2026 IL App (1st) 252168-U
No. 1-25-2168
Order filed November 12, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THIRD DIVISION

EXECUTIVE MS, INC., f/k/a Executive Mailing Service, Inc., an Illinois Corporation, Plaintiff-Appellant,

v.

EXECUTIVE MAILING SERVICE, INC., a Delaware Corporation, ALG WORLDWIDE LOGISTICS, LLC, and ARG EMSPHIL001, LLC, Defendants-Appellees.

Appeal from the Circuit Court of Cook County.
Honorable Jonathan Clark Green, Judge Presiding.
No. 2025 L 004587

PRESIDING JUSTICE QUISH delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court failed to provide sufficient detail in its ruling imposing sanctions under Illinois Supreme Court Rule 137, requiring the case to be remanded for additional findings and explanation.

¶ 2 While defending actions brought by defendants ARG EMSPHIL001, LLC ("ARG"), and ALG Worldwide Logistics, LLC ("ALG"), in two different circuit courts, plaintiff Executive MS, Inc. ("Executive MS"), filed a third action seeking a declaratory judgment on an issue that ARG and ALG both raised in their lawsuits. ARG and ALG moved to dismiss and for sanctions under

Illinois Supreme Court Rule 137 against Executive MS for acting contrary to established law by filing a declaratory judgment action to resolve a factual issue that was already being litigated in another case. The circuit court dismissed the action with prejudice and sanctioned Executive MS in the amount of $62,443.96 for ARG's and ALG's attorney's fees incurred in defending the action. For the following reasons, we vacate the court's judgment and remand for further proceedings.

¶ 3 Executive MS was incorporated in Illinois in 1974 and was formerly known as Executive Mailing Service, Inc. In 2022, it sold substantially all of its assets to a Delaware entity also named Executive Mailing Service, Inc. ("EMS"). As part of the transaction ("the Purchase Agreement"), Executive MS formally changed its name to Executive MS, Inc., and took an ownership interest in EMS.

¶ 4 In 2024, EMS experienced financial difficulties, prompting multiple creditors, including ARG and ALG, to file lawsuits against it to collect debts. ARG filed an action against EMS in the circuit court of Cook County in April 2024, alleging breach of contract claims related to EMS' failure to pay rent. ARG also named Executive MS as a defendant, alleging that it was liable as an alter ego of EMS. EMS stopped participating in the case after entering into an assignment for the benefit of creditors, and in March 2025, ARG obtained a default judgment against it. In May 2024, ALG filed its own breach of contract action against EMS in the circuit court of DuPage County and likewise named Executive MS as a defendant under an alter ego theory. Executive MS filed motions to dismiss in both cases, and both were denied.

¶ 5 In April 2025, Executive MS filed this action against EMS, ARG, and ALG in the circuit court of Cook County, alleging that EMS breached an indemnification clause in the Purchase Agreement and seeking a declaration that it is not the alter ego of EMS. In this complaint, Executive MS alleged that "[n]umerous third-party creditors have argued that Executive MS is the

alter ego of [EMS] to attempt to pierce [EMS]' corporate veil and hold Executive MS liable" and that the action was "being brought for the sake of judicial and litigation efficiency."

¶ 6 ARG and ALG both moved to dismiss Executive MS' declaratory judgment count under section 2-619(a)(3) and (a)(9) of the Code of Civil Procedure ("Code") (735 ILCS 5/2-619(a)(3), (a)(9) (West 2024)). Specifically, both defendants argued that dismissal was appropriate under section 2-619(a)(3) because the alter ego issue was already being litigated in two pending actions involving the same parties. ALG further argued that dismissal was warranted under section 2-619(a)(9) because Executive MS' request for a declaration that it was not an alter ego of EMS was barred by *Maryland Casualty Co. v. Peppers*, 64 Ill. 2d 187 (1976). In its motion, ARG argued for dismissal under section 2-619(a)(9) on the grounds that Executive MS was improperly seeking a declaration regarding the legal effect of past conduct. Both parties also asked the court to impose sanctions against Executive MS under Illinois Supreme Court Rule 137(a) (eff. Jan. 1, 2018) for bringing an action that was not warranted by existing law. ARG argued that sanctions were also warranted because Executive MS brought the suit for the improper purpose of delaying ARG's and ALG's other lawsuits and needlessly driving up the cost of litigation.

