IN THE SUPREME COURT OF IOWA

Supreme Court No. 23-0054
Linn County No. 06571 ESPR044198

IN THE MATTER OF THE ESTATE OF CONNIE JO TROUT, Deceased

Appeal from the Iowa District Court in and for Linn County
The Honorable Valerie Clay, Judge

Appellants' Final Reply Brief

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ARGUMENT

The Court reviews a district court's order imposing sanctions for an abuse of discretion. *First Am. Bank & C.J. Land, LLC v. Fobian Farms, Inc.*, 906 N.W.2d 736, 744 (Iowa 2018). A district court abuses its discretion when it exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Rowedder v. Anderson*, 814 N.W.2d 585, 589 (Iowa 2012) (quoting *Schettler v. Iowa Dist. Court for Carroll Co.*, 509 N.W.2d 459, 464 (Iowa 1993)). An erroneous application of the law is clearly untenable. *Id.* "Unreasonable" in this context means not based on substantial evidence. *Citizens' Aide/Ombudsman v. Rolfes,* 454 N.W.2d 815, 819 (Iowa 1990).

Since sanctions have a significant impact beyond the merits of a case and can affect the reputation and creativity of counsel, the abuse of discretion standard does not mean Courts give complete deference to the district court's decision[1]. *Bilharz v. First Interstate Bank of Wisconsin*, 98 F.3d 985, 989 (7th Cir. 1996) (citing *Pacific Dunlop Holdings, Inc. v. Barosh,* 22 F.3d 113, 118 (7th Cir.1994)) The imposition of sanctions is a serious matter and should be approached with circumspection. *O'Connell v. Champion Int'l Corp.,* 812 F.2d 393, 395 (8th Cir. 1987). Although the Court will not substitute its judgment for the district court's, the Court must reverse if the district court based its decision "on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell v. Hartmarx Corp.,* 496 U.S. 384, 405 (1990).

I. Dupaco and its counsel conducted a reasonable inquiry into the facts supporting their Reply.

Iowa Rule of Civil Procedure 1.413 requires anyone who signs a pleading, motion or other paper to conduct a reasonable inquiry into the facts before the document is filed with the court. *Mathias v. Glandon,* 448 N.W.2d

[1] The review is deferential because, usually, the district court is in the best position to evaluate counsel's actions and motivations. *Barnhill v. Iowa Dist. Court for Polk Cnty.*, 765 N.W.2d 267, 279 (Iowa 2009). It is important to note that several different judges were involved in this case. The judge that presided over the July 1, 2022 hearing was not the same judge who presided over the sanctions hearing and assessed sanctions against Dupaco and its counsel. (App. 46-47, 56, 66-8, 108-09, 186-87, 191 L:11-13; 209 L:11-13)

443, 445 (Iowa 1989). Compliance with the rule is determined at the time the paper is filed and not with hindsight gained from evidence discovered later. *Barnhill v. Iowa Dist. Court for Polk Cnty.*, 765 N.W.2d 267, 272 (Iowa 2009). The test is "reasonableness under the circumstances," and the standard to be used is "that of a reasonably competent attorney admitted to practice before the district court." *Weigel v. Weigel*, 467 N.W.2d 277, 281 (Iowa 1991).

Unlike most Iowa cases applying rule 1.413[2], the inquiry at issue in this case did not relate to the core facts underlying the claim Dupaco filed in Connie's estate. Instead, the inquiry related to a tangential issue of whether Trout gave Dupaco notice of the disallowance of claim in compliance with Iowa Code § 633.439. (App. 55) The Iowa Code required Trout to give a written notice of disallowance to Dupaco "by certified mail addressed to the claimant at the address stated in the claim." Iowa Code § 633.439. The notice of disallowance is meant to inform Dupaco that its claim has been disallowed and "will be forever barred" unless Dupaco files a request for hearing. *Id.* No one at Dupaco ever received the notice of disallowance of claim that was sent by Trout. (App. 51, 130, 198 L:1-14; 229 L:2-7)

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[2] *See Weigel*, 467 N.W.2d at 279 (fraud suit); *Mathias v. Glandon*, 448 N.W.2d 443, 444 (Iowa 1989)(personal injury lawsuit); *see also Barnhill v. Iowa Dist. Court for Polk Cnty.*, 765 N.W.2d 267, 270 (Iowa 2009)(class action lawsuit); *Rowedder*, 814 N.W.2d at 587 (fraud, conspiracy, professional negligence and breach of fiduciary duty).

The district court and Trout have conceded that Dupaco and its counsel performed some pre-filing inquiry. (App. 183; Trout's Brief 39) The critical question for this Court is whether the extent of the pre-filing inquiry performed by Dupaco and its counsel was reasonable under the circumstances. *Weigel*, 467 N.W.2d at 281.

