

No. 123622

IN THE SUPREME COURT OF ILLINOIS

ABRAHAM LINCOLN REYNOLDS, III,
2006 DECLARATION OF LIVING TRUST;
ROZLYN TAYLOR, Individually and as
Trustee; and MARVIN GRAY,

(Marvin Gray)
Petitioner,

v.

GERALD S. McCARTHY,

Respondent.

On review of the opinion of the Appellate Court of Illinois
First Judicial District, No. 1-16-2478

There on appeal from the Cook County Circuit Court,
No. 14 CH 09651
The Honorable Kathleen M. Pantle, Judge Presiding

TABLE OF CONTENTS OF
RECORD ON APPEAL

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TABLE OF CONTENTS OF RECORD ON APPEAL

NOW COMES the Petitioner, Marvin Gray, and pursuant to Supreme Court Rule 315(h) and states that the following Table of Contents consists of the chronologically-numbered pleadings or rulings, a summary of each pleading or ruling and the page numbers where such pleadings or rulings are found in the Record on Appeal that pertain to the instant appeal. The first four numbered bold and italicized “items” refer to pleadings and rulings contained in the Record on Appeal referencing a prior and related cause filed by the plaintiff below, Gerald McCarthy, and heard before Judge Rodolfo Garcia and the Appellate Court of the First District. (It is believed that this Supreme Court denied leave to appeal to that plaintiff, in Cause Number 183292, but the petitioner does not recall noting that denial in the Record on Appeal.):

TABLE OF CONTENTS OF RECORD ON APPEAL

Item #	Pleading or Ruling	Summary of Pleading or Ruling	Location in ROA
<i>1</i>	<i>Court order entered by Judge Rodolfo Garcia on May 9, 2013 in cause numbered 13 CH 00278</i>	<i>Granting judgment in favor of Defendant, Rozlyn Taylor and against the Plaintiff, Gerald McCarthy</i>	<i>C 162</i>
<i>2</i>	<i>Report of Proceedings of May 9, 2013 in cause numbered 13 CH 00278</i>	<i>“Judgment is entered in favor of Defendant, Rozlyn Taylor, and against Plaintiff—“ (at C 182)</i>	<i>C 163 to C 184</i>
<i>3</i>	<i>Final Order Denying Motion To Reconsider entered June 14, 2013 in cause numbered 13 CH 00278</i>	<i>“Plaintiff’s motion for reconsideration is DENIED.” (at C 185)</i>	<i>C 185 to C 187</i>
<i>4</i>	<i>Opinion of the Appellate Court of Illinois (First District) in cause numbered 1-13-2239 dated August 22, 2014</i>	<i>The decision of the trial court is affirmed</i>	<i>C 89 to C 110</i>

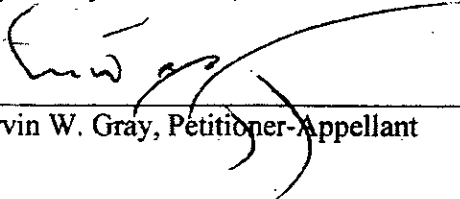
5	<u>The plaintiff's Verified Complaint For Inventory And Accounting, Removal Of Rozlyn Taylor, As Trustee, Claim On Trust Assets (,) Breach Of Fiduciary Duty, And Tortious Interference With Expentency (sic)</u>	a) The defendant had a fiduciary duty to the beneficiary which was breached. b) The defendant made false statements at the previous hearing and presented misleading evidence in the previous hearing.	C 5 to C 24 and C 27 To C 45
6	<u>The defendant's Motion To Strike And Dismiss And/Or For Summary Judgment Regarding Counts Iv And V Of The Plaintiff's Verified Complaint...</u>	a) The defendant was retained to represent the trust only and the plaintiff had filed an action against that trust. b) The plaintiff's contentions violate <i>Res judicata</i> and the decision of the previous hearing.	C 120 to C 131
7	<u>The plaintiff's Response to Defendant Gray's Motion To Strike and Dismiss...</u>	a) The defendant's assertion that he, as attorney for the trust, does not owe a duty to the trust's beneficiary is contrary to <i>Neal</i> . b) An attorney can have a duty to a beneficiary and all elements of <i>res judicata</i> are not present	C 191 to C 194
8	<u>The defendant's Reply to The plaintiff's Response...</u>	a) <i>Neal</i> holds that where trust attorney defends against a beneficiary, the attorney owes no duty to that beneficiary. b) The requirements for <i>res judicata</i> are present and separate claims are considered the same cause of action when they arise from a single group of operative facts.	C 204 to C 208
9	ORDER OF COURT	a) Count IV stricken with leave to re-plead, at C 216. b) Count V dismissed with prejudice at C217.	C 212 to C 221
10	<u>The plaintiff's Amended Verified Complaint For Inventory And Accounting, Removal Of Rozlyn Taylor, As Trustee, Claim On Trust Assets, And Breach Of Fiduciary Duty</u>	The defendant intentionally breached his fiduciary duty to act with due care, at C 230.	C 222 to C 240

