2024 IL App (3d) 230572-U

Order filed October 22, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

In re THE ESTATE OF FRANK A. STERIOTI SR.,	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Deceased	
	Appeal No. 3-23-0572
(Rathbun, Cservenyak & Kozol, LLC,	Circuit No. 19-P-27
Petitioner-Appellee,	Honorable Brian E. Barrett,
v.	Judge, Presiding.
John E. Partelow,	
Respondent-Appellant).	

JUSTICE ALBRECHT delivered the judgment of the court.
Justice Brennan concurred in the judgment.
Presiding Justice McDade specially concurred.

ORDER

¶ 1 *Held*: The circuit court erred in imposing sanctions under Illinois Supreme Court Rule 137 when the document at issue was a subpoena that was not a signed paper of a party.

¶ 2 Respondent, John E. Partelow, appeals the Will County circuit court's order imposing sanctions against him and in favor of Rathbun, Cservenyak & Kozol, LLC (Rathbun), pursuant

to Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018). He argues that sanctions under Rule 137 were improper because the subpoena at issue did not constitute a pleading or motion as contemplated by the rule. For the reasons that follow, we reverse.

¶ 3 I. BACKGROUND

¶ 4 Frank Sterioti Sr. died in early 2019. He left a will which divided his estate between his daughter, grandson, and a friend who acted as a caretaker. Of relevance to this appeal, Frank left his grandson, Nicholas Sterioti, his towing business and the real estate upon which the business sat.

¶ 5 Throughout the estate proceedings, the court appointed two of the towing business's employees, Dwayne Butzen and Lori Taylor-Esposito, to operate the business on behalf of the estate. The court ordered Butzen to act as manager and Taylor-Esposito to act as bookkeeper. Butzen and Taylor-Esposito were ordered to operate the business as Frank had, to provide the executor of the estate with a monthly accounting, to take only the compensation that Frank had paid them prior to his death, and to turn over rental income to the estate.

¶ 6 After the court appointed Butzen and Taylor-Esposito to operate Frank's business, Nicholas was unable to obtain any information regarding its operation for over a year. Nicholas then retained Partelow to represent him in the matter. Partelow concluded that Butzen and Taylor-Esposito were not complying with the court's order regarding the business's operation and filed an emergency motion to vacate, an injunction, and a rule to show cause. The motion sought to vacate the order appointing Butzen and Taylor-Esposito and to remove control of the business from them. He also sought a rule to show cause for failure to comply with the court's order and requested that Butzen and Taylor-Esposito turnover all funds that may have been

wrongfully withheld from the estate. The court ruled that the situation did not constitute an emergency, and Partelow's filings were not immediately heard.

¶ 7 Meanwhile, Butzen, who was represented by Katherine L. Maloney, an attorney at the Rathbun law firm, filed a petition to disqualify the administrators. After the filing, the administrators voluntarily withdrew their representation of the estate. A second administrator was appointed, who filed a petition to discontinue operation of the business and to liquidate assets in March 2022. The administrator also filed a rule to show cause and discovery citations. Shortly thereafter, Maloney withdrew her representation of Butzen.

¶ 8 Butzen testified at the citation hearing that he fired Taylor-Esposito not long after they were appointed to operate the business because he discovered Taylor-Esposito was stealing from the business. He hired Elaine Durham to do the accounting in Taylor-Esposito's place. Butzen stated that he told the first administrators and Maloney about the change in employment. He further stated that he did not report the change in circumstance to the court because he believed Maloney and the administrators would pass on the information. He further testified that he also discussed business operations with Maloney.

¶ 9 In anticipation of the court eventually hearing his own filings, Partelow began engaging in written discovery, which included sending interrogatories and requests to produce to Butzen, a subpoena *duces tecum* to the business's bank, and a subpoena to Maloney and the Rathbun office seeking information regarding Maloney's representation of Butzen while he was operating the business. Specifically, the subpoena requested information from Maloney regarding Butzen's communications with her related to the business and payments made for her representation as well as the source of those funds.