Upon learning that a disallowance had apparently been mailed to Dupaco, Amy Manning, the Legal and Asset Recovery Supervisor for the Member Solutions Department, contacted Trout's Attorney, Scott Shoemaker, and left a voicemail message requesting a call back. Shoemaker never returned Amy's call. (App. 147, 172, 220 L:1-19; 226 L:9-24) Dupaco and its attorneys filed a request for hearing on May 13, 2022 because Dupaco had no record of receiving the disallowance. (App. 37, 228 L:1-11) Trout immediately filed a resistance claiming Dupaco's request for hearing was untimely. Trout attached five exhibits to his resistance including, an undated, partially filled out domestic return receipt signed by a "Ron LeConte," and a USPS tracking printout from USPS's website. (App. 38-44)

The district court entered an order imposing a one-week deadline on Dupaco and its counsel to prepare and file a Reply. (App. 46) Dupaco and its attorneys' inquiry started with questioning Amy about her process for filing claims in estates and receiving disallowances. (App. 220 L:1-19) Amy had been filing 15-20 claims in estates per month on behalf of Dupaco for the last five

years. Amy was familiar with notices of disallowance and was aware of the short deadline Dupaco had to request a hearing. Out of approximately 1,200 estate claims filed, this was the first and only time Amy had failed to receive a notice of disallowance. (App. 220 L:1-23; 227 L:1-25; 234 L:13-23; 251 L:19-21)

Once Amy was alerted that a disallowance had been sent, she went through all her correspondence and claim files but could not find it. Receipt of the disallowance had not been logged in Dupaco's Workflow History either. Amy checked with all the other employees in the Member Solutions Department to see if anyone received the disallowance by mistake and no one had. (App. 147-48, 220 L:5-23; 221 L:4-25; 222 L:1-19; 226 L:9-25; 228 L:1-15)

Counsel questioned Amy about Dupaco's general mail processes, and Amy advised that all mail addressed to Dupaco at a Dubuque area address was transferred to its main mailroom at its JFK branch to be sorted. (App. 133-35, 254 L:14-19; 255 L:1-3) Once it is sorted, the mail is delivered to local branches by Dupaco employees. Amy explained that all legal related mail automatically goes to the Member Solutions Department on Satatoga Road in Asbury, Iowa. She stated that if a notice of disallowance or any other legal filing was sent to another department or branch by mistake, it would be immediately transferred to the Member Solutions Department. (App. 133-36, 227 L:1-7)

Amy and Dupaco's counsel also investigated whether Ron LeConte, the individual whose signature appeared on the domestic return receipt, had authorization to sign certified mail on behalf of Dupaco. (App. 42) Neither Amy nor any other employee in the Member Solutions Department recognized the name "Ron LeConte." Since Dupaco has nearly 700 employees at more than 20 locations in Iowa, Illinois and Wisconsin, Amy checked in two different databases to determine if LeConte was an employee of Dupaco. Both databases showed he was not an employee. Amy also searched Dupaco's internal messages and intranet links for any mention or discussion of "Ron LeConte" and found none. (App. 127, 133, 227 L:12-23; 228 L:1-11)

Finally, Amy met with Abby Kramer, the head associate in the main mailroom at Dupaco's JFK branch. Because Abby's job duties exclusively involved dealing with the mail, Amy believed Abby would know the name of an individual who was authorized to sign certified mail on behalf of Dupaco. When asked, Abby thought LeConte was the gentleman she occasionally saw dropping off mail at the JFK branch, but she believed that he worked for the post office. (App. 133-35, 228 L:1-22; 254 L:14-19)

Dupaco and its attorneys conducted a reasonable pre-filing inquiry into the facts. "It is not necessary that an investigation into the facts be carried to the point of absolute certainty." *Kraemer* v. *Grant County,* 892 F.2d 686, 689 (7th Cir. 1990). Once facts came to light showing LeConte's relationship with

Dupaco, Dupaco dismissed its request for hearing. (App. 89-93) In promptly dismissing its request for hearing , Dupaco and its counsel were acting reasonably and ethically by not unjustly inflating legal costs or wasting judicial resources.

A. The district court abused its discretion by failing to view Dupaco and its attorneys' conduct in terms of what was known at the time of filing the Reply.

In finding that Dupaco and its counsel's Reply filed June 1, 2022 violated rule 1.413, the district court impermissibly considered[3] whether Dupaco and its attorneys continued their inquiry after filing the Reply. Specifically, the district court noted that, "Dupaco and its attorneys certainly should have… [confirmed LeConte's employment status with the post office] before the July 1 hearing." (App. 183) The district court further complained that, "Dupaco's attorneys apparently conducted no additional research between the June 1 filing and the July 1 hearing" and that Attorney Blau "took no steps to correct [the tracking number] errors through any subsequent filing, even after Shoemaker pointed out Blau's logical errors in his August 15 Brief." (App. 184) The district court [4]concluded that,

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[3] Trout similarly based a portion of his argument in his brief on Dupaco and its counsel's post-filing investigations. (Trout Brief 24, 36, 40, 42, 47, 53, 64)

[4] The district court also expected a post-filing apology from Dupaco's counsel, "Counsel has not acknowledged any responsibility for the attorneys' own actions in this case." (App. 185)

> no reasonably competent attorney would fail to conduct any further inquiry into the facts and circumstances described in their pleadings before showing up for a hearing, as counsel apparently failed to do in this case between June 1 and July 1. (App. 185)

The district court similarly criticized the investigative steps Dupaco employee Julie Hoffmann took in August of 2022 while Amy was on maternity leave, finding that Julie "only needed to take one additional step beyond what [Amy] took," and that "[t]his additional inquiry apparently took less than a day." (App. 183)

The district court abused its discretion in basing its ruling on Dupaco and its counsel's investigative activity after the filing of the Reply. There is no continuing post-filing duty under rule 1.413. The Iowa Supreme Court confirmed this in *Mathias* when it held that,

> The plain meaning of the language of the rule and statute clearly expresses an intent that the court evaluate the signer's conduct **at the time of signing the pleading**…[t]he purpose of the rule and statute was to eliminate abuses **in the signing** of pleadings, motions and other papers filed in court proceedings. 448 N.W.2d at 447. (Emphasis added)

Any facts developed after the filing is filed are simply irrelevant to the propriety of the filing. The perfect acuity of hindsight has no place in a Rule 1.413(1) motion for sanctions. *Schettler,* 509 N.W.2d at 468.

