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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1716**

Thondee Pongmalee, et al.,
Plaintiffs,

Jeffrey K. Priest, et al.,
Respondents,

vs.

Wat Lao Sirithammaraam,
Appellant.

**Filed June 17, 2019
Affirmed
Cleary, Chief Judge**

Washington County District Court
File No. 82-CV-17-3673

Jeffrey K. Priest, Priest Law Firm, Eagan, Minnesota (attorney pro se and for respondents);
and

Kay Nord Hunt, Lommen Abdo, P.A., Minneapolis, Minnesota (for respondents)

Mark A. Olson, Olson Law Office, Burnsville, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Florey, Judge; and Cochran, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

Appellant challenges the district court's denial of its motion for sanctions, arguing that its notice of intent to seek sanctions complied with and satisfied the safe-harbor provisions of Minn. Stat. § 549.211 (2018) and Minn. R. Civ. P. 11. We affirm.

FACTS

On August 24, 2017, plaintiffs Thongdee Pongmalee,¹ Inthong Keodouangdy, Sengaloun Sayoudone, Christina Vilay, May Vilay, Bonavahn Neukircher, and other unnamed persons involved in the formation and operation of appellant Wat Lao Sirithammaram² temple (Wat Lao), filed a summons and complaint against Wat Lao, alleging claims that are not relevant to this appeal.³ On August 29, 2017, Wat Lao served a document entitled “notice of intent to seek sanctions.” The document stated that Wat Lao would move the district court “by a stand alone separate motion, to seek sanctions against Defendants [sic] and counsel pursuant to Rule 11 and § 549.211, in the event that said Plaintiffs do not dismiss their pretended cause of action in this matter within 21 days of this notice.” The alleged sanctionable conduct was never corrected. In early February 2018, the district court dismissed the underlying matter without prejudice.

¹ The case caption in the district court identifies this plaintiff as “Thondee Pongmalee”; however, appellant's brief identifies this plaintiff as “Thongdee Pongmalee.” We use “Thongdee Pongmalee” in the body of this opinion.

² The case caption in the district court identifies appellant as “Wat Lao Sirithammaraam”; however, appellant appears in the record as “Wat Lao Sirithammaram.” We use “Wat Lao Sirithammaram” in the body of this opinion.

³ Respondents Jeffrey K. Priest, Richard D. Crabb, and the Priest Law Firm represented plaintiffs in the underlying action.

In July 2018, Wat Lao served and filed a notice of motion and motion for sanctions on the same day. In August 2018, the district court held a hearing on the motion. The district court denied Wat Lao's motion, concluding that, by filing and serving its motion on the same day, Wat Lao had failed to comply with the 21-day safe-harbor provisions of Minn. R. Civ. P. 11.03(a)(1) and Minn. Stat. § 549.211, subd. 4(a).

This appeal follows.

D E C I S I O N

Wat Lao argues that it satisfied the 21-day safe-harbor provisions of Minn. R. Civ. P. 11.03(a)(1) and Minn. Stat. § 549.211, subd. 4(a), because its notice of intent to seek sanctions substantially complied with the requirement to serve a motion for sanctions 21 days before filing it with or presenting it to the district court. We disagree.

We review the district court's order regarding a rule 11 sanction for an abuse of discretion. *In re Progressive Ins. Co.*, 720 N.W.2d 865, 874 (Minn. App. 2006), *review denied* (Minn. Nov. 22, 2006). But the application of a statute or procedural rule to undisputed facts presents a question of law that is reviewed de novo. *Poppler v. Wright Hennepin Coop. Elec. Ass'n*, 845 N.W.2d 168, 171 (Minn. 2014) (applying rules of civil procedure); *Anderson v. Christopherson*, 816 N.W.2d 626, 630 (Minn. 2012) (applying a statute).

By presenting a document to a court, an attorney certifies that the document is not presented for an improper purpose and that the contentions in the document are warranted and have, or are likely to have, evidentiary support. Minn. Stat. § 549.211, subd. 2; Minn. R. Civ. P. 11.02. "If, after notice and a reasonable opportunity to respond, the court

determines that [this principle] has been violated, the court may . . . impose an appropriate sanction” Minn. Stat. § 549.211, subd. 3; Minn. R. Civ. P. 11.03.