¶ 10 In response to receiving Partelow's subpoena, Rathbun filed a motion to quash. The motion argued that Partelow's subpoena requested information that was classified as attorney-client privilege and because Butzen had not waived that privilege, Rathbun could not comply with the subpoena. Rathbun requested that the court quash the subpoena and award it the attorney fees incurred in the preparation and litigation of its motion. Partelow argued in response that Butzen had waived his attorney-client privilege on the information requested when he testified at the citation proceedings about certain communications with his attorney related to his operation of the business.

¶ 11 The court held a hearing before granting Rathbun's motion. In granting the motion, the court explained that there was "no knowing and intelligent waiver of attorney/client privilege" and the subpoena also infringed on attorney work product privilege. It further found that it was "impermissible" for Partelow to request such information without a waiver. The court granted the parties leave to file a motion for sanctions.

¶ 12 Rathbun filed a motion requesting sanctions against Partelow pursuant to Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018). The motion argued that due to Partelow's improper subpoena, Rathbun was forced to expend time reviewing the subpoena, filing a motion to quash, reviewing and responding to Partelow's response to the motion, and arguing it in court. Rathbun argued Partelow should have known the information was protected under attorney-client privilege and requested $3,209 in attorney fees and costs for litigating the motion to quash.

¶ 13 At the hearing for sanctions, Partelow argued that he believed Butzen waived attorney-client privilege because of statements Butzen made at the citation hearing that he was advised by his attorney how to operate the business. Thus, the subpoena was not frivolous and not intended to harass, cause unnecessary delay, or increase the cost of litigation for the other party. Further,

Partelow argued that a subpoena is not the type of document Rule 137 intended to sanction, as the rule only provides sanctions for pleadings or motions signed by the party or attorney. Ill. S. Ct. R. 137(a) (eff. Jan. 1, 2018).

¶ 14 The court found "[t]here was no reasonable basis to believe that subpoenaing a file of an attorney was [ ] proper" and that sanctions were warranted. It awarded Rathbun $2,094 in sanctions against Partelow pursuant to Rule 137. Partelow now appeals.

¶ 15 II. ANALYSIS

¶ 16 Partelow's argument on appeal is that the circuit court erred in ordering sanctions against him. Specifically, Partelow contends that an unsigned subpoena is not a document covered under Rule 137 because it is an unsigned discovery document that does not constitute a pleading or motion as described in the rule.

¶ 17 Rule 137 provides in pertinent part:

> "Every pleading, motion and other paper 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 paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by *** law, and that it is not interposed for any improper purpose *** If a pleading, motion, or other paper is signed in violation of this rule, the court *** 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 *** the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee." Ill. S. Ct. R. 137(a) (eff. Jan. 1, 2018).

¶ 18 The purpose of Rule 137 is to provide a means to penalize a party or attorney who abuses the judicial process with frivolous filings which cause undue delay or harassment. *Shea, Rogal & Associates, Ltd. V. Leslie Volkswagen, Inc.*, 250 Ill. App. 3d 149, 152 (1993). The decision to impose sanctions pursuant to Rule 137 is within the sound discretion of the court, and we will not disturb that decision absent an abuse of discretion. *In re Marriage of Sykes*, 231 Ill. App. 3d 940, 946 (1992).

¶ 19 Partelow argues that the subpoena he sent to Maloney was not a "paper of a party" under Rule 137, thus sanctions under the rule are not proper. Ill. S. Ct. R. 137(a) (eff. Jan. 1, 2018). Rathbun argues that while the subpoena was not signed by Partelow, his response to its motion to quash was signed by him and that its request for sanctions encompassed all pleadings filed litigating the propriety of the subpoena. While Rathbun's petition for sanctions requests attorney fees for forcing Rathbun to file and litigate its motion to quash, the actual request for sanctions only references Partelow filing an improper subpoena. It does not allege that the additional filings were improper or otherwise implicates the rule. Furthermore, Rathbun cites to no authority for its position that Rule 137 would encompass all documents filed after the subpoena without being specifically plead, and this argument was not raised in the circuit court.

