IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

GRETCHEN WILKINSON, *et al.*,	)	
	)	
Plaintiffs,	)	
v.	)	No. 15 L 000980
	)	
INSTITUTE IN BASIC LIFE PRINCIPLES, INC. and WILLIAM W. GOTHARD, JR.,	)	Hon. Judge Popejoy
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANT GOTHARD'S MOTION PURSUANT TO ILLINOIS SUPREME COURT RULES 137 AND 219(e) FOR SANCTIONS AND OTHER RELIEF AGAINST JANE DOE III

NOW COMES the Plaintiff, JANE DOE III, by and through her attorneys, MEYERS & FLOWERS, LLC, and for her Response to Defendant Gothard's Motion Pursuant to Illinois Supreme Court Rules 137 and 219(e) for Sanctions and Other Relief Against Jane Doe III, states as follows:

INTRODUCTION

In his Motion Pursuant to Illinois Supreme Court Rules 137 and 219(e) For Sanctions and Other Relief Against Jane Doe III ("Gothard's Motion," cited as "Gothard Mtn."), Defendant Bill Gothard ("Gothard") engages in page after page of victim blaming while blatantly disregarding the standard upon which courts adjudicate requests for Rule 137 sanctions. Gothard repeatedly mischaracterizes as false isolated, minor inconsistencies between Jane Doe III's ("Plaintiff") allegations and pleadings. Rather than allege sanctionable conduct given the totality of the circumstances as required in a Rule 137 analysis, Gothard cherry-picks statements, provides no context, and then sensationalizes those statements as "proof" that Plaintiff filed false pleadings as part of a conjured mass conspiracy to topple Gothard. When looking beyond Gothard's outrageous assertions and providing context to Plaintiff's statements, however, it becomes clear that Jane Doe III and the rest of the Plaintiffs were simply utilizing various coping mechanisms to deal with the

trauma they endured. Gothard has failed to allege sanctionable conduct as to either Plaintiff's Third Amended Complaint at Law (the "Complaint") or the Affidavit of Jane Doe (the "Affidavit"). Because the Complaint and Affidavit were well founded in law and fact and both Plaintiff and Plaintiff's counsel conducted a reasonable inquiry prior to filing, Gothard's Motion must be denied in its entirety.

LEGAL STANDARD

Rule 137 applies to pleadings, motions, and other papers. Ill. S. Ct. R. 137. When signing a pleading, an attorney represents to the court "that to the best of his knowledge, information, and belief formed after reasonable inquiry [the pleading] is well grounded in fact and is warranted by existing law . . . ." *Id.* The rule requires a narrow construction because it is "penal in nature and must be invoked only in those cases falling strictly within its terms." *Couri v. Korn*, 202 Ill.App.3d 848, 855 (3d Dist. 1990) (citing *In re Estate of Wernick*, 127 Ill.2d 61, 77 (1985)). To demonstrate a Rule 137 violation, the party seeking sanctions "must show that the opposing party pleaded untrue pleadings of fact without reasonable cause." *Id.* Even in the event an untrue statement is pleaded and proven to be untrue, it is not *per se* sanctionable. *Id.*

In the event the movant shows falsity in the pleadings, the court must then decide if the offending party conducted an objectively reasonable inquiry prior to making the false assertions. *Burrows v. Pick*, 306 Ill.App.3d 1048, 1054 (1st Dist. 1999). When analyzing the reasonableness of the inquiry, the court examines circumstances existing at the time the pleading was signed. *Couri*, 202 Ill.App.3d at 856. The trial court has sole discretion to award fees under Rule 137, and the trial court's decision will not be overturned except upon a showing of abuse of discretion. *Burrows*, 306 Ill.App.3d at 1051 (citing *Yassin v. Certified Grocers of Illinois, Inc.*, 133 Ill.3d 458, 467 (1990)).

ARGUMENT

Gothard fails to meet his burden to prove that (1) either the Complaint or the Affidavit contain statements of fact which were untrue when asserted, and (2) Plaintiff and Plaintiff's counsel failed to conduct an objectively reasonable inquiry under the circumstances existing at the time of the allegedly false assertions. Not only were Plaintiff's Complaint and Affidavit well founded in fact and law, a reasonable inquiry was undertaken by Plaintiff's Counsel and Plaintiff prior to filing the aforesaid documents. Gothard's narrow allegations ignore the Rule 137 standard and constitute a prohibited hindsight analysis. Gothard's Motion must be denied.

