IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE CONSERVATION OF
NEXTLEVEL HEALTH PARTNERS, INC.

Jacqueline Stevens, Intervenor, *Pro Se*

2020 CH 04431

REPLY TO OPPOSITION TO MOTION FOR SANCTIONS UNDER Ill. SUP. CT. R. 137 RULE 137

On June 8, 2022, Jacqueline Stevens ("Intervenor") filed a Supplemental Motion as an exhibit to a Motion for Leave to File the Supplemental Motion ("Supp. Mot."). On June 13, 2022 the court denied all motions within the Supp. Mot., including a motion to file a Sur-Sur Reply and strike portions of NextLevel's Sur-Reply, but scheduled briefing for the motion for sanctions under Ill Sup. Ct. R. 137 ("Mot. Sanctions"). On June 17, 2022, DLA Piper filed "NextLevel Health Partner's Inc. Opposition to Intervenor's Supplemental Motion" ("Opp. Mot."). On June 29, 2022 ("June 29, 2022 Order") the court ordered DLA Piper attorney Stephen Schwab ("Mr. Schwab") to file an affidavit about his communications with the court "regarding the lifting of sequestration in these proceedings, and the filing of replacement copies of those documents ordered to be maintained under seal or redacted in the Court's order of November 29, 2021." The June 29, 2022 Order also tolled the briefing for Intervenor's Reply.

I. OVERVIEW

The Opp. Mot. admits the central factual points point pled in Intervenor's Mot. Sanctions: records NextLevel pleadings asserted were sealed or redacted were in fact available to the public.

Opp. Mot., p. 5. DLA Piper also does not deny that no stamped filings of a redacted Complaint or Order of June 29, 2020 ("Conservation Order") were available until May 5, 2022. And, DLA Piper admits that under Ill. Sup. Ct. R. 137 ("R. 137"), "an attorney's signature on a document certifies that the document 'to the best of [the attorney's] knowledge, information, and belief formed after reasonable inquiry ... is well grounded in fact and is warranted by existing law....and that it is not interposed for an improper purpose.'" Opp. Mot., pp. 3-4, quoting R. 137.

Thus, DLA Piper's only defenses to sanctions are that: (1) the Mot. Sanctions "does not point to any specific statement in NextLevel's filings that purportedly violates Rule 137" (Opp. Mot. p. 4); (2) that DLA Piper adhered to court rules for filing records (Opp. Mot. p. 5); (3) the inaccurate statements in the pleadings "had no material impact on the outcome of the dispute" (Id.); and (4) that DLA Piper has "no control over what the Clerk of Court does after NextLevel files documents." Opp. Mot. p. 6. Each of these four claims is false or irrelevant.

II. Legal Standard

The purpose of R. 137 is to avoid frivolous filings. *Whitmer v. Munson*, 781 NE 2d 618, 630-31 (2002), overturning denial of sanctions motion and remanding to trial court for sanctions. ("As previously noted, the purpose of Rule 137 is to avoid frivolous and false lawsuits, and courts are called upon to use an objective standard in evaluating what was reasonable at the time of filing. See *Baker*, 323 Ill.App.3d at 963, 257 Ill.Dec. 268, 753 N.E.2d at 469 ... In this case, Whitmer initiated a lawsuit based on facts that he had to have known were false.") In this case, NextLevel's false representation of the record of proceedings led to hypothetical arguments about confidentiality for records that DLA Piper knew were not in fact confidential. Also, the standard for sanctions is objective outcomes, not intent. *Technology Innovation Center, Inc. v.*

