

No. 132438

IN THE
SUPREME COURT OF ILLINOIS

DANIELLE HENSLEY,

Plaintiff-Appellant,

v.

NORNAT MANAGEMENT SERVICE and MCDONALD'S CORP.,

Defendants—Appellees.

On Petition for Leave to Appeal from the Appellate Court, First District, No. 1-24-1821,
There Heard on Appeal from the Circuit Court of Cook County, Illinois, County
Department, Law Division, Circuit Court Number 2021 L 007004, The Honorable
Stephanie Saltouros, Judge Presiding.

DEFENDANTS-APPELLEES' LIMITED SUR-REPLY BRIEF

Defendants-Appellees Nornat Management Service and McDonald's Corporation submit this limited Sur-Reply pursuant to this Court's order granting leave to file. This Sur-Reply addresses the new matters raised in Plaintiff-Appellant's Reply Brief: Plaintiff-Appellant's request that the Court deem Defendants--Appellees' arguments forfeited under Illinois Supreme Court Rule 341(h)(7); Plaintiff--Appellant's challenges to Defendant--Appellees' citations and characterization of their arguments; and Plaintiff--Appellant's contention that Defendant--Appellees' retroactivity and law-of-the-case arguments should not be considered.

**I. PLAINTIFF—APPELLANT'S IDENTIFIED CITATION ERRORS
DO NOT WARRANT WHOLESALE FORFEITURE OF
DEFENDANT--APPELLEES' ARGUMENTS.**

Plaintiff--Appellant begins her Reply Brief by asserting that “[v]irtually none” of Defendants’ citations are accurate and asking this Court to disregard Defendant--Appellees’ arguments under Illinois Supreme Court Rule 341(h)(7). Reply Br. at 1–6. Although Defendant--Appellees acknowledge that certain citations require correction, narrowing, or withdrawal, those discrete issues do not justify the wholesale forfeiture Plaintiff--Appellant seeks.

Forfeiture under Rule 341(h)(7) is appropriate when a party fails to develop an argument or support it with pertinent authority. See *People v. Phillips*, 215 Ill. 2d 554, 565 (2005) (finding the defendant’s claim forfeited where he failed to provide supporting argument or citation to relevant authority); *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 493 (2002) (finding a three-page argument insufficient under Rule 341 where it contained no citations to authority). That is not the situation here. Defendant--Appellees identified their legal positions, explained the reasons supporting them, and cited the governing rules and pertinent authorities. Plaintiff--Appellant’s disagreement with particular citations does not transform those developed arguments into forfeited ones. Plaintiff--Appellant’s Reply Brief itself confirms that meaningful review remains possible. Plaintiff--Appellant identifies Defendant--Appellees’ arguments, challenges the authorities offered in support of them, and responds to those arguments on the merits. Accordingly, the Court should address each challenged citation individually rather than disregard Defendant--Appellees’ arguments wholesale.

A. Plaintiff-Appellant Overstates the Significance of the Challenged Citations.

Plaintiff-Appellant contends that Defendant--Appellees’ citation errors require wholesale forfeiture under Rule 341(h)(7). But Illinois courts distinguish between

arguments that are genuinely undeveloped or unsupported and briefing deficiencies that do not prevent meaningful review. Rule 341(h)(7) requires a party to present its contentions, the reasons supporting them, and pertinent authority. Ill. S. Ct. R. 341(h)(7). Rule 341(h)(7) permits forfeiture where a party fails to meaningfully develop an argument or support it with pertinent authority. *See People v. Phillips*, 215 Ill. 2d 554, 565 (2005) (finding the defendant's claim forfeited where he failed to provide supporting argument or citation to relevant authority); *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 493 (2002) (finding an argument insufficient under Rule 341 where it contained no citations to authority). That is not the situation here. Defendant--Appellees presented developed legal arguments and cited authority in support of those arguments. Plaintiff--Appellant's challenge concerns, in substantial part, whether particular authorities support the precise propositions stated or whether particular pinpoint citations are accurate. Those alleged deficiencies are materially different from presenting an argument without supporting legal analysis or authority at all.

