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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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REAVA KING,	)	
	)	Appeal from the Circuit Court
Petitioner-Appellee,	)	of Cook County.
	)	
v.	)	No. 11 OP 72205
	)	
JASON HARRIS,	)	The Honorable
	)	Patrice Ball-Reed,
Respondent-Appellant.	)	Judge, presiding.

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PRESIDING JUSTICE HYMAN delivered the judgment of the court.  
Justices Neville and Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* Respondent's petition for substitution of judge for cause did not meet statutory requirements for a hearing before a different judge and trial court did not abuse its discretion in denying respondent's Rule 137 petition for sanctions against petitioner's attorney.

¶ 2 Attorney Jason Harris seeks sanctions under Illinois Supreme Court Rule 137 (eff. July 1, 2013) against attorney Steven Pollack, for filing an allegedly meritless stalking case against him on behalf of his client, Reava King. Previously, we reversed and remanded an order that denied sanctions against Pollack, asking the trial court to apply an objective rather than subjective test in

determining whether the stalking claim brought by Pollack was meritless. On remand, Harris filed a petition for substitution of judge for cause, which the trial court denied, without transferring to another judge. After further discovery and another hearing, the trial court again denied Harris's motion for sanctions, finding that Pollack made a reasonable inquiry into the law and facts to conclude that the stalking petition was grounded in fact and warranted by existing law, and that it was not interposed for an improper purpose. We affirm. The trial court did not abuse its discretion in finding that Rule 137 sanctions were not warranted. Moreover, Harris's petition for substitution of judge did not meet statutory requirements and thus, a hearing before a different judge was not warranted.

¶ 3

### BACKGROUND

¶ 4

In 2009, Reava King hired Jason Harris, who is a public adjuster and general contractor as well as an attorney, to oversee the rehabilitation of her house, which was damaged in a fire. After about a year, the parties' relationship deteriorated and in November 2010, King sued Harris, alleging Harris failed to complete work she paid for. Harris responded by filing a mechanics lien suit against King.

¶ 5

While both cases were being litigated, in April 2011, King filed a *pro se* petition against Harris for a stalking no contact order under 740 ILCS 21/1 *et seq.* (West 2014)). Her petition listed one incident of stalking in December 2010, when King alleged Harris drove to her home and wanted to speak with her. Under the second incident heading, King listed a police report number, which made reference to a trespassing incident but did not explain what prompted the police report. King's *pro se* emergency petition for a no contact order was denied on May 2, 2011, and the matter was continued for status and discovery. At some point in May 2011, King retained Stephen Pollack as her attorney in the stalking case. Pollack also represented King in the two other proceedings involving Harris. According to Pollack, he initially declined to represent

King with regard to the no contact petition due to his unfamiliarity with this area of law, but later reconsidered.

¶ 6 King's deposition in connection with her stalking no contact petition took place on July 11, 2011. King testified to three incidents of alleged stalking. First, in December 2010, King saw a car similar to respondent's car—a black 2-or4-door Lexus—parked outside her house, which “spooked” her. She did not, however, see Harris in the car. Next, in February 2011, she again saw a black Lexus outside her house. She heard what sounded like her name in Harris's voice, and when she turned around, she believed she saw Harris's face. Again, she testified that she was spooked. Finally, in April 2011, she saw a black Lexus near her house, but did not see the driver, nor did she know if there was a driver in the car. She testified that she was never verbally or physically threatened on any of these occasions and that Harris had generally treated her respectfully throughout their acquaintance.

¶ 7 After taking King's deposition, Harris moved for summary judgment, which was granted. Harris then moved for sanctions against Pollack under Illinois Supreme Court Rule 137 (eff. July 1, 2013), arguing that Pollack pursued King's petition despite knowing it had no factual basis. The trial court denied the motion for sanctions, finding that Pollack was obligated to continue pursuing the petition because his client had directed him to do so. Harris appealed, arguing the trial court wrongly applied a subjective rather than an objective standard in determining whether sanctions were warranted. Agreeing with Harris, this court reversed and remanded with directions to the trial court to consider whether, at any time after Pollack agreed to represent King, a reasonable investigation would have revealed that the petition was factually or legally baseless. *King v. Harris*, 2013 IL App (1st) 120316-U (unpublished order under Supreme Court Rule 23).

