IN THE SUPREME COURT OF IOWA

Case No. 23-0054

In re Estate of Trout

On Appeal from the
District Court in and for Linn County
Hon. Judge Valerie L. Clay

Final Brief of the Appellee

Scott A. Shoemaker, AT0012379
Attorney for the Appellee
SCOTT SHOEMAKER AND ASSOCIATES, P.L.C.
425 Second Street S.E.
Suite 1200
Cedar Rapids, Iowa 52401
Phone: (319)804-8346
sshoemaker@cedarrapidswills.com

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ROUTING STATEMENT

Appellee concurs with Appellant's statement that this case is appropriate for transfer to the Court of Appeals as it presents an application of existing legal principals per Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

This is an appeal filed by Dupaco Community Credit Union (hereinafter "Claimant") and its attorneys McKenzie Blau and Thomas Bright of an order imposing sanctions on them for violations of Iowa Rule Civ. P. 1.413 issued by the Honorable Judge Valarie Clay on January 3, 2023 in Linn County Case No. ESPR044198. (App. at 188).

Proceedings Below

The Estate of Connie Jo Trout (hereinafter "the Estate") filed a Motion for Sanctions on August 31, 2022 alleging several violations of Iowa R. Civ. P. 1.413. by the Claimant and its attorneys. (App. at 110) These allegations arose from filings made by Claimant and its attorneys in its Motion for Hearing filed on

May 13, 2022 and its Reply to the Estate's Resistance filed on June 1, 2022. (App. at 110).

The May 13 and June 1 filings by the Clamant contained a number of factually false statements, statements intended to confuse and mislead the court, statements unsupported by existing law or good-faith arguments for the reversal or extension of existing law, as well as statements intended to waste time and distract from the real legal issues. (App. at 110).

The May 13 Motion for Hearing filed by the Claimant sought a hearing on the claim against the Estate which Claimant had filed on November 3, 2021. The Estate had disallowed that claim, for reasons not relevant to this appeal, by mailing a Notice of Disallowance by certified mail on March 4, 2022. (App. at 36). The Estate resisted Claimant's Motion arguing that the motion and the claim were time barred. (App. at 38).

A hearing was held on July 1, 2023 to determine if Claimant's Motion was timely. (App. at 191). Claimant and its counsel persisted in advancing the same meritless and factually incorrect arguments they had first laid out in the June 1 Reply at

the July 1 hearing. (App. at 192:19-22; 194:12-195:7; 11-16; 197:16-198:5; 199:15-200:17). As a result, Judge Paul Miller determined that an evidentiary hearing was necessary to assess the credibility of Amy Manning, an affiant in support of Dupaco's motion, as well as to determine the degree of factual truthfulness of Dupaco's clams. (App. at 201:7-203:5).

The evidentiary hearing was set for August 19, 2023 but was later continued on the court's own motion to August 31, 2023. (App. at 67). Less than one week before the scheduled hearing, Claimant filed a motion to dismiss their motion for hearing on their claim. (App. at 92). The district court dismissed the motion for hearing the same day and, in the same order, cancelled the August 31 hearing. (App. at 108). Claimant's Motion to Dismiss admitted, in essence, that there had been a number of factual "mistakes" in their previous filings. (App. at 93).

On August 31, 2022, the Estate filed its motion for sanctions against Claimant and its attorneys. (App. at 110). Claimant and its attorneys filed a resistance to the motion for sanctions on September 12, 2022. (App. at 130). A hearing on the motion was

held on November 3, 2022 with the Honorable Judge Valarie Clay presiding. (App. at 128; 209)).

Disposition of the District Court Case

On January 3, 2023, Judge Clay filed an Order finding that McKenzie Blau, Thomas Bright, and Dupaco Community Credit Union collectively violated Iowa R. Civ. P. 1.413 and thus the Estate of Connie Trout was entitled to sanctions. (App. at 186). The court imposed monetary sanctions in the amount of $14,387.60 on Dupaco and its attorneys, specifically assessing $5,000 in sanctions against Blau, $2,000 against Bright, and the balance, $7,387.60, against Dupaco. (App. at 186). Dupaco and its Attorneys filed this appeal on January 5, 2023. (App. at 188).

STATEMENT OF FACTS

Connie Jo Trout died intestate on or about June 18, 2021 in Cedar Rapids, Iowa. (App. at 15). Her son, Cory Trout, petitioned the Linn Country District Court to be appointed as administrator of her estate and was so appointed on July 16, 2021 (collectively, "the Estate"). (App. at 18-19). On November 3, 2021, Dupaco Credit Union (hereinafter "Claimant") filed a Claim in Probate

against the Estate in the amount of $11,593.17. (App. at 22). The claim was signed "DUPACO COMMUNITY CREDIT UNION, Claimant, by Amy Manning" and listed an address of "Amy Manning, Member Solutions, 3299 Hilcrest Road, P.O. Box 179, Dubuque, Iowa 52004-0179." (App. at 22).

For various reasons not relevant to this appeal, the Estate sent Dupaco a Notice of Disallowance of Claim by Certified Mail with Return Receipt on March 4, 2022 addressed to "Amy Manning, Dupaco Community Credit Union, P.O. Box 179, Dubuque, Iowa 52004-0179." (App. at 36). The use of the return receipt is not required by statute. Iowa Code § 633.439. The outgoing Certified Mail piece was assigned tracking number 70203160000130337903. (App. at 41) The Notice was delivered to the Claimant's post office box on March 8, 2022, as is evidenced by entering the tracking number 70203160000130337903 into the United States Post Office's official tracking utility found at www.usps.com. (App. at 43).

Ron LeConte, a contractor and agent of the Claimant authorized to receive and sign for Certified Mail pieces signed the

United States Postal Service Form 3811 (Domestic Return Receipt), indicating receipt of the mail piece. (App. at 42; 89). The Form 3811 was assigned tracking number 9590940273722028010758 and was delivered to the attorney for the Estate on March 10, 2022, as is evidenced by entering the tracking number 9590940273722028010758 into the United State Post Office's official tracking utility found at www.usps.com. (App. at 85-86)

The Estate caused an Affidavit of Mailing Notice of Disallowance of Claims to be filed with this Court on April 1, 2022. (App. at 36). Claimant took no action regarding the claim until making a single telephone call to the attorney for the Estate on May 10, 2022, (some sixty-seven days after the Estate mailed the Notice), (App. at 226:13-24), and filing its Motion for Hearing on the claim on May 13, 2022 (seventy days after the Notice was mailed) alleging that "no Notice of Disallowance of Claim was sent to Claimant by the Personal Administrator in compliance with Iowa Code § 633.439." (App. at 37).