Defendant--Appellees did not merely list issues or make conclusory assertions. Defendant--Appellees developed their arguments, identified the governing Supreme Court rules and local arbitration provisions, and cited authority in support of those arguments. Plaintiff-Appellant herself was able to identify those arguments, characterize the propositions she believed Defendant--Appellees advanced, and respond to them at length on the merits. Plaintiff-Appellant's Reply Brief therefore demonstrates that the alleged citation deficiencies did not prevent her—or this Court—from understanding the substance of Defendant--Appellees' position. Illinois courts have recognized that striking or disregarding a brief is a harsh sanction reserved for circumstances in which noncompliance with the briefing rules interferes with or precludes meaningful review. *In re Detention of*

Powell, 217 Ill. 2d 123, 132 (2005) (recognizing that striking a brief, in whole or in part, is a harsh sanction appropriate only where the procedural violations interfere with or preclude review); *see also Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 15 (recognizing that striking a brief is appropriate where procedural violations hinder appellate review). Plaintiff-Appellant has not shown that the challenged citations created that kind of obstacle here. To be sure, Defendant--Appellees do not ask the Court to rely upon an incorrect page or paragraph reference. Any genuine pinpoint errors should be corrected. But a citation error is not the same thing as a failure to present an argument at all. Plaintiff-Appellant's request to treat all of Defendant--Appellees' arguments as forfeited therefore sweeps far beyond the defect she identifies.

Plaintiff-Appellant's Reply Brief confirms that the challenged citations did not prevent meaningful review. Although Plaintiff-Appellant asks the Court to deem Defendant-Appellees' arguments forfeited, she states that she will address those arguments "[t]o the extent the Court wishes to consider [them] on the merits." Reply Br. at 6. She then addresses whether the Illinois Supreme Court's approval of the Commercial Calendar arbitration program encompassed the 2021 amendment, whether Rule 86 authorized the local arbitration procedure, whether Defendants-Appellees' retroactivity and law of the case arguments were forfeited, and whether those arguments fail on their merits. Plaintiff-Appellant's ability to identify and substantively respond to these arguments demonstrates that neither she nor this Court was prevented from understanding Defendants-Appellees' position.

B. Any Genuine Citation Errors Should Be Corrected, Not Treated as a Basis to Disregard Defendants' Entire Brief.

Plaintiff-Appellant's citation challenges fall into several categories. Some involve incorrect pinpoint citations or citation information. Others require clarification of the precise proposition for which Defendant--Appellees rely upon an authority. Still others concern authorities that are unnecessary to Defendant--Appellees' argument. Considered individually, these issues do not justify disregarding Defendant--Appellees' Response Brief. Defendant--Appellees cited paragraph 36 of *Jordan v. Macedo* on pages 23 and 26 of their Response Brief. Plaintiff-Appellant notes that paragraph 36 states only the disposition of the case. The appropriate pinpoint is paragraph 25, which explains that Cook County's mandatory-arbitration program is governed by local circuit-court rules, that Rule 86(c) authorizes circuits to adopt rules governing arbitration proceedings, and that those local rules must remain consistent with the Illinois Supreme Court's rules. *Jordan v. Macedo*, 2025 IL 130687, ¶ 25. The reference in Defendant--Appellees' Response Brief to "2025 IL 1300687" should also read "2025 IL 130687." Defendant--Appellees similarly clarify their reliance upon *Jones*. Paragraph 12 explains that Cook County's Mandatory Arbitration Program is governed by the Circuit Court Rules of Cook County, while paragraph 22 explains that local arbitration rules must remain consistent with the Illinois Supreme Court's rules. *Jones v. State Farm Mutual Automobile Insurance Co.*, 2018 IL App (1st) 170710, ¶¶ 12, 22. Accordingly, the references to paragraphs 17, 20, and 26 should instead cite paragraphs 12 and 22. *Id.*

Read together, *Jordan* and *Jones* support the narrower proposition advanced by Defendant--Appellees: Cook County may administer its mandatory-arbitration program through local circuit-court rules, provided those rules remain consistent with the Illinois Supreme Court's rules. *Jordan*, 2025 IL 130687, ¶ 25; *Jones*, 2018 IL App (1st) 170710,

¶¶ 12, 22. M.R. 9166 permits the challenged seven-day deadline because that deadline is the local procedural rule governing Cook County’s mandatory-arbitration program, and the Illinois Supreme Court’s order allowed that program to continue as administered through local rules. That interpretation is consistent with the governing principle that local rules may regulate procedure but must yield when they conflict with the Illinois Supreme Court’s rules. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 357 (2007).

