NOTICE
Decision filed 04/17/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 180239-U

NO. 5-18-0239

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

FANNY URFER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Shelby County.
	)	
v.	)	No. 14-L-12
	)	
JAMES PERDUE,	)	Honorable
	)	Martin W. Siemer,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held*: Where the record on appeal does not provide a basis to conclude that the trial court abused its discretion by denying James Perdue's motion for assessment of sanctions pursuant to Illinois Supreme Court Rule 137(a) (Ill. S. Ct. R. 137(a) (eff. July 1, 2013)), we affirm.

¶ 2 This appeal involves James Perdue's motion seeking sanctions from Fanny Urfer (Urfer) after the trial court allowed her to voluntarily dismiss her case for the second time. Urfer responded by filing her own motion seeking sanctions from James Perdue (Perdue). After a hearing on the record, the trial court denied both motions. From that order, Perdue timely appeals pursuant to Illinois Supreme Court Rule 301 (Ill. S. Ct. R. 301 (eff. Feb. 1, 1994)). Previously on November 2, 2017, the trial court dismissed Urfer's third amended complaint with prejudice, subject to Urfer's right to file her own motion asking for sanctions. The judgment

denying both motions for sanctions is final and appealable because the dismissal of Urfer's complaint concluded the case except for the sanctions requests. Accordingly, we have jurisdiction to consider this appeal.

¶ 3 FACTS

¶ 4 Urfer was at all relevant times a resident of the village of Tower Hill, a community of approximately 650 residents. Urfer served as the village's mayor from 1986 to 2009 and later became a member of the village's board of trustees. Perdue is a former resident of the village of Tower Hill.

¶ 5 When Perdue moved to Tower Hill, he placed a double wide mobile home on a lot without first obtaining a building permit from the village. Thereafter, he placed a carport on the lot. The mobile home was not compliant with village rules because it was placed too close to the road, and the carport was not compliant with village rules because a large portion of the carport was placed on public land. Ultimately, the village of Tower Hill filed suit against Perdue in an effort to obtain compliance with its zoning rules.

¶ 6 Urfer filed an initial complaint against Perdue in 2012.[1] That complaint was voluntarily dismissed on November 1, 2013. On September 2, 2016, Urfer refiled her complaint against Perdue alleging intentional infliction of emotional distress and malicious prosecution.

¶ 7 We briefly review Urfer's allegations of Perdue's behavior spanning more than 10 years to have a factual understanding of Urfer's lawsuit against Perdue. Perdue and his family attended village meetings to complain about the initial zoning issues. Due to behavior exhibited at that meeting, a county sheriff's deputy reported to the meeting and escorted Perdue and his family out of the meeting. Perdue and his family then began filing Freedom of Information Act

[1] *Urfer v. Perdue* was filed in Shelby County as 12-L-8. That case record is not part of the record in this appeal, and so we do not know the allegations of that complaint.

(FOIA) requests. 5 ILCS 140/1 *et seq.* (West 2016). Perdue also made allegations and filed complaints about Urfer to various governmental representatives and agencies. Urfer generally alleges that Perdue has a history of violent actions. Urfer claims that Perdue would frequently drive slowly by her home and if he made eye contact with Urfer or a family member, he would either shake his fist or make an obscene hand gesture towards Urfer or the family member he encountered. Urfer also claims that she knows of two occasions when Perdue drove his vehicle directly towards a person in an apparent effort to instill fear. One of the targeted persons was a village employee and the other was the spouse of a village employee. As a result of encounters with Perdue, the village redesigned the layout of its office so that all desks faced the front doors in order to have advance warning if Perdue approached. Similarly, the village treasurer's office was relocated behind protective glass. An off-duty sheriff's deputy attends all village meetings in the event that Perdue attends.

¶ 8 It was because of these types of interactions with Perdue that Urfer filed her complaint. Urfer alleged that she has suffered emotional distress because of Perdue's actions. She also accused Perdue of malicious prosecution because he filed a libel lawsuit against her on the basis of statements Urfer made in an affidavit in response to a Perdue-filed FOIA case. The trial court dismissed Perdue's complaint. This court affirmed. *Perdue v. Finley*, 2012 IL App (5th) 110225-U. Urfer also contended that Perdue's repeated complaints filed with various governmental entities constituted malicious prosecution. She amended the complaint twice and added a third count for spoliation of evidence related to a report that Perdue had burned many documents that could have been the subject of a discovery request.

¶ 9 Perdue filed a motion for summary judgment on October 27, 2017. Perdue contended that all of his actions constituted protected constitutional speech. He also argued that Urfer's

complaint was barred by the two-year statute of limitations applicable to her tort claims. Perdue also claimed that he was not subject to a duty to preserve documentary evidence and therefore Urfer would not be able to state a cause of action for spoliation of evidence.

¶ 10 On November 1, 2017, Urfer filed another motion to voluntarily dismiss her complaint, citing the deterioration of her health.[2] The next day, on November 2, 2017, the trial court held a phone hearing on all pending motions. The trial court granted the motion to voluntarily dismiss the complaint with prejudice but allowed Urfer the opportunity to file a motion for sanctions. Perdue withdrew his motion for summary judgment.

¶ 11 On November 27, 2017, Perdue filed his motion for assessment of sanctions. He complained of Urfer's two voluntary dismissals, issues with Urfer's discovery compliance, and his $51,309.25 in incurred attorney fees. Perdue asked the court to award him an appropriate sanction.

¶ 12 Thereafter, on February 14, 2018, Urfer filed her motion for assessment of sanctions. Urfer complained of issues with Perdue's discovery compliance.

