

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 22, 2019
Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 180404-U

NOS. 4-18-0404, 4-18-0405, 4-18-0406, 4-18-0407 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

STONE STREET CAPITAL, LLC,	)	Appeal from the
Petitioner-Appellee,	)	Circuit Court of
v.	)	Sangamon County
JERRISIA HITCHCOCK,	)	Nos. 10CH1417
Respondent-Appellant.	)	11CH960
	)	12CH1282
	)	13CH667
)	
	)	Honorable
	)	John M. Madonia,
	)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* The appellate court reversed and remanded for further proceedings, finding the trial court abused its discretion in denying respondent’s motion for sanctions.
- ¶ 2 From 2010 to 2013, petitioner, Stone Street Capital, LLC (Stone Street), filed four petitions for approval of the transfer of structured settlement payment rights between it and respondent, Jerrisia Hitchcock (Jerrisia), and the trial court entered orders granting those petitions. In April 2016, Jerrisia filed motions to vacate the four orders, claiming they were void and obtained by fraud. Seventeen months later, the orders were vacated by agreement of the parties. In September 2017, Jerrisia filed a motion for sanctions against Stone Street, which the court denied.
- ¶ 3 On appeal, Jerrisia argues the trial court abused its discretion in denying her

motion for sanctions. We reverse and remand for further proceedings.

¶ 4

I. BACKGROUND

¶ 5 Jerrisia was born in October 1990. In August 1998, she suffered a traumatic brain injury after being thrown from a van during a motor vehicle accident in Cook County, Illinois. As a result of the head injury, she suffered from cognitive deficits and behavioral problems. Following the accident, Jerrisia's mother, Deborisia Hitchcock, filed a personal injury lawsuit in Cook County on Jerrisia's behalf. Both Jerrisia and Deborisia were residents of Cook County. A settlement was ultimately reached and approved by the trial court in November 2003. Pursuant to the settlement, Jerrisia was to receive \$931,000 as compensation for her injuries.

¶ 6 Deborisia was appointed guardian of Jerrisia's estate, and, as part of the settlement after attorney fees and expenses, \$294,785.18 was deposited with The Northern Trust Company to be held for the benefit of Jerrisia and subject to withdrawal only upon order of the court or her attaining the age of majority. An additional \$300,000 was placed in a structured annuity policy issued to Jerrisia, providing monthly payments of \$1756.66 to begin on her 18th birthday and continuing for her lifetime, which expected to generate \$1.4 million.

¶ 7 In December 2014, a representative of Stone Street, a "specialty finance company" that purchases structured settlement payments, sent Jerrisia a letter stating, in part, "We love our loyal customers! As a thank you, we'll give you an immediate \$500 cash card the next time you choose the lump sum with us—even if you just recently completed your transaction." The only problem—Jerrisia knew nothing about Stone Street, had never sold lump sum portions of a structured settlement to Stone Street, and knew nothing about the existence of a structured settlement or any other kind of personal injury settlement on her behalf. She was not aware of the money deposited with The Northern Trust Company, and she knew nothing about

and had received no monthly payments in the past six years since she turned 18.

¶ 8 It was only after the December 2014 letter Jerrisia learned she had supposedly assigned portions of her structured settlement to Stone Street pursuant to four separate orders sought and obtained by Stone Street in Sangamon County Circuit Court on December 3, 2010, July 29, 2011, December 14, 2012, and July 19 and 26, 2013. Interestingly, neither Jerrisia nor her mother ever lived in Springfield, the accident that led to the settlement did not occur in Springfield, the lawsuit was not filed or settled in Springfield, and Stone Street is located in Bethesda, Maryland.

¶ 9 A. The Petitions

¶ 10 Four petitions seeking approval of purported assignments of payments under the annuity policy issued to Jerrisia, pursuant to the Structured Settlement Protection Act (215 ILCS 153/1 to 35 (West 2010)), were filed by Chicago attorney Brian P. Mack of Mack Law Group PC, the attorney for Stone Street, in Sangamon County. As it turns out, none of them were signed by Jerrisia, none of the notaries were of her signatures, none of the addresses listed for her were correct, and at no time was she ever provided notice of any of the petitions having been filed or heard. Within the petitions themselves, Stone Street failed to mention the clear anti-assignment provision contained in the annuity policy that stated:

“Non-assignability. No Payee or Beneficiary of this policy has the power to assign any payments or benefits of this annuity policy. Any attempt to make an assignment is void.”

