

NOTICE

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FILED
April 25, 2019
Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 150807-U

NO. 4-15-0807

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ENBRIDGE PIPELINE (ILLINOIS), LLC,)	Appeal from the
n/k/a Illinois Extension Pipeline)	Circuit Court of
Company, LLC.,)	McLean County
Plaintiff-Appellant,)	No. 14ED27
v.)	
MONARCH FARMS, LLC; BRYAN CARLSON,)	
Tenant; NON-RECORD)	
CLAIMANTS; and UNKNOWN OWNERS,)	The Honorable
Defendants)	Paul G. Lawrence,
)	Judge Presiding.

(Thomas J. Pliura, Appellee).

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Holder White and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court (1) affirmed the trial court’s denial of Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018) sanctions and (2) declined the request for Illinois Supreme Court Rule 375 (eff. Feb. 1, 1994) sanctions.

¶ 2 I. BACKGROUND

¶ 3 In June 2014, Enbridge Pipeline (Illinois), LLC, now known as the Illinois Extension Pipeline Company, LLC (IEPC), brought an easement condemnation action against (1) Monarch Farms, LLC, and its tenant, Bryan Carlson , and (2) unknown others (collectively landowners). See *Enbridge Pipeline (Illinois), LLC v. Monarch Farms, LLC*, 2017 IL App (4th) 150807, ¶ 2, 82 N.E.3d 1234 (*Monarch Farms I*). In July 2014, landowners filed traverse motions. Ultimately, the trial court denied landowners’ traverse motions, and landowners appealed.

¶ 4 In July 2017, this court reversed the trial court’s ruling and remanded for the trial

court to conduct a traverse hearing in accordance with our directions. *Id.* ¶ 113. This court retained jurisdiction to review the trial court’s ruling on remand. *Id.*; Ill. S. Ct. R. 615(b) (eff. Jan. 1, 1967).

¶ 5 In January 2018, Thomas J. Pliura, the attorney representing landowners, filed a memorandum entitled “Evidence Landowners Seek to Present to Rebut The ‘Good-Faith Negotiation’ Presumption” (memorandum) in support of landowners’ traverse motions. In this memorandum, Pliura argued that based on the totality of the circumstances, IEPC did not negotiate in good faith. In June 2018, after conducting a traverse hearing, the trial court denied landowners’ traverse motions.

¶ 6 In June 2018, IEPC filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018). After conducting a hearing on the motion for sanctions in August and September of 2018, the trial court denied the motion for sanctions, concluding that Pliura’s memorandum was not “interpose[d] *** for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.” In addition, the trial court, in accordance with our mandate, stated the following:

“Now, this appears to put an end to this litigation. In paragraph 107 of the Monarch Farms decision it says that if the landowners failed to rebut the presumption of public use, or failed to refute the commission’s good faith determination, then the Court should so rule, deny the landowners’ traverse motion, certify the record, and return the matter back to this Court. So I think that’s where we are at now. The Court is prepared then to certify the record and return the matter back to the [Appellate] Court.”

¶ 7 IEPC appeals, arguing (1) the trial court abused its discretion by denying its mo-

tion for Rule 137 sanctions and (2) this court should sanction Pliura pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994). We disagree and affirm.

¶ 8 I. BACKGROUND

¶ 9 A. The First Appeal

¶ 10 In April 2014, the Illinois Commerce Commission (Commission) granted IEPC eminent-domain authority to acquire easements over certain real estate for the planned construction of an approximately 170-mile liquid petroleum (oil) pipeline project known as the Southern Access Extension (SAX). See *Monarch Farms I*, 2017 IL App (4th) 150807, ¶ 1. In July 2014, landowners filed traverse motions, seeking dismissal of IEPC’s condemnation complaints. *Id.* ¶ 3. (A traverse motion is filed to oppose the condemnation of private property and challenges (1) the rebuttable presumption of public use and public necessity and (2) the presumption that the condemner negotiated in good faith. See *Enbridge Pipeline (Illinois), LLC v. Hoke*, 2017 IL App (4th) 150544, ¶¶ 133, 134, 80 N.E.3d 807.)

¶ 11 Ultimately, the trial court denied landowners’ traverse motions. *Monarch Farms I*, 2017 IL App (4th) 150807, ¶ 3. Landowners appealed, arguing that the trial court erroneously considered the traverse hearing as a motion to dismiss. *Id.* ¶ 87. In July 2017, this court agreed and concluded that the trial court failed to conduct a proper traverse hearing and vacated the trial court’s traverse judgment. *Id.* ¶ 113. This court remanded the case back to the trial court to conduct “a proper traverse hearing in accordance with this court’s direction[.]” *Id.* ¶ 96. This court retained jurisdiction to review the trial court’s ruling on remand. *Id.*; Ill. S. Ct. R. 615(b) (eff. Jan. 1, 1967).

