

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

GRETCHEN WILKINSON, et al.,

Plaintiffs,

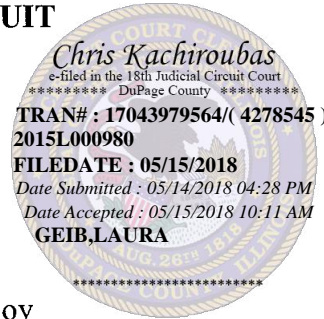
v.

**INSTITUTE IN BASIC LIFE PRINCIPLES,
INC. and WILLIAM W. GOTHARD, JR.,**

Defendants.

No. 15 L 000980

Hon. Judge Popejoy



**PLAINTIFF’S RESPONSE TO DEFENDANT GOTHARD’S MOTION PURSUANT TO
ILLINOIS SUPREME COURT RULES 137 AND 219(e) FOR SANCTIONS AND OTHER
RELIEF AGAINST RACHEL FROST**

NOW COMES the Plaintiff, RACHEL FROST, 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 Rachel Frost, states as follows:

INTRODUCTION

In his Motion Pursuant to Illinois Supreme Court Rules 137 and 219(e) For Sanctions and Other Relief Against Rachel Frost (“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 in Rachel Frost’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 Rachel Frost 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 Plaintiff's Third Amended Complaint at Law (the "Complaint"). Because the Complaint was 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) the Complaint contains 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 was Plaintiff's Complaint 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 Was 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 the Complaint was 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 had both a factual and legal foundation and was not interposed for an improper purpose.

A. Plaintiff's Complaint Was 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. 5-7. 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 a 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. 77-93. Gothard attempts to usurp the trial court by unilaterally deciding that Plaintiff did not have repressed memories even though she alleged and her statements corroborate that she did not recognize that Gothard’s actions caused her injuries. *See Gothard’s*

Mtn. p. 5-7. Only the trial court, not Gothard, determines as a matter of law whether a condition is scientifically recognized and 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 Was 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 was well founded in fact.

Gothard's misplaced argument that Rachel Frost falsely accused Gothard of sexual abuse is untenable. Plaintiff's aggravated sexual abuse claim against Gothard was dismissed by this Court. Plaintiff alleged that Gothard committed battery based on an unwanted touching. Plaintiff specifically alleged that Gothard "engaged in unwanted physical and sexual contact and conduct including touching RACHEL FROST's thighs and shoulders with his hands in a sexual manner, rubbing his foot up RACHEL FROST's legs in a sexual manner and grabbing her by the hair/neck in a sexual manner." Complaint ¶ 483. 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 Rachel Frost's 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 admission contradicts 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’s allegations regarding repressed memories, in addition to citing established Illinois law, were based in fact. In her interrogatory answers, Plaintiff provided the name of the mental health professional with whom she treated. *See* Rachel Frost’s Supplemental Answers to Defendant William Gothard’s SCR 213 Interrogatories, p. 13-14, copy attached hereto as **Exhibit C**. Additionally, Plaintiff stated that she was diagnosed by her counselor as having adjustment disorder and anxiety disorder and *began* to remember Gothard’s abuse when she read a story on the Recovering Grace website. *See id.* (emphasis added). Plaintiff’s objectively verified statements show prior to 2014, she did not realize that an injury occurred *and* that it was wrongfully caused as required by Illinois law. *See Franke v. Geyer*, 209 Ill.App.3d 1009, 1012 (3d Dist. 1991).

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. 7-9. 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 if they cope in certain ways or suffer certain types of injuries. Plaintiff stated that she suffered extreme anxiety and emotional instability and that her counselor

diagnosed her with adjustment disorder with anxiety. *See* Exh. C, p. 8-9. That emotional distress was objectively verified when Plaintiff obtained her diagnosis. *See id.* That Plaintiff may feel damaged in other ways does not preclude her from suffering severe emotional distress from Gothard's actions. Gothard's assertion that Plaintiff's statements regarding her (a layperson) legal interpretation of her case as somehow being "weak" reveals Gothard's fundamental misunderstanding of Illinois's emotional distress law. That Plaintiff may have slightly misunderstood her case does not negate or somehow falsify her allegations that she suffered severe emotional distress.

As demonstrated, Plaintiff's Complaint was 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 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. Plaintiff treated extensively with a mental health professional in order to

obtain necessary treatment and opinions regarding her injuries and how they were causally linked to Gothard's conduct. 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 innumerable 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 of the 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 produced extensive documents and answers in response to Gothard’s interrogatories and requests for production of documents. Plaintiff has diligently and in good faith searched and produced her records in order to comply with all discovery requests. Now that Plaintiff’s case has 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, Plaintiff 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 or describe 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,

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