Stone Street also failed to mention how these structured settlements arose out of an accident and personal injury lawsuit in Cook County and failed to attach copies of the orders approving the settlement entered by the Circuit Court of Cook County. No summons was issued or served on

Jerrisia, and no proof of service or signed waiver of service of process was ever filed with the court. We now turn to the specific petitions themselves.

¶ 11 *1. Stone Street's 2010 Petition*

¶ 12 In November 2010, Stone Street, by its attorney Mack, filed a petition for approval of the transfer of structured settlement payment rights between it and Jerrisia (case No. 10-CH-1417). The petition alleged Jerrisia was the recipient of structured settlement payments pursuant to a settlement agreement, which provided a schedule of payments under an annuity. Jerrisia sought to direct a portion of those annuity payments to Stone Street. The petition alleged Jerrisia entered into a purchase, transfer, and assignment agreement with Stone Street pursuant to which American General Life Insurance Company would make 120 monthly payments of \$700 from January 6, 2012, to December 6, 2021, to Stone Street, totaling \$84,000. Stone Street would pay Jerrisia \$46,000 under the purchase agreement. The petition alleged Stone Street provided a disclosure statement to Jerrisia, claimed the transfer was in her best interest and did not contravene any federal or state statutes, stated Jerrisia had been advised in writing by Stone Street to seek independent professional advice regarding the transfer and she either received such advice or knowingly waived such advice in writing, and stated jurisdiction and venue were proper in Sangamon County. The petition also included (1) a copy of the annuity policy; (2) a purchase, transfer, and assignment agreement purportedly signed by Jerrisia on November 11, 2010, and notarized by Bernice Bryant; and (3) a disclosure statement purportedly signed by Jerrisia on November 8, 2010. A notice of hearing indicated the petition was sent to Jerrisia at her residence in Country Club Hills, Illinois.

¶ 13 In December 2010, the trial court entered a final order granting approval of the transfer of the structured settlement payment rights. The order noted the transfer was in

Jerrisia's best interest and she had been advised by Stone Street to seek independent professional advice regarding the transfer. The court also stated the order was entered without any findings regarding the enforceability of any anti-assignment provisions contained in the annuity contracts or related documents.

¶ 14

2. Stone Street's 2011 Petition

¶ 15

In July 2011, Stone Street, again through attorney Mack, filed a second petition for approval of the transfer of structured settlement payment rights between it and Jerrisia (case No. 11-CH-960). The petition stated Jerrisia had entered into a purchase, transfer, and assignment agreement with Stone Street in which American General Life Insurance Company would make 120 monthly payments of \$456.66 from January 6, 2012, to December 6, 2021, to Stone Street, totaling \$54,799.20. Stone Street would pay Jerrisia \$31,000. The petition again claimed the transfer did not contravene any federal or state statutes, was in Jerrisia's best interest, and she had been advised by Stone Street to seek independent professional advice and either did so or waived such advice. Various documents purportedly signed by Jerrisia were attached to the petition, including, *inter alia*, (1) a July 2011 purchase, transfer, and assignment agreement notarized by Bernice Bryant; (2) a July 2011 disclosure statement; (3) a statement that Jerrisia received independent professional advice from Matthew Cate; and (4) a July 2011 stipulation and waiver, in which Jerrisia consented to Stone Street filing the petition in the Sangamon County Circuit Court. The notice of hearing listed a Country Club Hills address for Jerrisia.

¶ 16

That same month, the trial court entered a final order granting approval of the transfer of the structured settlement payment rights. The court's order noted it made no findings as to the enforceability of any anti-assignment provisions contained in the annuity contracts or

related documents and stated the transfer did not contravene any applicable statute or court order.

