

No. 1-18-2692

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
FIRST DISTRICT

CALVIN GRIGSBY and GRIGSBY & ASSOCIATES,) Appeal from the
) Circuit Court of
 Plaintiffs-Appellants,) Cook County.
)
 v.) No. 17 CH 9507
)
 ILLINOIS SECRETARY OF STATE,) Honorable
) Thomas R. Allen,
 Defendant-Appellee.) Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court’s order denying plaintiffs’ motion for sanctions is affirmed. Illinois Supreme Court Rule 137 does not allow plaintiffs to obtain a sanction order based only on alleged violations of the rule that took place at the administrative level.
- ¶ 2 Plaintiffs, Calvin Grigsby (Grigsby) and Calvin Grigsby & Associates, appeal the trial court’s order denying their motion for sanctions against defendant Illinois Secretary of State (SOS). We affirm because plaintiffs sought a sanction order based on allegations made at the

administrative level and, therefore, could not obtain a sanction order under Illinois Supreme Court Rule 137(c) (eff. Jan. 1, 2018).

¶ 3 This case arises out of allegations defendant filed with the Illinois Securities Department against plaintiffs in connection with financial investment advice plaintiffs gave to the Illinois Student Assistance Commission (ISAC) in 2008. Given our conclusion, we will only include the facts necessary for an understanding of our disposition.

¶ 4 In 2012, defendant filed a notice of hearing with the Illinois Securities Department alleging, *inter alia*, that in January, June, and September 2008, plaintiffs completed three Offering Analyses and two prudence opinion letters for ISAC relating to ISAC's investment in ShoreBank Corporation (SBC). Defendant alleged that plaintiffs recommended that ISAC invest in SBC despite warning signs in August 2008 that SBC had missed its financial performance projections. ISAC invested \$12,712,500 in SBC and, in August 2010, the FDIC closed SBC, which wiped out ISAC's investment. Defendant alleged that plaintiffs, *inter alia*, violated their fiduciary duties to ISAC, made material misrepresentations, and violated various provisions of the Illinois Securities Law of 1953 (Act) (815 ILCS 5/1 *et. seq.* (West 2012)).

¶ 5 Following a multi-day hearing before a hearing officer with the Illinois Securities Department, in May 2016, the hearing officer issued a report and recommendation, in which he concluded that the record did not support a finding that plaintiffs violated the Act and recommended that defendant dismiss the matter. The record does not show that defendant ever issued an order on the hearing officer's recommendation.

¶ 6 On July 12, 2017, plaintiffs filed a complaint in the circuit court, alleging that defendant violated their due process rights when it failed to promptly enter an award on the hearing officer's order and requesting the court enter a judgment requiring defendant to approve the hearing

officer's ruling. The Illinois Attorney General's Office represented defendant in the trial court proceedings.

¶ 7 Thereafter, on July 19, 2017, defendant issued an "Order of Censure and Fine" against plaintiffs, in which it rejected, in part, the hearing officer's findings of fact and recommendation to dismiss the case, concluded that plaintiffs violated section 12(A) of the Act, and censured each plaintiff \$1,000.

¶ 8 Then, in August 2017, plaintiffs filed an amended complaint in the circuit court, which sought additional relief under the Administrative Review Law (735 ILCS 5/3-104) (West 2016)). Plaintiffs alleged, *inter alia*, that defendant's charges before the hearing officer were meritless and that the hearing officer rejected those charges. The trial court's June 5, 2018, order found that the facts and conclusions of law in defendant's July 19, 2017, "Order of Censure and Fine" were clearly erroneous and against the manifest weight of the evidence.

¶ 9 On July 3, 2018, plaintiffs subsequently filed in the trial court a motion for sanctions under Rule 137 alleging that defendant had filed meritless charges with the hearing officer and they are entitled to reasonable expenses under sections (a) and (c) of the rule.¹ They alleged that Grigsby had "been unable to secure municipal financing work" and that the "charges have also harmed [Grigsby's] law practice which he attempted to restart around the time these charges were brought." Plaintiffs requested the trial court grant an award for the reasonable expenses they incurred to defend the action before the hearing officer and requested the award be entered against defendant and the attorney who represented defendant in that proceeding. Plaintiffs stated that they

¹ The record shows that on September 19, 2018, plaintiffs filed an "Introduction and Summary of Claims" in the Court of Claims, in which they asserted that their request for fees must be adjudicated in either in the circuit court or Court of Claims and requested an award of attorney fees and costs incurred in the administrative action. In plaintiffs' reply brief on appeal, they assert that the action in the Court of Claims is currently stayed pending the outcome of this appeal.

were not seeking an award against the Illinois Attorney General's Office or the attorney who handled the matter for that office.

¶ 10 Plaintiffs attached to their motion a "Certification of Stephen Scallan," who represented plaintiffs in this matter since 2013. In this affidavit, Scallan averred that plaintiffs incurred a total of \$140,480.39 in legal fees to defend this matter, which included \$108,156.40 for costs expended during the administrative proceedings. Scallan asserted that plaintiffs were seeking to recover the expenses incurred during the administrative action and "was not seeking the remainder except to the extent he is required to do so under Supreme Court Rule 137." Scallan further stated that plaintiffs did not desire to pursue a fee award against the assistant attorney general who represented defendant during the trial court proceedings and that, in the alternative, plaintiffs were seeking an award against defendant and the attorney who represented defendant during the administrative action for the entire amount of \$140,480.39.

¶ 11 The court denied plaintiffs' motion for sanctions, finding that Rule 137 did not govern the motion. The court also concluded that, even if Rule 137 did govern the motion, it would find that defendant did not violate the rule.

