2021 IL App (3d) 180389-U

Order filed March 4, 2021

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2021

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| FRANK AVILA and ANDREW FINKO | ) | Appeal from the Circuit Court |
| | ) | of the 12th Judicial Circuit, |
| Plaintiffs-Appellees, | ) | Will County, Illinois. |
| | ) | |
| v. | ) | Appeal No. 3-18-0389 |
| | ) | Circuit No. 17-MR-049 |
| THE VILLAGE OF LISLE, | ) | |
| | ) | The Honorable |
| Defendant-Appellant. | ) | John C. Anderson, |
| | ) | Judge, presiding. |

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PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices DAUGHERITY and SCHMIDT concurred in the judgment.

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**ORDER**

¶ 1 *Held*: Plaintiffs are not immune from Rule 137 liability under section 15 of the Citizen Participation Act because plaintiffs failed to demonstrate that Lisle's petition for attorney fees "is based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government" in accordance with 735 ILCS 110/15. The circuit court's ruling is affirmed.

¶ 2 The circuit court entered an order holding the plaintiffs—attorneys Avila and Finko—responsible for Rule 137 sanctions totaling $6,765 in attorney fees because, *inter alia*, plaintiffs' petition to place a question regarding annexation of the Village of Woodridge, the city of

Warrenville, and Village of Lisle "had no reasonable basis in fact or law." On appeal, the appellants argue that they are immune from liability under section 15 of the Citizen Participation Act (735 ILCS 110/15 (West 2016)) because (1) plaintiffs' activities were in furtherance of their clients' first amendment right of ballot access and (2) Lisle's petition for attorney fees was solely based on plaintiffs' acts in furtherance of their first amendment rights.

¶ 3 We affirm.

¶ 4 FACTS

¶ 5 On January 3, 2017, plaintiffs Frank Avila and Andrew Finko, on behalf of the electors of the Village of Woodridge, the City of Warrenville, and Village of Lisle, filed a "Petition to Place a Question of Annexation of Lisle, Warrenville, and Woodridge into the City of Naperville upon the Consolidated Election Ballots." The petition requested that a question of whether the municipalities of Woodridge, Warrenville, and Lisle should be annexed into Naperville be placed on the April 4, 2017, election ballot and submitted to electors of Naperville located within Will County, Illinois, pursuant to section 7-1-16 of the Illinois Municipal Code (65 ILCS 5/7-1-16 (West 2016)). Plaintiffs stated that they had submitted an identical petition to the Eighteenth Judicial Circuit in DuPage County. On April 20, 2017, Keri-Lyn Krafthefer, attorney for the Village of Lisle, e-mailed Avila to inquire about the status of the case and Avila responded, "We are dismissing it."

¶ 6 An initial case management conference was held, at which Krafthefer, on behalf of Lisle, was the only party present. Krafthefer informed the court that plaintiffs intended to dismiss the petition and that the DuPage County Circuit Court had dismissed a similar petition finding it was filed in bad faith. Krafthefer orally moved the court to dismiss the petition because (1) plaintiffs

submitted a smaller number of signatures than required to bring the petition; (2) the petition was moot as the April 4 election date had passed; and (3) plaintiffs had failed to prosecute the claim.

¶ 7 The court stated that it considered whether sanctions were appropriate and whether the case should be forwarded to the ARDC because the plaintiffs seemed to have filed a "breathtakingly meritless complaint." Krafthefer informed the court that the DuPage County court was also considering "that action" based on the court's determination that the petition was filed in bad faith. In its written order, the court set the case for status on May 22, ordered Lisle to file a motion to dismiss, and required plaintiffs to appear at the scheduled status hearing to explain why the court should not order sanctions under Rule 137 and should not forward a copy of the complaint to the ARDC.

¶ 8 On May 3, in advance of the status hearing, plaintiffs filed a motion to voluntarily dismiss their petition with prejudice. In the motion, plaintiffs explained that citizens of Lisle, Warrenville, Woodridge, and Naperville had sought to use their first amendment ballot access rights to place the question of annexation on the April 4 election ballot to "eliminat[e] duplicative branches of government, provid[e] efficiency in municipal services, and yield[] considerable financial savings to taxpayers." Avila and Finko also stated that they had been unavailable in February and March 2017 because Avila suffered from severe health issues and Finko had sustained a head injury and that the unexpected occurrences delayed the filing of the motion to voluntarily dismiss. Lisle and Woodridge filed a joint motion to dismiss the petition. On May 17, 2017, the court granted plaintiffs' motion for voluntary dismissal, allowed defendants to file a petition for attorney fees, and reserved the issue of Rule 137 sanctions.