I. Plaintiff's Complaint and Affidavit Were Neither False Nor Frivolous

Under any standard, let alone the demanding standard upon which a party seeking sanctions must abide, Gothard fails to demonstrate that either the Complaint or the Affidavit were false or frivolous. Pleadings lacking factual or legal foundations can be considered false or frivolous. *Baker v. Berger*, 323 Ill.App.3d 956, 966 (1st Dist. 2001). A pleading is also false or frivolous if it is interposed for an improper purpose such as to unnecessarily delay litigation or to harass. *Rios v. Valenciano*, 273 Ill.App.3d 35, 40 (2d Dist. 1995). Plaintiff's Complaint and Affidavit had both a factual and legal foundation and were not interposed for an improper purpose.

A. Plaintiff's Complaint and Affidavit Were Well Founded in Law

While the majority of Gothard's argument consists of bombarding the Court with targeted, out-of-context statements purportedly demonstrating the lack of a factual basis for Plaintiff's claims, Gothard also suggests that Plaintiff's allegations of repressed memories were not well grounded in law. Gothard Mtn., p. 7-9. Gothard's assertion evinces a misunderstanding of the effect that legally cognizable allegations of repressed memories have on the discovery rule.

Plaintiff's allegations of repressed memories are well founded in law based on Illinois courts validating the legality of allegations that meet certain threshold requirements.

Illinois courts have held that the discovery rule applies to childhood sexual abuse cases where the plaintiff repressed her memories of the abuse. *See Clay v. Kuhl*, 297 Ill.App.3d 15, 23 (2d Dist. 1998) (citing *Pedigo v. Pedigo*, 292 Ill.App.3d 831, 839 (5th Dist. 1997); *D.P. v. M.J.O.*, 266 Ill.App.3d 1029, 1033-34 (1st Dist. 1994)). "[I]f it is the plaintiff's intention to rely on such [repressed memories] to toll the statute of limitations, then she is obligated to plead the condition with sufficient specificity to advise the defendants of the alleged basis." *Clay v. Kuhl*, 297 Ill.App.3d at 23-24. The trial court would then decide as a matter of law whether that condition is scientifically acknowledged and would prevent the plaintiff's discovery of the abuse. *Id.*

Illinois courts have also held that it would be a patent injustice to require a plaintiff to discover something that is "inherently unknowable." *Phillips v. Johnson*, 231 Ill.App.3d 890, 893 (3d Dist. 1992). "Therefore . . . we acknowledge that in certain instances a plaintiff may be suffering from a condition that precludes her from recognizing that she has been a victim of childhood sexual abuse." *Clay*, 297 Ill.App.3d at 22. For the discovery rule to apply, a plaintiff must know that an injury occurred *and* that it was wrongfully caused. *Franke v. Geyer*, 209 Ill.App.3d 1009, 1012 (3d Dist. 1991).

Despite Gothard's assertion to the contrary, Plaintiff's allegations of repressed memories were well founded in Illinois law. Plaintiff needed only to plead the condition with sufficient details to apprise Gothard of the alleged basis. *See Clay*, 297 Ill.App.3d at 23-24. Here, Plaintiff met that burden. Not only did Plaintiff allege that she did not know her injuries were caused by the abuse, she also asserted that she was suffering from a condition that caused her to repress the memories of the abuse. Complaint, p. 108-121. Only the trial court, not Gothard, determines as a matter of law whether Plaintiff's allegations amount to a scientifically cognizable condition that could cause repressed memories. *See Clay v. Kuhl*, 297 Ill.App.3d at 23-24. With Plaintiff citing

to well established Illinois law in her Complaint, Gothard's argument related to Plaintiff's allegations of repressed memories cannot be sustained.

B. Plaintiff's Complaint and Affidavit Were Well Founded in Fact

Gothard erroneously contends that, in addition to lacking a sound legal basis, Plaintiff's Complaint was factually deficient. *See generally* Gothard's Mtn. Gothard once again provides no context to the allegedly false statements in a thinly veiled attempt to induce the Court into conducting an improper Rule 137 analysis. Such an approach contradicts the express requirement that a court review the totality of the circumstances at the time the allegedly false documents were signed. *See Couri*, 202 Ill.App.3d at 856. Rather than engage Gothard's tit-for-tat approach in which Plaintiff's statements are scrutinized in isolation, Plaintiff must only look to the totality of the circumstances and Gothard's own discovery answers to invalidate Gothard's contentions and prove Plaintiff's Complaint and Affidavit were well founded in fact.