¶ 13 On March 15, 2018, the trial court held its hearing on the competing motions for assessment of sanctions. The trial court's written order denied both motions "for reasons stated on the record." The record on appeal does not contain a transcript of this motion hearing or other report of the trial court's findings, and thus we do not know what the court's rationale for denying both motions was.

[2]Although the pleading is dated November 1, 2017, and the proof of service establishes that it was sent to the court and opposing counsel that same date, the motion was not file-stamped by the court until November 6, 2017. The trial court's November 2, 2017, order rules upon the November 1, 2017, dated motion to dismiss.

¶ 14 Perdue filed his notice of appeal on April 13, 2018. Urfer's attorney in the trial court passed away in May 2018, and she proceeds *pro se* in this appeal. Urfer did not file a responsive brief in this court.

¶ 15 LAW AND ANALYSIS

¶ 16 Perdue alleges that the trial court's denial of his request for sanctions pursuant to Illinois Supreme Court Rule 137(a) was erroneous. On review, we must determine whether the trial court abused its discretion. *Enbridge Pipeline (Illinois), LLC v. Hoke*, 2019 IL App (4th) 150544-B, ¶ 49, ___ N.E.3d ___ (citing *Mohica v. Cvejin*, 2013 IL App (1st) 111695, ¶ 47, 990 N.E.2d 720). The standard of review is deferential, in part, because the "conduct" occurred in the trial judge's presence, and therefore the trial judge is in the best position to determine if sanctions are warranted. *Mohica*, 2013 IL App (1st) 111695, ¶ 78 (Gordon, J., specially concurring). An abuse of discretion occurs if no reasonable person would agree with the trial court's decision. *Enbridge Pipeline (Illinois), LLC*, 2019 IL App (4th) 150544-B, ¶ 49 (citing *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16, 39 N.E.3d 992). On appeal, we may affirm the trial court's decision on sanctions for any reason provided in the record. *Id.*

¶ 17 Perdue's motion was filed pursuant to Rule 137(a), which provides:

> "Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. *** The signature of an attorney *** 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." Ill. S. Ct. R. 137(a) (eff. July 1, 2013).

¶ 18 Here, Perdue asked for sanctions, contending that Urfer's litigation was frivolous. Perdue answered Urfer's complaint, denied all allegations, and filed discovery requests seeking copies of all documentation, including minutes and audio/photo/video recordings of Tower Hill village meetings, as well as documentation of any other events described in her complaint. Perdue stated that Urfer never fully complied with these requests. He also alleged that Urfer was not compliant when he attempted to set deposition of her listed witnesses. Having not received dates when the witnesses were available, Perdue scheduled the depositions on his own. Before the depositions were taken, Urfer voluntarily dismissed her 2012 complaint. Perdue theorizes that Urfer dismissed the complaint to avoid producing the documents he requested and to keep him from deposing her witnesses. After Urfer filed a new complaint, Perdue again filed his discovery requests. He asserted that Urfer provided some answers but not all of the dates, times, and places of the actions as alleged in her complaint. When Urfer added the spoliation of evidence count to her third amended complaint, Perdue sent additional discovery requests seeking to confirm her claim. Perdue claimed that Urfer did not respond to these requests. In conclusion, Perdue argued that Urfer's claims were not well-grounded in fact, nor warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

¶ 19 The Illinois Supreme Court has enacted rules regarding the record required on appeal. Illinois Supreme Court Rule 321 requires that the record on appeal "shall also include any report of proceedings prepared in accordance with Rule 323." Ill. S. Ct. R. 321 (eff. Feb. 1, 1994). A report of proceedings can include "evidence, oral rulings of the trial judge, a brief statement of the trial judge of the reasons for his decision, and any other proceedings that the party submitting it desires to have incorporated in the record on appeal." Ill. S. Ct. R. 323(a) (eff. July 1, 2017). If a hearing was recorded, the appellant must ask the court reporting personnel to prepare a transcript of the proceedings within a set time frame. *Id.* If the hearing was not recorded or there are no personnel to prepare a transcript, the appellant may prepare a bystander's report—"a proposed report of proceedings from the best available sources, including recollection." Ill. S. Ct. R. 323(c). Alternatively, the parties may file a written stipulation upon an agreed statement of facts material to the controversy. Ill. S. Ct. R. 323(d).

¶ 20 The appellant bears the burden to present a sufficiently complete record of the trial court proceedings to support the claimed error. *Ladao v. Faits*, 2019 IL App (1st) 180610, ¶ 27, __ N.E.3d ___ (quoting *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984)); see also *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319, 789 N.E.2d 1248, 1251 (2003). In the absence of a complete record on appeal, the reviewing court will presume "that the order entered by the trial court was in conformity with the law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 391-92. Any doubts resulting because the record on appeal is incomplete will be resolved against the appellant. *Id.* at 392 (citing *Block & Co. v. Storm Printing Co.*, 40 Ill. App. 3d 92, 96, 351 N.E.2d 271, 274 (1976); *Sandberg v. American Machining Co.*, 31 Ill. App. 3d 449, 452, 334 N.E.2d 246, 248 (1975)).

¶ 21 Here, Perdue did not file a transcript of the March 15, 2018, hearing; did not file a bystander's report; and did not file an agreed statement of facts. As there is no transcript, report, or statement outlining the trial court's reason(s) for denying Perdue's motion for assessment of sanctions, we have no basis to conclude that the trial court abused its discretion in denying that motion. *Foutch*, 99 Ill. 2d at 392. We resolve these doubts about the record against Perdue. *Id.* Therefore, we affirm the order denying Perdue's motion for assessment of sanctions.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we affirm the judgment of the Shelby County circuit court.

¶ 24 Affirmed.