The Estate filed a Resistance to Claimant's Request for Hearing on May 13, 2022 arguing that the both the request for hearing and the claim itself were time barred. (App. at 38-39) The Estate attached five exhibits to its Resistance: (a) A copy of the Notice of Disallowance dated March 4, 2022, (b) A copy of the USPS Form 3800 (Certified Mailing Receipt) showing a mailing date of March 4, 2022 and bearing a tracking number of 70203160000130337903, (c) A copy of the USPS form 3811 (Domestic Return Receipt) signed by Ron LeConte and bearing a tracking number of 9590940273722028010758, (d) a printout from usps.com showing that the item bearing tracking number 70203160000130337903 had been delivered to a post office box in Dubuque, Iowa, and (e) a copy of the Estate's affidavit of mailing notice. (App. at 40-45).

On May 25, 2022, twelve days after the Claimant filed their initial motion for hearing, and apparently mystified by why the Claimant hadn't withdrawn its motion in light of the documentary evidence attached to the Estate's resistance, the Court filed an order stating:

> …the Court finds that a reply argument that addresses the Executor's contention that the Request for Hearing is untimely and prohibited by Iowa Code section 633.433 will be helpful to the Court in resolving the parties' dispute. Therefore, Dupaco Community Credit Union is ordered to file a reply to the Executor's Resistance, with the reply to be filed prior to 4:30 p.m. on June 2, 2022

(App. at 46).

Claimant's Reply was due to the court no later than 4:30 p.m. on June 2, 2022, but Claimant filed their response on the afternoon of June 1, more than twenty-four hours ahead of the deadline imposed by the court. (App. at 48). In their Reply, the Claimant advanced the factually false allegation "Said Notice was never received by Claimant at P.O. Box 179 or at any other address associated with Claimant, whether by certified mail, ordinary mail, or otherwise…" (App. at 48).

After performing an extremely cursory investigation that failed to reveal the identity of Ron LeConte or his relationship with the Claimant[1], Claimant went on to state "the signature card

[1] Claimant states in its Resistance to Motion for Sanctions they performed three actions to search for Ron LeConte prior to filing

was allegedly signed by 'Ron LeConte' who is not an agent or representative of the Claimant" and further alleged that "…Ron LeConte is an agent of the United States Postal Service." (App. at 49). While it is true that the Domestic Return Receipt was signed by Ron LeConte, the remainder of the allegations, that he is not an agent of the Clamant and that he is an agent of the United States Postal service are both false. (App. at 89).

The Reply went to make a series of legally and factually false statements attempting to set out a theory that the Notice of Disallowance had not been sent by certified mail, or if it had, that it had not been sent to the Claimant's address. (App. at 49). Included in their Reply was a detailed series of statements regarding tracking numbers associated with two relevant pieces of mail – the Notice of Disallowance and the Domestic Return Receipt – made by the Claimant knowing them to be false or made

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their June 1 Reply: (1) they searched the employee directory; (2) searched the intranet and internal messaging sites; (3) calling and speaking with a single mailroom employee. (Resistance to Motion for Sanctions). During the hearing on the Motion for Sanctions, they added a fourth step – asking other Member Services employees (App. at 228:8-10).

with a reckless disregard for the truth of said statements. (App. at 49).

Oral argument was held on July 1, 2022 on this issue of whether the Claimant's Motion for Hearing was timely. At that hearing, Linn County District Court Judge Miller asked of the Claimant, "I've read the file, and it sort of appears they followed the steps. What's your position? How do you get around that?" (App. at 192:16-18). The Claimant persisted in arguing its legally and factually false position that "the Notice of Disallowance was not actually sent via certified mail to the address listed in the claim" (App. at 192:19-21). The Claimant then went on to press its nonsensical and factually false theory that the only certified mail piece sent relating to the Notice of Disallowance was the Domestic Return receipt that had been delivered to an address in Cedar Rapids. (App. at 194:12-5:16). They further argued that Ron LeConte is an employee of the United States Postal Service and not authorized to accept certified mail on behalf of the Claimant. (App. at 197:16-22). This assertion is also factually incorrect. (App. at 89). Claimant further argued the factually

inaccurate and legally insignificant point that the Claimant never received the Notice of Disallowance. (App. at 197:23-8:2).

Due to the highly implausible conclusions reached by Manning in her affidavit and the Estate's serious doubts about the truthfulness of Manning's statements, matter was set for evidentiary hearing on August 19, 2022. (App. at 202:11-25) On the Court's motion, the August 19 hearing was continued until August 31, 2022. (App. at 67).

Due to the baffling and factually inaccurate nature of the Claim's statements and Claimant's apparent refusal to meaningfully investigate either the facts or the law of behind their statements, the Estate was forced to expend 43.6 hours preparing for the August 31 hearing (bringing the total time spent defending the Estate against the Claimant's motion to 68.2 hours). (App. at 168-170). This preparation including locating and interviewing potential witnesses, phone calls to the post office to verify postal practices and regulations, research into postal regulations, researching the law in this case, and preparing a trial brief to address both the factual inaccuracies of the Claimant's statements

regarding certified mail and the law surrounding service by mail. (App. at 218:10-11:2). Claimant filed no brief prior to the scheduled August 31 hearing, despite having specifically requesting leave to do so at the July 1 hearing. (App. at 200:24-11:6).

On August 24, 2022, less than one week before the scheduled evidentiary hearing on whether or not Claimant's motion for Hearing was timely, Claimant states they performed an investigation that, in less than one day, was able to reveal the identity of Ron LeConte and his relationship with the Claimant. (App. at 135). Instead of informing the attorney for Estate of their discovery immediately, the Claimant withheld their knowledge of Ron LeConte's identity for nearly two days, filing their motion to dismiss their claim (without first notifying the Estate of their discovery) on the afternoon of Friday, August 26, 2022 less than three working days prior to the hearing. (App. at 92). The Court dismissed the Claimant's motion and cancelled the hearing the same day. (App. at 108). In its Motion to Dismiss its own motion, Claimant wrote it stated it had made some "mistakes" and

"Dupaco now concedes that the evidence shows that the Notice of Disallowance of Claim was mailed to Dupaco via certified mail on March 4, 2022." (App. at 93).

On August 31, 2022, the Estate filed a Motion for Sanctions against the Claimant and its Attorneys alleging multiple violation of Iowa R. Civ. P. 1.413. Among other things, the Estate alleged that the Claimant and its attorneys violated Rule 1.413 by "Arguing that the Estate's mailing of the Notice did not meet the definition of 'Certified Mail' despite its meeting the definition set out in Iowa Code Section 618.15(1);" "Arguing that the alleged failure of actual delivery defeated the effectiveness of service when service was required by mail. …;" "fail[ing] to perform even the most rudimentary investigation into the facts on their claim including, but not necessarily limited to: (a) The identity of Ronald LeConte and his relationship with the Claimant. Even a cursory search using a common internet search engine would have revealed the connection with Swift Delivery in a matter of seconds that Claimant asserts was dispositive in their decision to dismiss their claim; and (b) The time, place and circumstances of the

delivery of the Notice;" "Claimant or Claimant's counsel intentionally presented facts to the Court which had no basis in truth or were presented for the sole purpose of misleading or confusing the Court…including, but not necessarily limited to: (a) Asserting that the Claimant had no knowledge of the identity of Ronald LeConte or his connection to the Claimant despite either the Claimant or their Counsel speaking with Mr. LeConte by telephone prior to the July 1, 2022 hearing; and (b) Asserting that the Estate failed to mail the Notice by Certified Mail; and (c) Asserting that the Notice the only piece of Certified mail associated with the Notice was delivered to an address different than the Claimant's address as shown on the claim; and (d) Asserting that Claimant did not receive, and no person acting on Claimant's behalf ever received the Notice; and (e) Asserting that the Notice was addressed to an address other than the one appearing in Claimant's claim; and (f) Asserting that the United States post office documents, the signatures thereon, or both were inauthentic." (App. at 110).