¶ 17

3. Stone Street's 2012 Petition

¶ 18

In November 2012, attorney Mack filed a third petition for approval of the transfer of structured settlement payment rights between Stone Street and Jerrisia (case No. 12-CH-1282). The petition stated Jerrisia had entered into a purchase, transfer, and assignment agreement with Stone Street in which American General Life Insurance Company would make 180 monthly payments of \$400 from January 6, 2014, to December 6, 2028, to Stone Street, totaling \$72,000. Stone Street would pay Jerrisia \$34,500. The petition contained similar language to the previous petitions and also indicated the settlement documents may contain language prohibiting Jerrisia's right or power to accelerate, defer, increase, decrease, or assign her structured settlement payments but that provision had been waived by the parties. The petition listed an address in Tinley Park, Illinois, as Jerrisia's residence. Attached to the petition were various documents purportedly signed by Jerrisia, including (1) a November 2012 purchase, transfer, and assignment agreement notarized by Bernice Bryant; (2) a disclosure statement; (3) a statement she received independent professional advice from Matthew Cate; and (4) a stipulation and waiver, in which she consented to jurisdiction and venue in Sangamon County. The notice of hearing listed a Tinley Park address for Jerrisia. In December 2012, the trial court granted the petition, which contained similar language as the prior order pertaining to anti-assignment provisions and that the transfer did not contravene any applicable statute or court order.

¶ 19

4. Stone Street's 2013 Petition

¶ 20

In July 2013, attorney Mack filed a fourth petition for approval of the transfer of structured settlement payment rights between Stone Street and Jerrisia (case No. 13-CH-667).

The petition stated Jerrisia had entered into a purchase, transfer, and assignment agreement with Stone Street in which American General Life Insurance Company would make 84 monthly payments of \$1356.66 from January 6, 2022, to December 6, 2028, and 84 monthly payments of \$1756.66 from January 6, 2029, to December 6, 2035, to Stone Street, for a grand total of \$261,518.88. Stone Street would pay Jerrisia \$70,912.20. The petition stated Jerrisia resided in Tinley Park. Attached to the petition were various documents purportedly signed by Jerrisia, including (1) a June 2013 purchase, transfer, and assignment agreement; (2) a disclosure statement; (3) a June 2013 affidavit notarized by Bernice Bryant; (4) a statement she received independent professional advice from Matthew Cate; and (5) a stipulation and waiver, where she consented to jurisdiction and venue in Sangamon County. The notice of hearing listed a Tinley Park address for Jerrisia. The trial court granted the petition, which contained language similar to the prior orders.

¶ 21

B. Jerrisia's 2016 Affidavit

¶ 22

According to Jerrisia's March 2016 affidavit, she did not become aware of the existence and amount of the personal injury settlement "until the beginning of 2015." She stated she "never signed any documents assigning, transferring, or purporting to assign or transfer to any person or entity any payments [she] was or [is] entitled to receive under the Annuity Policy." She also stated she never agreed to assign any payments under the annuity policy to Stone Street and never received any payments from Stone Street. Jerrisia claimed she was never contacted by Stone Street or served with summons regarding any petition filed by Stone Street. She claimed the signatures purporting to be hers on various documents were forged by Deborisia and notarized by Bryant, a "friend and gambling companion of Deborisia Hitchcock."

¶ 23

C. Jerrisia's Petitions to Vacate Void Orders

¶ 24 In April 2016, Jerrisia filed four petitions pursuant to section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2016)), seeking to vacate the orders granting approval of the transfer of the structured settlement payments. She claimed the orders were void *ab initio* due to the lack of jurisdiction and having been obtained by a fraud on the court. Jerrisia claimed she was unaware of the settlement agreement, never signed the assignment agreements, and never received any payment from Stone Street. She argued the orders approving the assignments of the structured settlement payments were void because (1) they were contrary to case law holding the trial court had no power to approve assignments when the structured settlement documents contain an anti-assignment provision; (2) the court lacked personal jurisdiction over Jerrisia because she was not served with summons and did not waive service of summons; (3) section 25(b) of the Structured Settlement Protection Act (Act) (215 ILCS 153/25(b) (West 2014)) required petitions for the approval of structured settlement transfers to be brought in the county in which an action was or could have been maintained; and (4) the orders were obtained through a fraud on the court, as evidenced by Stone Street's failure to advise the court of the anti-assignment provision and the governing case law precluding the assignments and by Stone Street's submission of forged documents in support of the petitions. Jerrisia asked the court to vacate the orders approving the transfers and to order Stone Street to disgorge and turn over to her all annuity payments received under the annuity policy plus interest. The court granted Jerrisia's motion to consolidate the cases and granted a motion to conduct limited discovery.