¶ 8 After remand, Harris filed a petition for substitution of judge for cause under section 2-1001(a)(3)(iii) of the Code of Civil Procedure. 735 ILCS 5/2-1001(a)(3)(iii) (West 2014). Harris's attorney asked that the petition be transferred to another judge, stating "if you decide the motion is proper, which it is, it has to be sent to another judge." The judge disagreed, stating "this matter is returned to the court from appeal. If, in fact, [the] appellate court felt I could not rule on this matter, they would have assigned it to another judge. I think your motion for substitution of judge is denied since this is not the first time this case is up. Based on that, I will deny your motion. The allegations in this motion [are] based upon your feeling and not a valid basis for a change of judges."

¶ 9 After additional discovery, the trial court held a hearing on Harris's Rule 137 petition. Harris asked to call Jeffrey Marks, Pollack's attorney, as a witness, to presumably testify that he had advised Pollack not to proceed with the petition for a stalking no contact order. The trial judge denied the request. After a hearing, the trial court again denied Harris's petition for Rule 137 sanctions. The court found that Pollack made a reasonable inquiry as to the law by reading and familiarizing himself with the Civil No Contact Stalking Act (740 ILCS 21/1 *et seq.* (West 2014)). The court noted that when Pollack filed the petition on King's behalf, the Act was fairly new and little case law existed. The court also rejected Harris's argument that Pollack's petition was flawed because it did not adequately describe the second alleged stalking incident in that it only listed a police report number without additional explanation. The court stated, "Ms. King filed the case as a *pro se* litigant. It is not uncommon for petitions filed by a *pro se* litigant to be less than perfect."

¶ 10 The trial court also rejected Harris's argument that Pollack had no reasonable factual basis for moving forward with the petition. The court noted that Pollack spoke with a former

Harris employee and another person Harris had allegedly improperly contacted and read the police report, which, along with his conversations with King, led him to reasonably believe that the elements for a Stalking No Contact order could be met. The court concluded that “[r]espondent presented nothing that provides this court with egregious conduct to support a contention that Pollack[‘s] conduct was for a vexatious purpose, undue delay, an improper purpose and/or harassment. \*\*\* [A]t the time this case was filed[,] investigated[,] and conducted, Pollack was a new attorney with limited resources. He did what was reasonable at the time.”

¶ 11 Harris appeals, arguing the trial judge (i) erred in ruling on the petition for substitution of judge for cause herself rather than transferring the petition to another judge (ii) erred in denying his request to call Pollack’s attorney as a witness; and (iii) abused her discretion in denying his petition for Rule 137 sanctions.

¶ 12 ANALYSIS

¶ 13 Petition for Substitution of Judge

¶ 14 Section 2-1001(a)(3) of the Code of Civil Procedure authorizes each party in a civil case to seek substitution of the trial judge for cause. The petition must “set[] forth the specific cause for substitution” and must be “verified by the affidavit of the applicant.” 735 ILCS 5/2–1001(a)(3)(ii) (West 2014). After a petition is filed, “a hearing to determine whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition.” 735 ILCS 5/2-1001(a)(3)(iii) (West 2014). We liberally construe section 2-1001(a)(3) to promote rather than defeat the right of substitution, particularly where the petitioner’s claim for “cause” is prejudice against the petitioner. See *In re Estate of Gagliardo*, 391 Ill. App. 3d 343, 346-47 (2009). But, a party’s right to have a petition for substitution for cause heard by another judge is not automatic. See *Williams v. Estate of Cole*, 393 Ill. App. 3d 771, 776 (2009).

A trial court may deny a petition without referring it to another judge if it fails to meet threshold statutory requirements. *In re Estate of Wilson*, 238 Ill. 2d 519, 567 (2010). Specifically, the trial court may deny the petition if it (1) was not timely filed, (2) failed to include an affidavit, or (3) alleged bias not stemming from an extrajudicial source. *Id.* at 553.

¶ 15 Harris’s petition for substitution of judge does not meet the threshold requirements—no affidavit was included and the alleged bias did not stem from an extrajudicial source.

¶ 16 Harris failed to verify the petition with an affidavit, as required under section 2-1001(a)(3)(ii). 735 ILCS 5/2-1001(a)(3)(ii) (West 2014). See also, *Wilson*, 238 Ill. 2d at 553. The absence of the affidavit is fatal, and accordingly, the trial court properly denied Harris’s petition for substitution without transferring the matter for a hearing before a different judge. *In re J.D.*, 332 Ill. App. 3d 395, 404 (2002) (petition for substitution of judge for cause was properly denied where petition was not verified by affidavit).