¶ 7 In its combined response to the motions to dismiss, Executive MS agreed to dismiss its action against ARG and ALG without prejudice. It explained that it named ARG and ALG as defendants "to present an opportunity to then move and consolidate the pending actions into one case due to the similar nature of the claims, parties, and factual issues." However, because ARG's and ALG's actions were proceeding in different circuit courts, consolidation under section 2-1006 of the Code (735 ILCS 5/2-1006 (West 2024)) was not available, and "procedurally it was more complex and time consuming because [Executive MS] would have to pursue the transfer and consolidation through the Illinois Supreme Court" under Illinois Supreme Court Rule 384 (eff.

July 1, 2017). Executive MS contended that ARG and ALG were not entitled to sanctions "because this action was brought in good faith and for a logical and reasonable purpose for the sake of the parties and judicial economy." It also argued that a declaratory judgment on the alter ego issue would avoid potential contradictory results in the other pending cases.

¶ 8 On July 29, 2025, the circuit court granted ALG's and ARG's motions to dismiss and dismissed Executive MS' declaratory judgment counts with prejudice "because the declaratory relief sought by [Executive MS] regards a fact issue pending in separate, previously-filed cases involving the parties." The court also found that sanctions were warranted and granted the defendants' requests for attorney's fees under Rule 137 "[f]or the reasons stated in open court." However, no transcript of that hearing appears in the record.

¶ 9 ARG and ALG then filed petitions for their attorney's fees. ALG sought $26,985.00 as well as $478.96 in costs, for a total of $27,463.96. ARG requested a total of $42,687.00 in fees and costs.

¶ 10 In its combined response to the fee petitions, Executive MS stated that it "disagree[d]" with the court's imposition of sanctions and that "the sanctions should be vacated for an evidentiary hearing, or, at a minimum, the requested fees should be reduced using a reasonableness standard." Executive MS further explained that it "filed this third action in an attempt to get the Parties into one case within the same venue for discovery purposes" and that "the procedure for doing the consolidation - because of the different venues (Cook and DuPage) - would have involved a potentially more involved and lengthy procedure." Executive MS noted that it had emails demonstrating that it acted in good faith in bringing the declaratory action and offered to provide them to the court for an *in camera* inspection. It further maintained that the action was merely "a novel approach to attempting to get the parties into one case for discovery purposes on the same

issue." Executive MS argued that the fees ARG and ALG requested were excessive when considering the nature of the work that the case required. It proposed that the court effectively reduce the hourly rates charged by ARG's attorneys—$1,150 for a partner and $735 for an associate—to equal the lower rates charged by ALG's attorneys—$615 for one partner and $515 for a second partner.

¶ 11 On September 25, 2025, the court awarded $27,463.96 to ALG and $34,980.00 to ARG, which it reduced "for the reasons stated in open court." The record again does not contain a transcript of that hearing or the court's ruling. The court explained that "Executive MS's filing of its cause of action for declaratory judgment on whether Executive MS and [EMS] are alter egos while that issue is being litigated between Executive MS and [the defendants] in [] separate, pending case[s] is a violation of the *Peppers* doctrine, which provides the basis for the Rule 137 sanction." The court further found that "[t]he declaratory judgment action is not supported by existing law or a good-faith argument for the extension, modification, or reversal of existing law." The court allowed Executive MS to voluntarily dismiss Count I against EMS without prejudice and therefore, dismissed the case "in its entirety," retaining jurisdiction to enforce the fee award. Executive MS timely appealed.

