

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0784**

In re the SUPERVISED Estate of Nancy Eileen Flatgard, Deceased.

**Filed November 25, 2024
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-PA-PR-23-404

Jonathan P. Baker, Baker Law Office, Walker, Minnesota (for appellant Brian T. Carlson)

Kathy S. Kimmel, Amy Papenhausen, Fox Rothschild LLP, Minneapolis, Minnesota
(for respondent Fiduciary Foundation, LLC)

Considered and decided by Reyes, Presiding Judge; Frisch, Judge; and
Florey, Judge.*

SYLLABUS

1. Under rule 11 of the Minnesota Rules of Civil Procedure, whether a party has withdrawn a frivolous claim within the safe-harbor period is a question of fact.

2. A district court acts within its discretion to impose sanctions pursuant to rule 11 of the Minnesota Rules of Civil Procedure when a party does not clearly and unequivocally withdraw a frivolous claim within the safe-harbor period.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

OPINION

FRISCH, Judge

In this probate matter, appellant argues that the district court erred by granting respondent's motion for sanctions pursuant to rule 11 of the Minnesota Rules of Civil Procedure and Minn. Stat. § 549.211 (2022) because (1) appellant withdrew the claims underlying the district court's sanctions order during the safe-harbor period, (2) appellant did not engage in sanctionable conduct, and (3) the sanctions imposed were unnecessarily severe. We affirm the sanctions judgment because the district court did not clearly err in finding that appellant had not withdrawn frivolous claims within the safe-harbor period, and the district court otherwise acted within its discretion in ordering sanctions.

FACTS

This matter arises out of claims brought by appellant Brian T. Carlson against the estate of his sister Nancy Flatgard, who died in December 2022. Flatgard was survived by Carlson and one adult child who was her sole heir.¹ Flatgard was the sole beneficiary of the estate of W.S.C., who was Flatgard and Carlson's brother. Carlson previously brought an unsuccessful petition to appoint a special administrator to investigate Flatgard's conduct in relation to W.S.C.'s estate (the W.S.C. matter). *See In re Est. of Carlson*, No. A22-0957, 2023 WL 1771649, at *1 (Minn. App. Feb. 6, 2023), *rev. denied* (Minn. Apr. 26, 2023). In May 2023, Carlson made a claim against Flatgard's estate arising out of what he described as an interest in "[c]osts, expenses, attorney's fees and sanctions awarded" to

¹ Upon petition from Flatgard's heir, respondent Fiduciary Foundation, LLC was appointed as special administrator and later personal representative of Flatgard's estate.

Carlson that “have been, and will be incurred, in [the W.S.C. matter].” We describe the history of Carlson’s actions with respect to his brother’s estate and Flatgard’s estate, which informed the district court’s award of sanctions against Carlson and is relevant to our review of the district court’s sanctions order on appeal.

In 2020, Carlson petitioned the district court “for the appointment of himself as special administrator” of W.S.C.’s estate. *Carlson*, 2023 WL 1771649, at *2. Flatgard served as W.S.C.’s attorney-in-fact before he died. *Id.* at *1. Carlson asserted that he should be appointed special administrator to investigate Flatgard’s actions while she was serving as W.S.C.’s attorney-in-fact. *Id.* at *2. The district court denied Carlson’s petition, “conclud[ing] that it is unnecessary to appoint a special administrator because [W.S.C.’s] 1984 will devised all of his property to [Flatgard] and because any causes of action that a special administrator might assert against [Flatgard] are now time-barred.” *Id.*

Carlson appealed, and we affirmed. *Id.* at *1-2. We concluded that the district court did not abuse its discretion by considering W.S.C.’s 1984 will and determining that a special administrator was not necessary to preserve W.S.C.’s estate. *Id.* at *3-5. Carlson petitioned the supreme court for further review. While that petition for further review was pending, Carlson filed a demand for notice in the Flatgard estate matter that he “may have a financial or property interest” in the estate based on a “[p]otential claim” which “may be awarded” in the W.S.C. matter.

On April 26, 2023, the supreme court denied Carlson’s petition for further review in the litigation involving the W.S.C. matter. A few days later, Carlson initiated a claim against Flatgard’s estate for an “amount, yet to be determined, [that] will be set by the court

after a Petition and Request for an award by [Carlson] against [Flatgard's estate] in the matter of [W.S.C.'s estate]." The claim contains an acknowledgment that "[t]here may or may not be an award by the Court," and that "[i]f there is no award this claim will be withdrawn." Respondent Fiduciary Foundation, LLC, as special administrator of Flatgard's estate, notified Carlson that this claim would be disallowed without a petition for allowance before the district court.