AMT 732 N.E.2d 1129, 1135 (2000), overturning denial of sanctions remanding to trial court for sanctions. ("Though it may be true that, subjectively, TIC and Murray did not act in bad faith, the standard by which a court must measure an attorney's conduct is an objective one. It is of little consequence 'that an attorney 'honestly believed' his or her case was well grounded in fact or law.' *Fremarek v. John Hancock Mutual Life Ins. Co.*, 272 Ill.App.3d at 1074, 209 Ill. Dec. 423, 651 N.E.2d 601.") The key question for imposing sanctions is whether it was reasonable to expect that attorneys knew statements in their pleadings were inaccurate. *Kensington's Wine v. John Hart Fine Wine*, 909 NE 2d 848, 864 (2009). ("In reviewing a motion for sanctions, the trial court must employ an objective standard and determine what was reasonable at the time the party filed its pleading." *Baker v. Daniel S. Berger, Ltd.*, 323 Ill.App.3d 956, 963, 257 Ill.Dec. 268, 753 N.E.2d 463 (2001).) DLA Piper devotes substantial time to claiming it properly filed documents. However, the attorneys do not, and cannot, dispute that pleadings submitted by DLA Piper included false statements material to the litigation and that the attorneys knew or should have known this. DLA Piper does not dispute that "...DLA Piper attorneys left in the public record information that they told this court would pose dire consequences to NextLevel and Centene ..." Mot. Sanctions, p. 5. Intervenor pointed out as well, "As late as April 26, 2022, NextLevel stated its 'confidentiality interests weight in favor of keeping ... documents sealed or redacted.' Sur-Reply p. 7." *Id*. Of course on April 26, 2022, there was nothing to "keep" secret. By submitting pleadings falsely claiming records were sealed or redacted that were in fact publicly accessible, and by maintaining a hypocritical concern for secrecy in these matters, DLA Piper frivolously imposed on the time of Intervenor and impaired her ability to focus on the motions appropriate to the true posture of the case.

III. Argument

DLA Piper states, "First, the Supplemental Motion does not point to any specific statement in NextLevel's filings that purportedly violates Rule 137" (Opp. Mot. p. 4). However, in addition to quoting from the Sur-Reply insisting on "*keeping* ... documents sealed or redacted" (emphasis added) that were in fact publicly accessible, Intervenor's June 8, 2022 Mot. Sanctions also quotes from DLA Piper's Opposition Response to Intervenor's First Amended Motion ("FAM"):

> For instance, the NextLevel Response states, 'Exhibits A and B to the Giese Declaration ...[and] NextLevel's RBC information contained in the Complaint and Conservation Order ... are the only parts of the docket that are still sealed or redacted.'... Mot. Sanctions, p. 6, quoting from [NextLevel] Response [March 14, 2022], p. 5.[1]

This statement is false. On March 14, 2022, DLA Piper knew or should have known that the RBC information in the Complaint and June 9, 2020 Order ("Conservation Order") as well as the exhibits to the Giese Declaration ("Giese Dec. Exs.") were all publicly accessible, either as exhibits to the November 12, 2021 Memorandum in Support of NextLevel's Proposed Limitations on Lift of Sequestration ("NextLevel Memorandum") or simply at the public terminal as originally filed.[2] DLA Piper does not claim otherwise.

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1 Examples of other false statements about the records redacted or sealed are as follows: Sur-Reply, p. 2 (referencing "documents that are still sealed or slightly redacted..."[and] specific documents that remain under seal or redacted); Opp. Resp., p. 6 ("The Seal Order is not a further application of the Sequestration Statute. Even if the Court were to hold the Sequestration Statute unconstitutional, the documents that currently are sealed or redacted would remain so under the Court's inherent power.")

2 The court at a hearing on July 15, 2022 stated that all of the records it had ordered sealed or redacted were publicly accessible, at that point as exhibits to NextLevel's Memorandum. Intervenor does not have access to the CCCPortal and thus was only episodically aware of when certain documents were accessible to the public. There appears to have been changes in this. For instance, orders that were not released to Intervenor were later available at the terminal, as was the Complaint.