Plaintiff alleged that Gothard "engaged in unwanted physical and sexual contact and conduct including placing his hand on JANE DOE III's leg and inner thigh in a sexual manner, rubbing JANE DOE III's shoulders, arms and hands in a sexual manner and rubbing his feet on JANE DOE III's feet in a sexual manner." Complaint ¶ 676. Despite emphatically stating that the aforementioned allegation was false, Gothard admitted in his answers to Plaintiff's interrogatories that he touched Plaintiff. *See generally* Gothard's Answer to Plaintiff Jane Doe III Interrogatories, copy attached hereto as **Exhibit A**. Gothard qualified his answer in that "Defendant vehemently denies that any "physical contact" which occurred was of a sensual or sexual nature." *Id.* 2-3. Gothard also posted online that his actions of "holding of hands, hugs, and touching of feet or hair with young ladies crossed the boundaries of discretion and were wrong." *See* Gothard's Online Post, copy attached hereto as **Exhibit B**. Gothard's admissions contradict his claims that Plaintiff made false statements, regardless of his insistence that the contact was non-sensual. Gothard's assertion can only be considered a bad faith attempt to mischaracterize as false that which would

ultimately be a question for the jury. Gothard cannot take a question of fact for the jury and repackage it as a false pleading.

Plaintiff also had a well-founded factual basis to assert in her Affidavit that if she were not permitted to file the Complaint anonymously, she would be in danger from her father. *See* Affidavit of Jane Doe III, copy attached hereto as **Exhibit C**. As Plaintiff attested, in the event her father found out that she publicly disclosed his sexual abuse of her, she would be in personal danger and suffer psychological, physiological, and emotional distress. *Id.* Contrary to Gothard's suggestions regarding any ulterior motives, Plaintiff sought filing status as a Jane Doe to keep the lawsuit a secret from her father. Plaintiff's father would not have known about the lawsuit regardless of any inadvertent disclosures in private message groups were it not for Gothard's counsel contacting him directly via phone and disclosing the lawsuit and Plaintiff's identity. Prior to that time, only Plaintiff's mother was aware of the lawsuit, which she kept secret from Plaintiff's father. To suggest that Plaintiff would not be in danger were she to disclose to the public that her father sexually abused her constitutes gross ignorance of the implications of outing an abuser who has already victimized the person disclosing the abuse. Regardless of any concomitant effects of anonymous filing that Gothard cites out of context, *see* Gothard's Mtn., p. 4-5, Plaintiff's paramount reason for doing so was fear of retribution, a valid reason for seeking anonymity that was well grounded in fact.

Plaintiff's allegations related to her suffering severe emotional distress as a result of Gothard's unwanted sexual conduct were factually sound. Again, Gothard employs the same tired attempts at cherry-picking statements to purportedly show that Plaintiff's claims were false. *See* Gothard's Mtn., p. 6-7. At best, Gothard identifies minor inconsistencies in Plaintiff's allegations while not definitively disproving them. At worst, Gothard stereotypes certain victims of sexual abuse as not being true victims in the event they utilize a variety of coping mechanisms. Sexual abuse victims cope differently, and some employ different methods at different times. For

Plaintiff, talking with her friends was merely a way to cope with the abuse that she suffered. Talking with her friends did not nullify her severe emotional distress. That Plaintiff may have utilized different coping mechanisms does not negate or somehow falsify her allegations that she suffered severe emotional distress.

Plaintiff's allegations regarding repressed memories, in addition to citing established Illinois law, were based in fact. Only after Plaintiff heard stories from other victims of Gothard's abuse did her repressed memories resurface. Gothard points to internet posts taken out of context as support for his allegation that Plaintiff knew her claims were time barred. *See* Gothard's Mtn., p. 7-9. Far from it, Plaintiff's statements show that she started to become aware of only some of the harmful conduct perpetuated by Gothard after Lizzie's story was published. Plaintiff did not regain her memories all at one time; rather, the process by which she remembered Gothard's abuse was dynamic and continued to occur over time. Gothard further points to a conversation between Attorney Frank Cesarone and Plaintiff in which Attorney Cesarone allegedly informed Plaintiff that the statute of limitations precluded any causes of action against Gothard. Gothard's Mtn., p. 8-9. Attorney Cesarone merely informed Plaintiff that the discovery rule would apply in this case given Plaintiff's repressed memories, not that her claim was completely time barred. Additionally, this Court denied Gothard's 2-619 motion to dismiss the Complaint based upon the court determining that the pleadings regarding repressed memories were adequate.

As demonstrated, Plaintiff's Complaint and Affidavit were well founded in fact and law. By isolating statements and pointing the finger at Plaintiff for certain behavior misperceived as contradictory to her allegations, Gothard engages in page after page of victim shaming. Setting aside Gothard's ridicule and shaming, his allegations fall well short of the those necessary for the Court to levy sanctions against Plaintiff. Gothard's Motion must be denied.

