

IN THE SUPREME COURT OF IOWA

Case No. 23-0054

Dupaco Community Credit Union,
Appellant,

v.

Iowa District Court for Linn County,
Appellee.

Review of Court of Appeals Decision Dated March 6, 2024

**Resistance to Appellant's Application for Further
Review**

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STATEMENT REGARDING FURTHER REVIEW

Appellant alleges that the Court of Appeals made three significant errors in annulling Appellant's writ of certiorari. They first allege that the court of appeals improperly considered facts discovered after the sanctioned filing was made and the court of appeals imposed a duty to take remedial action, post filing. Secondly, they allege that the courts below improperly weighed evidence in determining if they had violated Iowa R. Civ. P. 1.413. Thirdly, they allege that the court of appeals failed to appropriately consider factors set out in *Barnhill v. Iowa Dist. Court for Polk County*, 765 N.W.2d 267 (Iowa 2009) in determining the propriety of amount of the sanctions imposed. For these reasons, Appellant asserts further review in this matter is not only appropriate, but necessary.

(Application for Further Review at 7). Neither their allegations nor their assertions about the necessity or propriety of further review have any merit. Appellant's Application for Further Review should be denied for three reasons.

Appellant's Application Should Be Denied Because It Only Address One Ground for Sanctions Found by the District Court, Not Both and Therefore Further Review Would Not Change the Outcome

First, the district court found, and the court of appeals affirmed that Dupaco and its attorneys violated Rule 1.413 on two separate grounds. Specifically, Appellant failed to conduct a reasonable pre-filing investigation into the identity of Ron LeConte, and also for making false statements about the use of certified mail to send a Notice of Disallowance to Dupaco. (App. at 183-84; Opinion at 10). Appellant's Application for Further Review addresses only the reasonable investigation issue and does not address the certified mail issue. Thus, even if the supreme court were to side with Appellants on the issue they have raised, the result would remain the same – that the Appellant engaged in sanctionable conduct.

Further Review is Improper Because the Court of Appeals Applied the Correct Standard of Review to the District Court's Findings

Secondly, the court of appeals applied the appropriate standard of review to the findings of the district court. Orders imposing sanctions for violations of Rule 1.413 are reviewed for abuse of discretion. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). 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), and

appellate review may only correct erroneous applications of law.

Weigel v. Weigel, 467 N.W.2d 277, 280 (Iowa 1991).

Each and every issue raised in the Appellant's Application for Further Review is a question about the sufficiency of evidence. It is well established that the sufficiency of evidence is a question of fact, and not a question of law. *See McMurry v. Jahn*, 202 N.W. 758 (Iowa 1925). Questions of fact are not generally reviewable on certiorari. *Smith v. Board of Sup.rs of Jones County*, 30 Iowa 531, 536 (1870).

Further Review is Improper Because This is Not the Type of Case
Appropriate for Supreme Court Review

Thirdly, even if we were to accept the Appellant's view of the court of appeal's opinion as correct, and we do not, these errors fall far short of the mark making further review by the supreme court appropriate, much less necessary.

"Further review by the supreme court is not a matter of right, but of judicial discretion." Iowa R. App. P. 6.1103(1)(b). This Rule goes on to state that "[a]n application for further review will not be granted in normal circumstances." *Id.*

Rule 6.1103(1)(b) sets out four types of cases that, while not representative of the full measure of the Court's discretion, are indicative of the type of cases appropriate for further review. They are "(1) The court of appeals has entered a decision in conflict with a decision of this court or the court of appeals on an important matter; (2) The court of appeals has decided a substantial question of constitutional law or an important question of law that has not been, but should be, settled by the supreme court; (3) The court of appeals has decided a case where there is an important question of changing legal principles; (4) The case presents an issue of broad public importance that the supreme court should ultimately determine." *Id.*

Appellant has failed to demonstrate how the case at bar fits into any of the categories set out in Rule 6.1103(1)(b). Indeed, in their brief to the court of appeals, Appellant specifically concedes that this case "presents the application of existing legal principles" and is not appropriate for review by the supreme court.

Because this case is, as Appellant has conceded, not of type appropriate for review by the supreme court and because the Appellant has failed to raise any meritorious issue appropriate for

supreme court review, further review is improper and Appellant's Application for Further Review must be denied.

ARGUMENT

I. APPELLANT'S APPLICATION FOR FURTHER REVIEW SHOULD BE DENIED BECAUSE THE COURT OF APPEALS APPLIED THE PROPER STANDARD IN REVIEWING THE DISTRICT COURT'S DETERMINATION THAT APPELLANT FAILED TO PERFORM A REASONABLE INQUIRY INTO THE FACTS CONTAINED IN APPELLANT'S SANCTIONED FILINGS.

Appellant argues that "the courts below" abused their discretion by "impermissibly focus[ing] on Dupaco and its counsel's post-filing statements and investigative efforts" and "impos[ing] a continuing duty on counsel to take remedial action after signing a pleading if counsel later discovers information that renders an allegation in its pleading no longer well-grounded in fact."

(Application at 17 and 21). Neither assertion is true. Instead, the district court found, and the court of appeals affirmed, that the Appellant had failed to make a reasonable inquiry into the facts contained in their sanctioned filings.