The Estate sought $24,351.45 in sanctions which was the total of multiplying the 68.2 hours of work the Estate spend defending the Claimant's now dismissed Motion for Hearing times the Attorney for the Estate's ordinary hour rate of $350 and adding in certain out-of-pocket costs. (App. at 110). Claimant filed a resistance to the Estate's Motion on September 12, 2022. Hearing was held on the Motion on November 3, 2022. (App. at 209).

On January 3, 2023, the Court issued its Order finding that the Claimant and its Attorneys had violated Rule 1.413 in two ways: (1) for failing to conduct a reasonable investigation into the facts surrounding the identity of Ron LeConte and the circumstances of the delivery of the Notice of Disallowance and (2) for submitting a "convoluted and actually incorrect argument (about whether a piece of certified mail is or is not what it purports to be)." (App. at 185). The court awarded the Estate $14,387.60 in sanctions for the Claimant and its attorney's violation of Rule 1.413. (App. at 186). On January 5, 2023, the

Claimant filed a Notice of Appeal, appealing "all adverse judgments, rulings and orders inhering therein." (App. at 188).

STANDARD OF REVIEW

Orders imposing sanctions for violations of Iowa R. Civ. P. 1.413 are reviewed for abuse of discretion. *Mathias v. Glandon*, 448 N.W. 443, 445 (Iowa 1989). Abuse of discretion occurs only when the court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Schettler v. Iowa Dist. Ct for Carroll County*, 509 N.W.2d 459, 464 (Iowa 1993). "'Unreasonable' in this context means not based on substantial evidence." *Id.* A reviewing court is bound by the district court's findings of fact, if those findings of fact are supported by substantial evidence. *Zimmerman v. Iowa Dist. Ct.*, 480 N.W.2d 70, 74 (Iowa 1992). Although review is for abuse of discretion, the reviewing court will correct erroneous applications of law. *Weigel v. Weigel*, 467 N.W. 277, 280 (Iowa 1991).

"Evidence is substantial if 'a reasonable mind would accept it as adequate to reach a conclusion.'" *Crall v. Davis*, 714 N.W.2d

616, 619 (Iowa 2006)(quoting *Bus. Consulting Servs. V. Wicks*, 703 N.W.2d 427, 429 (Iowa 2005)). "When reviewing a claim that substantial evidence does not support a district court finding, [a reviewing court is] required to view the evidence in the light most favorable to the judgment and liberally construe the court's findings to uphold, rather than defeat, the result reached." *Hutchinson v. Shull*, 878 N.W.2d 221, 229 (Iowa 2016). Evidence supporting a district court finding is not insubstantial merely because a reviewing court may draw a different conclusion from it. *Id.* "The ultimate question is whether it supports the finding actually made, not whether the evidence would support a different finding." *Brokaw v. Winfield-Mt. Union Cmty. Sch. Dist.*, 788 N.W.2d 386, 393 (Iowa 2010)(quoting *Raper v. State*, 688 N.W.2d 29, 26 (Iowa 2004)).

ARGUMENT

The sole issue before the court on this appeal is whether or not the district court abused its discretion in awarding sanctions to the Estate of Connie Jo Trout, Appellee herein, for the Appellants, Dupaco Community Credit Union and its attorneys

McKenzie Blau and Thomas Bright's violations of Iowa Court Rule 1.413 and/or Iowa Code Section 619.19. It did not.

Iowa R. Civ. P. 1.413(1) provides in relevant part

> … Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: counsel has read the motion, pleading, or other paper; that to the best of counsel's 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 cause an unnecessary delay or needless increase in the cost of litigation. …If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion … shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee. The signature of a party shall impose a similar obligation on such party.

Iowa Code Section 619.19 is identical in substance. *Barnhill v. Iowa Dist. Court for Polk County*, 765 N.W.2d 267, 272 (Iowa 2009). Rule 1.413 creates three duties known as the "reading, inquiry, and purpose elements." *Weigel*, 467 N.W.2d at 280.

"Each duty is independent of the other, meaning a breach of any one constitutes a violation of the rule. *Harris v. Iowa Dist. Ct. for Johnson Cnty.*, 570 N.W.2d 772, 776 (Iowa Ct. App. 1997). "If a party violates rule 1.413(1), the court *must* impose 'an appropriate sanction.'" *Buhr v. Howard Cnty. Equity*, 801 N.W.2d 33, 2011 WL 1584348 at *5 (Iowa Ct. App. 2011)(Table)(emphasis added). *See also* Iowa R. Civ. P. 1.413(1).

The "inquiry" element of Rule 1.413 requires that "the signer certify that to the best of his knowledge, information, and belief, formed after a reasonable inquiry, the pleading, motion, or other paper is (1) well grounded on the facts and (2) warranted either by existing law or by a good faith argument for the extension, modification, or reversal of existing law." *Weigel*, 467 N.W.2d at 280 (internal citations omitted). "The 'reasonableness' of the attorney's inquiry into the facts and law may depend on such factors as the time available to the signor for investigation; whether the signor had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of

the law; or whether the signor depended on forwarding counsel or another member of the bar." *Id.* "The 'improper purpose' clause seeks to eliminate tactics that divert attention from the relevant issues, waste time, and serve to trivialize the adjudicatory process." *Hearity v. Iowa Dist. Ct.*, 440 N.W.2d 860, 866 (Iowa 1989). "[W]hether a violation has occurred is a matter for the [district] court to determine." *Mathias,* 448 N.W. at 446 (citing *O'Connell v. Champion Int'l Corp.*, 812 F.2d 393, 395 (8th Cir. 1997).

The test for conduct by counsel as it relates to Rule 1.413 is "reasonableness under the circumstances." *Hearity*, 440 N.W.2d at 866. The standard by which a court reviews counsel's conduct is "that of a reasonably competent attorney admitted to practice before the district court." *Id*. A court shall apply an objective, and not subjective standard. *Mathias*, 448 N.W at 445. "Reasonableness" is determined at the time a paper is filed, and not with hindsight of evidence gained at trial. *Id* at 447. While there is no continuing duty imposed by Rule 1.413, this Court has emphasized that the duties imposed by the Rule apply to every

paper in a matter that that requires such a filing. *Id*. Individual filings may be read together to indicate a pattern of conduct. *Id*. Indeed, this court has made it clear "we will not allow an attorney to act incompetently or stubbornly persistent, contrary to the law or facts, and then later attempt to avoid sanctions by arguing he or she was merely trying to expand or reverse existing case law." *Barnhill*, 765 N.W.2d at 279.

