

dismissed the request.

¶ 4 Marion Surgery Center, Ltd., owns and operates an Illinois-licensed ambulatory surgical treatment center located in Marion. The controlling interest in Marion Surgery Center, Ltd., was held by Marion Holdings, LLC. After negotiations in 2010 and 2011, Marion Holdings was sold to Cirurgia Centro, LLC, a company managed by attorney Ronald E. Osman. Plaintiff Maqbool Ahmad had also sought to purchase Marion Holdings, but was outbid by Cirurgia. The contract of sale was signed on January 27, 2011, and was contingent upon receipt of state approval for the change in ownership.

¶ 5 Cirurgia filed its exemption request seeking approval for the change of ownership with the Illinois Health Facility Planning Board in late January. The hearing was held later that year, and over the objections of the plaintiffs, the planning board approved the exemption for change of ownership. Cirurgia's purchase of Marion Holdings was completed on June 30, 2011.

¶ 6 Plaintiff George Ortiz, M.D., served as the medical director of the Marion Surgery Center from March 2005 until his resignation on April 27, 2010. On July 5, 2011, he sent another letter to the Marion Surgery Center in which he purported to resign his position a second time.

¶ 7 On July 6, 2011, Dr. Ortiz, Dr. Ukeme Umana, Dr. Maqbool Ahmad, and Dr. Joseph Olk, all of whom practice together at the Marion Eye Center, filed their complaint against Cirurgia and the Marion Surgical Center, alleging that the Marion Surgery Center would be engaging in the unauthorized practice of medicine because with Dr. Ortiz's resignation, the Marion Surgical Center lacked a medical director. The plaintiffs alleged that attorney Osman, not being a licensed medical practitioner, was ineligible to fill that role.

¶ 8 The complaint asked the court to permanently enjoin the Illinois Department of Public Health from issuing a license to Cirurgia and Marion Surgical Center until each

company was either owned or controlled by a licensed healthcare provider. In seeking this remedy, the plaintiffs alleged that because Dr. Ortiz had resigned as the medical director for Marion Surgical Center, the surgical center no longer had medical supervision, as required by Illinois law.

¶ 9 On July 11, 2011, the defendants filed a motion to dismiss the complaint. One of the theories the defendants claimed in support of their motion was that the court lacked subject matter jurisdiction. The defendants contended that until the Illinois Department of Public Health issued a license, there could be no jurisdiction in the circuit court. Furthermore, the defendants argued that the Ambulatory Surgical Treatment Center Act (210 ILCS 5/1 *et seq.* (West 2010)) contained its own procedures for filing a complaint with the Department of Public Health regarding the issuance of licenses. Therefore, the defendants claimed that administrative law dictated that the circuit court is not vested with jurisdiction until after a final administrative decision is made.

¶ 10 The court held a hearing on July 12, 2011, and took the matter under advisement. By docket entry dated July 19, 2011, the court granted the motion to dismiss. The written order filed on July 20, 2011, stated that the matter was not ripe for consideration. The court held that the licensing procedure was not complete. The trial court noted that once the administrative process concluded, review could then be sought pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2010)). The court concluded that it did not have jurisdiction to consider the matter.

¶ 11 After the trial court's dismissal, the defendants filed a motion for sanctions pursuant to Supreme Court Rule 137 (eff. Feb. 1, 1994). The defendants sought an award of attorney fees incurred in responding to the complaint. The total sought by the defendants was \$8,486.25. The false allegations claim in the motion for sanctions was derived from a contact between Dr. Ortiz and one of the defendants. That contact led the defendants to

conclude that the plaintiffs could have determined that an underlying allegation of their complaint was untrue. The defendants allege that the plaintiffs knew that on the date of filing, the Marion Surgery Center had a medical physician in a supervisory position.

¶ 12 The confusing facts of this situation involve Dr. Ortiz's successive resignations as medical director—more than one year apart. In fact, the 2010 resignation was the accurate resignation date. The defendants claim that Dr. Ortiz recommended that the surgery center hire Dr. Pauline Carroll to serve as the facility's medical director. Dr. Carroll became the medical director on June 1, 2010. Later, in an August 3, 2011, email Dr. Ortiz sent to the administrator of the Marion Surgery Center (who had been confused by and questioned the resignations), Dr. Ortiz confirmed that he had resigned in 2010 when Dr. Carroll had become available to serve. On the basis of the "admissions" in this email, the defendants claimed that the plaintiffs clearly knew that these allegations about the lack of medical supervision were false.

¶ 13 The court reviewed the request for sanctions, and on September 6, 2011, by docket entry, it stated, "The Court having considered the motion for Rule 137 sanctions, and being fully advised in the premises, hereby denies the motion."

¶ 14 The defendants appeal that ruling.

¶ 15 **LAW AND ANALYSIS**

¶ 16 The purpose of Supreme Court Rule 137, which authorizes an award of sanctions in appropriate situations, is to prohibit abuse of the court system by claimants "who make vexatious and harassing claims based upon unsupported allegations of fact or law." *Peterson v. Randhava*, 313 Ill. App. 3d 1, 7, 729 N.E.2d 75, 80 (2000). The trial court is in the best position to decide application of this rule, and the decision to grant or deny a request for sanctions is typically within the trial court's sound discretion, which is reviewed for abuse. *In re Estate of Smith*, 201 Ill. App. 3d 1005, 1009, 559 N.E.2d 571, 574 (1990).