¶ 9 On June 6, 2017, Lisle filed a petition for attorney fees, requesting fees in the amount of $14,868.75 for legal services rendered during the pendency of this case. Plaintiffs filed a

response to the petition, arguing that Lisle's petition for fees should be denied because counsel did not act on behalf of Lisle in this case, but on behalf of then-Lisle mayor, Joseph Broda. The petition shows Lisle only incurred $6,765 in attorney fees. On July 26, 2017, a hearing was held on the court's motion for sanctions and petition for attorney fees. The court clarified its order allowing Lisle to file a petition for attorney's fees:

> "THE COURT: Again, the question of sanctions is on the Court's motion, it's not on Lisle's motion. And to the extent I wanted Lisle to do anything, it was to provide me some indication as to what their fees were so that if sanctions were indeed appropriate, then I might have some good signposts as to what sanctions might be appropriate."

¶ 10 Lisle acknowledged that the $14,868.75 in attorney fees was a mathematical error and clarified that the village was seeking $6,765 in attorney fees. Lisle also argued that plaintiffs acted in bad faith and, thus, sanctions against plaintiffs were proper because (1) plaintiffs provided an insufficient number of signatures in violation of the Municipal Code; (2) plaintiffs failed to cause notice of a hearing on the petition to be published under the Election Code; (3) plaintiffs improperly filed their petition in Will County; and (4) plaintiffs failed to exercise professional courtesy.

¶ 11 Plaintiffs asserted that (1) during the winter months, the petition circulators rushed to obtain signatures for the petition and that plaintiffs did not receive the list of signatures until the day before they filed the petition, leaving them no time to review the petitions and authenticate the signatures; (2) plaintiffs communicated with legal counsel of the Illinois State Board of Elections who informed them that the Municipal Code, not the Election Act, governed in this case; (3) although only a small portion of Naperville and Woodridge were in Will County,

plaintiffs also filed the petition in the Twelfth Judicial Circuit Court to ensure that the Will County Election Authority would have an order from a court within its jurisdiction with which to comply; and (4) Lisle lacked standing to defend against the petition.

¶ 12 On September 8, 2017, the court found that the petition was not filed in good faith and, therefore, did not comply with Rule 137 because (1) the petition "had no reasonable basis in fact or law"; (2) it was unnecessary to file the petition in Will County to acquire jurisdiction over the Will County Clerk because Illinois circuit courts have jurisdiction over all justiciable matters; (3) the petition did not have the requisite signatures and "some of the signature pages are presented as individual pages with unique pagination but they are, in fact, photocopies"; (4) plaintiffs were not making good-faith attempts to "test the legal and interpretive bounds of the statute" as their arguments lack[ed] credibility and were "complete nonsense."

¶ 13 The court noted that Lisle's standing was irrelevant to the issue of whether plaintiffs violated Rule 137 and that plaintiffs' failure to advance the case supported the court's conclusion that plaintiffs were not acting in good faith. The court ordered that plaintiffs "provide letters of apology to the mayors and trustees/councilmen of Naperville, Lisle, Warrenville, and Woodridge. Said letters must reflect a conciliatory tone for wasting the time and resources of those municipalities and the taxpayers that live there." Plaintiffs were also instructed to file a copy of the letters with the clerk of the court in this case. The court also ordered that the plaintiffs "comply with the [letter requirement] with sufficient remorse and zeal, [and if so,] there exists a real possibility that the court may ultimately decline to award fees as a sanction." The court declined to submit the matter to the ARDC.

¶ 14 The case was set for a status hearing on October 9, 2017; however, October 9 was a designated court holiday, and the status hearing occurred the next day. The court noted plaintiffs'

failure to appear but held the absence harmless given the court's scheduling error. The court stated, however, that "it goes without saying that the case would be called the next business day. Any suggestion that they believed otherwise would be absurd. In fact, the Court is in receipt of a phone message Mr. Avila left with the clerk stating that he would be unable to appear today." The court awarded Lisle sanctions in the amount of $6,765 "for the reasons stated in the September 8 order" and ordered plaintiffs to comply with its September 8 order that they send apology letters. The court stated that it would reevaluate whether to submit the matter to the ARDC at the next status hearing.

¶ 15 On November 21, 2017, plaintiffs moved to vacate the court's October 10 order, asserting that they had received no notice of the September 8 order. The plaintiffs attached three unsigned letters from Finko dated October 31, 2017, addressed to the mayors of Warrenville, Woodridge, and Lisle. Plaintiffs also filed a motion for sanctions against Lisle's attorneys. In its response to the motion to vacate order and motion for sanctions, Lisle noted that only the Mayor of Lisle received an apology letter, the letter was from Finko only, and it was affixed with Wonder Woman stamps.

