to plaintiffs’ motion, and the trial court continued the hearing on the motion to June 12, 2018, resulting in a lack of prejudice to defendant. Accordingly, the initial violation of the notice requirement does not provide a basis for reversal. *Cf. Valdovinos v. Luna-Manalac Medical Center, Ltd.*, 328 Ill. App. 3d 255, 267-68 (2002) (declining to reverse grant of voluntary dismissal even though the plaintiffs did not strictly comply with notice requirements, based on lack of prejudice to the defendants); see also *Mizell v. Passo*, 147 Ill. 2d 420, 428 (1992) (same).

¶ 20 On the subject of payment of costs, defendant cites *Vaughn v. Northwestern Memorial Hospital*, 210 Ill. App. 3d 253, 257 (1991), where the court stated that costs must be paid in order for the plaintiff to qualify for and receive a voluntary dismissal. Defendant recognizes that a voluntary dismissal may be granted conditioned upon the payment of costs (see *Mizell*, 147 Ill. 2d at 428-29) but argues that this did not occur here.

¶ 21 We note that the trial court orally stated that it was granting “a voluntary dismissal without prejudice upon the payment of costs,” but its written order stated: “Costs are to be paid to Defendant upon re-filing of the suit, if applicable.” Typically, oral rulings control over any conflicting written order. *Family Amusement of Northern Illinois, Inc. v. Accel Entertainment Gaming, LLC*, 2018 IL App (2d) 170185, ¶ 23. In this case, however, the trial court’s oral ruling is general, whereas its written order very specifically provides that plaintiffs will be required to pay costs to defendant only if they re-file the suit. Additionally, there is no order setting the amount of costs, and defendant represents that costs have not been paid. We therefore review the trial court’s ruling as conditioning payment of costs on plaintiffs’ re-filing of their case.

¶ 22 Section 2-1009 states that a plaintiff may voluntarily dismiss the suit “upon payment of costs” to the defendant (735 ILCS 5/2-1009(a) (West 2016)), which by its plain language means that the plaintiff may voluntarily dismiss the case only if the plaintiff has paid such costs. See also *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 106 (“plaintiffs must pay costs as a condition of taking a voluntary dismissal without prejudice”); *Valdovinos*, 328 Ill. App. 3d at 267 (one requirement that must be met for a plaintiff to voluntarily dismiss her case is the payment of costs). Accordingly, the trial court erred in granting plaintiffs a voluntary dismissal absent a payment of costs, and we reverse its ruling and remand the cause.

¶ 23 Based on our resolution of this issue, we do not address defendant's argument that the motion to voluntarily dismiss the case should additionally have been denied as to Katarzyna as a plaintiff because she lacked standing and was improperly attempting to avoid a potentially dispositive ruling and sanctions.

¶ 24 Defendant next argues that the trial court erred in denying its motion for Rule 137 sanctions as moot. Our reversal of the trial court's grant of plaintiffs' motion to voluntarily dismiss the case makes defendant's argument itself moot. See *In re K.C.*, 2019 Ill. App (4th) 180693, ¶ 20 (an issue on appeal that no longer presents an actual controversy is moot). However, because the issue is likely to recur on remand, we address it in the interest of judicial economy. See *Petre v. Kucich*, 331 Ill. App. 3d 935, 944 (2002).

¶ 25 Citing a federal court case, defendant argues that the trial court retained jurisdiction to impose sanctions after it granted plaintiffs a voluntary dismissal. Defendant maintains that in its motion for sanctions, it identified specific facts which showed that plaintiffs and their counsel made a deliberate effort to cover up Katarzyna's lack of standing, including a 2001 quitclaim deed showing that she was not a record title holder to the home, and a quitclaim deed recorded by plaintiffs' counsel on April 20, 2018, after this suit was filed.

¶ 26 Rule 137 allows a court to sanction a party or attorney who has filed a pleading that is either not well-grounded in fact or law, or that is interposed for an improper purpose. Ill. S. Ct. R. 137 (eff. Jan. 1, 2018); *Enbridge Pipeline (Illinois), LLC v. Hoke*, 2019 IL App (4th) 150544-B, ¶ 48. The rule is intended to prevent the filing of false and frivolous lawsuits. *Clark v. Gannett Co.*, 2018 IL App (1st) 172041, ¶ 66. Whether to grant sanctions under Rule 137 is within the trial court's discretion. *Enbridge Pipeline (Illinois), LLC*, 2019 IL App (4th) 150544-B, ¶ 48.

¶ 27 Here, the trial court stated that the motion for sanctions was not a dispositive motion, so it would not preclude a grant of plaintiffs' motion for a voluntary dismissal. We note that a trial court has the discretion whether to hear even dispositive motions prior to granting a voluntary dismissal. See 735 ILCS 5/2-1009(b) (West 2016). The trial court also stated that it "certainly [could not] be decided until there [was] a decision on the merits." This statement is incorrect, as the sanctions motion dealt solely with the question of Katarzyna's standing to file the suit, whereas the merits of the case involved parking and tree issues in plaintiffs' townhouse development. The trial court's written order stated that it denied the motion for sanctions as moot. The sanctions motion was moot in the sense that the trial court could choose whether to address it before granting a voluntary dismissal. See *id.* However, a motion for sanctions may be filed even after a voluntary dismissal. See *In re Marriage of Barmak*, 276 Ill. App. 3d 83, 85-86 (1995) (a Rule 137 motion may be filed within 30 days of the entry of a voluntary dismissal); *Airolen Capital Ventures, Inc. v. Petri*, 265 Ill. App. 3d 80, 81 (1994) (defendants filed a Rule 137 motion after the trial court granted the plaintiff's motion for a voluntary dismissal). As such, defendant's motion for sanctions was not moot simply by virtue of the grant of plaintiffs' motion to voluntarily dismiss the case. The trial court should keep these principles in mind upon remand.

¶ 28 Defendant additionally argues that the trial court erred in denying its motion to assess costs under section 5-109. Our reversal of the voluntary dismissal renders this issue moot as well.

¶ 29 Last, defendant argues that if it prevails in this appeal, it is entitled to reasonably attorney fees and costs under the declaration. As we are remanding this case for further proceedings, the trial court may address this issue on remand.

¶ 30

III. CONCLUSION

¶ 31 For the reasons stated, we reverse the judgment of the Du Page County circuit court granting plaintiffs' motion to voluntarily dismiss the case, and we remand for further proceedings consistent with this order.

¶ 32 Reversed and remanded.