Second, DLA Piper does not deny that on May 26, 2022, the Complaint and Conservation Order were publicly available without redactions, nor that its attorneys knew that each and every record its pleadings claimed were sealed or redacted were publicly accessible through at least July 15, 2022 as exhibits to the NextLevel Memorandum of November 12, 2021. Indeed, as Intervenor recently learned, Illinois attorneys have real-time, free access to all case materials filed in Cook County.[3] Instead, DLA Piper claims it was helpless to enforce the court's order of November 29, 2021 lifting the order staying the end of sequestration and ordering the Giese Exs. sealed and redacted versions of the Complaint and Conservation Order replace the original respective filings ("Lift and Seal Order"). They would have the court believe a global law firm is incapable of administrative follow-up for an order they claim is vital to the interests of Centene and NextLevel. Opp. Mot., p. 6.

Consider the double-standard applied when Mr. Schwab demanded Intervenor immediately withdraw from public view these same records. Stevens Declaration ("Ex. A."), ¶33, Ex. 5, even though Intervenor effectively filed them as confidential exhibits and *the underlying records – the documents photographed at the public terminal in the Daly Center – all were still publicly accessible*. On July 27, 2022, DLA Piper attorney Matthew Freilich, immediately contacted Intervenor after observing through the attorney-accessible CCCPortal that two exhibits filed by Intervenor indeed were inadvertently and briefly public (Ex. 1). Intervenor within a few hours had assurances from the clerk's office that the documents she filed as "confidential" were indeed not available to the public and she has not heard anything to the contrary from opposing counsel. DLA Piper is demonstrably attentive to what is public and what is hidden, and yet declined at any point to prevail on the court or the court's clerk to effectively

3 Cook County Clerk of the Circuit Court, https://www.cookcountyclerkofcourt.org/.

handle its own exhibits and does not claim otherwise. The problem is not DLA Piper's inability to "control" the clerk (Opp. Mot., 6), but a decision to plead facts alternative to those of the proceeding record and to leave the actual record undisturbed.

An additional inaccurate statement in DLA Piper's pleadings filed on behalf of NextLevel of which Intervenor only recently became aware concerns exhibits to the Giese Declaration that required sealing and were called "Exhibits A and B," a designation also used in the Lift and Seal Order of November 29, 2021 and by Mr. Schwab as recently as July 12, 2022: "You will recall the Court's Nov. 29, 2021 Order which declared that Exs. A and B to the Giese Declaration would remain under seal; there were no other exhibits to the Giese Declaration." Stevens Decl., ¶40, Ex. 6. However, *there is no Exhibit A or Exhibit B* to the Giese Declaration. Stevens, Declaration, ¶¶15b – 17. On July 13, 2022, Mr. Schwab stated in an email, "The exhibits you filed as part of the Giese Declaration are indeed the Exhibits A and B referenced in the Declaration." Stevens Decl., ¶ 41, Ex. 7. This false statement in the pleadings led to further confusion because of the court's reliance on this claim in its Lift and Seal Order, leading Intervenor to infer there were additional exhibits -- "Exs. A and B"-- that had been sealed when the truth is that the only exhibits sealed were pages captioned as "Exhibit 1," "Exhibit 3," and "Exhibit 4." Stevens Declaration, ¶16.

DLA Piper claims its false statements in pleadings had "no material impact on the outcome of any dispute..." and claims its pleadings and filings were irrelevant because "Intervenor *already had access* to those redacted documents..." Opp. Mot. pp. 5-6. However, the court's order of December 6, 2021 allowed Intervenor's motion for the "limited purpose of making arguments regarding the public nature of these proceedings." By the time DLA Piper

filed its Opp. Mot. on March 14, 2022, the case law on publicly accessible records meant that NextLevel had lost any right to confidentiality for the Giese Exhibits or portions of records for which NextLevel sought redactions. A key purpose of Intervenor's pleading had been accomplished, but neither the Intervenor nor the court were aware of this and thus were forced to waste time on a bogus record. Instead of having time to write about these proceedings, filings by DLA Piper caused Intervenor to pursue records that she possessed and that, had she not be an Intervenor, could have published without threat of sanctions. The more she learns, the more apparent is DLA Piper's responsibility for the confusion. Stevens Declaration, ¶¶ 16-19, 38-40, 47. Although this court has not ruled on whether the public nature of the records in dispute means they must be declared public, DLA Piper attorneys no doubt understood the implications of what at best could be construed as their inability to effectively represent the interests of their client.