Rule 1.413 has many purposes, primarily, to deter litigants from engaging in the practices it prohibits, *Barnhill*, 765 N.W.2d at 276, specifically "The rule is intended to discourage parties and counsel from filing frivolous suits and otherwise deter misuse of pleadings, motions, or other papers." *Id*. at 273(Citing *Hearity,* 440 N.W.2d at 864). It is intended to maintain professionalism in the practice of law. *Barnhill*, 765 N.W.2d. at 273. Sanctions under Rule 1.413 are meant to avoid the cost to opposing litigants and the judicial system in terms of wasted time and money. *Breitbach v. Christanson*, 541 N.W.2d 840, 845 (Iowa 1997). "Perhaps the most important secondary purpose is partial compensation of the victims." *Rowedder v. Anderson*, 814 N.W.2d

585, 593 (Iowa 2012). A party or his attorney need not act in subjective bad faith or with malice to trigger a violation. *Barnhill,* 765 N.W.2d at 273.

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT IMPOSED SANCTIONS ON THE CLAIMANT AND ITS ATTORNEYS BECAUSE IT FOUND TWO INSTANCES OF SANCTIONABLE CONDUCT IN CLAIMANT'S JULY 1 RESISTANCE AND THE COURT'S FINDINGS WERE SUPPORTED BY SUBSTANTIAL EVIDENCE.

Preservation of Error

In the most technical sense, Claimant has failed to properly preserve this issue on appeal, since the proper vehicle for review of a district court order imposing sanctions is an application for writ of certiorari, not an appeal. *Mathias*, 448 N.W at 445. However, a case "shall not be dismissed" if filed seeking the wrong form of relief, "but shall proceed as though the proper form of review had been requested." Iowa R. App. P. 6.108. Thus, this error was properly preserved by the Appellant when it raised this issue in its Resistance to Appellee's Motion for Sanctions, argued it at the hearing on that Motion, and filed a timely, if improper, Notice of Appeal.

Argument

The district court properly found two separate instances of sanctionable action on the part of the Appellant in this matter. Specifically, the court found the Appellants failed to conduct a reasonable investigation in attempting to discover Ron LeConte's relationship with the Appellant, (App. at 183), and continuing to insist that the Notice of Disallowance had not been mailed or that the mailing has been defective, or that the notice had not been sent via certified mail (App. at 184). Each of these instances would have been sufficient to merit the imposition of sanctions. *Harris,* 570 N.W.2d at 776. Each of these instances is supported by substantial evidence in the record, and therefore it would be improper for this Court to reverse the district court's finds on that ground. *Schettler*, 509 N.W.2d at 464. In addition, Appellant argues that there is evidence in the record sufficient to show that they did not violate Rule 1.413 and, therefore, the district court's ruling should be reversed. This argument is also without merit. *Brokaw*, 788 N.W.2d at 393.

A. The Clamant Failed to Make a Reasonable Investigation into the Facts Underlying its Claims.

The District Court found that the Appellant failed to perform a reasonable investigation into the facts contained in its July 1, 2022 Reply to Administrator's Resistance to Request for Hearing. (App. at 183). Specifically, the District Court found the Appellant's choice to stop its investigation in to the identity of Ron LeConte and his relationship with the Claimant when they did constituted a violation of Rule 1.413. (App. at 183; 185). The District Court took further issue with the Appellant's assertion of their implausible theory that "a postal employee would sign for (accept) certified mail on behalf of a postal customer." (App. at 183). Because this finding is supported by substantial evidence, the District Court did not abuse its discretion in making it.

1. The Court Properly Considered the Weigel Factors in Making Its Determination

In *Weigel*, the Court set out four factors useful in determining whether or not and investigation into the facts is "reasonable." *Id*. at 280. They are: "[1] the time available to the signor for investigation; [2] whether the signor had to rely on a

client for information as to the facts underlying the pleading, motion, or other paper; [3] whether the pleading, motion, or other paper was based on a plausible view of the law; [and 4] whether the signor depended on forwarding counsel or another member of the bar." *Id*. In *Matthias*, the Court found that a district court should consider "all relevant circumstances" and set out a list of twelve factors to consider which is substantially similar to the list set out in *Weigel*.[2] *Matthias*, 448 N.W.2d at 446.

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[2] The *Mathias* factors are: a. the amount of time that was available to the signer to investigate the facts; b. the complexity of the factual and legal issues in question; c. the extent to which pre-signing investigation was feasible; d. the extent to which pertinent facts were in possession of opponent or third parties or otherwise not readily available to the signer; e. the knowledge of the signer; f. the extent to which counsel relied upon his or her client for the facts underlying the pleading, motion or other paper; g. the extent to which counsel had to rely upon his or her client for facts underlying the pleading, motion or other paper; h. whether the case was accepted from another attorney and, if so, at what stage of the proceedings; i. the extent to which counsel relied upon other counsel for the facts underlying the pleading, motion or other paper; j. the extent to which counsel had to rely upon other counsel for the facts underlying the pleading, motion or other paper; k. the resources reasonably available to the signer to devote to the inquiry; and l. the extent to which the signer was on notice that further inquiry might be appropriate.

It is clear from the record that the District Court gave appropriate weight to the each of the *Weigel* factors as well as a substantial number of the *Mathias* factors in reaching its decision to find a violation of Rule 1.413 by the Appellant. The District Court noted:

> In reaching this conclusion [that Manning and counsel's inquiry was unreasonable] the Court specifically considered factors including the extent to which the pertinent facts were (or were not) readily available to Manning, whether the conclusions Manning reached seemed plausible, and the time available for Manning and counsel to conduct their inquiry(ies). With respect to counsel, the Court also considered the extent to which attorney Blau had to rely upon the client to obtain the information.

(App. at 183).

2. The District Court's Conclusions Are Based on Substantial Evidence

If the District Court's express consideration of the *Weigel* factors was not sufficient in itself to support the Court's conclusion that Appellant's investigation is unreasonable, there is substantial evidence in the record to support that conclusion.

The record contains an extensive account of the steps the Appellant did and did not take in attempting to determine the identity of Ron LeConte and his relationship with the Claimant. Despite the identity and relationship of Ron LeConte being absolutely critical to the Appellant's theory of non-receipt of the Notice of Disallowance, the Appellant's own court filings and witnesses show that Appellant performed only the most cursory search to determine LeConte's identity. Amy Manning, the Dupaco employee responsible for handling this claim, searched the employee telephone directory. (App. at 133, 227:15-20:2). She searched Dupaco's intranet. (App. at 133, 227:2-4). She asked around among her co-workers in her department. (App. at 133, 228:8-10). Finally, she contacted a single mailroom associate. (App. at 133, 228:11-17). The mailroom associate informed Manning that the associate did not know who LeConte was, but *assumed* he worked for the post office. (App. at 228:13-22).