¶ 17 Harris does not allege bias stemming from an extrajudicial source. Where bias or prejudice is invoked as the basis for seeking substitution, it must normally stem from an extrajudicial source, *i.e.*, from a source other than from what the judge learned from his or her participation in the pending case. “ ‘[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.’ “ *Eychaner v. Gross*, 202 Ill. 2d 228, 281 (2002) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)) To be entitled to a hearing before another judge on whether a substitution for cause is warranted, the petition must allege grounds that, if taken as true, would justify granting a substitution for cause. *Alcantar v. Peoples Gas Light & Coke, Co.*, 288 Ill. App. 3d 644, 649 (1997).

¶ 18 In arguing bias, Harris points to the following: (i) the trial court wanted the case to go more quickly and viewed Harris's discovery requests as causing unnecessary delay; (ii) the trial court said in court that the case was dragging on because of the "the lawyers' egos and anger;" and (iii) the trial court was irritated with Harris's decision to bring a Rule 137 petition as evidenced by her statement that the order granting summary judgment "should have ended it right there because the case was resolved." Assuming all of these allegations are true, they constitute opinions formed by the trial judge on the basis of facts introduced or events occurring in the course of the proceedings. Moreover, they do not display a deep-seated favoritism or antagonism that would make fair judgment impossible, as they simply suggest the judge thought that both parties were dragging the case on longer than necessary. See *Danhauer v. Danhauer*, 2013 IL App (1st) 123537, ¶ 25 (affirming circuit court's denial of petition for substitution of judge for cause where petitioners did not sufficiently allege bias derived from extrajudicial source or a high degree of favoritism or antagonism that would render fair judgment impossible); *Schachter v. City of Chicago*, 2011 IL App (1st) 103582, ¶ 25 ("actual prejudice' must be established in any petition seeking substitution of judge for cause" (quoting *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 30)).

¶ 19 Pollack's Attorney as a Witness

¶ 20 Next, Harris contends the trial court erred in denying his request to call as a witness Pollack's attorney, Jeffrey Marks. Harris asserts that Pollack and Marks, who are friends, discussed the underlying stalking case before Pollack retained Marks to represent him in the Rule 137 proceeding. Harris asserts Marks advised Pollack not to proceed with the stalking no contact petition and he should be able to call Marks as a witness to ask about those conversations because they occurred before the attorney-client privilege attached.

¶ 21 Illinois Supreme Court Rule 341(h)(7) requires appellant’s argument to contain “the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.” Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). A reviewing court is entitled to have the issues clearly defined, with pertinent authority cited. *Boeger v. Boeger*, 147 Ill. App. 3d 629, 631. Bare contentions without argument or citation to relevant authority do not merit consideration on appeal. *Fitzpatrick v. ACF Properties Group, Inc.*, 231 Ill. App. 3d 690, 708 (1992). The failure to assert a well-reasoned argument supported by legal authority in violation of Rule 341(h)(7) (eff. Feb. 6, 2013), results in waiver. *Heupel v. Jenkins*, 379 Ill. App. 3d 893, 900 (2008). Harris has failed to comply with the requirements of Rule 341(h)(7) (eff. Feb. 6, 2013). He did not elaborate on this argument in his brief and cited no authority, much less any relevant, persuasive authority to support his theory that he should have been permitted to call Marks as a witness. Thus, the issue is waived.

¶ 22 Waiver aside, Harris would not prevail. The exclusion of cumulative evidence lies within the discretion of the trial court, whose ruling will not be reversed absent a clear abuse of discretion. *Kozasa v. Guardian Electric Manufacturing Co.*, 99 Ill. App. 3d 669, 678 (collecting cases). A trial court abuses its discretion when its decision is fanciful, arbitrary, or unreasonable, or where no reasonable person would take the same view. *Williams v. BNSF Ry. Co.*, 2015 IL App (1st) 121901-B, ¶ 43. When the trial court denied Harris’s motion to call Marks as a witness, Marks stipulated that he told Pollack that the stalking case was a complicated area of law and that he should get help if he decided to proceed with the case. And that he told Pollack that he was not required to represent King simply because he was representing her in other cases. Given this stipulation, the trial court’s decision refusing Harris’s request to call Marks as a

witness only for him to repeat what he had stipulated to does not amount to an abuse of discretion.

