2026 IL App (1st) 251788-U
Nos. 1-25-1788, 1-25-1789, and 1-25-1801 (cons.)

Order filed November 18, 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NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).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

LEMKO CORPORATION and BOHDAN PYSKIR, Plaintiffs,

v.

ILLINOIS DEPARTMENT OF LABOR and DAVID MEYERS, Defendant-Appellees

and

NICHOLAS LABUN, Defendant-Appellant

(Lemko Corporation, Plaintiff-Appellant).

LEMKO CORPORATION and BOHDAN PYSKIR, Plaintiffs,

v.

ILLINOIS DEPARTMENT OF LABOR and ROBERT WONG, Defendant-Appellees

and

NICHOLAS LABUN, Defendant-Appellant

(Lemko Corporation, Plaintiff-Appellant).

LEMKO CORPORATION and BOHDAN PYSKIR, Plaintiffs,

v.

ILLINOIS DEPARTMENT OF LABOR and MICHAEL SISTO, Defendant-Appellees

and

NICHOLAS LABUN, Defendant-Appellant

(Lemko Corporation, Plaintiff-Appellant).

Appeal from the Circuit Court of Cook County.
Honorable David B. Atkins, Judge, Presiding.
Nos. 20 CH 5929, 20 CH 5930, and 20 CH 5931

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

ORDER

¶ 1 *Held*: Circuit court did not err by denying plaintiffs' motion to modify the judgment entered under section 3-111(a)(8) of the Administrative Review Law.

¶ 2 The Illinois Department of Labor ("IDOL") found Lemko Corporation and Lemko's owners, Nicholas Labun,[1] (collectively, "plaintiffs") and Bohdan Pyskir[2] jointly liable for unpaid wages and statutory penalties to three former Lemko employees under the Wage Payment and Collection Act ("WPCA"). 820 ILCS 115/14 (West 2024). After plaintiffs unsuccessfully sought review of that decision under the Administrative Review Law ("ARL") and upon IDOL's motion, the circuit court entered judgment against plaintiffs in the amount of past due wages plus statutory penalties under section 3-111(a)(8) of the ARL. 735 ILCS 5/3-111(a)(8) (West 2024). Plaintiffs

[1]While Labun was listed as a defendant in the complaint for administrative review, the parties agree he should have been named as a plaintiff. Consistent with how the parties refer to him in their briefs, we will also refer to him as a "plaintiff" in this appeal.

[2]While Pyskir signed the joint notice of appeal *pro se*, he has not filed an appearance in this court and the appellant's brief was filed solely on behalf of Lemko and Labun. Therefore, we conclude that Pyskir is not participating in this appeal.

then filed a motion to modify the judgment under section 2-1203 of the Code of Civil Procedure ("Code"), 735 ILCS 5/2-1203 (West 2024), seeking to reduce the amount of statutory penalties. The circuit court denied the motion. On appeal, plaintiffs argue that the circuit court erred when it did not equitably reduce the judgment based on alleged delays by IDOL, which increased the statutory penalties they owed. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 These three consolidated cases arise from three wage claims filed with IDOL in July 2017 by former Lemko employees David Meyers, Robert Wong, and Michael Sisto (collectively, "the claimants"). The basis of all three claims was that Lemko, a communications company, failed to pay the claimants their full salaries in 2016 and 2017 when Lemko was experiencing significant financial distress. Lemko filed a response to each claim, asserting that the claimants agreed to continue working for a reduced salary and receive deferred pay, plus an additional bonus, once Lemko was able to obtain outside funding.

¶ 5 The three claims were consolidated before IDOL and proceeded to an evidentiary hearing before an administrative law judge ("ALJ") in June 2020. The evidence adduced at the hearing is not relevant here because plaintiffs do not challenge those rulings in these appeals. On June 26, 2020, the ALJ issued a decision and order in favor of the claimants. He also found that Pyskir and Labun qualified as "employers" under the WPCA and thus, were jointly and personally liable for the claimants' unpaid wages along with Lemko. The ALJ held that Lemko, Pyskir, and Labun jointly owed unpaid wages of $93,513 to Sisto, $27,152 to Wong, and $64,202 to Meyers, less required withholdings.