II. Plaintiff and Plaintiff's Attorneys Conducted a Reasonable Inquiry

While Plaintiff expressly maintains that the allegations contained in her Complaint and Affidavit were true, both Plaintiff and Plaintiff's attorneys nonetheless conducted a reasonable inquiry at the time of filing such that sanctions under Rule 137 are inappropriate. The totality of the circumstances surrounding the initial filing bolster the reasonableness of those inquiries. While Gothard engages in a piecemealed hindsight analysis *ad nauseum*, he once again provides no legal basis for sanctions under Rule 137.

Plaintiff conducted a reasonable inquiry prior to filing the lawsuit by having extensive discussions with other victims of Gothard's abuse in order to corroborate her resurfaced memories. She reviewed all Gothard and IBLP related documents in her possession in order to further confirm Gothard's misdeeds. Given the lapse in time between the alleged abuse and when Plaintiff was no longer repressing her memories, she had no choice but to corroborate those refreshed memories with other victims. No other due diligence could have been conducted or was required to further corroborate Gothard's actions. Additionally, the sufficiency of Plaintiff's due diligence is bolstered by the fact that touching did occur even though Gothard could not recall specific dates or specific instances of unwanted touching. *See* Exh. A, p. 2-3; Exh. B.

Plaintiff's attorneys engaged in extensive due diligence by vetting the facts and circumstances forming the bases of the initial complaint filed by Plaintiff's prior attorneys. Plaintiff's attorneys conducted research into the validity in Illinois of tolling the statute of limitations based on repressed memories. *See* Section I, Part A, *supra*. Plaintiff's attorneys reviewed innumerous documents and verified Plaintiff's recitation of the abuse Gothard perpetuated versus the similar accounts given by other girls. It was reasonable to rely on Plaintiff's assertions because aside from Plaintiffs and Gothard, no one else was or could have been privy to what occurred between the two of them. *See Couri*, 202 Ill.App.3d at 856. Plaintiff's attorneys'

inquiry did not stop after the initial pleadings and continued to the point that Plaintiff voluntarily dismissed her case.

Given the vigilance with which both Plaintiff and her attorneys initially vetted this case and continued to do so until dismissal, no basis for sanctions exists under Rule 137. Plaintiff's allegations were neither false nor frivolous. Regardless of Gothard's failure to satisfy this threshold inquiry, both Plaintiff and Plaintiff's counsel conducted a reasonable and thorough inquiry into the facts and law underpinning this case. Gothard is not entitled to any relief under Rule 137.

III. Gothard's Rule 219 Motion is Moot

After engaging in nine pages of finger pointing, victim shaming, and ignorant behavior regarding coping mechanisms utilized by sexual abuse victims, Gothard concludes his Motion with a superfluous claim for sanctions under Illinois Supreme Court Rule 219. In determining whether to impose sanctions under Rule 219(e), a "court shall consider discovery undertaken (or the absence of same), any misconduct, and orders entered in prior litigation involving a party." Similar to Gothard ignoring the standard upon which a claim for sanctions under Rule 137 must lie, Gothard intentionally omits discussion of any factors considered in a Rule 219(e) analysis. When analyzing the discovery undertaken and the lack of misconduct, Gothard's motion must be denied.

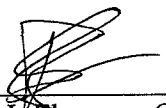
Plaintiff's produced extensive documents and answers in response to Gothard's interrogatories and requests for production of documents. Plaintiffs have diligently and in good faith searched and produced their records in order to comply with all discovery requests. Now that Plaintiffs' cases have been voluntarily dismissed, it makes little sense to continue with discovery. Gothard spent his entire motion protesting the expense of litigation, yet now seeks to prolong litigation. At most, Plaintiffs should be instructed to preserve any previously compelled evidence rather than engage in additional production. All other relief sought by Gothard pursuant to Rule 219 should be denied.

CONCLUSION

Rather than continue to victim shame and needlessly drag out the current litigation, Gothard should withdraw his motion and move on. Regardless of Plaintiff's voluntary dismissal, Gothard's ignorance of the ways in which sexual abuse victims cope with that abuse is abhorrent. There is a stark difference between voluntarily dismissing a case due to the inability to prove the allegations after due diligence versus dismissing because those allegations were false. Gothard grossly confuses the two. This Court should deny Gothard's motion in its entirety and put an end to his continued shaming and victim blaming.

Respectfully Submitted,

MEYERS & FLOWERS, LLC



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