In *Brooks Web Servs., Inc. v. Criterion 508 Sols., Inc.*, Brooks, Inc. filed suit alleging that Criterion failed to pay money pursuant to a contract and under theories of open account and quantum meruit. No. 08-1707, 2010 WL 446553

at *1 (Iowa Ct. App. Feb. 10, 2010). At trial, the district court granted a directed verdict in favor of Criterion and found that Brooks, Inc. failed to establish the elements of each of its claims. *Id.* at *2. Criterion filed a motion for sanctions contending that counsel for Brooks, Inc. failed to conduct a reasonable inquiry into the facts before filing suit. *Id.* at *3. The district court agreed. In its order, the district court noted that an outdated and incorrect contract was attached to the petition and no amendment was filed to correct it. It also found that the contract required Brooks, Inc. to submit timely invoices to Criterion and that it was revealed at trial that Brooks, Inc. failed to do this. The district court concluded that "any cursory examination of the correct contract and the claims would have shown that the claims were not well grounded in fact" and assessed sanctions against counsel for Brooks, Inc. in the amount of $25,326.64. *Id* at *5.

Counsel for Brooks, Inc. appealed, and the Iowa Court of Appeals sustained the writ, finding that the district court abused its discretion in imposing sanctions on counsel for Brooks, Inc. *Id.* at *6. The Court of Appeals was troubled by the district court's assessment of counsel's actions in terms of what was known at trial since rule 1.413 requires the evaluation to occur at the time the paper is filed. *Id.* The Court of Appeals held that the rule "does not apply a continuing duty on attorneys to perform a constant inquiry of the factual basis of a client's claim." *Id.* at *7.

Like the Court in *Brooks*, this Court should similarly be troubled with the district court's consideration of Dupaco and its counsel's post-reply investigation into the facts. Here, the district court explicitly found that Dupaco and its counsel's Reply filed on June 1, 2022 violated rule 1.413. (App. 185) Yet, the district court repeatedly criticizes Dupaco and its counsel's failure to continue their inquiry after filing the Reply. The district court abused its discretion in assessing sanctions against Dupaco and its counsel's based on their post-filing conduct, when the statute and Iowa courts are clear that there is no continuing post-filing duty under rule 1.413. *Schettler,* 509 N.W.2d at 468. (App. 183-85)

Trout concedes in his brief that there is no continuing duty imposed by rule 1.413 but argues that the rule applies to every filing and filings may be read together to determine a pattern of conduct. (Trout Brief 32-3) There is no series of filings or pattern of conduct to examine in this case. Dupaco and its attorneys filed their Reply on June 1, 2022. (App. 48) Once a hearing was set, Dupaco filed a motion to allow Amy to participate in the hearing remotely since she was 39 weeks pregnant, and Trout resisted that motion claiming "it is unreasonable to believe that the minuscule amount of travel involved…to participate in the hearing would represent any real danger to [Amy Manning]…" (App. 57-59) The next filing made by Dupaco and its attorneys

was its motion to dismiss the request for hearing, which was granted on August 26, 2022. (App. 92-93, 108-109)

B. The district court abused its discretion when it failed to consider whether pertinent facts were readily available to Dupaco and its counsel.

In determining whether a reasonable inquiry into the facts has been made the court considers all relevant circumstances, including the extent to which pertinent facts were in possession of opponent or third parties or otherwise not readily available to the signer. ABA Section on Litigation, *Standard and Guidelines for Practice under Rule 11 of the Federal Rules of Civil Procedure* (1988), *reprinted in* 121 F.R.D. 101, 114 (1988); *Barnhill*, 765 N.W.2d at 273; *Mathias*, 448 N.W.2d at 446.[5] The district court recited this factor in its order but failed to actually examine whether pertinent facts were readily available to Dupaco in determining that Dupaco's Reply violated rule 1.413. (App. 183)

[5] Trout argued in his brief that Dupaco and its counsel were applying a subjective standard when they applied the factors set forth in *Mathias* to the facts of this case. (Trout Brief 42-43) Utilizing these court-approved factors does not make the analysis subjective. *Barnhill*, 765 N.W.2d at 273. Compliance is measured by an objective, not subjective, standard of reasonableness **under the circumstances**. *Mathias*, 448 N.W.2d at 445-46. (Emphasis added) Many of the factors set forth in *Mathias* and *Barnhill* examine the circumstances that should be considered in determining whether a reasonable inquiry into the facts has been made. *Barnhill*, 765 N.W.2d at 273; *Mathias*, 448 N.W.2d at 446.