The District Court concluded that a reasonably competent attorney admitted to practice before the district court would not have terminated their investigation into the facts at this point,

especially given the highly implausible nature of the conclusion reached by Manning – specifically that a postal employee would sign for certified mail on behalf of a postal customer. (App. at 183). The District Court found that a reasonably competent attorney would have taken additional steps such as contacting the post office to confirm LeConte's employment status, tracking down LeConte himself, or, at minimum, requesting more time to perform a reasonable investigation into this critical fact.[3] (App. at 183). Appellant does not dispute that they took none of these steps. (Brief of the Appellant at 43-48, App. at 228:23-21:1). Indeed, Appellants continued to argue their theory that LeConte was a postal employee at the July 1 hearing, suggesting that even in the month between the filing of their Reply to the Resistance

[3] Not insignificantly, the steps suggested by the District Court substantially mirror the steps taken by the Appellee, who had no reason to know Ron LaConte's identity or relationship with the Appellant prior to the Appellant's filing of their Request for Hearing. Appellee contact the post office by telephone to determine that LaConte was not a post office employee and was informed that he owned Swift Delivery. Appellees also performed a search for LaConte at google.com and was able to find a telephone number and searched available public records online to locate an address. This was later confirmed by a private investigator.

and the hearing, they took no further steps to investigate the truth of Manning's statement. (App. at 197:16-8:2).

3. Appellant's Arguments as to Why a Reasonable Investigation Was Not Necessary Are Unpersuasive

Instead of performing a reasonable investigation, Appellant argues that further investigation was unnecessary. Firstly, Appellant contends searches that are unlikely to produce important evidence are unnecessary. (Brief of the Appellant at 43). Because Appellant believed "the inquiry that the district court found Dupaco and its counsel should have made would not have yielded probative evidence…it was reasonable for Dupaco and its counsel to forgo investigative avenues that were unlikely to lead to relevant information." *Id*. This conclusion is problematic for three reasons.

First, it is factually untrue. Appellee used methods very much like what the district court recommended and was able to locate and interview LeConte. Secondly, Appellant makes the assertion that the inquiry would have yielded no probative evidence, but provides not factual or legal basis for that assertion. Finally, given the critical nature of the evidence at stake here, and

the absolute implausibility of the theory Manning advanced, it does not excuse the Appellant's total inaction under these circumstances, even if the precise course of action the District Court suggested was not actionable.

Appellant puts forward three additional theories in support of their argument that their election to take no further steps to investigate constitutes a "reasonable investigation." Specifically, they argue that "[t]he fictitious name of LeConte's business was not readily available to Dupaco,"[4] (Brief of the Appellant at 44), "[c]ounsel for Dupaco reasonably relied on first-hand-information for experienced employees of Dupaco, (Brief of the Appellant at 45), and "Dupaco conducted a reasonable investigation given the one-week deadline."[5] (Brief of the Appellant at 49).

Each of these theories fails for two reasons. First, they require the court to apply the wrong standard. In determining whether an investigation is reasonable or not, a court shall apply

[4] Appellant cites no legal authority of any kind in support of the significance of this proposition.

[5] Appellant cites no authority, legal or otherwise, in support of this conclusion.

an objective, and not subjective standard. *Mathias*, 448 N.W at 445. In order for Appellant to succeed on any of these theories, the court must apply a subjective standard. The question is not "What should Dupaco have done?" but "What steps should a reasonably competent attorney do to locate Ron LeConte?" Appellant is asking this court to apply the former, incorrect standard in advancing its several theories.

Secondly, but no less significantly, these theories ask the court to perform the wrong inquiry. When evaluating whether a finding is supported by substantial evidence, as is required here, "The ultimate question is whether it supports the finding actually made, not whether the evidence would support a different finding." *Brokaw*, 788 N.W.2d at 393. Appellant urges this Court to consider whether or not the evidence would support a finding different than the one made by the district court. It further argues that, if the evidence would support such an alternative finding, that this court must determine that the district court's finding is invalid. This is not the case. The relevant question is

whether or not the evidence supports the district court's finding. *Id.*

B. The Claimant Persisted in Advancing a Theory That Was Factually Inaccurate, Confusing, and Misleading.

1. The District Court's Conclusion Was Based on Substantial Evidence and was not an Abuse of Discretion

Similarly, the district court found that Appellant violated Rule 1.413 by asserting "that the Notice of Disallowance had not been sent via certified mail" or if it had been, that mailing was somehow deficient. (App. at 184). In its January 3 Order imposing sanctions on the Appellant, the Court wrote that it was "unable to explain what [Blau] was looking at when she made her assertions [about the lack of certified mailing]. She apparently made no effort to explain the incongruence in her 'findings' or to seek clarification from anyone at USPS before submitting her *factually incorrect assertions* to the Court." (App. at 184)(emphasis added).

The district court's finding that the Appellant's factually incorrect assertions constituted a violation of Rule 1.413 is not an abuse of discretion because it is based on substantial evidence.

Schettler, 509 N.W.2d at 464. The district court specifically considered the fact that Blau's account of the facts was irreconcilable both with the documentary evidence presented by the Estate *and* her own exhibit. (App. at 184). Because this is the type of evidence "a reasonable mind would accept as adequate to reach a conclusion" it is substantial evidence. *Crall*, 714 N.W.2d at 619.

2. Appellant's Assertions About Certified Mailing are not "Isolated Factual Errors" and are thus Sanctionable

Appellants concede that their assertion that the Notice of Disallowance was not mailed by certified mail is an error. (Brief of the Appellant at 52). They argue that is it improper to sanction a party under Rule 1.413 for "isolated factual errors that do not undermine a party's legal theory." Appellant's assertion fails for three reasons.

First, Appellants fail to cite any controlling authority in support of this proposition. They cite *Forrest Creek Assoc., Lts. V. McLean Sav. And Loan Ass'n.*, 831 F.2d 1238 (4th Cir 1987) but do not cite and authority of any type from Iowa or the Eighth Circuit to suggest that their proposition has been adopted as law in Iowa.

Secondly, Appellants argue "[l]itigants and attorneys make mistakes" with the implication that their "erroneous" factual assertion was a mere error for that reason, it cannot form a basis for a sanction under Rule 1.413. This is simply not the case. Indeed, "a party or his attorney need not act in subjective bad faith or with malice to trigger a violation" of Rule 1.413. *Barnhill*, 765 N.W.2d at 274. Indeed, Appellant's theory is constructed from virtually *nothing but* factual errors.

Finally, even if the proposition urged by the Appellant *was* the law before this Court, it does not apply in this instance. The argument that Appellant's claim that the Notice of Disallowance was not sent by certified mail was not an "isolated factual error." That theory formed the bulk of their argument in their June 1 Reply. (App. at 49). In an argument that spanned a mere seven brief paragraphs, (Paragraphs 7 through 13), five of them (paragraphs 9 through 13) relate to this argument. (App. at 49). (The remaining paragraphs laid out the also factually incorrect argument that Ron LeConte was not an agent of Dupaco, but was an employee of the Postal Service). To compound maters,

Appellant continued to persist in this factually incorrect and patently meritless argument at the July 1 hearing, with arguments on this issue consuming nearly one third of the hearing transcript. (App. at 192:19-197:3).