A motion for sanctions . . . must be made separately from other motions or requests and describe the specific conduct alleged to [constitute the violation]. It must be served . . . but may not be filed with or presented to the court unless, within 21 days after service of the motion, or another period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

Minn. Stat. § 549.211, subd. 4(a); *see also* Minn. R. Civ. P. 11.03(a)(1) (establishing the same 21-day notice requirement). This 21-day notice requirement is referred to as the “safe-harbor provision.” *See, e.g., Johnson ex rel. Johnson v. Johnson*, 726 N.W.2d 516, 518 (Minn. App. 2007); *Progressive Ins. Co.*, 720 N.W.2d at 874.

Compliance with the safe-harbor provision is mandatory. *Johnson*, 726 N.W.2d at 518. A court that fails to apply the safe-harbor provision “err[s] as a matter of law.” *Id.* at 519 (“While the district court has the authority to assess sanctions . . . that authority is circumscribed by the 21-day safe-harbor provisions of the statute and the rule.” (quotation marks omitted)).

Here, Wat Lao did not initially serve a motion for sanctions, but instead served a notice of intent to seek sanctions. A “motion” is “[a] written or oral application requesting a court to make a specified ruling or order.” *Black’s Law Dictionary* 1168 (10th ed. 2014). Wat Lao’s notice of intent to seek sanctions was not a motion as mandated by the rule. It was not in the form of an application requesting a court to make a specified order, but was instead a threat that such a motion might be filed sometime in the future. The notice of

intent appears to be an attempt to get the case dismissed at an early stage, rather than an outright request for sanctions. It was also not substantively identical to the motion that Wat Lao eventually filed 11 months later. In its notice of intent to seek sanctions, Wat Lao argued the following: plaintiffs failed to follow proper procedures in seeking to inspect corporate records; plaintiffs' claim for damages for wrongful eviction fails on its face; plaintiffs failed to properly plead damages; plaintiffs failed to follow the proper procedures for seeking a writ of quo warranto under Minn. Stat. § 480.04 (2018); plaintiffs failed to plead a proper cause of action under Minn. Stat. § 317A.411 and misstated facts; plaintiffs failed to state a cause of action under Minn. Stat. § 317A.751; and plaintiffs are not entitled to injunctive relief.

Wat Lao's later notice of motion and motion, served and filed on the same day in July 2018, did not specify on what basis sanctions were appropriate. In his affidavit supporting the motion, appellant's counsel stated that "[t]he action was entirely without any factual or legal basis or merit and made some outright provable false statements." He went on to assert that a number of specific factual claims made by respondents, acting as plaintiffs' counsel, were false. Wat Lao also maintained, in its memorandum supporting the motion, that counsel "violated [Minn. Stat. § 549.211, subd. 2] by making claims or other legal contentions that were not warranted by existing law and could not be taken as a non-frivolous extension of existing law." The only substantive overlap between Wat Lao's notice of intent to seek sanctions and its later motion for sanctions was the allegation that false facts were alleged in the complaint. However, the specifics of those facts were not made clear in the notice of intent to seek sanctions.

The purpose of the safe-harbor provision is to provide a party with a 21-day opportunity to withdraw a pleading or address deficiencies that violate Minn. Stat. § 549.211 and Minn. R. Civ. P. 11. This purpose is not served when an actual motion for sanctions is not filed until 11 months after a notice of intent document, alleging substantially different deficiencies. Indeed, “[a] policy of deterrence is not well served by tolerating abuses during the course of an action and then punishing the offender after the trial is at an end.” *Empire Fire & Marine Ins. Co. v. Carlson*, 476 N.W.2d 666, 669 (Minn. App. 1991) (quotation omitted).

We have previously held, and now reaffirm, that substantial compliance with the safe-harbor provision is insufficient in Minnesota. *See Dyrdal v. Golden Nuggets, Inc.*, 672 N.W.2d 578, 590 (Minn. App. 2003) (rejecting substantial-compliance argument), *aff’d on other grounds*, 689 N.W.2d 779 (Minn. 2004). As in *Dyrdal*, “applying the doctrine of substantial compliance in this case would ignore the unambiguous, mandatory statutory requirement that a motion for sanctions be made separately from other motions or requests.” *Id.* The district court did not err in denying Wat Lao’s motion for sanctions based on its failure to comply with the safe-harbor provisions of Minn. Stat. § 549.211 and Minn. R. Civ. P. 11.03.

Affirmed.