¶ 12 Executive MS raises four issues in this appeal, arguing that (1) the circuit court erred in determining that it violated Rule 137; (2) the court's orders imposing sanctions lacked requisite findings and explanation; (3) the court erred in denying its request for an evidentiary hearing; and (4) the amount of fees awarded was excessive and unreasonable. We find that Executive MS forfeited its argument regarding its entitlement to an evidentiary hearing. We agree, however, that the court's ruling imposing sanctions lacked the specificity required by Rule 137(d) and that

vacating and remanding for further findings is required, which moots our consideration of the remaining issues.

¶ 13 First, Executive MS argues that the circuit court erred in not holding an evidentiary hearing regarding the reasonableness of ARG's and ALG's fee requests. However, we find that Executive MS forfeited this argument because it did not request an evidentiary hearing on that particular issue. Instead, Executive MS specifically stated in its response to the fee petitions that it disagreed with the court's finding that it violated Rule 137 and immediately thereafter argued that "the sanctions should be vacated for an evidentiary hearing." Executive MS also argued that the court found that the basis for its decision to file this lawsuit was "lacking in good faith. However, no evidentiary hearing was provided to the Plaintiff on the sanctions." Executive MS reinforced this later in its response when it stated that it "advocates for the sanctions being vacated for an evidentiary hearing *on the rationale*." (Emphasis added.) Thus, Executive MS requested an evidentiary hearing only on whether it violated Rule 137, not whether ARG's and ALG's requested fees were reasonable. Accordingly, we find this issue forfeited. See *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 14 (noting that issues not raised in the trial court are forfeited).

¶ 14 However, we agree with Executive MS that the court's orders imposing sanctions did not contain the level of specificity that Rule 137 requires. Rule 137(a) requires attorneys and litigants to ensure that every filing "is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Ill. S. Ct. R. 137(a). If an attorney or party violates this rule, the

court may sanction the attorney, his client, or both. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 13.

¶ 15 Rule 137(d) provides that, "[w]here a sanction is imposed under this rule, the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order." Ill. S. Ct. R. 137(d). This court has explained that "[s]pecific findings by the trial court are necessary to enable a reviewing court to make an informed and reasoned decision as to the propriety of a sanction order and they form the predicate to the deference that reviewing courts accord the trial court's exercise of its discretion in such matters." *In re Marriage of Adler*, 271 Ill. App. 3d 469, 476 (1995); see also *Arnold*, 2015 IL 118110, ¶ 15 ("[I]t is logical to require circuit courts to provide an explanation when imposing sanctions, to make clear to the sanctioned party and future litigants what conduct will not be tolerated."). "An appellate court may only affirm an imposition of sanctions based upon the reasons set forth by the trial court." *US Bank Trust, N.A. as Trustee for LSF11 Master Participation Trust v. Burnett*, 2021 IL App (1st) 210135, ¶ 39. A court's decision to impose sanctions is reviewed for an abuse of discretion. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998).

¶ 16 The court's first order, dated July 29, 2025, finding that Rule 137 sanctions were appropriate provided no specific findings and stated only that, "[f]or the reasons stated in open court, ALG's and ARG's requests for attorneys' fees as a sanction under Rule 137 are granted." A simple finding of entitlement such as this is insufficient. See *Bedoya v. Illinois Founders Insurance Co.*, 293 Ill. App. 3d 668, 681 (1997). Although the court referenced oral findings, no transcript of that hearing appears in the record and there is no indication that the hearing was transcribed by a court reporter. The parties also have not provided a bystander's report or agreed statement of facts. See Ill. S. Ct. R. 323 (eff. July 1, 2017). Thus, unlike in *Asher Farm Limited Partnership v.*

Wolsfeld, 2022 IL App (2d) 220072, ¶ 61, where this court found that it was permissible for the circuit court to expressly incorporate into its written order a detailed explanation made at a hearing that was transcribed, no such record is present in this case. See also *Law Offices of Brendan R. Appel, LLC v. Georgia's Restaurant & Pancake House, Inc.*, 2021 IL App (1st) 192523, ¶ 79 ("[W]hen the order incorporates by reference a document that may be read that contains the trial court's reasoning, it would be sufficient.")