¶ 6 The decision also held that the claimants were entitled to statutory damages of 2% of the underpayment for each month such underpayment remains unpaid. Lemko, Pyskir, and Labun

were required to pay a non-waivable administrative fee of $1,000 to IDOL. See 820 ILCS 115/14(a) (West 2020). The decision informed them that if they did not make the payments by July 31, Lemko, Pyskir, and Labun were responsible for additional statutory penalties to IDOL and the claimants. At the time of IDOL's decision, the accrued penalties and fees were $76,496.16 for Sisto's claim, $23,934.39 for Wong's claim, and $52,233.20 for Meyers's claim. IDOL denied Lemko and Pyskir's motion to reconsider the final decision. Relevant to this appeal, plaintiffs did not argue at any time before IDOL or the ALJ that IDOL's investigation into the wage claims was unreasonably long or that the statutory penalties should be reduced.

¶ 7 In September 2020, Lemko and Pyskir filed complaints for administrative review in the circuit court of Cook County, seeking the reversal of IDOL's decisions. Labun was joined as a defendant in February 2022, though he filed a memorandum of law supporting the complaints for administrative review. The circuit court affirmed IDOL's decisions in April 2023. Lemko and Pyskir filed a notice of appeal in each of the three cases, which were assigned appeal numbers 1-23-0849, 1-23-0850, and 1-23-0851. These appeals were consolidated and later dismissed for want of prosecution in June 2024. The mandates issued in July 2024.

¶ 8 In September 2024, IDOL filed a motion for judgment in each of the three cases in the circuit court under section 3-111(a)(8) of the ARL, which allows the court "to enter judgment for the amount justified by the record" when the agency's decision is affirmed in an administrative review action. 735 ILCS 5/3-111(a)(8) (West 2024). IDOL argued that the ALJ's June 26, 2020 decision and order had become final and enforceable when this court dismissed the consolidated appeals. IDOL asked the circuit court to enter judgment under section 3-111(a)(8) in the amount of the original unpaid wages and penalties, plus additional penalties that had accrued since the date of the IDOL decision.

¶ 9 Attached to the motion was a declaration of Susie Reynolds, an IDOL Division Manager, calculating the accrued penalties for each claimant. According to Reynolds, the statutory penalties had accrued such that plaintiffs owed $354,042.75 in penalties and fees for Sisto's claim, $104,521.53 for Wong's claim, and $242,784.73 for Meyers's claim.

¶ 10 The matter was continued two times: a continuance of one month for "status of settlement" and a continuance of two months "to allow Nicholas Labun an opportunity to review the calculations provided by" IDOL. In January 2025, the circuit court granted the motion as to all three claimants, entering judgment against Lemko, Pyskir, and Labun in the amount of $467,754.55 for Sisto's claim, $137,538.36 for Wong's claim, and $320,854.36 for Meyers's claim.

¶ 11 Lemko, Pyskir, and Labun filed a motion to modify, reconsider, or vacate the circuit court's judgment under section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2024)) and section 3-111(a)(8) of the ARL. They argued that the circuit court should equitably reduce the judgment because IDOL's three-year investigation into the wage claims from 2017 to 2020 and alleged misleading conduct during settlement negotiations prolonged the case and increased the amount of statutory penalties owed. They asked the circuit court to deduct the statutory penalties that accrued during those periods from the judgment, as they were not at fault for those delays and allowing those penalties would result in a windfall for IDOL and the claimants.

¶ 12 Attached to the motion to modify were copies of emails between the Office of the Illinois Attorney General ("OAG"), which represented IDOL, and counsel for Lemko. The first exchange begins in November 2023, when counsel for Lemko represented that they were attempting to secure financing to pay off the claims and asked for "an updated accounting from IDOL for the wage claims, plus penalties and administrative costs through December 31, 2023." OAG

responded approximately a month later with updated figures for all three claimants. This exchange does not contain any apparent attempt to negotiate a settlement.