One very pertinent fact that was unavailable to Dupaco while conducting its pre-reply investigation was the fictitious name of LeConte's courier business, Swift Delivery. (App. 89) Swift Delivery was the key piece of information that Dupaco needed to ascertain its connection to LeConte. The first time "Swift Delivery" appeared in the record for this case was August 24, 2022. (App. 89) Dupaco and its counsel's investigative efforts to identify LeConte's connection to Dupaco were stifled by LeConte's failure to complete the domestic return receipt properly by indicating he was an agent of Swift Delivery. Moreover, all Dupaco employees who were questioned by Amy had never heard of LeConte. (App. 42, 89; 228 L:1-22; Diagram 1)

Likewise, Dupaco and Swift Delivery had an oral contract for Swift Delivery to sign certified mail on behalf of Dupaco, which meant there was no document Amy or another employee of Dupaco could locate to substantiate the relationship. (App. 135, 243 L:10-16; 244 L:1-5) Julie Hoffmann was only able to identify the connection by locating a long-time employee who had knowledge of the oral contract.

While Amy was on maternity leave starting on July 1, 2022, Julie prepared for the evidentiary hearing with counsel and retraced all of Amy's investigative steps. During a preparation session on August 24, 2022, Julie thought of contacting Deb Digman about LeConte because Deb had been employed at Dupaco for over thirty years and was the long-time executive

secretary to the leadership team. After speaking with Julie about the issue, Deb undertook an investigation of her own. (App. 89, 123, 135, 230 L:1-23; 244 L:1-5; 255 L:1-13) After doing some research, Deb contacted Julie that afternoon and explained that LeConte owned a business called Swift Delivery, and while she could not locate any contract or written document verifying the agreement, she believed Dupaco had an oral contract with Swift Delivery to sign for certified mail. (App. 135, 243 L:10-16; 244 L:1-5) Right around the same time on August 24, 2022, Shoemaker filed the Affidavit of LeConte. According to LeConte's affidavit, he had no interaction with Dupaco employees since all he did was drop off a mail bin in an enclosed entrance at Dupaco's JFK branch (App. 89, 135) Once Dupaco learned the name of LeConte's business on August 24, 2022, it moved to dismiss its request for hearing and the district court granted it on August 26, 2022. (App. 108)

The district court completely ignored this relevant factor in its order assessing sanctions. The district court only mentions "Swift Delivery" twice in its order without discussing how this new information affected Dupaco's pre-reply investigation. (App. 175) Likewise, the district court does not even acknowledge that the relationship between Dupaco and Swift Delivery was based on an oral contract. (App. 171-186) The district court's failure to consider whether pertinent facts were readily available to Dupaco in

determining whether Dupaco and its attorneys conducted a reasonable inquiry into the facts was an abuse of discretion.

C. Dupaco and its counsel conducted reasonable inquiries that were likely to lead to relevant evidence.

In its order assessing sanctions, the district court fixated on Dupaco and its counsel's failure to verify LeConte's employment status with the post office in finding a violation of rule 1.413. (App. 173, 183-86) However, the critical issue in this case was not whether LeConte was employed by the post office, but whether LeConte had authority to sign certified mail on behalf of Dupaco. As such, ascertaining LeConte's relationship to Dupaco was the primary goal of Dupaco and its counsel's pre-filing investigation. (App. 42, 227 L:9-25) No one contacted the post office because the post office was unlikely to have relevant information relating to Dupaco and LeConte's relationship. The very qualified information relating to the post office was included in Amy's affidavit[6] because it was the view of Abby Kramer, the head mailroom associate at Dupaco, whose job exclusively involves dealing with the mail. Abby had seen LeConte dropping off mail at the JFK branch several times. It is not so farfetched for an employee to assume that a gentleman they have seen dropping off mail at Dupaco works at the post office. (App. 133)

[6] "To the best of my knowledge, Ron LeConte is an agent of the United States Post Office" (App. 51)

In his brief, Trout describes steps he or his counsel purportedly took to investigate the identity of LeConte and concludes that they "mirrored the steps the district court recommended" in its order assessing sanctions. (Trout Brief 40) Trout cannot provide a citation to the record because none of Trout's "investigative steps" were made part of the district court record and are therefore not part of the record on appeal. *See* Iowa R. App. P. 6.801. "It is a fundamental principle that our review of district court rulings is limited to the record made before the district court." *State v. Boggs*, 741 N.W.2d 492, 505 n.2 (Iowa 2007). Practitioners should refrain from citing items that were not made a part of the district court record and are therefore not part of the record on appeal. *Lynch v. Moreno*, No. 21-0815, 2022 WL 1486185 *4 n.6 (Iowa Ct. App. May 11, 2022). Trout's after-the-fact attempt to claim that he used methods much like the district court recommended must fail and not be considered by this Court.