Appellant argues that these statements are part of a larger argument "that there were enough irregularities in the exhibits to Trout's resistance that reasonably called into question whether Dupaco was 'given' notice under the operative statute." (Brief of the Appellant at 50). This augment, to the degree it was raised at all in Appellant's June 1 Resistance, was relegated to a single sentence primarily concerned with Ron LeConte. It only emerged, partially formed, at the end of the July 1 hearing. Even then it was not fully articulated until it appears in the Appellant's brief on this appeal. (App. at 199:15-200:23).

Even now, Appellants persist in arguing trivialities and misrepresents the record below. They argue, for example, that the fact that "the notice of Disallowance of claim was dated March 4, 2022 but the affidavit of mailing was not signed or filed until April 4, 2022." (Brief of the Appellant at 50). While the delay in

mailing and filing may be unusual, it is of no legal significance. Appellees cite no authority as to *when* an affidavit of mailing *must* be filed. Similarly, Appellants argue that the return receipt was "not dated," "not addressed to the claimant", and that "no service type was indicated." It is significant to note that the use of the return receipt is not required under Iowa Code Section 633.439.

While these the "allegations" that the receipt is not dated and that the service type is not checked are true in a technical sense, this point is rendered moot by the fact that this information *is* included in the document referred to as "Exhibit D" in Appellant's brief (Brief of the Appellant at 51). Appellant's statement that the return receipt "was not addressed to the claimant" is false. The return receipt shows the address "P.O. Box 179, Dubuque, Iowa 52204" which, as the district court determined, was the only complete address included in the claim. (App. at 182). The Appellants also argue that "Trout's USPS tracking printout showed a mailing was delivered to a postal facility in Dubuque, Iowa but does not indicate who picked up the mailing or the contents of the mailing." It is absurd to argue that

the tracking printout "does not indicate the contents of the mailing" is an "irregularity." The tracking printout does not ordinarily provide this information. In addition, the return receipt that was paired with the item in Exhibit D shows that the item was received by Ron LeConte, Dupaco's agent for receiving such correspondence.

Finally, Appellants argue that the "district court did not criticize any of these points in its Order assessing sanctions against Dupaco." (Brief of the Appellant at 51). First, it should be noted that the district court levied sanctions against Dupaco *and its attorneys*. (App. at 186). Secondly, this statement misrepresents the record. The court raised the issue of the delay in filing at both the November 3 hearing, (App. at 253:20-254:9), and in its Order (App. at 180, n. 10). However, it is of no relevance that the district court failed to "criticize any of these points in its Order" because the purpose of the Order was not to determine if the Estate had made any missteps in serving the notice (which, by this time Appellant had conceded it had not),

(App. at 93), but to determine if Appellees had violated Rule 1.413, which the court determined it had. (App. at 185-86).

The district court properly found that the Appellant had failed to conduct a reasonable investigation into the facts and law supporting their June 1 Reply and had misrepresented facts in that same document. The district court's conclusion is supported by substantial evidence because it is supported by the kind of evidence "'a reasonable mind would accept it as adequate to reach a conclusion.'" *Crall*, 714 N.W.2d at 619. Because the district court's conclusions are supported by substantial evidence, they cannot be "unreasonable," and therefore cannot be an abuse of discretion. *Schettler*, 509 N.W.2d at 464. Since the district court's findings are not an abuse of discretion, it would be improper for this court to reverse the findings of the district court. *Mathias*, 448 N.W. at 445.

II. IT WOULD BE IMPROPER FOR THIS COURT TO REVERSE THE DISTRICT COURT'S IMPOSITION OF SANCTIONS ON THE GROUND THAT CLAIMANT'S WERE WARRANTED BY EXISTING LAW OR A GOOD-FAITH ARGUMENT FOR THE EXTENSION, MODIFICATION, OR REVERSAL OF EXISTING LAW.

Preservation of Error

In the most technical sense, Claimant has failed to properly preserve this issue on appeal, since the proper vehicle for review of a district court order imposing sanctions is an application for writ of certiorari, not an appeal. *Mathias*, 448 N.W at 445. However, a case "shall not be dismissed" if filed seeking the wrong form of relief, "but shall proceed as though the proper form of review had been requested." Iowa R. App. P. 6.108. Thus, this error was properly preserved by the Appellant when it raised this issue in its Resistance to Appellee's Motion for Sanctions, argued it at the hearing on that Motion, and filed a timely, if improper, Notice of Appeal.

Argument

Appellant argues that they "urged in their resistance to Trout's motion for sanctions and the hearing that its arguments were warranted by existing law or for a good faith argument for

the extension, modification, or reversal of existing law" and therefore the sanctions levied against them were improper. (Brief of the Appellant at 57)(internal citations omitted). This argument fails for two reasons.

A. The District Court Imposed Sanctions on the Claimant on the Basis of Factual Issues, Not on the Basis of Legal Issues.

First, the Court sanctioned the Appellants for their failure to make a proper inquiry into the facts underlying their claims or for mispresenting those facts to the court. Rule 1.413 requires the signer of a paper to certify that it is "well grounded in the facts" after performing a reasonable investigation. *Weigel*, 467 N.W.2d at 280. In its Order imposing sanctions, the court wrote "The question for the court under Rule 1.413 is…whether Manning and counsel's inquiry *into the facts* was reasonable. The Court concludes *it was not*." (App. at 183)(emphasis added). The court goes on to write "…[Appellants] still insisted that no Notice of Disallowance had been mailed or, if it had, that it was defective. Further, because Blau erroneously asserted that the Notice of Disallowance was not sent via certified mail, her June 1 Reply distracted the parties and the Court from the 'real' legal issue…"

(App. at 184). In conclusion, the Court wrote "Therefore…the Court concludes that Dupaco's June 1 2022 filing in this case, which its attorneys steadfastly defended until after a Dupaco *finally conducted a reasonable inquiry into the facts*…is contrary to IRCP 1.413 and requiring sanctions." (App. at 185)(emphasis added). Because the district court sanctioned Appellants for failing to make a reasonable investigation into the facts, as required by Rule 1.413, then it is immaterial whether or not Appellant's "arguments were warranted by existing law."

B. The Claimant's Arguments Were Not Warranted by Existing Law, Nor a Good-Faith Argument for the Extension, Modification, or Reversal of Existing Law.

Appellants arguments were not "warranted by existing law." The district court identified the "real" legal issue underlying the Appellant's June 1 Reply – "If Manning were correct that a USPS employee intercepted the Notice *after it was properly sent via certified mail*, would that have any legal effect on whether or not Notice was given?" (App. at 184-15). The answer is no, failure of delivery is of no legal consequence.