¶ 13 The second exchange begins in October 2024. Counsel for Lemko sent a settlement offer to OAG on behalf of Lemko and Pyskir. OAG responded asking for financial documentation from Lemko and Pyskir. After OAG received those documents, OAG forwarded them to IDOL and said it would follow up. Approximately two weeks later, OAG sent a response seeking to clarify the terms of the settlement offer. A separate email was sent to counsel for Labun asking for a settlement offer on his behalf. There is no response to either email attached to the motion. The final email is from OAG in January 2025, stating that IDOL would ask the circuit court to enter the judgment and that "[o]nce the judgment orders are entered, the Department will hopefully be able to provide a settlement response."

¶ 14 IDOL responded to the motion to modify, arguing that the circuit court should strike the settlement emails attached to the motion as they violated Illinois Rule of Evidence 408(a). Ill. R. Evid. 408(a) (eff. Jan. 1, 2011). IDOL further argued that, even if the court were to consider the emails, they did not warrant modification of the judgment because they did not establish that IDOL or OAG were misleading or caused any undue delay. IDOL asserted that plaintiffs' claim that IDOL took an unreasonably long time to resolve the wage claims was forfeited because they did not raise it before the administrative agency or in support of their complaint for administrative review. Lastly, IDOL noted that the statutory language for the penalty provision used the mandatory "shall" and that the legislature intended the penalties to be mandatory.

¶ 15 Attached to IDOL's response were additional emails between OAG and counsel for Lemko starting in October 2024. In those emails, OAG represented multiple times that IDOL wanted to

move forward to have the judgment order entered, but would be open to exploring settlement before pursuing post-judgment litigation.

¶ 16 In reply, Lemko, Pyskir, and Labun argued that the court had authority to reduce the judgment under section 2-1203, their challenge to IDOL's delay was not forfeited because it was "a new equitable argument tied to the Judgment itself, not a waived administrative challenge," the court could consider the settlement emails and the emails supported reducing the penalties.

¶ 17 The circuit court denied the motion to modify. The court found that Lemko, Pyskir, and Labun failed to cite any authority supporting their argument that the court had authority to modify the judgment to reduce statutory penalties in an administrative review proceeding. The court noted that while it was "sympathetic" to the amount of statutory penalties, it was "not persuaded it has authority to reduce such penalties here." The court also found no evidence to support the allegation that IDOL took an unreasonably long time to investigate the claims and such a claim was not raised in the administrative proceeding. Further, the court held there was no evidence that plaintiffs were misled during settlement discussions such that the statutory penalties that accrued during either period should be excluded from the judgment.

¶ 18 Plaintiffs appealed all three cases. The appeals were numbered 1-25-1788 for Sisto's claim, 1-25-1789 for Wong's claim, and 1-25-1801 for Meyers's claim. This court granted the parties' joint motion to consolidate the appeals.

¶ 19 II. ANALYSIS

¶ 20 On appeal, plaintiffs argue that the circuit court had authority to equitably reduce the judgment under section 2-1203 of the Code and erred when it declined to do so. IDOL responds that plaintiffs forfeited this argument by raising it for the first time in a motion to reconsider, the circuit court correctly decided that the penalties in the WPCA were not subject to equitable

reduction under the ARL, and, even if they were, the circuit court did not abuse its discretion by denying the motion to modify the judgment.

¶ 21 Section 2-1203 allows a party to "file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment" within 30 days after entry of the judgment in a case tried without a jury. 735 ILCS 5/2-1203(a) (West 2026). The circuit court's decision to grant or deny a section 2-1203 motion is reviewed for an abuse of discretion and whether substantial justice is done between the litigants. *Babcock v. Wallace*, 2012 IL App (1st) 111090, ¶ 23. An abuse of discretion occurs when the circuit court's ruling is arbitrary, fanciful, or when no reasonable person would adopt the position taken by the circuit court. *Seymour v. Collins*, 2015 IL 118432, ¶ 41.

¶ 22 Plaintiffs' motions to modify the judgments sought to reduce their liability for statutory penalties in those judgments under the WPCA. The WPCA provides that a claimant "shall be entitled to recover" a statutory penalty calculated monthly from the date of underpayment of wages. 820 ILCS 115/14(a) (West 2020). At the time of the wage claims at issue in this case, the statutory penalty was 2% of the amount of underpayment calculated each month. *Id.* The WPCA also provided for an additional 1% penalty calculated daily for each day that an outstanding underpayment remained unpaid, starting 35 days from the administrative or court order requiring payment. 820 ILCS 115/14(b) (West 2020). "[A]ny exception, objection, motion, or other challenge to the order, including appeal, does not toll the accrual of statutory interest penalties" under the WPCA. *Miller v. Kiefer Specialty Flooring, Inc.*, 317 Ill. App. 3d 370, 379 (2000). Here, as detailed in the attachments to the ALJ's decisions, statutory penalties began to accrue in 2017.