II. Dupaco's Reply had a reasonable basis in fact.

Rule 1.413 requires that a pleading, motion, or paper be well grounded in fact. A document is well grounded in fact if it has a reasonable basis in fact. The rule is intended to deter baseless filings in district court. *Cooter & Gell,* 496 U.S. at 393. In response to Dupaco's request for hearing, Trout filed a

resistance and attached the following proof of service documents, all of which Dupaco had never seen before:

- **(A)** a notice of disallowance of Dupaco's claim indicating a mailing date of March 4, 2022;
- **(B)** a Form 3800 certified mail receipt showing an item was addressed to Amy Manning, PO Box 179, Dubuque Iowa 52004-0179;
- **(C)** an undated, partially filled out Form 3811 domestic return receipt reflecting an article addressed to Amy Manning, PO Box 179, Dubuque, Iowa 52004-0179 was signed for by a "Ron LeConte," and;
- **(D)** a USPS tracking printout from USPS's website. (App. 38-44)

The district court ordered Dupaco to file a reply within a week. (App. 46)

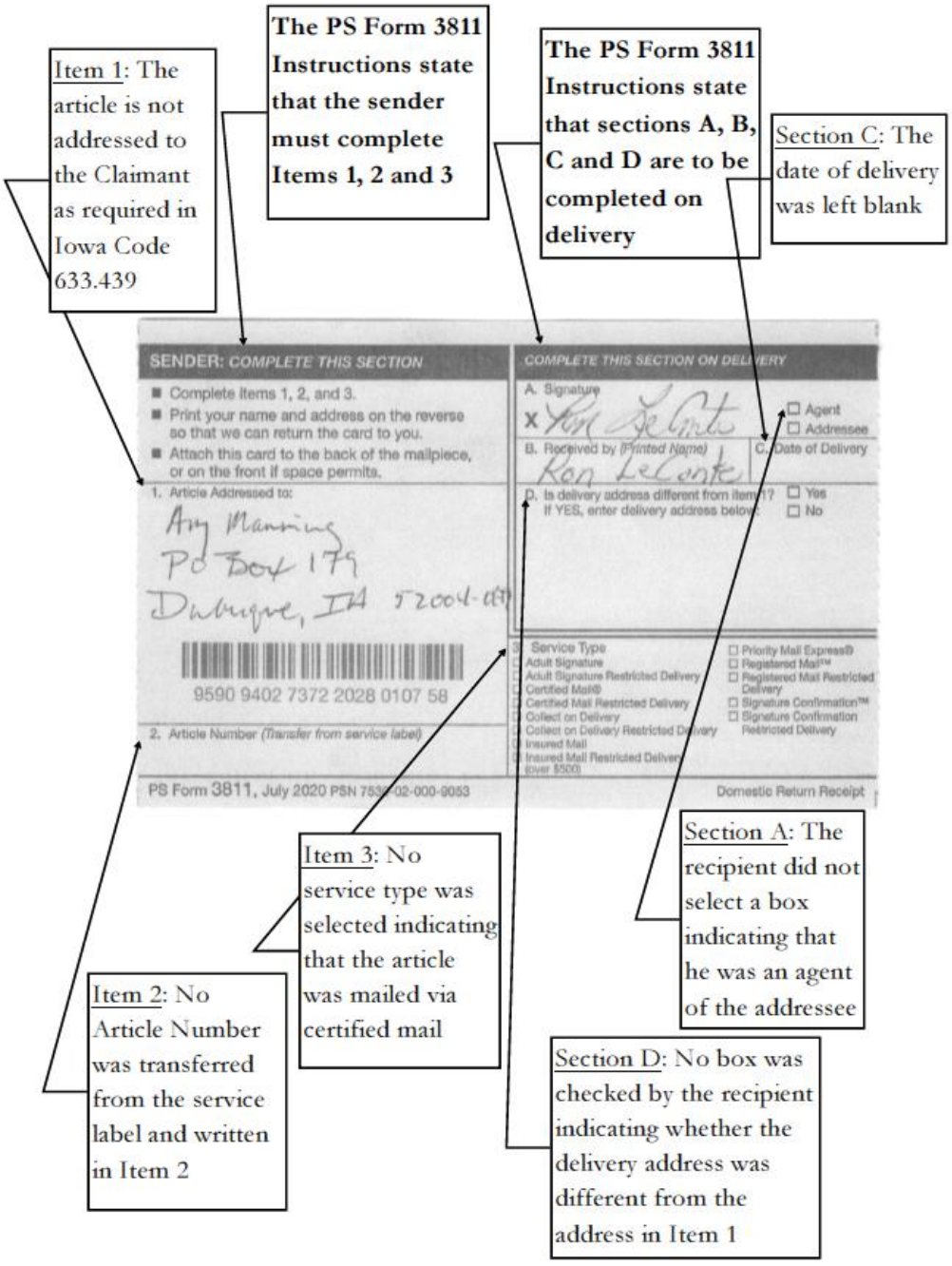
In its court-ordered Reply, Dupaco argued that,

> …the Notice of Disallowance was not given to [Dupaco] via certified mail addressed to [Dupaco] at the address stated in the claim, and [Trout's] Attachments do not constitute "proof of service." *See* Iowa Code §§ 633.439; 633.442. Therefore, [Dupaco's] Request for Hearing is timely. (App. 49)

In support of its argument, Dupaco emphasized the following: (1) Dupaco did not receive the notice of disallowance; (2) Ron LeConte signed the signature card for the notice of disallowance and he is not an agent of Dupaco; (3) Dupaco's verified claim should not be disallowed given the solvency of the

estate; and (4) there are irregularities in the proof of service attachments to Trout's resistance. (App. 48-52, 138)

Specifically, Dupaco pointed out the following irregularities in the domestic return receipt that was attached to Trout's resistance:



(**Diagram 1**; App. 48-9, 130, 199 L:24-5; 200 L:1-16; 240 L:4-25; 241 L:1-16)