¶ 25 D. Stone Street's Motion to Strike

¶ 26 In June 2016, Stone Street filed a motion to strike the anti-assignment and venue allegations in Jerrisia's section 2-1401 petitions. Stone Street claimed the Act had been amended

in 2015 to clarify that anti-assignment provisions can be waived. Jerrisia filed a response in opposition to the motion, arguing the 2015 amendments to the Act only applied to transfers made on or after the 30th day after the effective date of August 5, 2015. 215 ILCS 153/35 (West 2016). The trial court denied Stone Street's motion.

¶ 27 E. Bernice Bryant's Deposition

¶ 28 Bernice Bryant testified that when she notarized the documents purportedly bearing Jerrisia's signature, it was Deborisia who actually signed the documents in front of Bryant. She thought Deborisia was signing the documents on her own behalf, and Deborisia did not tell Bryant that she was signing her daughter's name or that her daughter asked her or authorized her to sign her name. Bryant stated Deborisia was alone when she signed the documents and Bryant never talked to Jerrisia about any of the documents.

¶ 29 F. The Trial Court's Agreed Settlement Order

¶ 30 In spite of evidence of the fraudulent transactions, forged signatures, and lack of any notice, Stone Street did not agree to vacate the transfers and return the funds to Jerrisia until September 2017. At that time, the trial court entered an agreed settlement order, vacating by agreement of the parties the court's four transfer approval orders. The court ordered American General Life Insurance Company and American General Annuity Service Corporation to issue all future payments due and owing under the annuity policy directly to Jerrisia. The court dismissed Jerrisia's section 2-1401 petitions with prejudice. The court also retained jurisdiction to adjudicate any petition by either party for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013).

¶ 31 G. Jerrisia's Motion for Sanctions

¶ 32 In September 2017, Jerrisia filed a motion for sanctions under Illinois Supreme

Court Rule 137 (eff. July 1, 2013), including her attorney fees and costs incurred in preparing, filing, and litigating her section 2-1401 petitions. Jerrisia’s motion alleged, in part, as follows:

“Stone Street violated Supreme Court Rule 137 by making false statements to and concealing material facts from the Court in each of its four petitions. Specifically, Stone Street (1) filed multiple documents containing the forged signature of Jerrisia Hitchcock, when it knew or reasonably should have known that each of the documents purportedly signed by Hitchcock was a forgery; (2) knowingly concealed from the Court that the annuity policy contained an anti-assignment provision; and (3) falsely misrepresented to the Court that the petitions were in compliance with the Structured Settlement Protection Act, when Stone Street and its counsel knew that settled Illinois case law prohibited the Court from approving the alleged assignments based upon the anti-assignment clause in the annuity.”

Jerrisia also alleged Stone Street falsely represented through the forged documents that she had agreed to waive service of process and consented to the *ex parte* entry of the orders approving the assignments and falsely advised the court that it had *in personam* jurisdiction over her.

¶ 33 H. Stone Street’s Response to Jerrisia’s Motion for Sanctions

¶ 34 Stone Street stated it had voluntarily repaid Jerrisia for all payments made under the approved transfer orders and assisted her in ensuring all future payments are made to her directly. Stone Street claimed it reasonably believed it was dealing directly with Jerrisia during each transfer and had the legal right to seek transfer of the structured settlement payments. It

reasonably believed the documents it filed in court were signed by Jerrisia and were served upon her at the address provided by the individual purporting to be Jerrisia. Stone Street based its belief on the notarized documents, the supporting documents, and the notarized confirmation that Jerrisia had discussed the transfers with her own attorney. At the time of the transfers, Stone Street also reasonably believed a transfer of structured settlement payment rights could occur even where there were restrictions on an assignment.

¶ 35 I. The Hearing on the Motion and the Trial Court’s Ruling

¶ 36 At the May 2018 hearing on Jerrisia’s motion for sanctions, her counsel stated Stone Street “fought tooth and nail not to pay this money back” and “it took 17 months” to get Stone Street to restore Jerrisia to the position she occupied before the transfers took place. Counsel also argued Stone Street failed to comply with the provisions of the Act, filed the actions in a jurisdiction unrelated to the acts that gave rise to the settlement, did not comply with its own guidelines, and never spoke with Jerrisia. Stone Street’s counsel argued it reasonably believed Jerrisia waived the anti-assignment language in her contracts and it had a good-faith reason to file the transfers.