¶ 12 B. Pliura’s Memorandum on Remand

¶ 13 In January 2018, Pliura filed his memorandum in support of the traverse motion in

which he argued that, based on the totality of the circumstances, IEPC did not negotiate in good faith. Pliura also filed a memorandum titled “Evidence Landowners Seek to Present to Rebut the ‘Public Use’ Presumption.” In May 2018, IEPC filed a response to Pliura’s memorandums.

¶ 14 In June 2018, the trial court conducted a traverse hearing. At the traverse hearing, Pliura withdrew his public use argument because it had been recently rejected in *Enbridge Energy (Illinois), LLC v. Kuerth*, 2018 IL App (4th) 150519-B, 99 N.E.3d 210. In Pliura’s good-faith memorandum, he argued that IEPC failed to (1) base offers on an appraisal, (2) inform landowners that their offers were based on the land market study, and (3) inform landowners of the right to abandon.

¶ 15 After argument, the trial court concluded that the landowners did not present “clear and convincing evidence, or any evidence, to refute the substantial deference afforded [to] the commission’s good-faith determination.” Accordingly, the trial court denied landowners’ traverse motions. As we noted earlier, the court, after denying the traverse and Rule 137 motions, said to certify the record to this court. Landowners do not appeal the trial court’s traverse ruling.

¶ 16 C. The Motion for Rule 137 Sanctions

¶ 17 Also in June 2018, citing Pliura’s memorandum, IEPC filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018), in which IEPC asserted that (1) Pliura knowingly made legal arguments that were contrary to binding precedent and (2) there was no good-faith basis in fact to support Pliura’s arguments. Pliura filed a response in which he (1) rejected IEPC’s assertions and (2) alleged that IEPC had filed its motion for sanctions for an improper purpose.

¶ 18 In August and September of 2018, the trial court conducted a hearing on IEPC’s motion for sanctions. After hearing argument from both sides, the trial court concluded that

Pliura's memorandum was not filed for any improper purpose and was not sanctionable. In addition, the trial court stated:

“The Court has wide discretion in a [Rule] 137 motion for sanctions. I do note that Mr. Pliura did not bring up the public use argument at all, because of the [*Kuerth*] decision and others. He did proceed on the good faith argument, and he was unsuccessful. But I cannot find in exercising my discretion that the reason he did that was to interpose it for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation. *** And so I am going to deny the motion for [Rule] 137 sanctions.”

¶ 19 IEPC appealed the trial court's denial of Rule 137 sanctions to this court. Landowners did not appeal the trial court's denial of their traverse motion.

¶ 20 D. The Motion for Rule 375(b) Sanctions

¶ 21 In February 2019, after Pliura submitted his brief, IEPC filed a motion for sanctions pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994). IEPC argues that Pliura should be sanctioned because he “prosecute[d] claims on behalf of [landowners] who had actually withdrawn their just-compensation awards[.]” IEPC is essentially arguing that Pliura's actions were contrary to existing law and were unreasonable.

¶ 22 II. ANALYSIS

¶ 23 IEPC appeals, arguing (1) the trial court abused its discretion by denying its motion for Rule 137 sanctions and (2) this court should sanction Pliura pursuant to Rule 375(b). We disagree and affirm.

¶ 24 A. The Trial Court's Denial of Rule 137 Sanctions

¶ 25 IEPC argues that the trial court abused its discretion by denying its motion for

facts.” *Technology Innovation Center, Inc., v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 244, 732 N.E.2d 1129, 1134 (2000). A trial court abuses its discretion only when no reasonable person would agree with its decision. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16, 39 N.E.3d 992. A reviewing court may affirm the trial court’s denial of Rule 137 sanctions for any reason provided by the record. *Id.*

¶ 29

2. *This Case*

¶ 30 In this case, the trial court concluded that it “cannot find *in exercising my discretion* that the reason [Pliura filed his memorandum] *** was *** for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.” (Emphasis added.) Significantly, the trial court noted that Pliura only proceeded on the good faith argument and voluntarily withdrew his public use argument after it was rejected in *Kuerth*, 2018 IL App (4th) 150519-B. Pliura acted reasonably when he withdrew his public use argument, which this court recently rejected in *Enbridge Pipeline (Illinois), LLC v. Hoke*, 2019 IL App (4th) 150544-B, _ N.E.3d _. Rule 137 is to be strictly construed, and the purpose of the rule is to prevent frivolous lawsuits, not to punish unsuccessful litigants. *Peterson*, 313 Ill. App. 3d at 7.