On July 14, Carlson petitioned the district court to allow his claim of "attorney's fees and costs and disbursements" totaling \$229,000, which he represented to be the amount of his attorney fees incurred during his litigation in the W.S.C. matter. The petition also provides that these fees constitute "damages for the breach of fiduciary duty by [Flatgard]" and seeks enforcement of a trust or constructive trust over W.S.C.'s estate. Carlson also filed a notice of intervention in a related foreclosure matter, asserting that the mortgage at issue was void because Flatgard did not have valid title to property formerly owned by W.S.C.

On August 4, Fiduciary Foundation moved to dismiss Carlson's petition for failure to state a claim upon which relief can be granted, arguing that Carlson's petition in the Flatgard estate matter "recast" his prior unsuccessful petition in the W.S.C. matter which had been "litigated to conclusion" or "otherwise barred as a matter of law." Later in August, Fiduciary Foundation moved to disqualify Carlson from representing himself because of his prior legal representation of Flatgard.²

² At the time he filed the petition, Carlson was licensed to practice law in Minnesota.

On September 5, Fiduciary Foundation notified Carlson that it intended to pursue sanctions under rule 11 of the Minnesota Rules of Civil Procedure and Minn. Stat. § 549.211. In this correspondence, Fiduciary Foundation informed Carlson that “the sanctionable document is the Petition for Allowance of Claim and for Other Relief (‘Petition’) – and the included claims and allegations – that you filed against the Estate.” On September 15, Fiduciary Foundation emailed Carlson reiterating its intent to pursue sanctions and stating that it would serve the motion the following Monday (September 18). Carlson did not respond to either communication.

On September 18, Fiduciary Foundation served Carlson with a notice of motion and motion for sanctions. On October 2, Carlson emailed Fiduciary Foundation’s counsel stating that he would “withdraw the Petition as written to eliminate any potential violation of the Rules” and that he would “send appropriate documentation” upon his return from vacation. Carlson also stated that he was without internet or email access while on vacation. Two days later, counsel for Fiduciary Foundation responded by email, requesting that Carlson clarify his course of action because his communication “suggests [he] intend[s] to proceed with the Petition (of some nature)” against the estate. Fiduciary Foundation informed Carlson that it wished to review Carlson’s referenced withdrawal documentation before determining whether to continue pursuing sanctions. Carlson did not respond to this email. Around this time, the district court granted Fiduciary Foundation’s motion to disqualify Carlson from representing himself.

On October 16, having still not heard from Carlson, Fiduciary Foundation filed its motion for sanctions with the district court. The next day, Carlson retained counsel who

subsequently emailed Fiduciary Foundation that Carlson would be “formalizing his October 2, 2023 claim withdrawal by filing a written withdrawal of claim with prejudice.” On October 20, Carlson filed a document with the district court withdrawing the claims set forth in the May statement of claim and July petition for allowance of claim with prejudice. A week later, Carlson moved to withdraw his motion to intervene in the foreclosure matter.

The district court granted Fiduciary Foundation’s motion for sanctions, determining that Carlson “engaged in conduct violating Rule 11 and Section 549.211” in his petition by making frivolous claims against the estate and in his notice of intervention in the foreclosure case. In pertinent part, the district court ordered Carlson to pay Fiduciary Foundation’s attorney fees incurred in connection with the motion to dismiss the petition, the motion to disqualify Carlson, and the sanctions motion, amounting to \$51,297, which was half of that requested by Fiduciary Foundation.

Carlson appeals.

ISSUES

- I. Did the district court clearly err in determining that Carlson had not withdrawn frivolous claims within the safe-harbor period?
- II. Did the district court abuse its discretion by determining that Carlson engaged in sanctionable conduct?
- III. Did the district court otherwise abuse its discretion in sanctioning Carlson?

ANALYSIS

Each of Carlson’s arguments on appeal arises from the district court’s sanctions judgment. Pursuant to rule 11 of the Minnesota Rules of Civil Procedure, when an attorney presents a claim to the court, the attorney certifies that, to the best of their knowledge,

information, and belief, the claim is not presented for an improper purpose, that the claim is warranted by existing law or an extension of that law, and that allegations, denials, and other factual contentions are supported by evidence. Minn. R. Civ. P. 11.02(a)-(e). A district court may impose sanctions on a party or their counsel upon determination that a violation of rule 11.02 has occurred. Minn. R. Civ. P. 11.03. An alternative, parallel scheme for the imposition of sanctions exists under Minn. Stat. § 549.211, which overlaps substantially with rule 11. *Johnson ex rel. Johnson v. Johnson*, 726 N.W.2d 516, 518-19 (Minn. App. 2007).

