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Pro Se Lawyers Can Recover Attorneys' Fees Under Illinois Supreme Court Rule 137

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McCarthy v. Taylor, 2019 IL 123622

Brief Summary

In a case of first impression, the Illinois Supreme Court held that a court is authorized under Illinois Supreme Court Rule 137(a) to impose sanctions in the form of attorneys' fees against a plaintiff to compensate a *pro se* attorney who successfully defends against a frivolous claim.

The facts of this case play out like a movie. The primary beneficiary of a trust learned after his friend committed suicide that his friend had secretly amended his trust to the substantial benefit of a new girlfriend. Jilted by this discovery—and after the trial court found the amendment to be valid—he sued the lawyer who informed him about the amendment, alleging tortious interference. The Illinois Supreme Court affirmed the dismissal of the frivolous claim and the award of attorneys' fees for the attorney who defended himself.

Complete Summary

When the grantor (Reynolds) first created the living trust, it was written such that if Reynolds' then romantic interest (Coles) died before Reynolds, the plaintiff (McCarthy) would receive Coles' 80% share following Reynolds' death. Coles passed away before Reynolds, setting up McCarthy to receive the lion's share of the trust at Reynolds' death. A few years later, Reynolds committed suicide. The defendant attorney (Gray) contacted McCarthy after Reynolds' death, and notified him that Reynolds had amended the trust before his death to name a new romantic interest (Taylor) as the primary beneficiary. Pursuant to the amendment, McCarthy would now receive a much smaller 20% share of the trust.

McCarthy's first attempt to invalidate the trust failed when the trial court found the amended trust was valid. Seeking another bite at the apple, McCarthy sued Gray, alleging breach of fiduciary duty and tortious interference. After the claims were dismissed, Gray filed a motion for sanctions under Illinois Supreme Court Rule 137(a), contending that McCarthy made false statements in his complaint, and that Gray and McCarthy did not have an attorney-client relationship. The trial court found that McCarthy's cause of action against Gray was frivolous, and

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Terrence P. McAvoy

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therefore subject to Rule 137(a) sanctions in the amount of \$9,907.98. The appellate court vacated the award holding that a *pro se* attorney was not entitled to receive attorney fees.

The Illinois Supreme Court initially discussed a basic summary of the sanctions rule: "The plain language of Rule 137 authorizes a court to impose sanctions against a party or counsel for filing a motion or pleading that is not well-grounded in fact; that is not supported by existing law or lacks a good-faith basis for the modification, reversal, or extension of the law; or that is interposed for any improper purpose." *McCarthy*, ¶19.

The *McCarthy* case distinguished *Hamer v. Lentz*, 132 Ill.2d 49 (1989) (*pro se* attorney not entitled to attorneys' fees for prosecuting a Freedom of Information Act action) and *State ex rel. Schad, Diamond & Shedden, P.C. v. My Pillow, Inc.*, 2018 IL 122487 (law firm not entitled to attorneys' fees for prosecuting *qui tam* claim under the False Claims Act), because those matters involved a fee-shifting provision and the long standing "American Rule" that each side should bear its own litigation expenses. Other cases were distinguishable because they did "not involve Rule 137 sanctions to compensate a *pro se* attorney defending himself against frivolous claims." *McCarthy*, ¶28. Since the policy of Rule 137 sanctions is to "deter frivolous pleading and litigation," the court noted that "it would be illogical to deny attorney fees to *pro se* attorneys defending themselves in such matters." *Id.* The purpose of sanctions is to punish the party who abuses the judicial process. The court concluded that: "under Rule 137, a court is authorized to impose sanctions in the form of attorney fees under Illinois Supreme Court Rule 137(a) (eff. July 1, 2013) against a plaintiff to compensate an attorney defending himself against a frivolous cause of action." *McCarthy*, ¶32.

Two justices dissented, in part. Justice Karmeier believed the majority fell short of addressing compensation for non-lawyers who defend frivolous actions as *pro se* defendants and proposed that a defendant's loss of income (regardless of occupation) that was attributed to the time spent defending the action be considered in assessing appropriate sanctions. Justice Garman dissented for a number of reasons, and "most importantly," because "the majority's holding impermissibly carves out a special exception for attorneys." *McCarthy*, ¶60.

Significance of the Case

Illinois attorneys forced to defend themselves in frivolous actions may now seek attorneys' fees as sanctions pursuant to Illinois Supreme Court Rule 137, which is essentially Illinois' equivalent of Federal Rule 11.

For more information contact Terrence P. McAvoy or Joanna L. Storey