¶ 23 First, we agree with IDOL that plaintiffs forfeited their argument that the time that IDOL spent investigating the wage claims between 2017 and 2020 should not count towards the statutory penalties because they did not raise this argument during the administrative proceedings. "Issues

not raised before the administrative agency are forfeited." *Marathon Petroleum Company LP v. Cook County Department of Revenue*, 2024 IL 129562, ¶ 44. Additionally, plaintiffs did not raise this argument until their motion to modify or reconsider the judgment. The purpose of a motion to reconsider is to bring the court's attention to (1) new evidence; (2) changes in the law; or (3) errors in the court's previous application of the law. *Zahdan v. Frontline Business Enterprise Inc.*, 2024 IL App (1st) 221351, ¶ 44. "A reconsideration motion is not the place to raise a new legal theory" and theories not previously raised are subject to forfeiture. *Id.*

¶ 24 Plaintiffs seek to avoid forfeiture by characterizing their argument as seeking an "equitable modification" of the judgment entered by the circuit court, rather than an attack on IDOL's decision. We reject this characterization. Plaintiffs seek to challenge IDOL's final decision that plaintiffs were liable for penalties that accrued between 2017 and 2020. Plaintiffs could have raised this argument before IDOL and made a record regarding any delay they allege was attributable to the agency, but they failed to do so. They also failed to raise this argument in response to IDOL's motion for judgment, raising it for the first time in their motion to reconsider. Thus, we find that plaintiffs forfeited this argument by not raising it before IDOL, the ALJ, or the circuit court before their motion to reconsider. *Marathon Petroleum Company LP*, 2024 IL 129562, ¶ 44; *Zahdan*, 2024 IL App (1st) 221351, ¶ 44.

¶ 25 Forfeiture aside, we reject plaintiffs' argument that the circuit court had authority to modify the statutory penalties which were part of the judgment under section 2-1203 of the Code and section 3-111(a)(8) of the ARL. Section 2-1203 allows parties to "file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief" within 30 days of the entry of the judgment in a non-jury case. 735 ILCS 5/3-1203(a). As pointed out by the circuit court, plaintiffs do not cite any relevant authority to support their argument that section 2-

1203 grants the circuit court authority to reduce mandatory statutory penalties in an administrative review proceeding like this case. The two cases cited by plaintiffs, *Servio v. Paul Roberts Auto Sales, Inc.*, 211 Ill. App. 3d 751, 757 (1991) and *Regas v. Associated Radiologists*, 230 Ill. App. 3d 959, 967 (1992), are not applicable as they do not involve proceedings under the ARL.

¶ 26 Section 3-111(a)(8) allows the circuit court, "in case of affirmance or partial affirmance of an administrative decision which requires payment of money, to enter judgment for the amount justified by the record and for costs, which judgment may be enforced as other judgments for the recovery of money." 735 ILCS 5/3-111(a)(8) (West 2024). Plaintiffs also cite no authority to support their argument that this section allows the circuit court to "modify its judgment to exclude the portions of the penalties assessed to Plaintiffs that accrued solely because of IDOL's dilatory investigation of the wage claims and the OAG's misleading conduct during settlement negotiations." The circuit court has narrow authority under the ARL. See *Beggs v. Board of Educ. of Murphysboro Community Unit School Dist. No. 186*, 2016 IL 120236, ¶ 45 ("A circuit court's exercise of review over a final administrative decision is thus limited by the specific dictates of the Administrative Review Law."). Given the narrow scope of the circuit court's role under the ARL and plaintiffs' lack of authority to support its argument, we reject it.