¶ 31

The trial court, rather than this court, was in the best position to make this determination and to determine whether Rule 137 sanctions should be imposed against Pliura. *Cvejin*, 2013 IL App (1st) 111695, ¶ 78 (Gordon, J., specially concurring). Furthermore, as the record in this case demonstrates, the trial court’s denial of sanctions was informed, based on valid reasoning, and followed logically from the facts of this case. *Technology Innovation Center, Inc.*, 315 Ill. App. 3d at 244. For these reasons, we conclude that the trial court’s denial of Rule 137 sanctions was not an abuse of discretion.

¶ 32

To further emphasize the trial court’s broad discretionary authority to impose or

decline to impose sanctions pursuant to Rule 137, this court notes our recent opinion in *Hoke*, 2019 IL App (4th) 150544-B. In that case, which was nearly identical to this case because it involved the same lawyers and almost identical issues, at issue was whether Pliura's good-faith memorandum violated Rule 137. This court affirmed the trial court's imposition of sanctions against Pliura. The decisions reached in *Hoke* and this case illustrate the breadth of the trial court's discretion under Rule 137.

¶ 33 B. Rule 375(b) Sanctions

¶ 34 IEPC also requests that this court sanction Pliura pursuant to Rule 375(b). We decline to do so.

¶ 35 We first note that Pliura did not bring this appeal on behalf of the landowners. Instead, he was responding as appellee to IEPC's appeal of the trial court's denial of Rule 137 sanctions against Pliura. Rule 375(b) empowers a reviewing court to sanction an attorney if it determines that an appeal or other action in a reviewing court is frivolous or not taken in good faith. *Garlick v. Bloomingdale Township*, 2018 IL App (2d) 171013, ¶ 59. _ N.E.3d _. An appeal or other action is frivolous when (1) it is not reasonably well-grounded in fact; (2) it is not warranted by existing law; (3) it is not a good-faith argument for the extension, modification, or reversal of existing law; or (4) a reasonable attorney would not have brought the appeal. *Goldberg v. Michael*, 328 Ill. App. 3d 593, 600, 766 N.E.2d 246, 252 (2002). An appeal or other action is not taken in good faith when the primary purpose is to delay, harass, or cause needless expense. *Id.* 600-01. This is an objective test. *Bloomingdale Township*, 2018 IL App (2d) 171013, ¶ 59. The imposition of Rule 375(b) sanctions "is left entirely to the discretion of the reviewing court." *Parkway Bank and Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 87, 2 N.E.3d 1052.

¶ 36 We conclude that the imposition of sanctions under Rule 375(b) is not appropriate

in this case. In *Hoke*, 2019 IL App (4th) 150544-B, this court similarly declined to impose Rule 375(b) sanctions against Pliura, and we noted that this “pipeline litigation has gone on long enough” and that imposing sanctions “will only further delay the outcome of this case.” *Id.* ¶ 60. We reiterate these views and in the exercise of our discretion we decline to impose sanctions.

¶ 37

C. Certification of the Record

¶ 38 In *Monarch Farms I*, 2017 IL App (4th) 150807, ¶ 58, landowners appealed (1) the trial court’s evidentiary rulings and (2) the denial of its traverse motions. This court vacated the trial court’s traverse ruling and remanded for an expedited traverse hearing. *Id.* ¶¶ 97-117. Specifically, this court ordered as follows:

“We direct the trial court to schedule and otherwise supervise discovery and conduct further proceedings regarding a traverse hearing in an expedited fashion. If, in the court’s judgment, landowners fail to (1) rebut the presumptions of public use and public necessity in IEPC’s favor or (2) successfully refute the Commission’s good-faith determination, the court should so rule as to those specific issues, deny landowners’ traverse motions, certify the record, and return the matter back to this court. If landowners present sufficient evidence to rebut the presumptions or to refute the good-faith determination, the court should then conduct a further hearing as to those claims on the traverse motions.” *Id.* ¶ 107.

¶ 39 On remand, the trial court denied (1) landowners’ traverse motion and (2) IEPC’s motion for sanctions. Following this, pursuant to our remand instructions, the trial court certified the record and returned this case to our court.

¶ 40

D. Epilogue

¶ 41 In concluding, we note that the only issues in this appeal were the trial court’s de-

nial of Rule 137 sanctions and the request for Rule 375 sanctions. Any other arguments which could have been raised, such as the denial of landowners' traverse motion, are forfeited. *In re Estate of Hayden*, 361 Ill. App. 3d 1021, 1027, 838 N.E.2d 93, 99 (2005). Thus, this order fully terminates this case.

¶ 42

III. CONCLUSION

¶ 43

For the reasons stated, we affirm the trial court's judgment.

¶ 44

Affirmed.