¶ 16 On March 5, 2018, a hearing on the motions was held. Plaintiffs argued against sanctions as follows:

> "MR. FINKO: Thank you, your Honor. Just to summarize, the initial complaint was filed based on an interpretation of statutes that have never been interpreted before by the Appellate Court. It was filed in Will County for the reason that the clerk is here and the [sic] for the Court to have jurisdiction over the clerk. Filing in the wrong venue under 2 – Section 2-104 of the Code of Civil Procedure –

THE COURT: The clerk is not even a party in the case.

MR FINKO: No, I understand that. But your Honor's order –

THE COURT: How do you get jurisdiction over someone who is not a party?

MR FINKO: The statute doesn't require the – that person to be named. That's the way that – this was a statute that had never been applied and never been interpreted, so we were doing the best we could on interpreting it at the point. We just thought that the order would be able – would be directed because the clerk is a government official, so if it was in error, obviously then maybe in the future we would do things obviously very differently. But we did not – we did our best good faith effort to interpret the statute under a very short time frame.

I think we had less than a week, perhaps days, to prepare and file this complaint. And to the extent that it was filed in the wrong venue, the venue statute says that no action will be dismissed – or that it can be just transferred. So to the extent that it was filed here erroneously, I apologize to the Court, to the taxpayers of Will County. The procedure would have been – and we could have simply transferred it. However, we did voluntarily dismiss the complaint, agreed with [sic] that with Counsel before anything really got going or under way here.

To the extent that there was a – an issue, I thought – the Court had mentioned about the number of signatures that were attached. We did the best we could. We thought we could supplement. But the other option we thought always was we could challenge this through the Appellate Court to say well, this statute is

> not appropriate because it imposes a higher burden during winter months to collect signatures than perhaps a different statute or different sections of the election or different sections of the municipal code. So, you know, filing a complaint with some signatures that aren't perhaps in the Court's determination were not sufficient."

¶ 17 On April 5, 2018, the court granted plaintiffs' motion to vacate the October 10 order imposing fees and reinstated the September 8 order requiring letters of apology. The court reconsidered its motion for sanctions and again awarded Lisle sanctions in the amount of $6,765 because plaintiffs failed to comply with the apology letter sanctions in the September 8 order. The court denied plaintiffs' motion for sanctions against Lisle. Plaintiffs filed a motion to reconsider and vacate the court's April 5 and September 8 orders, which the court denied. Plaintiffs appealed.

¶ 18 ANALYSIS

¶ 19 I. Immunity

¶ 20 Plaintiffs argue that they are immune from liability under section 15 of the Citizen Participation Act (735 ILCS 110/15 (West 2016)) because (1) plaintiffs' activities were in furtherance of their clients' first amendment right of ballot access and (2) Lisle's petition for attorney fees was solely based on plaintiffs' acts in furtherance of their first amendment rights as (a) Lisle intentionally requested unrelated fees for services rendered after plaintiffs filed their motion for voluntary dismissal with prejudice, (b) Lisle admitted that it sought disclosure of the plaintiffs' clients to hold the "citizens responsible for this attempt to use the court system to advance an unclear political agenda at significant expense to taxpayers," and (c) the village filed the petition on behalf of the Mayor of Lisle, not the Village of Lisle.

¶ 21

Lisle claims that plaintiffs have forfeited this issue because they had failed to bring it before the trial court in violation of sections 15 and 20 of the Citizen Participation Act (735 ILCS 110/15 (West 2016)). Moreover, Lisle asserts that a petition for attorney fees does not constitute a "motion" under the Citizen Participation Act and, thus, the Act is not applicable to this case. Lisle also alleges that the petition for attorney fees was not based solely on plaintiffs' first amendment activity because the trial court's sanctions ruling was "independent of and had no relation to" plaintiffs' acts in furtherance of their rights.