A. Trout incorrectly addressed the Notice of Disallowance.

One of the most substantial irregularities Dupaco discovered was that the domestic return receipt (Form 3811) along with many of the other proof of service attachments showed that the notice of disallowance was addressed to Amy Manning instead of to Dupaco as required by Iowa Code § 633.439. (App. 41-2, 49, 196 L:7-9; 241 L:6-12) The certified mail receipt (Form 3800) similarly showed that the disallowance was mailed to Amy Manning and not to Dupaco. In his hearing brief, Trout argued that postal regulations require the address on the certified mail receipt to match the address on the outgoing mail piece. (App. 76) Because the certified mail receipt was not addressed to Dupaco, it must follow that neither was the outgoing mail piece containing the disallowance. (App. 41)

Trout attempts to disguise his error by referencing Shoemaker's affidavit of mailing which includes Dupaco and Amy Manning as the addressees. (Trout Brief 17) However, the affidavit of mailing is the weakest piece of evidence as it was executed and filed 28 days after the disallowance was mailed. (App. 45) Every other attachment offered by Trout illustrates that the disallowance was incorrectly addressed to Amy Manning instead of to Dupaco. Even Attorney Shoemaker confirmed at the July 1, 2022 hearing that the disallowance "was

addressed to Amy Manning at PO Box 179 in Dubuque, Iowa." (App. 41-2, 172, 196 L:7-9)

Trout bobs and weaves around discussing his failure to properly address the notice of disallowance and instead claims he sent the notice to the only complete address on Dupaco's claim. (Trout Brief 48) But simply mailing the notice of disallowance to the address on the claim is insufficient under Iowa law. Iowa Code § 633.439 mandates that the notice of disallowance be "***addressed to the claimant*** at the address stated in the claim…" Iowa Code § 633.439 (Emphasis added) Based on the evidence in the record, the notice of disallowance was not addressed to Dupaco as the claimant in compliance with Iowa Code § 633.439.

B. Isolated factual errors that do not undermine a party's legal theory are not sanctionable.

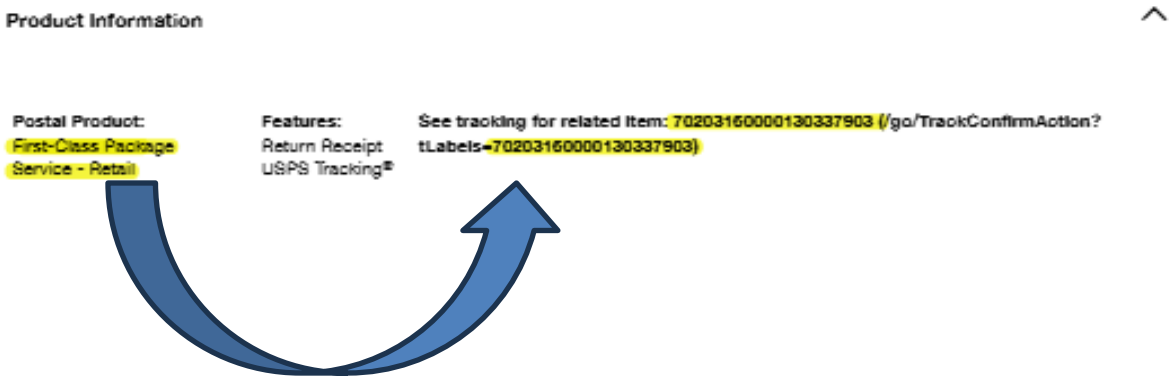
In addition to the above irregularities in Trout's proof of service attachments, Dupaco and its counsel discussed Trout's USPS tracking printout, which was two pages long and was designated as Exhibit D. (App. 43-4) On the second page of Exhibit D, *see below*, tracking number 9590 was the only tracking number listed on that page. Dupaco's counsel interpreted the certified mail feature as applying to the related item with tracking number 9590 and

concluded that tracking number 9590 was for an article that included certified mail as a feature.

(**Diagram 2**; App. 44) Counsel for Dupaco misread Trout's Exhibit D. The certified mail feature did not apply to tracking number 9590 that was directly adjacent to it on page two. Rather, the certified mail feature applied to tracking number 7020 on page one. (App. 43-44, 49)

Counsel then made a similar mistake by taking tracking number 9590, which counsel believed at the time was for a first-class mailing that included certified mail as a feature and input it into the USPS website tracking tool. The tracking tool indicated that the article was delivered to a mailbox in Cedar Rapids, Iowa, which was not the address on Dupaco's claim. (App. 22, 53, 85) On the bottom of the USPS website tracking tool, *see below*, Dupaco's attorneys misread the First-Class Package Service – Retail postal product information as applying to the related item with tracking number 7020 and concluded that

tracking number 7020 was for a first-class retail package mailing that did not have certified mail as a feature.