"When a statute provides for service by mail, without expressly requiring more, service is accomplished by mailing, regardless of whether the notice is actually received by the addressee." *Echer v Morrison*, 278 N.W.2d 9, 11 (Iowa, 1979)(McCormick, J. dissenting opinion). *See also L.F. Noll, Inc. v. Eviglio*, 816 N.W.2d 319 (Iowa 2012); *Barrett v. Bryant*, 290 N.W.2d 917 (Iowa 1980); *Calinger v. Konz*, 723 N.W.2d 452, 2006 WL 2418910 (Iowa App.2006)(Table); *Ross v. Hawkeye Insurance Co.*, 50 N.W. 47 (Iowa, 1891) (holding service under a statute of notice by registered letter addressed to an insured at his post office address was complete upon the letter being registered and mailed); *Holbrook v. Mill Owner's Mutual Insurance Co.*, 53 N.W. 229 (Iowa 1892); *Phoenix Metals Corp. v. Roth*, 284 P.2d 645 (Ariz. 1955); *Douglas v. Janis*, 118 Cal.Rptr. 280 (1974); *Ford v. Genereux*, 87 P.2d 749 (Colorado 1939); *Hartford Trust Co. v. West Hartford*, 81 A. 244 (Conn. 1911); *Hartley v. Vitoello*, 154 A. 255 (Conn. 1931); *Wasden v. Foell*,117 P.2d 465 (Idaho, 1941); *Johnson & Dealman, Inc. v. Wm. F. Hegarty, Inc.*, 224 A.2d 510 (N.J.Super 1966); *Benson v. Benson*, 291 S.W.2d 27 (Ky. 1956); *MacLean v.*

Reynolds, 132 N.E. 270 (Minn. 2010); *Hurley v. Olcott*, 91 N.E. 270 (N.Y. 1910); *Davis v. Mosley*, 55 S.E.2d 329 (N.C. 1949); *McCoy v. Bureau of Employment Compensation*, 77 N.E.2d 76 (Ohio App 1947); *Stroh v. State Accident Insurance Fund*, 429 P.2d 472 (Or. 1972); *Commonwealth v. Coldren*, 14 A.2d 340 (Pa.Super 1940); *Madsen v. Preferred Painting Contractors*, 233 N.W.2d 575 (S.D. 1975); *Johnson Service Co. v. Climate Control Contractors, Inc.*, 478 S.W.2d 643 (Tex.Civ.App 1972); *Carroll v. Hutchinson*, 200 S.E. 644 (Va. 1939); *Schroedel Corp. v. State Highway Comm'n.*, 157 N.W.2d 562 (1968); *Am.Jur.2d* Notice § 27 at 508 (1971); 66 C.J.S. Notice § 18 at 664 (1950).

While the district court noted that "proof that a recipient did receive a piece of mail is competent evidence that it was not mailed", *Dudder v. Shanks*, 689 N.W.2dd 214, 218 (Iowa 2004), and "A party's statement under penalty of perjury that he did not receive a notice as required is 'sufficient to generate a fact question as to whether the notice was actually sent…as required.'" (App. at 180)(citing *Allen v. Waukee*, (Slip Copy 2022), 2022 WL 3067060 *3 (Iowa Ct. App. 2022). The critical difference between

Allen and the present case is that in *Allen*, the statement that the notice was not received was, presumably, true. The first time Manning stated that the notice had not been received was in her affidavit attached to their July 1 Reply. (App. at 51). By the time this document was filed, neither she nor Dupaco's attorneys would have any reason to believe that this statement was true. Prior to filing Appellant's June 1 Reply, they had been served with extensive documentary proof that the Notice had, in fact, been delivered to them and had been received by their agent, Ron LeConte. (App. at 40-45). False statements, or statements made with a reckless disregard for the truth, cannot be competent evidence. *See generally State v. Seager*, 341 N.W.2d 420 (Iowa 1983).

Despite overwhelming authority underlying the contention that service by mail, when required by statute, is complete upon mailing, Appellants argue that an exception to the general rule exists for probate notices. However, they are unable to cite any authority to support their position from Iowa or any other jurisdiction.

Instead, they persist in misrepresenting the state of the law on this issue. They misrepresent the court's statement in *Iowa Supreme Ct. Att'y Disciplinary Board v. Hearity*, "[r]eceipt of certified mail constitutes notice as a matter of law," 812 N.W.2d 614, 620 (Iowa 2012) to mean "one must receive certified mail in order for service to effective," when, in the context of the case it is clear that the statement means "if one receives certified mail and does not open or read it, one is still imputed to have knowledge of its contents." The latter interpretation is made explicitly clear by the Court in *Hearity* citing *Burgess v. Great Plains Bag Corp.*, 409 N.W.2d 676 (Iowa 1987) in support of this proposition and adding the parenthetical explanation of the citation "holding plaintiff deemed to have notice of contents of accepted certified mail regardless of whether he read the documents." *Hearity*, 812 N.W.2d at 620.

III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN FIXING THE AMOUNT OF THE MONETARY SANCTIONS IT IMPOSED BECAUSE THE SANCTION IS BASED ON PROPER AUTHORITY, COMPETENT EVIDENCE, AND ACHIEVES A PROPER PURPOSE.

Preservation of Error

In the most technical sense, Claimant has failed to properly preserve this issue on appeal, since the proper vehicle for review of a district court order imposing sanctions is an application for writ of certiorari, not an appeal. *Mathias*, 448 N.W at 445. However, a case "shall not be dismissed" if filed seeking the wrong form of relief, "but shall proceed as though the proper form of review had been requested." Iowa R. App. P. 6.108. Thus, this error was properly preserved by the Appellant when it raised this issue in its Resistance to Appellee's Motion for Sanctions, argued it at the hearing on that Motion, and filed a timely, if improper, Notice of Appeal.

Argument

A. While Compensation of Victims is not the Primary Purpose of Sanctions under Rule 1.413, it is a Proper Purpose.

Because the district court found that Appellants had violated Rule 1.413, it is obligated to impose an "appropriate sanction." *Buhr*, 2011 WL 1584348 at *5. While the primary purpose of Rule 1.413 is to deter litigants from engaging in the practices it prohibits, *Barnhill*, 765 N.W.2d at 276, compensation of the victims is an important secondary purpose. *Rowedder*, 814 N.W.2d at 593.

B. The Court Gave Appropriate Consideration to the Factors Set Out in *Barnhill* When it Determined the Amount of the Sanctions It Imposed.

In *Barnhill*, the court adopted four factors for determining the appropriate monetary sanction for a violation of Rule 1.413. They are (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." *Barnhill*, 765 N.W.2d at 277. Failure to consider one or more of these factors does not constitute abuse of discretion in fixing the amount of a monetary sanction. *Rowedder*, 814 N.W.2d at 591. Appellees

argue that the court failed to accord appropriate weight to only two of these factors – reasonableness of the fee and severity of the violation. (Brief of the Appellant at 65-71). Because the Appellants failed to take issue with the remaining factors, those factors are unreviewable by the appellate court. *Aluminum Co. of American v. Musal*, 622 N.W.2d 476, 479 (Iowa 2001)("Issues not raised in the appellate briefs cannot be considered by the reviewing court.")