¶ 22

The parties' dispute—whether or not Lisle's petition for attorney fees constitutes a Strategic Lawsuit Against Public Participation ("SLAPP") under the Citizen Participation Act and, therefore, should be dismissed—presents a question of statutory interpretation. "The fundamental rule of statutory interpretation is to ascertain and give effect to the intent of the legislature." *Benzakry v. Patel*, 2017 IL App (3d) 160162, ¶ 74 (citing *Ryan v. Board of Trustees of the General Assembly Retirement System*, 236 Ill. 2d 315, 319 (2010). "The most reliable indicator of that intent is the language of the statute itself." *Id.* "In determining the plain meaning of statutory language, a court will consider the statute in its entirety, the subject the statute addresses, and the apparent intent of the legislature in enacting the statute." *Id.* (citing *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009)). "If the statutory language is clear and unambiguous, it must be applied as written, without resorting to further aids of statutory interpretation." *Id.* (citing *Hendricks v. Board of Trustees of the Police Pension Fund*, 2015 IL App (3d) 140858, ¶ 14). The issue of statutory interpretation is reviewed *de novo*. *Id.* ¶ 73.

¶ 23

In August 2007, Illinois enacted anti-SLAPP legislation under the Citizen Participation Act (735 ILCS 110/1 *et seq.* (West 2008)). *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 33. "SLAPPs are lawsuits aimed at preventing citizens from exercising their political rights or

punishing those who have done so." *Id.* (citing *Wright Development Group, LLC v. Walsh*, 238 Ill. 2d 620, 630 (2010)). "SLAPPs use the threat of money damages or the prospect of the cost of defending against the suits to silence citizen participation." *Id.* (citing *Walsh*, 238 Ill. 2d at 630). "SLAPPs are, by definition, meritless." *Id.* ¶ 34 (citing John C. Barker, *Common-Law and Statutory Solutions to the Problem of SLAPPs*, 26 Loy. L.A. L. Rev. 395, 396 (1993). "Because winning is not a SLAPP plaintiff's primary motivation, the existing safeguards to prevent meritless claims from prevailing were seen as inadequate, prompting many states to enact anti-SLAPP legislation." *Id.* ¶ 35 (citing Kathryn W. Tate, *California's Anti-SLAPP Legislation: A Summary of and Commentary on Its Operation and Scope*, 33 Loy. L.A. L. Rev. 801, 804-05 (2000)). "[T]he purpose of the Act is to give relief, including monetary relief, to citizens who have been victimized by meritless, retaliatory SLAPP lawsuits because of their act or acts made in furtherance of the constitutional rights to petition, speech, association, and participation in government." *Id.* ¶ 44 (citing *Walsh*, 238 Ill. 2d at 633) (internal quotation marks omitted).

¶ 24 Section 15 requires plaintiffs to demonstrate that Lisle's petition for attorney fees "is based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government." *Id.* ¶ 56 (citing 735 ILCS 110/15 (West 2008)). If plaintiffs have met their burden of proof, the burden shifts to the responding party to prove by "clear and convincing evidence that the acts of the moving party are not immunized from, or are not in furtherance of acts immunized from, liability [under the] Act." *Id.* (citing 735 ILCS 110/20(c) (West 2008)).

¶ 25 Here, plaintiffs failed to prove that the petition for attorney fees was "based on, relates to, or is in response to" any acts by plaintiffs in furtherance of their petition to place the question of annexation on the April 4 ballot. Prior to the trial court's injection of the issue of sanctions, the

only relief sought by Lisle was dismissal of a complaint based on (1) real and significant departures from fundamental statutory requirements and (2) mootness due to the election date having passed. The evidence shows that the fee petition was filed in direct response to the trial court's order instructing the village to file the petition. The court later clarified that the intent of the petition it had sought was "to provide [the court] some indication as to what their fees were so that if sanctions are indeed appropriate, then [the court] might have some good signposts as to what sanctions might be appropriate."

¶ 26 The evidence also shows that the fee petition ordered by the court addressed plaintiffs' failure to sufficiently bring a petition that was based in law and fact. Throughout this case, Lisle asserted that plaintiffs' petition failed to comply with various statutory provisions and that plaintiffs caused a substantial delay in proceedings by continuing a moot case for two months before they ultimately filed a motion to dismiss. Because plaintiffs have failed to meet their burden, it is irrelevant whether plaintiffs' actions were genuinely aimed at procuring favorable government action, result, or outcome and, thus, are immune from liability under section 15. See *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 53. Accordingly, we affirm the trial court's ruling and find that plaintiffs are not immune from liability under section 15 of the Citizen Participation Act.

¶ 27 II. Sanctions

¶ 28 Plaintiffs argue that the trial court erred when it ordered sanctions on April 24, 2017, and again on May 17, 2017, without conducting a court hearing on the matter. Plaintiffs also claim that the trial court's factual findings were against the manifest weight of the evidence because (1) the petition they had filed was not seeking forcible annexation but was merely seeking to submit a question on the April 4, 2017, ballot pursuant to the Municipal Code; (2) the Will County Clerk

does not have to be a named party to the suit; (3) because there is no established precedent interpreting the Municipal Code, plaintiffs did not assert arguments contrary to authority and made reasonable inquiry concerning the code's interpretation; and (4) plaintiffs took reasonable steps to dismiss the case when they informed Lisle's attorney that they intended to dismiss the case and subsequently filed a motion for voluntary dismissal.