¶ 12 On appeal, plaintiffs contend that the court erred when it denied their motion for sanctions under Rule 137. Plaintiffs assert that they are entitled to the reasonable expenses incurred to defend this action before the hearing officer and that Rule 137(c) allows them to obtain an award against defendant for the costs they incurred to defend allegations made at the administrative level. Plaintiffs claim that defendant's case consisted of factually untrue and baseless charges that both the hearing officer and the trial court rejected and that defendant never had any evidence that plaintiffs engaged in wrongdoing or that their investment advice violated any standard of care or the Illinois Securities Code.

¶ 13 Rule 137(a) states, in relevant part, as follows:

“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.” Ill. S. Ct. R. 137(a) (eff. Jan. 1, 2018).

Rule 137(a) provides that the court may impose on the person or a represented party who signed the document an appropriate sanction, which may include an order to pay “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. Jan. 1, 2018).

¶ 14 Rule 137(c), which is entitled, “Applicability to State Entities and Review of Administrative Determinations,” states as follows:

“This rule shall apply to the State of Illinois or any agency of the State in the same manner as any other party. Furthermore, where the litigation involves review of a determination of an administrative agency, the court may include in its award for expenses an amount to compensate a party for costs actually incurred by that party in contesting on the administrative level an allegation or denial made by the State without reasonable cause and found to be untrue.” Ill. S. Ct. R. 137(c) (eff. Jan. 1, 2018).

¶ 15 The purpose of Rule 137 “is to prevent parties from abusing the judicial process by imposing sanctions on litigants who file vexatious and harassing actions based upon unsupported allegations of fact or law.” *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217

(2007). Rule 137 “applies only to pleadings, motions, and other papers filed by a litigant.” *Benz v. Department of Children and Family Services*, 2015 IL App (1st) 130414, ¶ 45.

¶ 16 Citing this court’s decision in *Benz*, 2015 IL App (1st) 130414, defendant asserts that Rule 137(c) does not apply to plaintiffs’ request for sanctions because they sought an award of sanctions based solely on the allegations defendant made during the administrative proceedings. At the hearing on plaintiffs’ motion for sanctions, the trial court stated that *Benz* was “very close and on point to our discussion” and concluded that Rule 137 did not apply. We agree and, following our decision in *Benz*, conclude that Rule 137 does not allow plaintiffs to obtain a sanctions order that is independent of the proceedings in the trial court.

¶ 17 In *Benz*, the plaintiffs argued on appeal that they were entitled to sanctions against the Illinois Department of Children and Family Services (DCFS) because, in the administrative proceedings, DCFS asserted an argument that was legally erroneous and lacked a reasonable basis. *Id.* ¶ 43. The plaintiffs argued that under Rule 137(c), they could seek sanctions in the trial court for a “false argument” made at the administrative level. *Id.* ¶ 46. This court found that Rule 137(c) did not allow the trial court to issue a sanction order that was “independent of the proceedings in the trial court.” *Id.* ¶ 47. Rather, this court concluded that the provision “allows that a sanction order for an improper *court* filing may also include expenses incurred at the administrative level.” (Emphasis in original.) *Id.* In reaching this conclusion, this court stated that, under Illinois Supreme Court Rule 1 (eff. July 1, 1982), the supreme court limits the applicability of the supreme court rules to civil and criminal proceedings and that, with respect to a trial court’s review of an administrative proceeding, the supreme court “dictates that litigation commences, and the parties become ‘litigants’ within the meaning of the rules when a plaintiff files a complaint for administrative review in the circuit court.” *Benz*, 2015 IL App (1st) 130414, ¶ 45. Thus, the court

noted that before a plaintiff files a complaint for administrative review no litigation exists, and therefore the supreme court rules do not yet apply. *Id.*

¶ 18 Here, following *Benz*, we conclude that Rule 137 does not apply to plaintiffs' request for sanctions because plaintiffs sought a sanction order for allegations defendant made at the administrative level that were independent of the proceedings in the trial court. In plaintiffs' motion for sanctions, they sought an award for costs incurred to defend this action before the hearing officer and requested an award against defendant and the attorney who prosecuted the case before the hearing officer. Plaintiffs expressly asserted in their motion that they were not seeking an award against the Illinois Attorney General's Office, which represented defendant during the trial court proceedings. They did not request sanctions based on any improper allegations made by a litigant in any court filings filed in the trial court. Accordingly, plaintiffs requested a sanction order that was independent of the proceedings in the trial court. Thus, we conclude that the trial court did not err in denying plaintiffs' motion for sanctions and in finding that Rule 137 did not govern the motion. See *id.* ¶ 47 (this court concluded that the plaintiffs' request for sanctions under Rule 137(c), which were based on an erroneous legal argument made at the administrative level, did not "provide a vehicle for a sanction order that is independent of the proceedings in the trial court").

¶ 19 We note that plaintiffs assert that in the affidavit attached to their motion for sanctions, they sought, in the alternative, the total amount of expenses incurred at both the administrative and trial court levels. Although plaintiffs made an alternative request for award for the total amount of expenses incurred at both the administrative and trial court levels, plaintiffs did not request an award for sanctions based on any improper court filings made, or violations of Rule 137, in the trial court proceedings. Rather, as previously discussed, their request was based only on allegations

defendant made at the administrative level, and not on any improper allegations made in a court filing in the trial court proceedings. Plaintiffs' alternative request does not entitle them to Rule 137 sanctions.

¶ 20 Finally, given our conclusion, we need not determine whether defendant's conduct violated Rule 137.

¶ 21 For the reasons explained above, we affirm the judgment of the trial court.

¶ 22 Affirmed.