(**Diagram 3**; App. 49, 53, 86)

Trout inflates the significance of the tracking number error and claims it formed the bulk of the argument in Dupaco's Reply. (Trout Brief 46-48) This is not supported by substantial evidence. While a decent portion of the district court's order awarding sanctions was devoted to discussing the transposition of the tracking numbers, the transposition error in the Reply was confined to two[7] paragraphs out of eighteen paragraphs and was never repeated in any other filing by Dupaco. (App. 48-54, 138)

Sanctions are required only if the entire pleading or motion is deemed frivolous, not when one of the arguments supporting the pleading or motion is without merit. *Burull v. First Nat. Bank of Minneapolis,* 831 F.2d 788, 789 (8th

[7] Paragraph 12 of the Reply does not actually contain any errors. The article with tracking number 9590 was delivered to a mailbox in Cedar Rapids, Iowa. However, Dupaco and its counsel were tracking the domestic return receipt instead of the notice of disallowance. (App. 49)

Cir.1987); *Johnson v. Iowa Dist. Ct.,* No. 07-2007, 2009 WL 142543 at *4 (Iowa Ct. App. Jan. 22, 2009)("it is established that 'the duty [under rule 1.413] is not breached when merely one argument or sub-argument behind a valid pleading or motion is without merit.'"); *see* Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach,* 36 Drake L.Rev. 483, 496 (1986). The question is not whether the eventual pleading contains factual error, but whether the errors are so significant that they undermine the entire case. *Id.* at 492-3.

In *Milwaukee Concrete Studios, Ltd. v. Fjeld Mfg. Co., Inc.*, the 7th Circuit held that an inadvertent factual error made in response to a motion to dismiss was improperly deemed the basis for Rule 11 sanctions. 8 F.3d 441, 451 (7th Cir. 1993). In holding that the plaintiff made a colorable legal argument that was not undercut by its factual error, the Court stated,

> Inadvertent factual errors will occur—we hope not frequently, but litigants and attorneys will make mistake … . Perhaps a sanction would cause MCS and its counsel to more carefully review future filings, but Rule 11 is not directed to isolated factual errors that do not undermine a party's legal theory. Instead, Rule 11 is meant to deter baseless filings in district court.

Id. The Court also found that imposing sanctions was not necessary to deter similar conduct in the future. *Id.*

Similar to *Milwaukee Concrete Studios, Ltd.,* the inadvertent error relating to the tracking numbers in this case did not undercut the legal basis for Dupaco's Reply. It was one sub-argument in support of an overarching argument that

there were enough irregularities in Trout's attachments to raise doubts as to whether Dupaco was given notice under the operative statute. (App. 48-53, 138) Other sub-arguments in support of the same premise were that: (1) the notice of disallowance of claim was dated March 4, 2022 but the affidavit of mailing was not signed or filed until April 1, 2022; (2) the notice of disallowance was not addressed to the claimant as required by Iowa Code §633.439 and (3) the domestic return receipt was not dated and no service type was selected indicating that the article was mailed via certified mail. The tracking number error did not make Dupaco's overall argument "baseless." *Cooter & Gell,* 496 U.S. at 393. The domestic return receipt was still not dated and was not addressed to Dupaco. The affidavit of mailing was still signed and filed four weeks after it was mailed. In short, even without the tracking number argument, there were still enough irregularities in Trout's exhibits to raise doubts as to whether Dupaco was "given" notice under the operative statute. (App. 40, 42, 45, 48-9, 138, 200 L:1-17; 241 L:8-12)

A district court abuses its discretion in imposing sanctions when it bases its decision on "a clearly erroneous assessment of the evidence." *Cooter & Gell,* 496 U.S. at 405. That is exactly what the district court did here. The district court abused its discretion in finding a violation of rule 1.413 when it failed to look at Dupaco's reply as a whole and instead fixated on one isolated error that did not jeopardize Dupaco's overarching argument. (App. 183-85)

III. The district court abused its discretion in assessing sanctions in an excessive amount against Dupaco and its counsel.

Dupaco and its attorneys urge this Court to sustain the writ of certiorari and find that the district court abused its discretion in finding a violation of rule 1.413 in this case for the reasons discussed above. However, if the Court finds a violation of rule 1.413, Dupaco and its counsel respectfully request that this Court find that the district court abused its discretion in awarding sanctions in an excessive amount.

A. The district court's failed to follow the four-step test set forth in Rowedder.

In determining the proper sanction, the district court is to make specific findings as to "(1) the reasonableness of the opposing party's attorney's fees; (2) the minimum to deter; (3) the ability to pay; and (4) factors related to the severity of the … violation." *Rowedder*, 814 N.W.2d at 590 (quoting *In re Kunstler,* 914 F.2d 505, 523 (4th Cir.1990)). In weighing the severity of the violation, the Iowa Supreme Court has directed district courts to consider the American Bar Association factors it set forth in the *Barnhill* decision. *Barnhill,* 765 N.W.2d at 276–77; *Everly v. Knoxville Community School Dist.*, 774 N.W.2d 488 (Iowa 2009). A district court imposing sanctions must provide an explanation for any sanction imposed so a reviewing court may ensure the imposition of sanctions was appropriate. *Tenkku v. Normandy Bank,* 348 F.3d

737, 743 (8th Cir. 2003); *accord Lee v. L.B. Sales, Inc.,* 177 F.3d 714, 718-19 (8th Cir. 1999)(specific factual findings supporting an award for sanctions "ensure that the sanctions address the excess costs resulting from the misconduct, provide the sanctioned party an adequate opportunity to respond, and facilitate meaningful appellate review").