¶ 37 The trial judge denied Jerrisia’s motion for sanctions and stated, in part, as follows:

“I don’t think this is about the law at the time. I understand that there was a lot of legal wrangling about the anti-assignment provisions. However, I think the language in the rule regarding whether or not the petitions filed by Stone Street were warranted by existing law or a good faith argument for the extension, modification or reversal of existing law. Certainly they had a well-

found[ed] basis for either believing that the existing law supported their position, at least some of the decisions would tend to support their position or at the very least that a modification or reversal of the existing law was appropriate. *** The subject matter jurisdiction they're relying on was based on having a lawyer appointed representing the interests purportedly of [Jerrisia], also a consent to jurisdiction would be permissibly persuasive in the eyes of the Court to establish what they were trying to accomplish, certainly service of process would have benefitted potentially everyone in this position, but I don't think it's required, I don't think it resolves the issue before the Court regarding sanctions."

The judge noted there were "certainly unique circumstances involving some substantial deceptions on the part of the mother and on the part of the notary." However, the judge believed Jerrisia's counsel was asking him to "impose sinister motives" on the way Stone Street handled the petitions but sanctions would have been appropriate if Stone Street had "continued to fight this." Although "certain processes could have been better," the judge found sanctions inappropriate based on "objectively reasonable methods for addressing concerns of forgery that they had in place."

"Legally and factually based on the objective investigation I think was in place, conducted, performed, albeit it failed, this is more about the mother and her gambling partner than it is about the oversights of Stone Street. And I'll admit they are oversights. Clearly, this wouldn't have happened and it was preventable, but

not to a sanctionable conduct.”

¶ 38 In its docket entry denying Jerrisia’s motion for sanctions, the trial court stated the efforts made by Stone Street to verify the identity of Jerrisia were objectively reasonable under the circumstances at the time the pleadings at issue were filed. “In the end, all of the parties to the underlying transactions at issue in [Jerrisia’s] motion were victimized by the actions of [Jerrisia’s] thieving mother, with the assistance of *** her friend, Ms. Bryant, who is seemingly [Jerrisia’s] mother’s personal fraudulent notary and apparent accomplice.” The court found no just reason to delay the entry or enforcement of the order. This appeal followed.

¶ 39 II. ANALYSIS

¶ 40 Jerrisia argues the trial court abused its discretion in denying her motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013). We agree.

¶ 41 Illinois Supreme Court Rule 137(a) (eff. July 1, 2013) provides as follows:

“(a) *** 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.”

¶ 42 “The purpose of [Rule 137] is to prevent abuse of the judicial process by penalizing claimants who bring vexatious and harassing actions based upon unsupported allegations of fact or law.’ ” *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 15, 39 N.E.3d 992 (quoting *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067, 1074, 651 N.E.2d 601, 606 (1995)); see also *Lewy v. Koeckritz International, Inc.*, 211 Ill. App. 3d 330, 334, 570 N.E.2d 361, 364 (1991) (stating “Rule 137 is intended to prevent counsel from making assertions of fact or law without support”). “The rule is designed to discourage frivolous filings, not to punish parties for making losing arguments.” *Lake Environmental*, 2015 IL 118110, ¶ 15, 39 N.E.3d 992.

¶ 43 In deciding whether sanctions are appropriate under Rule 137, “the court must determine what was reasonable for the attorney or the signing party to believe at the time of filing, rather than engaging in hindsight.” *Peterson v. Randhava*, 313 Ill. App. 3d 1, 7, 729 N.E.2d 75, 80 (2000). “A court should not impose sanctions on a party for failing to conduct an investigation of facts and law before filing if he presents objectively reasonable arguments for his position, regardless of whether those arguments are unpersuasive or incorrect.” *Peterson*, 313 Ill. App. 3d at 7, 729 N.E.2d at 80. However, sanctions may be imposed “when a party asserts a legal proposition that is contrary to established precedent.” *Polsky v. BDO Seidman*,

293 Ill. App. 3d 414, 427, 688 N.E.2d 364, 374 (1997).

¶ 44 “The decision whether to impose sanctions under Rule 137 is committed to the sound discretion of the circuit judge, and that decision will not be overturned unless it represents an abuse of discretion.” *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487, 693 N.E.2d 358, 372 (1998). “An abuse of discretion occurs only when the trial court’s decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court.” *Seymour v. Collins*, 2015 IL 118432, ¶ 41, 39 N.E.3d 961; see also *Lake Environmental*, 2015 IL 118110, ¶ 16, 39 N.E.3d 992.