11	<u>The defendant's Motion To Dismiss Amended Verified Complaint...</u>	The plaintiff does not plead the existence of a fiduciary duty, a breach thereof, resultant damages nor special facts that come within the general exception.	C 245 to C 249 and C 252 to C 254
12	<u>The plaintiff's Response to Motion To Dismiss Amended Verified Complaint...</u>	The defendant intentionally breached his fiduciary duty and deprived the plaintiff of trust assets, inventory, accounting, funds for a social affair and his rightful share of the trust.	SUP2:C 5 to C 9
13	<u>Defendant Marvin Gray's Reply To Plaintiff's Response To Motion To Dismiss Verified Complaint...</u>	The plaintiff mis-states the law; "When an adversarial situation arises, the attorney for the executor owes allegiance only to the estate" and again fails to plead special facts to invoke the exception.	C 270 to C 279
14	ORDER OF COURT	Count V dismissed with prejudice: "...The plaintiff once again pleaded the alleged existence of the defendant's fiduciary duty without any supporting facts."	C 330 to C 335
15	<u>The defendant's Motion For Sanctions Against The Plaintiff Attorney with a Time & Expense Accounting and Recapitulation with Time and Expense Schedule</u>	Defendant prays for costs and expenses in the amount of \$11,232.55	C 359 to C 370
16	<u>The defendant's Motion For Leave to File A First Amended Motion For Sanctions..., on the basis of typographical errors</u>	Self-explanatory	C 405 to C 407
17	<u>The defendant's First Amended Motion For Sanctions Against The Plaintiff Attorney</u>	The plaintiff's pleadings were filed in contravention of SC Rule 137 and 735 ILCS 5/1-109 and praying for damages in the amount of \$11,232.55.	C 421 to C 433
18	<u>The plaintiff's Response To First Amended Motion To (sic) Sanctions</u>	No false statements were identified and that a pro se attorney is not entitled to attorney's fees	C 442 to C 443

19	<u>The defendant's Reply To Response To First Amended Motion...</u>	Invoking the language of the prior court order and praying for an increase in costs and fees to the amount of \$12,106.03, including subsequent time expended	C 445 to C 456
20	ORDER OF COURT	<ol style="list-style-type: none"> 1. No basis in law for the plaintiff to file Count IV (fiduciary duty); 2. Sanctions are available to the defendant for Count V (false statements and misleading evidence); 3. No law found prohibiting attorney's fees to a pro se lawyer; and 4. The defendant to file a supplemental pleading 	C 511 to C 516
21	<u>The defendant's Supplemental Petition For Sanctions Against The Plaintiff Attorney</u>	If sanctions are appropriate for Count IV of the original complaint, they should be appropriate for Count V of the amended complaint because the counts are virtually indistinguishable, reducing his claim for costs and fees to \$8,745.58.	C 518 to C 528
22	<u>Plaintiff's Response To Supplemental Petition For Sanctions...</u> with exhibit—the court order of March 30, 2016	The defendant ignores the court order, presents no new material and the request for fees of \$8,643.30 should be denied.	C 536 to C 545
23	<u>Plaintiff's Motion For Reconsideration</u>	Court mis-applied existing case law, based its decision on allegations not argued in the Defendant's motion for sanctions, failed to appreciate the timeliness of the plaintiff's complaint and praying that the order of March 30, 2016 be set aside.	SUP2: C 10 to C 21
24	<u>Response of Defendant Marvin Gray To Plaintiff's Motion For Reconsideration,</u>	The plaintiff's motion seems to be directed to the court's order of August 25, 2015 when the counts of his original complaints were addressed	C 530 to C 535

25	<u>Plaintiff's Reply To Response of Defendant Marvin Gray To Plaintiff's Motion For Reconsideration</u>	(1) the defendant seeks to circumvent the issue; (2) the Garcia hearing dealt with the validity of the amendment and the Pantle action dealt with the actions of the defendants after the Garcia hearing; (3) the plaintiff seeks to remove the sanctions; and (4) "...fees for representing yourself are not expenses and do not apply."	C 548 to C 549
26	ORDER OF COURT	(1) Sanctions are available to a pro se attorney in reference to Rule 137; (2) Plaintiff's motion for reconsideration is denied as Gray was found to have been a credible witness; Gray is granted a sanction award in the amount of \$9,707.08	SUP1: C 4 to C 9
27	CORRECTED ORDER OF COURT	Corrected error contained in the order that she entered on March 30, 2016: "The Court is willing to award the defendant a sanction for having to defend himself against the frivolous Count V of the original complaint".	C 551 to C 556