Carlson asserts that the district court erred in three ways: (1) by finding that Carlson had not withdrawn his frivolous claims within the safe-harbor period, (2) by determining that Carlson engaged in sanctionable conduct, and (3) by imposing impermissibly severe sanctions. We reject each of Carlson’s challenges.

I. The district court did not clearly err in finding that Carlson had not withdrawn his frivolous claims within the safe-harbor period.

Carlson first argues that the district court erred in imposing sanctions because he withdrew the offending claims within the safe-harbor period. Rule 11.03(a)(1) of the Minnesota Rules of Civil Procedure requires a party seeking sanctions to serve a notice of motion and motion on an opposing party 21 days before filing the motion with the court. If “the challenged document, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected” within the 21-day safe-harbor period, the party seeking sanctions may then file its motion. Minn. R. Civ. P. 11.03(a)(1). This safe-harbor

period allows an “offending party time to withdraw the improper papers or otherwise rectify the situation.” *Johnson*, 726 N.W.2d at 518-19 (quotation omitted).

Carlson asserts that the district court erred as a matter of law in sanctioning him because he withdrew his claims in the October 2 email and therefore could not be sanctioned. He argues that the language in the email definitively establishes that he withdrew the offending claims at that time, and consequently, the district court had no authority to impose sanctions because he corrected the sanctionable conduct within the safe-harbor period. In support of this argument, Carlson cites several cases from other jurisdictions in which a district court determined that certain actions undertaken by a party amounted to a withdrawal of an offending claim under rule 11.³ But none of the cited cases—nor any authority in Minnesota—stand for the proposition that a party’s withdrawal of an offending claim under rule 11 is a question of law, or that a district court lacks the authority to determine, based on the individual circumstances of a particular case, a party’s compliance with the rule 11 procedures required to bring a sanctions motion. And unlike the definite and fixed notice and timing procedures required of a party seeking sanctions set forth in rule 11, the withdrawal of an offending claim is neither definite nor fixed and

³ See, e.g., *Carruthers v. Flaum*, 450 F. Supp. 2d 288, 306-07 (S.D.N.Y. 2006) (concluding that a party withdrew a challenged claim when the party’s counsel signed a stipulation to withdraw an offending claim because it was a “step leading to the withdrawal of the offending claim”); *Mourabit v. Klein*, 393 F. Supp. 3d 353, 364, 365 n.6 (S.D.N.Y. 2019) (finding a party’s email stating that it was “prepared to file a notice of voluntary dismissal” was “sufficient to bring it within the protection of safe harbor”), *vacated in part on other grounds on reconsideration*, No. 18 Civ. 8313, 2019 WL 4392535 (S.D.N.Y. Sept. 13, 2019), *aff’d*, 816 F. App’x. 574 (2d Cir. 2020). Unlike the circumstances set forth in these cases, Carlson did not offer to execute or actually execute any document to be filed with the district court stipulating to the withdrawal of the offending claims.

instead requires a district court to engage in an individualized assessment of a party's compliance. *See Johnson*, 726 N.W.2d at 518-19 (concluding that the district court erred as a matter of law by sanctioning appellant when opposing counsel did not provide notice to the sanctioned party before filing in district court). We therefore hold that under rule 11 of the Minnesota Rules of Civil Procedure, whether a party has withdrawn a frivolous claim within the safe-harbor period is a question of fact.

We review the district court's factual findings that Carlson did not withdraw his frivolous claims within the safe-harbor period for clear error. *See Minn. R. Civ. P. 52.01* ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous."). A finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021).

We conclude that the district court did not clearly err in finding that Carlson had not withdrawn his frivolous claims within the safe-harbor period. The district court found that Fiduciary Foundation served the motion for sanctions on September 18 and that Carlson did not withdraw his claims until October 20, at the earliest. These findings are supported by the record. On October 20, Carlson filed a document with the district court stating his intention to "hereby withdraw, with prejudice" his petition, claims, and "any other affirmative claim for relief" he had made against Flatgard's estate. On October 27, Carlson filed a motion in the foreclosure matter to withdraw his motion to intervene and for other relief. Both filings occurred well past the 21-day safe-harbor period, which had expired on

October 9 because Fiduciary Foundation had served Carlson with a notice of motion and motion for sanctions on September 18.