Appellants contend that the district court failed to adequately determine the reasonableness of the Appellee's attorney fees. This contention bears no merit. The court based its determination on Appellee's attorney fee affidavit which included an itemized account of all time expended investigating and defending Appellant's frivolous filings. (App. at 185). However, the court did not simply accept the affidavit as-is, but pointed questioned the attorney or the Appellee about the contents of the affidavit at the November 3 hearing. (App. at 218:10-11:3). In its Order Imposing Sanctions, the Court specifically found that the $24,431.45 in requested sanctions were unreasonable, fixing a

reasonable amount of sanctions at $14,387.60, of which $14,000 were attorney's fees. (App. at 185-86) The court also specifically found that $83.85 of the requested out-of-pocket expenses were unreasonable. (App. at 185).

Appellants further argue that Appellee's attorney fee affidavit is insufficient as a matter of law, and therefore the district court abused its discretion is relying on it for the award of sanctions. However, the sufficiency of evidence is a question for the finder of fact. *State v. Bloom*, 983 N.W.2d 44, 50 (Iowa 2022). When a determination is based on substantial evidence, that determination cannot be an abuse of discretion. *Schettler*, 509 N.W.2d at 464. Evidence is substantial when "a reasonable mind would accept it as adequate to reach a conclusion." *Crall*, 714 N.W.2d at 619. Because an attorney fee affidavit is the type of evidence a reasonable person would accept as adequate to reach a conclusion, the district court did not abuse its discretion is relying on in determining the appropriate amount of the sanction it levied. *See, for example Rowedder*, 814 N.W.2d at 590. ("The

court noted that the parties presented it with itemizations of attorney fees incurred by the parties seeking sanctions…")

Additionally, Appellees contend that "a reasonableness inquiry necessarily requires a determination as to what extend Trout's expenses and fees could have been avoided and were self-imposed." (Brief of the Appellant at 67). Appellant cites no authority in support of this proposition.[6] However, assuming without conceding that this is the Iowa law on the matter, there is sufficient evidence in the record that the court gave this consideration due weight. As mentioned previously, the court examined the Attorney for the Appellee on the contents of his attorney fee affidavit at the November 3 hearing. (App. at 218:10-11:3). The district court went on to make a specific finding that the requested sanction was unsupported by the record, and instead ordered a lower sanction. (App. at 185-86).

Appellant also argues that the district court failed to make an appropriate determination of the severity of their violation of

[6] They do cite INVST Fin. Grp., Inc. v Chem-Nuclear Sys., Inc. 815 F.2d 319 (6th Cir. 1987) somewhat later on in their Brief. (Brief of the Appellant at 67).

Rule 1.413. Again, they mispresent the state of the law. In their brief, they state "In weighing the severity of the violation, the district court was to consider the American Bar Association factors that were outlined in the *Barnhill* decision…" (Brief of the Appellant at 69). This conflates two separate analytical systems as set out in *Rowedder*, where the court wrote "*In addition to these four factors*, [i.e.: (1) 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] *we have encouraged* district courts to consider factors set forth by the American Bar Association." *Id*. at 590. Several of the ABA factors are similar to the factors set out in *Barnhill*. *See Rowedder*, 814 N.W.2d at 590 n.1.

Appellant contends that their violation of Rule 1.413 is "slight" (Brief of the Appellant at 70). This contention is contrary to the record. While Appellees contend that their motion "took up very little of the court's time as only one twenty-minute hearing was held" (Brief of the Appellant at 70), they neglect to note the amount of time the court spent preparing for two hearings, even

though only one was actually held, as well as reviewing filings and sorting through issues. In its Order imposing sanctions, the court specifically noted "…Blau's assertions did cause confusion and waste time for both Shoemaker and the Court to work thorough." (App. at 184). Indeed, the record shows that the attorney for the Appellees expended 68.2 hours of their time in defending the frivolous claims made by the Appellants. (App. at 168; 185).

However, the severity of the violation of Rule 1.413 goes far beyond the mere amount of time spend investigating and defending frivolous filings. One of the purposes of Rule 1.413 is to maintain professionalism in the practice of law. *Barnhill*, 765 N.W.2d. at 273. While the court stopped short of expressly finding Appellants acting in bad faith, they did not rule out the possibility, writing "Blau was either confused by what she found on the USPS tracking site or was attempting to confuse or mislead the court." (App. at 184). It continued "The Court will give Blau the benefit of the doubt and assume she just made a mistake and did not intentionally misrepresent facts." (Id.). The court took

issue with the competence of the attorneys for the Appellant, writing

> …it appears to the Court that Counsel has not acknowledged any responsibility for the attorney's own actions in the case. The court concludes that no reasonably competent attorney would have simply taken their client's assertions about mail being intercepted by a postal worker, with no proof to support it, at face value and present it as fact. The Court further concludes that no reasonably competent attorney would submit the convoluted and factually incorrect argument (about whether a piece of certified mail is or is not what it purports to be) as was included in the June 1 Reply. And the court further concludes that no reasonably competent attorney would fail to conduct any further inquiry into the facts and circumstances described in the pleadings before showing up for a hearing, as counsel apparently failed to do in this case between June 1 and July 1.

(App. at 185).

These actions – persisting in pressing theory wholly unsupported in fact or in law, all the while knowing that your theory is unsupported by fact or law, acting in what appears to be bad faith, misrepresenting facts to the court, failing to perform even the most fundamental duties of investigating the facts

contained in the papers you file - are the very things that risk irreparable damage to the legal profession and are the very behaviors that Rule 1.413 was enacted to prevent. Even if the burden in terms of time or resources to the court or to the attorney for the Appellant is "slight," the Appellant's infraction of Rule 1.413 is severe.

CONCLUSION

Because the district court did not abuse its discretion in assessing sanctions against the Appellants for their violation of Iowa R. Civ. P., the Estate prays this court dismiss the Appellant's application for writ of certiorari and affirm the district court's finding that the Appellant and its attorneys violated Iowa R. Civ. P. 1.413 and the imposition of sanctions in the amount stated in the district court's order and for any further relief this court finds just and reasonable.

STATEMENT OF NONORAL SUBMISSION

Appellee joins Appellant in its request that this matter be submitted for review without oral argument.

Dated this 19th day of June, 2023

By: /s/ Scott A. Shoemaker
Scott A. Shoemaker, AT0012379
Attorney for the Appellee
SCOTT SHOEMAKER AND ASSOCIATES, PLC
425 SECOND ST SE, SUITE 1200
Cedar Rapids, Iowa 52401
Phone: (319) 804-8346
sshoemaker@cedarrapidswills.com

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Dated this 19th Day of June, 2023

/s/ Scott A. Shoemaker____
Scott A. Shoemaker

CERTIFICATE OF SERVICE

The undersigned certifies that this brief was served upon all attorneys of record and the clerk of the supreme court via electronic delivery through EDMS pursuant to Iowa Court Rule 16.317 upon all parties on this 19th day of June, 2023.

/s/ Scott A. Shoemaker___
Scott A. Shoemaker