Respectfully submitted,



 Marvin W. Gray, Petitioner-Appellant

October 5, 2018
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**STATEMENT OF THE STANDARD OF
REVIEW PURSUANT TO SUPREME COURT
RULE 315(h)**

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STATEMENT OF THE STANDARD OF REVIEW
PURSUANT TO SUPREME COURT RULE 315(h)

1. That the overarching issue in this matter is confined to whether the Appellate Court ruled correctly when it, *inter alia*, while affirming the finding of the trial court that the plaintiff below violated Rule 137 by filing frivolously and that the trial court did not abuse its discretion by imposing Rule 137 sanctions, reversed the trial court's award of attorney's fees to this petitioner because the petitioner appeared *pro se*, in light of this Court's previous ruling, in Hamer v. Lentz, 132 Ill. 2d. 49 and its "progeny", that *pro se* attorney's do not incur attorney's fees. However, within that larger issue, subordinate issues may be identified, including:

A. Whether Hamer should preclude *pro se* attorney's fees incurred by a party defending against frivolous pleadings;

B. Whether the purpose and function of Supreme Court Rule 137, i.e., to discourage the filing of frivolous pleadings, is lost and unavailable to a *pro se* party who defends against frivolous pleadings;

C. Whether the fact that the sole Illinois body of authority precluding an award of *pro se* attorneys' fees involves only fee claimants who initiated the respective actions themselves should also function to preclude other fee claimants who are responding to causes of actions instigated by others.

D. Whether a plaintiff proceeding *pro se* in violation of Rule 137 can legally and logically claim that the prevailing defendant should not be awarded attorneys' fees because of the fact that the defendant proceeded *pro se*.

2. These and other such issues are purely legal questions involving settled statutory law pertaining to certain factual circumstances and the interpretation and

application of that law onto converse factual circumstances. The interpretation of a statute presents a question of law that this court reviews *de novo*. City of Champaign v. Madigan, 2013 IL App (4th) 120662, ¶ 28, 372 Ill. Dec. 787, 793, 992 N.E.2d 629, 635. Where the question on appeal is limited to application of the law to undisputed facts, the standard of review is *de novo*. Price v. Philip Morris, Inc., 219 Ill. 2d 182, 236, 302 Ill. Dec. 1, 34, 848 N.E.2d 1, 34 (2005). Because we are presented solely with questions of law, our review is *de novo*. Townsend v. Sears, Roebuck & Co., 227 Ill. 2d 147, 153, 879 N.E.2d 893, 316 Ill. Dec. 505 (2007). When an appellate court is presented solely with questions of law, its review is *de novo*. Millineum Maint. Mgmt. v. Cty. of Lake, 384 Ill. App. 3d 638, 639, 323 Ill. Dec. 819, 823, 894 N.E.2d 845, 849 (2008). A judge's rulings of law in a civil or criminal case are reviewed under the non-deferential *de novo* standard. Franz v. Calaco Dev. Corp., 352 Ill. App. 3d 1129, 1132, 288 Ill. Dec. 669, 674, 818 N.E.2d 357, 362 (2004).

3. The term "*de novo*" has a well-known legal meaning: "*Generally a new hearing or a hearing for the second time, contemplating an entire trial in the same manner in which matter was originally heard and a review of previous hearing. On a hearing 'de novo' court hears matter as a court of original and not appellate jurisdiction.*" Black's Law Dictionary 649 (5th ed. 1979). Dean Foods Co. v. Ill. Pollution Control Bd., 143 Ill. App. 3d 322, 334, 97 Ill. Dec. 471, 480, 492 N.E.2d 1344, 1353 (1986). The *de novo* standard of review is particularly appropriate herein. The trial court rejected Hamer and its progeny as foreclosing an award of attorneys' fees to the pro se appellant responding to the plaintiff's frivolous pleading but the appellate court, although affirming all of the trial court's findings, could not apparently overcome the "policy" of Hamer although the case

was confined to pro se attorneys who initiated actions and did not pertain to pro se attorneys responding to frivolous actions. A case of ostensible first impression, a close and studied *de novo* consideration is plaintively called for of the claims pro se attorneys for attorneys' fees incurred when they defend against frivolous allegations filed by others (including those who may, as in the instant cause, be pro se attorney plaintiffs, themselves).

Respectfully submitted,



Marvin W. Gray, Petitioner-Appellant

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