Notably, the district court expressly rejected Carlson's argument that he withdrew the petition and notice of intervention by sending an email to Fiduciary Foundation on October 2 that stated: "I withdraw the Petition as written to eliminate any potential violation of the Rules. I am in Italy on vacation and cannot send or receive internet/email until my return to MN. Will send appropriate documentation upon my return." The district court found that this email did not amount to a withdrawal of the offending claims under rule 11 because the language in the email reflected "a cagey message that suggested [Carlson] was going to continue to pursue claims and remedies against the Estate, even if in a different form than what was written in the Petition."

The district court did not clearly err in making the ultimate finding that the email was equivocal because, as the district court found, the email failed to address the offending claim in the notice of intervention in the foreclosure matter; based on the parties' history, Fiduciary Foundation "reasonably construed" Carlson's email "as stating he would continue to assert claims" against the estate; Fiduciary Foundation had asked for clarification of the email and Carlson did not respond; and Carlson had historically provided the court with "demonstrably misleading and conflicting information about his knowledge of the sanctions motion and his ability to communicate with [Fiduciary Foundation]." And the district court discredited Carlson's representation that he was unable to access the internet or send or receive email while on vacation, noting that Carlson emailed Fiduciary Foundation on October 2 while he was on vacation. These findings are

supported by the record and are otherwise grounded in the district court's credibility assessment of Carlson, which we do not disturb on appeal. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (explaining that appellate courts defer to district court credibility determinations).

We therefore conclude that the district court did not clearly err in finding that Carlson's October 2 email did not withdraw the challenged claims under rule 11.

II. The district court did not abuse its discretion in determining that Carlson engaged in sanctionable conduct.

Carlson next argues that sanctions were improper because he did not engage in conduct in violation of rule 11 and Minn. Stat. § 549.211. We “review[] the district court’s award of sanctions under either provision for an abuse of discretion.” *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011), *rev. denied* (Minn. Mar. 15, 2011). The district court determined that Carlson engaged in sanctionable conduct by making claims in his petition that were not supported by existing law or a nonfrivolous argument to change the law, and by advancing factual allegations with no evidentiary support. And the district court determined that Carlson maintained these frivolous claims beyond the safe-harbor period because his October 2 email did not clearly and unequivocally withdraw the frivolous claims. We discern no abuse of discretion in the district court’s determinations.

When presenting pleadings or motion papers to the court, an attorney “certifies that the claims are not being presented for an improper purpose, such as harassment; that they are supported by existing law or a nonfrivolous argument to change the law; and that factual

allegations or their denials have evidentiary support.” *Collins*, 793 N.W.2d at 145 (citing Minn. Stat. § 549.211; Minn. R. Civ. P. 11.02). Thus, rule 11 prescribes “an affirmative duty” on counsel “to investigate the factual and legal underpinnings of a pleading.” *Id.* (quotation omitted). “A district court may impose sanctions against an attorney or a party who violates these requirements.” *Id.* But sanctions “should not be imposed when an attorney has an objectively reasonable basis for pursuing a factual or legal claim or when a competent attorney could form a reasonable belief that a pleading is well-grounded in fact and law.” *Gibson v. Coldwell Banker Burnet*, 659 N.W.2d 782, 787 (Minn. App. 2003) (quotation omitted).

Before the supreme court denied review of the W.S.C. matter, Carlson asserted a contingent claim for attorney fees that he alleged to have incurred against Flatgard’s estate, asserting that he “contribute[d] to the benefit of th[at] estate.” *See* Minn. Stat. § 524.3-720 (2022) (providing for attorney fees in probate matters). But after Carlson filed the contingent claim, the supreme court denied Carlson’s petition for further review in the W.S.C. matter. Once the W.S.C. matter concluded with finality when the supreme court denied the petition for further review, Carlson no longer had a contingent claim in the W.S.C. matter, and he asserted no other separate claims in or related to that action. *See Carlson*, 2023 WL 1771649, at *4 (affirming the district court’s determination that appointing Carlson as a special administrator “would not result in any benefit to any party”). That is when Fiduciary Foundation served its notice of motion and motion for sanctions, demanding that Carlson withdraw the offending claims within the safe-harbor period and, when he failed to respond within the safe-harbor period, filed the same in

district court. We therefore conclude that the district court's determination that Carlson's litigation activities did not benefit W.S.C.'s estate is supported by the record and that Carlson had no "objectively reasonable basis" to support a claim against Flatgard's estate.⁴

The district court also acted within its discretion to impose sanctions because Carlson's "cagey" October 2 email did not withdraw his frivolous claims. The district court rejected Carlson's argument that his email amounted to a withdrawal of the frivolous claims and instead found that the email was at best equivocal and unclear, leaving the district court with the discretion to sanction Carlson for the offending conduct.⁵ Accordingly, we hold that a district court acts within its discretion to impose sanctions pursuant to rule 11 of the Minnesota Rules of Civil Procedure when a party does not clearly and unequivocally withdraw a frivolous claim within the safe-harbor period.