¶ 45 In her motion for sanctions, Jerrisia claimed Stone Street made false statements to and concealed material facts from the trial court when it (1) falsely represented the petitions were in compliance with the Act when Stone Street’s counsel knew Illinois case law prohibited the court from approving the alleged assignments based on the undisclosed anti-assignment clause in the annuity; (2) falsely represented that Jerrisia had agreed to waive service of process and consented to the *ex parte* entry of the orders approving the alleged assignments; and (3) filed multiple documents containing her forged signature, when it knew or reasonably should have known each of the documents were forged.

¶ 46 We find Jerrisia’s first claim dispositive in this case. Jerrisia states Stone Street indicated in its petitions that the purported assignments did not “contravene any federal or state statutes or the order of any court or responsible governmental or administrative authority.” However, she notes none of the petitions advised the trial court that the annuity policy contained an anti-assignment provision and two of the petitions contained language indicating the settlement documents might contain language prohibiting her right to assign her payments but that provision was waived by the parties. Jerrisia argues the statements and Stone Street’s

petitions were directly contrary to appellate court case law and were unsupported by a good-faith argument for the modification or reversal of that case law.

“The Illinois General Assembly enacted provisions of the [Act] (215 ILCS 153/1 to 35 (West 2004)), and its predecessor statute (215 ILCS 5/155.34 (West 1998)), to protect settlement recipients from the growing number of factoring companies using the allure of quick and easy money to induce settlement recipients to cash out their future payments at substantial discounts, depriving victims and their families of the long-term financial security the structured settlements were designed to provide.” *Settlement Funding, LLC v. Brenston*, 2013 IL App (4th) 120869, ¶ 34, 998 N.E.2d 111.

¶ 47 Effective July 30, 1998, section 155.34(b) of the Illinois Insurance Code (Insurance Code) (215 ILCS 5/155.34(b) (West 2000)) provided “[n]o person who is the beneficiary of a structured settlement of a claim for personal injury may assign in any manner the payments of the settlement without prior approval of the circuit court of the county where an action was or could have been maintained.” Section 155.34 of the Insurance Code consisted of only two subsections at that time. 215 ILCS 5/155.34(a), (b) (West 2000).

¶ 48 In cases involving a structured settlement agreement containing an anti-assignment provision, courts thereafter held the provision must be enforced and any attempt to assign the settlement payments was void. See *Henderson v. Roadway Express*, 308 Ill. App. 3d 546, 552, 720 N.E.2d 1108, 1113 (1999) (finding the anti-assignment provision could not be waived); *Green v. Safeco Life Insurance Co.*, 312 Ill. App. 3d 577, 581, 727 N.E.2d 393, 397

(2000) (citing section 155.34(b) of the Insurance Code and finding the trial court abused its discretion by failing to uphold the language of the anti-assignment provision in the settlement agreement); *In re Nitz*, 317 Ill. App. 3d 119, 123, 739 N.E.2d 93, 98 (2000) (citing section 155.34(b) of the Insurance Code and finding “[w]here a structured settlement agreement does not permit the payments to be assigned, the court’s authority to act on a petition seeking approval of the assignment of payments under such an agreement is not invoked, and the petition should be dismissed”); *In re Shaffer*, 319 Ill. App. 3d 1048, 1058, 746 N.E.2d 285, 293 (2001) (finding the anti-assignment provision was valid and holding the trial court had no discretion to review the proposed assignment under section 155.34 of the Insurance Code).

¶ 49 Effective January 1, 2004, the General Assembly replaced section 155.34 of the Insurance Code with the new Act (215 ILCS 153/1 to 35 (West 2004)), which included multiple sections on definitions, required disclosures to payees, approval and effects of transfers, procedures for approval of transfers, and general provisions. Section 25 of the Act included similar language as the Insurance Code, stating “[n]o payee or beneficiary of a payee of a structured settlement may assign in any manner the structured settlement payment rights without the prior approval of the circuit court or responsible administrative authority.” 215 ILCS 153/25(a) (West 2004).

¶ 50 Section 15 of the Act (215 ILCS 153/15 (West 2004)) provided as follows:

“No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in

a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(1) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;

(2) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and

(3) the transfer does not contravene any applicable statute or the order of any court or other government authority.”