¶ 23

Motion for Sanctions

¶ 24

Lastly, Harris argues that the trial court erred in denying his motion for Rule 137 sanctions. Rule 137 was created to prevent parties from abusing the judicial process by imposing sanctions on litigants who file vexatious and harassing actions based on unsupported allegations of fact or law. *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217 (2007). Under Rule 137, “litigants and attorneys have an affirmative duty to conduct an inquiry of the facts and law prior to filing an action, pleading, or other paper.” *Couri v. Korn*, 202 Ill. App. 3d 848, 855 (1990). To prevail on a motion for Rule 137 sanctions, the petitioner must demonstrate that the opposing party pled untrue facts without reasonable cause. *Id.* ¶ 12 On review of a lower court’s decision to deny or impose sanctions, this court must determine whether the circuit court’s decision was “informed, based on valid reasons, and followed logically from the circumstances of the case.” *Burrows v. Pick*, 306 Ill. App. 3d 1048, 1051 (1999). Generally, we will defer to a circuit court’s decision regarding sanctions and will not reverse unless there has been an abuse of discretion. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). Because Rule 137 is penal in nature, it is narrowly construed. *Dowd & Dowd, Ltd.*, 181 Ill. 2d at 487.

¶ 25

Harris alleges Rule 137 sanctions are warranted because Pollock (1) prepared answers to interrogatories falsely stating that King saw Harris parked in front of her house; (2) signed a response to Harris’s summary judgment motion that contained false statements; (3) withheld evidence Harris sought in discovery, including photographs and emails from a potential witness; (4) failed to depose witnesses; (5) failed to conduct adequate legal research; (6) failed to properly document his work; (7) failed to amend the pleadings to conform to the proofs after King’s

deposition; (7) failed to dismiss King's petition after her deposition, even though he acknowledged King did not actually see Harris on the date of the alleged stalking incident; (8) failed to dismiss the case after Harris stated he was not at King's home on the date of the alleged stalking incident; (9) made false statements to the trial court, including that King alleged multiple stalking incidents, even though her *pro se* petition alleges only one incident and telling the court King feared Harris, even though King said in her deposition that she was not afraid at the time of the alleged stalking incident.

¶ 26           The judge denied Harris's request for sanctions, and we cannot say that her determination was an abuse of discretion. The trial judge noted that the Stalking No Contact Order Act (740 ILCS 21/1 *et seq.* (West 2014)) was enacted on January 1, 2010, not long before King filed her *pro se* petition in April 2011 and Pollack took up the case in May 2011. Little caselaw existed at that time, and the court determined that Pollack's reading of the statute was a reasonable inquiry into the law.

¶ 27           The trial court also found that Pollack acted reasonably in moving forward with the case based on his discussions with King, a former Harris employee who worked on King's project, and another person Harris had allegedly improperly contacted. The court concluded that based on those discussions, along with the police report and the decision by Harris employees to enter King's home to retrieve tools, Pollack reasonably believed he had a basis for moving forward with the petition. The court found that Harris's assertions that he never threatened or verbally abused King were not relevant to the inquiry about the reasonableness of Pollack's actions, because threats and verbal abuse are not necessary for a claim under the statute.

¶ 28           Harris extensively relies on King's statement at her deposition that she never saw Harris outside her house, and that Pollack told the court Harris parked outside King's house on multiple

occasions, even though King's *pro se* petition alleges only one stalking incident. Even if King's deposition testimony failed to adequately establish she saw Harris outside her home on the night alleged and her petition only raises one alleged stalking incident, neither one supports a finding that King's stalking claim was not well-grounded in fact. In her deposition, King said she believed Harris was outside her home based on seeing his car and hearing his voice, even though she did not see him. She also testified to three alleged stalking incidents, even though her *pro se* petition mentions a single incident. And Pollack testified that when he interviewed King, she said she believed Harris was outside her house on several occasions. Thus, Pollack's statements to the court were not false. Even if Pollack was ultimately wrong about the viability of King's stalking claim, it cannot be seen as being "interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Thus, we affirm the trial court's denial of Rule 137 sanctions. *Hess v. Loyd*, 2012 IL App (5th) 090059, ¶ 22 (trial court abused its discretion only where no reasonable person would take the view adopted by it).

¶ 29 Affirmed.