DLA Piper asserts that its false statements were immaterial to the case outcome, but does not dispute with specificity Intervenor's statement that as a result of its actions, "pro se Intervenor was forced to puzzle through the confusing docket and file a motion with no compensation, thus depriving her of time needed for other research, publications, and work commitments." Mot. Sanctions, p. 10. Again, DLA Piper does not deny that records it claimed were sealed or redacted were publicly available and it does not deny that there was no redacted Complaint or Conservation Order stamped as filed until May 5, 2022. By misrepresenting the actual status of filings, DLA Piper created enormous confusion for Intervenor, who was obligated to spend time trying to decipher records whose meaning DLA Piper understood. If DLA Piper had not throughout its briefings mispresented the nature of the docket, Intervenor also would

have had an opportunity to make use of the information and arguments in her Supplemental Brief about the docket confusion that the court denied as "untimely." Order, June 13, 2022. By misrepresenting the caption of the Giese Declaration exhibits and whether documents and exhibits were redacted and sealed DLA Piper hid from Intervenor not only accurate information about the records of this proceeding but also information about the firm's competency, the effects of the sequestration statute, and the oversight ability of the DOI and court materially relevant to arguments central to the motion to have 215 ILCS 5/188.1 (b)(4,5) declared unconstitutional.

Conclusion

DLA Piper claims *NextLevel* would not have "anything to gain by 'misrepresenting' or 'with[holding]' any information." Opp. Mot., quoting Mot. Sanctions at 21. DLA Piper then asks the court to infer that since NextLevel, not the Intervenor or public, is harmed by the documents being public, it is unfair to infer any "bad faith" on the part of NextLevel failing to insure the documents in question were effectively redacted and sealed and urgest the court to take this into consideration in its sanctions ruling. Opp. Mot., p. 5, citing to *Cantrall v. Bergner*, 2016 IL App (4th) 150984, ¶ 29. However, the public release of records *DLA Piper* sought to have sealed or redacted on behalf of NextLevel suggests that the law firm was not effective at protecting its client's putative interests.

Second, NextLevel prognosticated dire outcomes were certain records to be released. NextLevel, Centene, and DLA Piper shared an interest in not drawing attention to the fact that information it claimed needed to be kept secret had been publicly available, as would be clearly indicated if DLA Piper's pleadings accurately characterized the status of the records in question. Opp. Mot., p. 6. Although usually it's impossible to test a counter-factual of publicity in these

cases, the events in this proceeding have allowed for a natural experiment. Eight months after records NextLevel claimed would cause chaos and unfairly harm its interests and those of Centene remained public, the dire outcomes have not materialized. Had DLA Piper's pleadings correctly stated the public availability of records ordered sealed or redacted, NextLevel and DLA Piper would need to account for the falsification of their predicted outcomes. In short, if one follows DLA Piper's reasoning and infers good or bad faith from outcomes, then DLA Piper's silence on the state of the filings in question is substantial evidence of the law firm's bad faith.

Respectfully Submitted,
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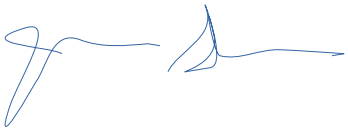
VERIFICATION

I, the undersigned, swear under penalty of perjury, as provided by law under Section I-109 of the Illinois Rule of Civil Procedure, that the statements contained in this motion are true and correct to the best of my knowledge and belief, except where I lack sufficient knowledge to form a belief of the truth of the allegations, where so stated.



Jacqueline Stevens
July 29, 2022

Certificate of Service

I certify that on June 29, 2022, I caused the foregoing document to be filed and served on all counsel of record.