An examination of the district court's order assessing sanctions reveals that it failed to follow any of the steps set forth *Rowedder*. In assessing $14,387.60 in sanctions against Dupaco and its counsel, the district court's analysis started with reviewing Shoemaker's attorney fee affidavit that he filed the morning of the hearing requesting $24,431.45 for 68.2 hours of work. Without elaborating further, the district court determined that the amount of fees requested by Trout were "not reasonable and unsupported by the record." The district court then found that the sanctions should be limited to 40 hours of work at Shoemaker's hourly rate. (App. 185) The district court did not explain its rationale for landing on 40 hours. The district court did not determine which of the fees were reasonably necessary to defend against the sanctionable portions of the Reply. The district court did not find the minimum amount of sanctions necessary to deter. The district court did not analyze any of the factors relating to the severity of the violation. (App. 171-187)

Even though the itemization of services Shoemaker provided to the district court the morning of the hearing was utterly devoid of details necessary to determine the reasonableness of the services and fees, the district court only asked Shoemaker a single question about his attorney fee affidavit at the hearing. (Tr. II 10 L:10-25; 11 L:1-3) Shoemaker claims in his attorney fee affidavit to have spent 43.6 hours preparing for the August 31 hearing that never occurred because Dupaco had already dismissed its request for hearing. The district court designated one hour for that hearing. It is unreasonable to spend 43.6 hours preparing for a single one-hour hearing. (Trout Brief 23, App. 67, 108)

Likewise, the large amounts of time Shoemaker spent "researching" are unjustified given that the central dispute was a factual issue regarding whether LeConte had authority to sign for certified mail on behalf of Dupaco. (App. 170) The district court removed witness fees in the amount of $83.85 from the sanction award because Attorney Shoemaker did not call any witnesses at the single hearing that was held in this case on July 1, 2022. (App. 185-86) However, the district court included in the sanction the sheriff's service fees Shoemaker incurred when he had Amy Manning served with a subpoena at her home address while he knew she was on maternity leave. (App. 88 186) The district court abused its discretion in assessing $14,387.60 in sanctions against

Dupaco and its counsel when it failed to conduct a principled analysis of the relevant factors and failed to explain the basis for the sanctions award.

B. Trout failed to meet his burden of establishing an entitlement to an award of attorney fees.

The fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. The applicant should exercise "billing judgment" with respect to hours worked, and should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) Because incomplete or imprecise billing records may prevent a district court from meaningfully reviewing a request for excessive, redundant, or otherwise unnecessary hours, "[i]nadequate documentation may warrant a reduced fee." *H.J. Inc. v. Flygt Corp.*, 925 F.2d 257, 260 (8th Cir. 1991).

Shoemaker's itemization of services was less than one page long and contained 93 total words that were supposed to describe 33 separate fee entries. The word "Research" constituted the complete description of services for 12 of Attorney Shoemaker's fee entries. Many of the other entries had two-word descriptions of the services performed (i.e. "Review File", "Review Order" and "File Affidavit"). Shoemaker's itemization of services also does not appear to be a contemporaneous log of the hours worked. (App. 170) Because Trout's

documentation of hours was grossly inadequate, the district court abused its discretion in failing to reduce the award much more than it did.

C. The sanction award exceeds the minimum needed to deter.

The primary purpose of sanctions under rule 1.413(1) is to deter frivolous litigation, not to compensate the winning side. *First Am. Bank v. Fobian Farms, Inc.*, 906 N.W.2d 736, 745 (Iowa 2018). The sanction chosen by the district court should be the least severe sanction adequate to deter a party from filing frivolous pleadings. *Kirk Capital Corp. v. Bailey* 16 F.3d 1485, 1491 (8th. Cir. 1994).

In *Rowedder*, a conservator sued multiple defendants for fraud, conspiracy, professional negligence, and breach of fiduciary duty. 814 N.W.2d at 587. The claims found sanctionable were eventually dismissed by summary judgment. *Id.* at 588. The defendants sought $63,926 in attorney fees for defending the frivolous claims through appeal, but the district court only imposed a sanction of $1,000 against the conservator's attorney. *Id.* at 588. The defendants appealed and the court of appeals affirmed the $1,000 sanction. *Id.* at 588–89. On further review, the Iowa Supreme Court similarly affirmed the $1,000 sanction, and noted that the district court made detailed findings that $1,000 was the amount necessary to deter future conduct. *Id* at 591; *see also*

Barnhill, 765 N.W.2d at 277 (affirming $25,000 sanction when victims' attorney fees were $148,596).

In this case, the district court assessed $14,387.60 in sanctions against Dupaco and its counsel for filing a Reply which necessitated one 20-minute hearing. The conservator's attorney in *Rowedder* was only sanctioned $1,000 for taking his client's claims to summary judgment and all the way through an appeal. *Id.* The discrepancy between the sanctions assessed in this case and the sanctions assessed in *Rowedder* illustrates that the district court's sanctions against Dupaco and its attorneys were unreasonable, out of line with what is necessary to deter and not supported by substantial evidence.

CONCLUSION

Dupaco and its counsel request that this Court sustain the writ of certiorari and reverse the district court's award of sanctions as the district court abused its discretion in finding a violation of rule 1.413 in this case.

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Proof of Service & Certificate of Filing

I certify that on June 22, 2023, I, the undersigned party or person acting in their behalf, did serve Appellants' Final Reply Brief on counsel for all parties to this action using the Iowa Judicial Branch EDMS system, which will send notification of such filing to all counsel and all parties to this action.

I further certify that on June 22, 2023, I filed Appellants' Final Reply Brief with the Clerk of the Iowa Supreme Court using the Iowa Judicial Branch EDMS system.

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Dated this 22nd day of June 2023.

/s/ McKenzie R. Blau