Defendant--Appellees’ original citation to pages 346–47 of *Vision Point* did not support the statement that separate approval is required whenever a local rule operates outside a framework authorized by the Illinois Supreme Court. Those pages concern requests for admission. Defendant--Appellees instead rely upon page 357 for the narrower proposition that, although circuit courts possess some rulemaking authority, their rules remain subject to the Illinois Supreme Court’s review and may not conflict with its rules. *Id.* at 357. The reference in Defendant--Appellees’ Response Brief to “225 Ill. 2d 334” should also read “226 Ill. 2d 334.” Defendant--Appellees likewise clarify the limited proposition for which they rely upon *Bright*. The absence of demonstrated prejudice does not, by itself, excuse noncompliance with an applicable procedural rule. *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995). Defendant--Appellees do not rely upon *Bright* for the broader proposition that a litigant may never challenge the validity of a local rule. Because *Bright* ends at page 210, the reference to page 211 should be deleted. *Id.* Defendant--Appellees’ reliance upon *Gersch* is similarly limited. *Gersch* addressed whether a decision declaring a statute unconstitutional should apply retroactively under the ab initio doctrine. *People v. Gersch*, 135 Ill. 2d 384, 389 (1990). The appropriate pinpoint for that proposition is page 389. *Id.* Defendant--Appellees rely upon *Dus* only for the general proposition that Rule

303 promotes the finality of trial-court judgments. *Dus v. Provena St. Mary's Hospital*, 968 N.E.2d 1178, 1184 (Ill. App. Ct. 2012). Defendant--Appellees do not contend that *Dus*, standing alone, establishes that Plaintiff-Appellant's challenge to Local Rule 25.11 constitutes an impermissible retroactive attack.

Plaintiff-Appellant also challenges Defendant--Appellees' reliance upon *People ex rel. Brazen v. Finley*, *People v. Illgen*, *In re D.T., L.A.S., Inc. v. Mini-Tankers, USA, Inc.*, and *Ianotti v. Chicago Park District*. Defendant--Appellees' arguments do not depend upon the propositions for which Plaintiff-Appellant challenges those authorities. Defendant--Appellees do not rely upon *Brazen* for the proposition identified in Plaintiff-Appellant's Reply Brief. *People ex rel. Brazen v. Finley*, 119 Ill. 2d 485, 492 (1988). The reference to page 382 of *Illgen* was erroneous because the *Illgen* opinion ends at page 379 and page 382 belongs to *In re Witt*. *People v. Illgen*, 145 Ill. 2d 353 (1991). Defendant--Appellees' argument does not depend upon that erroneous pinpoint. Defendant--Appellees likewise do not rely upon *In re D.T.* for the proposition that consistency permits nonuniform procedures or outcomes. *In re D.T.*, 212 Ill. 2d 347, 355 (2004). Defendant--Appellees also do not rely upon *L.A.S., Inc.* for that proposition. *L.A.S., Inc. v. Mini-Tankers, USA, Inc.*, 342 Ill. App. 3d 997, 1001 (2003). Nor do Defendant--Appellees rely upon the cited passage from *Ianotti* as substantive authority because that passage states only the disposition. *Ianotti v. Chicago Park District*, 250 Ill. App. 3d 628, 621 N.E.2d 185 (1993).

These authorities are unnecessary to Defendant--Appellees' narrower argument that local procedural rules may govern Cook County's arbitration program so long as they remain consistent with and do not conflict with the Illinois Supreme Court's rules. *Jordan*, 2025 IL 130687, ¶ 25; *Vision Point*, 226 Ill. 2d at 357. Plaintiff-Appellant further observes

that *Brooks* involved compliance with Rule 604(d), rather than a challenge to the validity of that rule. *People v. Brooks*, 233 Ill. 2d 146 (2009). Defendant--Appellees therefore do not rely upon *Brooks* for the proposition that a litigant may never challenge the validity of a procedural rule after receiving an adverse result.