¶ 20 Rule 137 only authorizes the circuit court to impose sanctions for the filing of pleadings, motions, or other papers that are in violation of the rule itself. *In re C.K.*, 214 Ill. App. 3d 297, 300 (1991). A subpoena is not typically considered a "paper of a party" because it is issued by the circuit clerk and is not signed by the party or his attorney. *Id.* Further, Rule 137 only applies where "a pleading, motion, or other paper is signed in violation of" the rule. Ill. S. Ct. R. 137 (eff. Jan. 1, 2018). It does not apply when no pleading, motion, or other paper is signed. *In re*

C.K., 214 Ill. App. 3d at 299-300. Thus, Rule 137 does not apply here, when a subpoena is not a pleading, motion, or "paper of a party," nor is it signed by a party or his attorney.

¶ 21 Moreover, Rule 137 is not the only means of ordering sanctions and is not properly used to sanction a discovery violation where a more specific sanction rule would apply. *Diamond Mortgage Corp. v. Armstrong*, 176 Ill. App. 3d 64, 71 (1988); *In re Marriage of Adler*, 271 Ill. App. 3d 469, 474-78 (1995). The more appropriate avenue for Rathbun to pursue would have been sanctions under Illinois Supreme Court Rule 219, which authorizes sanctions for discovery violations. See Ill. S. Ct. R. 219(c), (d) (eff. July 1, 2002). Specifically, Rule 219(d) provides that a court may enter any order provided for in paragraph (c) of the rule, which includes the possibility of sanctions, if a party "willfully obtains or attempts to obtain information to which that party is not entitled." *Id.* This is exactly what Rathbun asserts Partelow did here and is the basis for its petition—Rathbun repeatedly argues that the sanctions were for Partelow's actions in filing a subpoena to obtain information to which he was not entitled. The purpose of Rule 219(d) is to provide recourse for situations such as this; therefore, Rule 219(d) could be the proper authority for receiving sanctions in this matter. Ill. S. Ct. R. 219(d) (eff. July 1, 2002).

¶ 22 Because 219(d) allows for a court to enter sanctions under Rule 219(c) when a party attempts to obtain privileged information to which he or she is not entitled, it is more appropriate to request sanctions under Rule 219 than Rule 137. See *id.* A more specific rule applies; thus Rule 137 sanctions are not proper here. See Ill. S. Ct. R. 137(a); *In re Marriage of Adler*, 271 Ill. App. 3d at 474-78. While Rathbun argues that this court may affirm on any grounds supported by the record, we do not have the means to do so here. See *Tillman v. Pritzker*, 2021 IL 126387, ¶ 24. As Rathbun itself points out, the court did not make any findings regarding a violation of Rule 219, and sanctions should not be awarded without those findings. Rule 219(d) specifically

states that sanctions can be awarded when a party abuses the discovery process or uses an improper discovery method to obtain information. Ill. S. Ct. R. 219(d) (eff. July 1, 2002). Because the petition for sanctions was filed under the incorrect rule, the court could not make the requisite finding that Partelow abused the discovery process.

¶ 23 Accordingly, we find the conduct for which Partelow was sanctioned was not encompassed by Rule 137 as Rule 219 could have been applied instead. Thus, the circuit court abused its discretion by imposing sanctions under the incorrect rule. We therefore reverse the circuit court's order imposing Rule 137 sanctions.

¶ 24 III. CONCLUSION

¶ 25 The judgment of the circuit court of Will County is reversed.

¶ 26 Reversed.

¶ 27 PRESIDING JUSTICE McDADE, specially concurring:

¶ 28 I concur with the analysis and decision regarding the imposition of Supreme Court Rule 137 sanctions, which is the only issue decided by the circuit court or raised in the Notice of Appeal and, thus, the only issue presented for our consideration. Moreover, our actual decision, as set out in the syllabus (*supra* ¶ 1), is based solely on the language of the rule and is fully sufficient to resolve the appeal. I do not join in the discussion of Supreme Court Rule 219(c), which I believe to be unnecessary and advisory.