III. The district court did not otherwise abuse its discretion in sanctioning Carlson.

Carlson makes additional arguments asserting that the district court abused its discretion in determining the amount of sanctions and in sanctioning him for asserting

⁴ Because we conclude that the district court did not abuse its discretion in ruling that Carlson's petition violated rule 11, we decline to reach Carlson's challenge to the district court's determination that his claims were also precluded by the doctrines of res judicata and collateral estoppel. *See* Minn. R. Civ. P. 11.02(b).

⁵ We note that even if Carlson's email amounted to a withdrawal of his frivolous claims, the district court might still have acted within its discretion to impose sanctions. A district court may, in its discretion, impose sanctions even when an offending claim is withdrawn during the safe-harbor period. *Buscher v. Montag Dev., Inc.*, 770 N.W.2d 199, 211 (Minn. App. 2009), *rev. denied* (Minn. Oct. 28, 2009) (affirming rule 11 sanctions when the party amended a challenged affidavit within the safe-harbor period).

frivolous claims beyond those set forth in the petition. We discern no abuse of discretion in the district court's sanctions award.

Carlson's arguments that the district court imposed an excessive sanction and did not consider his ability to pay ignore the district court's explicit consideration of these issues. In its sanctions order, the district court weighed the severity of the sanction requested by Fiduciary Foundation "in light of [Carlson's] fixed income" and the money Carlson spent in the W.S.C. matter, considering Carlson's "former status as an attorney and his knowledge and ability [to] navigate the legal system." The district court then noted that Carlson had been twice disqualified from serving as his own attorney yet continued to pursue previously litigated, and adversely decided, claims. Ultimately, the district court determined that "without proper deterrence," Carlson may again attempt to pursue frivolous claims and that "effectuating deterrence requires levying a higher fee than the minimum requested by [Fiduciary Foundation]." The district court's determinations are supported by the record and do not constitute a misapplication of the law. *See Collins*, 793 N.W.2d at 145.

We are similarly unpersuaded by Carlson's argument that the district court abused its discretion in sanctioning him for his conduct in the foreclosure matter because that issue was "not raised in respondent's notice of motion and motion." But we do not read the district court's sanctions order as bifurcating an amount of sanctions related to Carlson's offending conduct in separate proceedings. Instead, we read the district court's order as sanctioning Carlson for advancing multiple frivolous claims of an identical nature. And the record reflects that Fiduciary Foundation repeatedly notified Carlson that it sought

sanctions related to the same conduct. Carlson does not contest that Fiduciary Foundation properly served its notice of motion, motion for sanctions, and supporting documents upon him. And Carlson likewise does not contest that in those filings, Fiduciary Foundation explicitly noted that its sanctions motion included “a memorandum of law, a declaration with exhibits, and a proposed order.” Fiduciary Foundation’s memorandum of law provides that the basis for sanctions includes Carlson’s actions in the foreclosure matter, which reassert the same frivolous claim as set forth in the petition. If “fair notice has been given and the subject party has an opportunity to respond,” a district court has “wide discretion to award the type of sanctions it deems necessary.” *Gibson*, 659 N.W.2d at 790 (quotation omitted). Because these documents fairly and repeatedly notified Carlson that Fiduciary Foundation sought sanctions related to all of Carlson’s frivolous claims, including those set forth in the foreclosure matter, and Carlson was fairly notified as to the scope of his offending conduct and did not timely correct the same, we conclude that the district court did not abuse its discretion in sanctioning him for this conduct.⁶

DECISION

We hold that under rule 11 of the Minnesota Rules of Civil Procedure, whether a party has withdrawn a frivolous claim within the safe-harbor period is a question of fact. We further hold that a district court acts within its discretion to impose sanctions pursuant to rule 11 of the Minnesota Rules of Civil Procedure when a party does not clearly and

⁶ Carlson also argues that the district court abused its discretion in its sanctions order because it overlooked Fiduciary Foundation’s duty to mitigate its fees. This argument relies on a conclusion that Carlson’s October 2 email withdrew his frivolous claims, which we have already rejected.

unequivocally withdraw a frivolous claim within the safe-harbor period. Because the district court did not clearly err in finding that Carlson had not withdrawn his frivolous claims within the safe-harbor period, and the district court did not abuse its discretion in determining that Carlson engaged in sanctionable conduct or in determining the severity of sanctions, we affirm.

Affirmed.