Similarly, *Alwin* concerns law-of-the-case principles rather than retroactivity. *Alwin v. Village of Wheeling*, 371 Ill. App. 3d 898, 910 (2007). Defendant--Appellees therefore rely upon *Alwin* only in connection with the law-of-the-case doctrine. *Id.* Finally, Defendant--Appellees do not rely upon *Walker* or *Santiago* as establishing a separate test asking whether a local rule operates within an “authorized framework.” *Walker* concerns conflicts between Illinois Supreme Court rules and legislation. *People v. Walker*, 119 Ill. 2d 465, 475, 519 N.E.2d 890, 894 (1988). *Santiago* concerns the principles governing the interpretation of Illinois Supreme Court rules. *People v. Santiago*, 236 Ill. 2d 417, 428 (2010). Defendant--Appellees’ argument is narrower: local procedural rules remain permissible so long as they are consistent with and do not conflict with the Illinois Supreme Court’s rules. *Jordan*, 2025 IL 130687, ¶ 25; *Vision Point*, 226 Ill. 2d at 357. Plaintiff-Appellant also states that Defendant--Appellees cited *Jones*, *Walker*, and *Bright* on pages 29 and 30 for propositions “inconsistent with their citations,” but she does not identify every proposition and pinpoint allegedly at issue. That generalized objection does not establish that every argument appearing on those pages lacks legal support.

Defendant--Appellees have therefore corrected the inaccurate citation information and clarified the limited propositions for which the challenged authorities are offered. None of those corrections undermines the legal foundation of Defendant--Appellees’ arguments. Striking or disregarding arguments is a harsh sanction appropriate only when a procedural

violation interferes with or precludes meaningful review. *In re Estate of Coleman*, 2016 IL 117952, ¶ 19 (quoting *People v. Howard*, 233 Ill. 2d 213, 224 (2009), and *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005)). The Court declined to strike the challenged material in *Coleman* because the alleged deficiencies did not hinder or preclude review. *Id.* Plaintiff-Appellant’s detailed response to Defendant--Appellees’ authorities and substantive arguments likewise demonstrates that meaningful review remains possible here. The Court should therefore evaluate Defendant--Appellees’ corrected arguments on their merits rather than deeming them forfeited.

II. DEFENDANT--APPELLEES DID NOT FORFEIT THEIR RETROACTIVITY AND LAW OF THE CASE ARGUMENTS BY RAISING THEM FOR THE FIRST TIME IN SUPPORT OF AFFIRMANCE IN THIS COURT.

Plaintiff-Appellant argues that Defendant--Appellees forfeited their retroactivity and law of the case arguments because those arguments were not raised before the appellate court. Reply Br. at 9. That argument ignores a long-settled distinction in Illinois law between an appellant attempting to obtain reversal on a new theory and an appellee offering an additional legal basis for affirming a judgment already entered in its favor. The Illinois Supreme Court has repeatedly held that an appellee may urge a new point in support of the judgment so long as the factual basis for that point was before the trial court. *Shaw v. Lorenz*, 42 Ill.2d 246, 248 (1969); *Beahringer v. Page*, 204 Ill. 2d 363, 370 (2003); *Rehfield v. Diocese of Joliet*, 2021 IL 125656, ¶ 31. In *Shaw*, 42 Ill. 2d at 248, the Court expressly rejected the contention that a defense was waived merely because it had not been raised at trial. The Court explained that, although the waiver rule applies to an appellant seeking reversal, “the appellee may urge any point in support of the judgment on appeal, even

though not directly ruled on by the trial court,” provided the factual basis for the point was before the trial court. *Id.* at 248.

That principle was reaffirmed in *Beahringer*, 204 Ill. 2d at 370. There, the defendants had not raised exhaustion of administrative remedies in the circuit court and first advanced the argument in the appellate court. The plaintiff asserted waiver. The Supreme Court rejected that argument because the defendants were appellees and because the plaintiff’s complaint and attached exhibits supplied the factual basis necessary to resolve the issue. *Id.* at 370. The Court therefore considered the new legal theory as an additional basis for sustaining the judgment. *Id.* The Court applied the same rule again in *Rehfield*, 2021 IL 125656, ¶ 31. There, the Diocese advanced a Whistleblower Act argument for the first time in the Illinois Supreme Court. *Id.* ¶ 31. The plaintiff argued that the Diocese had forfeited the issue because it had not raised it below. *Id.* The Court rejected that contention, explaining that “an appellee may urge *any point in support of the judgment on appeal*, so long as a factual basis for such point was before the trial court.” *Id.* ¶ 31. (quoting *Beahringer*, 204 Ill. 2d at 370)) (emphasis added). Because the existing record supplied the factual basis necessary to resolve the argument, the Court considered it. *Id.* Those cases are directly responsive to Plaintiff-Appellant’s forfeiture argument here. Defendant--Appellees prevailed in both the circuit court and the appellate court. They are not attempting to obtain reversal of an adverse judgment on a new theory. Rather, they raise retroactivity and law of the case as additional legal reasons why the judgment already entered in their favor should remain undisturbed. Under *Shaw*, *Beahringer*, and *Rehfield*, the facts that those arguments were not presented in the First District does not, by itself,