¶ 27 Even if the circuit court had the authority to modify the judgment in the manner suggested by plaintiffs, we cannot find that the circuit court abused its discretion in declining to do so. Plaintiffs sought to reduce the statutory penalties they owed because IDOL allegedly delayed investigating the claims between 2017 and 2020 and IDOL allegedly delayed settlement negotiations while the first appeal was pending and after IDOL filed the motion for judgment.

¶ 28 We agree with the circuit court there is no evidence in the record that IDOL took an "unreasonably" long time investigating the claims or that OAG misled plaintiffs during settlement

negotiations that would warrant reducing the penalties. Plaintiffs cite no such evidence in their brief and fail to cite any authority to suggest that IDOL's taking three years to resolve the claims is unreasonable such that they should not be responsible for the statutory penalties that accrued during that period, particularly when plaintiffs did not object to that time period or raise this issue before IDOL or the ALJ. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (The argument portion of a brief "shall contain the contentions * * * and the reasons therefor, with citations to authorities * * *."). The employer is responsible for penalties that accrue between the date of underpayment and IDOL's final decision in favor of the claimants. 820 ILCS 115/14(a) (West 2020). We cannot find that the circuit court abused its discretion by declining to deduct penalties that accrued between when the wage claims were filed in 2017 and IDOL's decision in 2020.

¶ 29 Plaintiffs' next contention is that the circuit court should have deducted penalties that accrued during the four months when OAG "misled" plaintiffs during settlement negotiations. IDOL responds that the emails attached to plaintiffs' motion are not admissible under Illinois Rule of Evidence 408(a) and should not be considered. Ill. R. Evid. 408(a). It alternatively argues that, even if the emails are considered, they do not demonstrate that IDOL caused any delay that would warrant modifying the judgment.

¶ 30 We agree with IDOL that, even if we consider the emails, they do not establish any basis to exclude the penalties that accrued during each period. First, plaintiffs forfeited this argument by failing to cite any supporting authority or develop this argument. See Ill. S. Ct. R. 341(h)(7); *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010).

¶ 31 Second, the first email exchange merely shows that IDOL took approximately one month to provide updated calculations of the amount due based on the statutory penalties accrued. This exchange shows no misleading conduct on the part of OAG. The second exchange shows that,

upon receiving a settlement offer on behalf of Lemko and Pyskir, OAG requested financial documentation and clarification, before stating that it would discuss the offer with IDOL. About a month after the initial offer, before a hearing on IDOL's motion for judgment, OAG then stated it was "still discussing this matter with the Department." The matter was then continued by the circuit court for two months "to allow Nicholas Labun an opportunity to review the calculations provided by" IDOL. Shortly before the next hearing, OAG stated that it would ask the court to enter judgment and IDOL would provide its settlement position after judgment was entered.

¶ 32 The second exchange does not demonstrate any misleading conduct, bad faith negotiating, or other conduct that could justify excluding the statutory penalties for this period. Neither exchange supports plaintiffs' assertion that IDOL led plaintiffs "to believe that resolution was imminent and that continued accrual of penalties would be addressed as part of any settlement," as they argue. Therefore, we reject plaintiffs' argument and find no abuse of discretion.

¶ 33 Plaintiffs next argue that the statutory penalties constitute an "inequitable penalty" resulting in a "windfall" for IDOL and the claimants. This argument largely rehashes plaintiffs' prior arguments, and contains no citation to authority besides section 3-111(a)(8). As plaintiffs acknowledge, the penalty provisions of the WPCA are remedial and accrue until payment is made and are in place to prevent delays in repaying wages that are withheld by the employer. See *Miller*, 317 Ill. App. 3d at 378-79. Plaintiffs do not argue that those penalties are unconstitutional or were wrongfully imposed, only that the circuit court should have reduced them based on alleged delays by IDOL. As discussed, there is no evidence of improper delays by IDOL that could warrant reducing the penalties.

¶ 34 In their reply brief, plaintiffs raise new arguments that were not raised in their opening brief. As plaintiffs raised these arguments for the first time in their reply brief, they are forfeited.

See Ill. S. Ct. R. 341(h)(7) ("Points not argued are forfeited and shall not be raised in the reply brief.").

¶ 35 III. CONCLUSION

¶ 36 For the foregoing reasons, we affirm the order of the circuit court of Cook County denying plaintiffs' motion to modify the judgment.

¶ 37 Affirmed.