¶ 29 Lisle alleges that plaintiffs had multiple opportunities, and used those opportunities, to defend themselves against sanctions. Furthermore, Lisle claims that an evidentiary hearing was unnecessary because the petition's deficiency made it clear on its face that plaintiffs filed a frivolous pleading. Thus, Lisle argues that the trial court's findings support an award of monetary sanctions under Rule 137.

¶ 30 Rule 137 "authorizes a court to impose sanctions on lawyers and parties who violate its terms." *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 486 (1998). "[U]nder Rule 137, sanctions may be granted under two different circumstances: (1) when a pleading, motion, or other paper is not 'well-grounded in fact' or is not 'warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law,' or (2) when it is interposed for purposes such as to 'harass or to cause unnecessary delay or needless increase in the cost of litigation.'" *People v. Stefanski*, 337 Ill. App. 3d 548, 551 (2007) (citing Ill. S. Ct. R. 137 (eff. Aug. 1, 1989)). "The purpose of Rule 137 is to 'prevent abuse of the judicial process by penalizing claimants who bring vexatious and harassing actions based upon unsupported allegations of fact and law.'" *Burrows v. Pick*, 306 Ill. App. 3d 1048, 1050 (1999) (citing *Senese v. Climatemp, Inc.*, 289 Ill. App.3d 570, 581 (1997)). "The purpose is not to punish litigants and their attorneys simply because they have been unsuccessful in the litigation." *Id.* (citing *Espevik*

*v. Kaye*, 277 Ill. App.3d 689, 697 (1996)). Rule 137 is penal in nature and must be strictly construed. *Gleason*, 181 Ill. 2d at 487.

¶ 31 "[A]n objective determination of reasonableness under the circumstances applies when determining whether a filed paper is grounded in fact and warranted by existing law; it is not sufficient that the party honestly believed that the allegations raised were grounded in fact and law." *Stefanski*, 377 Ill. App. 3d at 552 (internal quotation marks omitted). A trial court's order granting or denying a petition for sanctions is reviewed under the abuse of discretion standard. *Commonwealth Edison Co. v. Munizzo*, 2013 IL App (3d) 120153, ¶ 33. "A trial court abuses its discretion when its ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *Id.* (citing *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009) (internal quotation marks omitted)). When addressing sanctions, the reviewing court's "primary consideration is whether the trial court's decision was informed, based on valid reasoning, and follows logically from the facts." *Id.*

¶ 32 As to whether plaintiffs are entitled to an evidentiary hearing, "parties faced with Rule 137 sanctions should be granted a hearing to determine if sanctions are warranted." *Koch v. Carmona*, 268 Ill. App. 3d 48, 54 (1994). In this case, the record shows that plaintiffs were given opportunities to be heard at hearings on July 26, 2017, and March 5, 2018.

¶ 33 As to the trial court's award of sanctions, the evidence shows that plaintiffs' actions were not objectively reasonable. Plaintiffs stated that they relied on citizens of Lisle, Warrenville, and Woodridge to obtain signatures for the petition. The signatures were submitted to plaintiffs the day before they planned to file the petition. In order to meet the January 3 deadline, plaintiffs hastily submitted the petition without the requisite number of signatures in accordance with the

plain language of section 7-1-16. Plaintiffs admitted that they did not verify the authenticity of the signatures before they filed the petition.

¶ 34 Notwithstanding their failure to obtain the appropriate number of signatures, Plaintiffs argued that they intended to challenge the constitutionality of section 7-1-16's signature requirement; however, they failed to do so before the April 4 election. In fact, had plaintiffs conducted even a rudimentary inspection of their petition, they would have found that some of the pages were merely photo-copied duplicates. Plaintiffs became aware that their petition was not meritorious on February 28 when the DuPage County circuit court dismissed the petition. However, plaintiffs waited until four days before the conference, and 16 days after the election, to inform Lisle's attorney that they were dismissing the claim. Eventually, plaintiffs filed a motion to dismiss a month after the conference. Furthermore, there are concerns as to whether plaintiffs chose the proper venue to file the petition, especially when Lisle and Warrenville are not located in Will County. Accordingly, we affirm the decision of the circuit court.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court of Will County is affirmed.

¶ 37 Affirmed.