¶ 17 The party seeking sanctions bears the burden of proof. *In re Marriage of Schneider*, 298 Ill. App. 3d 103, 109, 697 N.E.2d 1161, 1166 (1998).

¶ 18 Reviewing a trial court's decision on the question of sanctions, we must primarily consider " 'whether the trial court's decision was informed, based on valid reasoning, and follows logically from the facts.' " *Whitmer v. Munson*, 335 Ill. App. 3d 501, 514, 781 N.E.2d 618, 629 (2002) (quoting *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 244, 732 N.E.2d 1129, 1134 (2000)).

¶ 19 With this legal foundation, we turn to the wording of the rule. Supreme Court Rule 137 requires the following:

"Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. *** The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it 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. *** If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee.

* * *

Where 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 (eff. Feb. 1, 1994).

The express wording of the rule mandates that the order awarding sanctions must contain the specific reasons and bases for the award. The rule has no similar requirement for an order denying a request for sanctions. Nonetheless, several districts, including our own, have held that a hearing and a specific order is required if the court decides to grant or deny a party's request for sanctions. See *Graham v. Hildebrand*, 248 Ill. App. 3d 742, 618 N.E.2d 1259 (1993) (Fifth District case holding that the motion for sanctions (both Rule 137 and section 2-611 of the Code of Civil Procedure), which the trial court denied, was worthy of a hearing); *In re Estate of Smith*, 201 Ill. App. 3d 1005, 559 N.E.2d 571 (1990) (Third District case holding that a hearing "ought" to be held to allow the parties the opportunity to present evidence supporting and/or rebutting the Rule 137 sanctions request, and allowing the parties to present argument on their positions); *O'Brien & Associates, P.C. v. Tim Thompson, Inc.*, 274 Ill. App. 3d 472, 653 N.E.2d 956 (1995) (Second District case holding that even in cases where the court denies Rule 137 sanctions, the court must set forth its reasons for doing so).

¶ 20 The rationale for requiring the court to state its reasons for denying sanctions, despite no requirement within the governing supreme court rule, is explained in *In re Estate of Smith*. The court explained as follows:

"For a court of review to enter its decision without benefit of the trial court's explicit findings tends to establish too many *ad hoc* rules of law as to the correct result in any given case." *In re Estate of Smith*, 201 Ill. App. 3d at 1010, 559 N.E.2d at 574.

¶ 21 According to the logic of these appellate decisions, without the benefit of a hearing and reasons for the denial, the trial court's order granting or denying the request for sanctions

is not entitled to deferential treatment. *Peterson*, 313 Ill. App. 3d at 7, 729 N.E.2d at 80. Even if we choose to follow the reasoning of these decisions—that a nonspecific denial of a request for sanctions is not entitled to deference—we find that there remains no legal reason to automatically reverse the order if "the court's determination of the issue can be made on the basis of the pleadings or trial evidence." *In re Marriage of Schneider*, 298 Ill. App. 3d at 109, 697 N.E.2d at 1166.

¶ 22 In this case, while the underlying complaint was dismissed by the court, the dismissal was not substantive, but was based upon the fact that the complaint was premature—that the administrative process had not yet been concluded. Having reviewed the underlying complaint, the motion for sanctions, as well as briefs on appeal, the false allegations center on Dr. Ortiz. The allegation was that the Marion Surgical Center did not have a medical doctor managing the clinic. As Dr. Ortiz stated in his 2010 letter of resignation that he was resigning now that Dr. Carroll had joined the center, the defendants argue that the allegation about lack of medical supervision in the complaint was false. There was clearly some confusion on the part of Dr. Ortiz, who resigned in 2010 and then signed another letter indicating that he resigned in July 2011. In a later email, which was attached to the memorandum of law in support of the motion for sanctions, Dr. Ortiz was chagrined by his mistake and apologized for signing this erroneous letter in light of his actual 2010 resignation when Dr. Carroll became available.

¶ 23 The plaintiffs continue to allege that the person actively managing the center is not a physician, but is an attorney. This claim was at the heart of the plaintiffs' complaint. The question was the identity of the person who was actually running the medical center. The defendants do not appear to dispute the attorney's ownership of the holding company which owns the surgery center. Accordingly, the pleadings fail to clearly establish that the foundation of the underlying complaint was a false allegation. The applicable burden of

proof was with the defendants who were seeking sanctions. Without more for the court to consider in the request for sanctions, the court could reasonably find that the request for sanctions was inappropriate and should be dismissed. Having reviewed the same pleadings as the trial judge reviewed, we conclude that the trial court's decision to deny the request for sanctions was proper. Nothing in the motion for sanctions and the accompanying legal memorandum establishes frivolousness or proof of false allegations.

¶ 24

CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of Williamson County is hereby affirmed.

¶ 26 Affirmed.