result in forfeiture. *See Shaw*, 42 Ill. 2d at 248; *Beahringer*, 204 Ill. 2d at 370; *Rehfield*, 2021 IL 125656, ¶ 31.

The relevant question is instead whether those arguments rest on a factual basis already contained in the record. They do. The retroactivity argument arises from the procedural sequence already before the Court: the arbitration proceeding, the governing local rule, Plaintiff-Appellant's untimely rejection under that rule, the circuit court's entry of judgment, and Plaintiff-Appellant's request that this Court invalidate or refuse to apply the operative procedure to her completed arbitration. No additional evidence is required to evaluate the legal consequences of the relief Plaintiff-Appellant seeks.

The law of the case argument likewise depends only on the procedural history of this litigation and the First District's prior disposition of the same legal controversy. It does not depend on a disputed fact outside the record or require the Court to make a new factual finding. It is therefore precisely the type of additional legal argument that an appellee may advance in support of an existing judgment. The Supreme Court's recent decision in *People v. Hagededt*, 2025 IL 130286, confirms both the rule and its limit. There, the State acknowledged that it had not raised its new Fourth Amendment argument in either the trial court or appellate court and relied on *Rehfield* to present the argument for the first time in the Supreme Court. The Court recognized the established rule that an appellee may urge any point supporting the judgment where the factual basis was before the trial court. *Id.* ¶ 21. *Hagededt* confirms both the appellee rule and its limits. Although the Court recognized that an appellee may urge any point in support of the judgment where the factual basis was before the trial court, it declined to consider the State's new theory because that theory was inconsistent with the position taken below and would have required factual development

that never occurred. *People v. Hagestedt*, 2025 IL 130286, ¶¶ 21–23. That limitation does not apply here because Defendant--Appellees' retroactivity and law of the case arguments arise entirely from the existing record and procedural history.

Plaintiff-Appellant's reliance on *People v. Robinson*, 223 Ill. 2d 165, 173–74 (2006), therefore does not resolve the issue. Plaintiff-Appellant invokes *Robinson* for the broad proposition that issues not raised before the appellate court are forfeited. Reply Br. at 9. But *Shaw*, *Beahringer*, and *Rehfield* address the more specific circumstance presented here: a prevailing appellee asserting an additional legal basis for sustaining the judgment on a record already developed below. That more specific line of authority governs the preservation question here. Accordingly, Defendant--Appellees did not forfeit their retroactivity and law of the case arguments merely because they were first advanced in this Court.

CONCLUSION

Plaintiff-Appellant's Reply Brief does not warrant wholesale forfeiture of Defendant--Appellees' arguments under Rule 341(h)(7), and Defendant--Appellees did not forfeit their retroactivity and law-of-the-case arguments by raising them in support of affirmance in this Court. For these reasons, Defendants-Appellees respectfully request that this Court reject Plaintiff-Appellant's forfeiture arguments and affirm the judgment of the appellate court.

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CERTIFICATE OF COMPLIANCE

I certify that this Brief conforms to the requirements of Illinois Supreme Court Rules 341(a) and (b). The length of this Brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the Brief under Rule 342(a), is **3385 words**.

Respectfully submitted,

/s/ Harry L. Durden

Attorney for Defendants-Appellees

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NOTICE OF FILING and PROOF OF SERVICE

The undersigned, being first duly sworn, deposes and states that on September 11, 2026, the Defendants-Appellees' Limited Sur-Reply Brief was electronically filed and served upon the Clerk of the above court. Service of the Brief will be accomplished via email to the following counsel of record:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Harry L. Durden, Jr.
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