Section 5 of the Act (215 ILCS 153/5 (West 2004)) noted a “transfer” included an assignment.

¶ 51 Jerrisia relies on *Brenston*, 2013 IL App (4th) 120869, ¶ 45, 998 N.E.2d 111, which held “the Act did not apply because of the anti[-]assignment clause in the settlement agreement and the annuity contract, and thus the trial court was without authority to approve Settlement Funding’s petitions under the Act.” She also notes, attorney Mack, who represented Stone Street in each of the four petitions, was the attorney in *Henderson*, 308 Ill. App. 3d at 550-52, 720 N.E.2d at 1111-13, where in a case of first impression, this court found the presence of an anti-assignment provision prohibited assignment of periodic payments. Further, attorney Mack was counsel in *Nitz*, 317 Ill. App. 3d at 125-26, 739 N.E.2d at 99-100, where the Second

District followed the ruling in *Henderson* and dismissed a petition seeking assignment of structured settlement payments in a personal injury case. Attorney Mack was also counsel in *Shaffer*, 319 Ill. App. 3d 1057, 746 N.E.2d at 293, where the First District upheld the language of an anti-assignment clause for the same reasons. Even after the legislative change in 2004, which replaced section 155.34 of the Insurance Code with the new Act, the Second District found two years later in *In re Foreman*, 365 Ill. App. 3d 608, 615, 850 N.E.2d 387, 392-93 (2006), an anti-assignment provision like the one here deprived the trial court of the authority to approve the assignment. In the *Brenston* case, also handled by attorney Mack, this court went so far as to note, as we do here, how Settlement Funding (the structured settlement factoring company in that case) could hardly plead ignorance of the law with regard to the effect of anti-assignment provisions in structured settlement agreements like the one before us where attorney Mack was the attorney of record in the three cases most frequently cited on this issue. *Brenston*, 2013 IL App (4th) 120869, ¶ 40, 998 N.E.2d 111.

¶ 52 In denying Jerrisia’s motion for sanctions, the trial court found Stone Street “had a well-found[ed] basis for either believing that the existing law supported [its] position, at least some of the decisions would tend to support their position or at the very least that a modification or reversal of the existing law was appropriate.” The court concluded Stone Street “legally *** [was] permitted to bring the petitions.”

¶ 53 We find the trial court abused its discretion in denying the motion for sanctions on this issue. Since 1999, the Illinois Appellate Court has repeatedly held that where a structured settlement agreement contains an anti-assignment provision, that provision must be enforced and renders any attempt to assign structured settlement payments void. Stone Street cannot plead ignorance of this case law as attorney Mack was heavily involved in many of those cases. More

importantly, Stone Street was thus bound by that case law when it presented its petitions to the trial court. However, in its first two petitions, Stone Street did not reference the possible existence of an anti-assignment clause, suggesting an attempt to hide this fact from the court. Such conduct cannot be countenanced.

¶ 54 Also, although *Brenston* had not been decided when Stone Street filed its four petitions, Stone Street's conduct was in many ways similar to the conduct found to be fraudulent in that case. See *Brenston*, 2013 IL App (4th) 120869, ¶¶ 37-41, 998 N.E.2d 111. Thus, Stone Street was certainly aware of *Brenston* when Jerrisia filed her motions to vacate, and yet it still took almost a year and a half for Stone Street to settle the case. At the hearing on the motion for sanctions, counsel for Stone Street stated it did not engage in any transactions after *Brenston* was decided and until the Act was amended. However, we note Stone Street did solicit a new transaction with Jerrisia in its December 2014 letter. This solicitation occurred over one year after *Brenston* was decided and before the effective date of the 2015 amendment to the Act. This suggests Stone Street intended to continue purchasing structured settlements, regardless of any anti-assignment language, and thereby continue to ignore the case law because there would be no party to appeal the granting of its petitions if both sides agreed to waive that language.

¶ 55 Given the totality of Stone Street's conduct in connection with the four petitions at issue in this appeal, we find sanctions under Supreme Court Rule 137 (eff. July 1, 2013) are appropriate. As the trial court abused its discretion in denying Jerrisia's motion for sanctions, we remand for further proceedings on her motion.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 58

Reversed and remanded for further proceedings.