¶ 17 The court's subsequent order granting ARG's and ALG's fee petitions, dated September 25, 2025, provided some additional findings, with the court holding:

> "The Court reiterates its finding that Executive MS's filing of its cause of action for declaratory judgment on whether Executive MS and Executive Mailing Service are alter egos while that issue is being litigated between Executive MS and [the defendants] in [] separate, pending case[s] is a violation of the *Peppers* doctrine, which provides the basis for the Rule 137 sanction. See *Maryland Cas. Co. v. Peppers*, 64 Ill. 2d 187, 196-97 (1976). The declaratory judgment action is not supported by existing law or a good-faith argument for the extension, modification, or reversal of existing law."

¶ 18 While this order provided the general basis for the court's prior finding that sanctions were warranted, we still find that it lacked the level of specificity that Rule 137(d) requires. The court's order contained only two sentences. The second sentence merely recited the language of the rule, which is of minimal assistance. See *Bertuli v. Gaull*, 215 Ill. App. 3d 603, 605 (1991) ("[Rule 137] requires a court to make specific factual findings rather than just recite the language of the rule ***."). The first sentence provided only a general explanation that the *Peppers* doctrine barred the type of declaratory judgment action that Executive MS brought in this case. We find it difficult to properly analyze the court's reasoning based on the limited information provided, particularly

without any substantive discussion of *Peppers* or an explanation of why that doctrine, which is normally applied in insurance-related cases (see *State Farm Fire & Casualty Co. v. John*, 2017 IL App (2d) 170193, ¶ 23), applies here and demonstrates that Executive MS' conduct was objectively unreasonable, warranting Rule 137 sanctions.

¶ 19 ARG and ALG note that "strict compliance with Rule 137(d) is not required when the record otherwise establishes the circuit court's reasoning for the award" (*Asher Farm*, 2022 IL App (2d) 220072, ¶ 61) and argue that we may affirm the court's sanctions order when the record supports the court's ruling, even if the order does not include specific findings. For support, they rely on *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 69 (2011), where this court affirmed an order imposing sanctions in which the circuit court made certain findings "without specificity," finding that the record as a whole supported the court's ruling. However, the sanctioned parties in *Nelson* did not argue that the circuit court's order lacked the specificity required by Rule 137(d). See *id.* at 67-69. Accordingly, this court's analysis did not address the technical sufficiency of the circuit court's findings, and any comments regarding the amount of detail provided by the circuit court were mere *obiter dicta* with no precedential effect. See *Cates v. Cates*, 156 Ill. 2d 76, 80 (1993).

¶ 20 Instead, we agree with Executive MS that this case is similar to *Airolen Capital Ventures, Inc. v. Petri*, 265 Ill. App. 3d 80, 82 (1994), where this court found that it was insufficient for the circuit court to merely find that "[t]he Plaintiff did not make an adequate and sufficient investigation into the facts prior to filing the complaint in this matter," "[t]he discovery matters and the Answers to the Request To Admit show there was no basis for the litigation to be brought," and "[t]he requirements of Illinois Supreme Court Rule 137 were not met in this case." As explained in that case, specific findings are necessary to allow the reviewing court to determine

"(1) whether the circuit court's decision was an informed one; (2) whether the decision was based on valid reasons that fit the case; and (3) whether the decision followed logically from the application of the reasons stated to the particular circumstances of the case." *Id.* at 82-83. The minimal explanation that the circuit court provided in this case does not provide enough detail to enable that analysis. Accordingly, we find that the court did not comply with the requirements of Rule 137(d) and that remand for further explanation is necessary. See *Adler*, 271 Ill. App. 3d at 478 (vacating the order imposing sanctions and remanding "with specific instructions to enter the findings mandated by Rule 137 even if that means the court is required to reopen arguments").

¶ 21 For the foregoing reasons, we vacate the court's July 29 and September 25, 2025, orders imposing sanctions on Executive MS and remand with instructions for the court to provide more detailed findings supporting the imposition of sanctions as required by Rule 137(d).

¶ 22 Vacated and remanded with instructions.