A. The Court of Appeals Applied the Correct Standard of Review in Affirming the District Court's Ruling and Therefore Further Review Would Be Improper

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.’” 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 (emphasis added, 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. “[W]hether a violation has occurred is a matter for the [district] court to determine.” *Mathias*, 448 N.W.2d at 446 (internal citations omitted). The test for conduct by counsel as it relates to Rule 1.413 is “reasonableness under the circumstances.” *Hearity v. Iowa Dist. Ct.*, 440 N.W.2d 860 (Iowa 1989). 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.2d at 445.

Orders imposing sanctions for violations of Rule 1.413 are reviewed for abuse of discretion. *Mathias*, 448 N.W.2d at 445. 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, 480 N.W.2d at 74. Although review is for abuse of discretion, the reviewing court will correct erroneous applications of law. *Weigel*, 467 N.W.2d at 280.

“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) “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).

Appellant asserts “... the court of appeals neglected to view Dupaco’s and its counsel’s conduct at the time of filing the reply, and instead concentrated solely on their investigative efforts after filing the reply on June 1, 2022.” (Application at 19). This statement is false. The district court made explicitly clear in its order that it took “no issue with the steps Manning took in her inquiry into LeConte’s identity, but it *does* take issue with her decision to stop her inquiry when she did.” (App. at 183)(emphasis in the original). The court continues “Given the complete lack of proof, the Court simply does not find the assumption that a postal employee would sign for (accept) certified mail on behalf of a postal customer to be plausible.” *Id.* In short, the court specifically found that Dupaco had failed to make a reasonable investigation into the facts *prior to* the June 1 filing. The district court goes on to note that counsel was also obligated to make a reasonable inquiry into the facts prior to the filing, and also failed to do so. *Id.* These findings are based on the exhibits and testimony submitted by the parties and are therefore based on substantial evidence.

The court of appeals affirmed the district court's analysis writing "we do not disagree with the district court's ruling in any material aspect. We find the court recited and applied controlling case law, and we discern no abuse of discretion." (Opinion at 9). The court of appeals goes on to write:

Contrary to claims made in the appellate brief, the district court did not impose sanctions based on '[t]he perfect acuity of hindsight.' Instead, the court found Blau and Bright behaved unreasonably when comparing their conduct to the investigation a reasonably competent attorney would have undertaken.

(Opinion at 12). In addition, the court of appeals notes

"The record here established Blau and Bright did little if any investigation to satisfy themselves that Manning provided accurate information. The claim that LeConte was a postal service 'interloper' was at best 'questionable,' and the basis for that claim was 'conjecture, suspicion, or rumor'" (Opinion at 11, internal citations omitted).

While it is worth noting that both the district court and court of appeals mention Dupaco's "second investigation," both do so in the context of illustrating what a reasonable investigation would have

entailed. (App. at 183, n. 11; Opinion at 10). In neither case does either court use this as a basis for modifying the duty that existed prior to making the June 1 filing.

Because the district court's findings are based on substantial evidence and the court of appeals applied the appropriate standard of review in affirming the district court's order, Appellant's Application for Further Review must be denied.

B. The District Court Found Two Separate Instances of Sanctionable Conduct so Reversal on the Single Ground Alleged by the Appellant Would Not Change the Ultimate Outcome, Making Further Review Improper.

Even if the lower courts erroneously considered post-filing conduct as it related to the investigation in the identity of Ron LeConte, such a finding is not sufficient to reverse the court of appeals. The district court found that the Appellant's misrepresentation that the notice of disallowance was never sent by certified mail, despite it have been sent by certified mail was sufficient to impose sanctions on the appellants. (App. at 184). The court of appeals affirmed this finding. (Opinion at 10). The lower courts finding of a second violation of Rule 1.413 means that, even if the supreme court should reverse the lower courts on the issue of the

pre-fling investigation, the ultimate result would remain the same and therefore further review would be improper.

C. This is Not the Type of Case Typically Reviewed by the Supreme Court and Therefore Further Review Would Be Improper.

Even if the court of appeals has erred by applying an improper standard of review, such an error is immaterial. This matter is before this Court on Appellant's Application for Further Review. Further review of this matter by this Court is improper. Iowa R. App. P.

6.1103(1)(b) admonishes that "further review by the supreme court is not a matter of right, but of judicial discretion." The rule goes on to state that "[a]n application for further review will not be granted in normal circumstances." *Id.* Indeed, the rule lists four types of cases that are indicative of the character of cases that this Court will consider for further review. They are (1) The court of appeals has entered a decision in conflict with a decision of this court or the court of appeals on an important matter; (2) The court of appeals has decided a substantial question of constitutional law or an important question of law that has not been, but should be, settled by the supreme court; (3) The court of appeals has decided a case where there is an important question of changing legal principles; (4) The

case presents an issue of broad public importance that the supreme court should ultimately determine. The case at bar falls into none of these categories and therefore further review would be improper in this matter.

II. APPELLANT’S APPLICATION FOR FURTHER REVIEW SHOULD BE DENIED BECAUSE FAILURE TO CONSIDER “THE FULL SPECTRUM OF FACTORS” IN ASSESSING EVIDENCE IS A QUESTION OF FACT NOT REVIEWABLE ON CERTIORARI AND THE COURT OF APPEALS APPLIED THE CORRECT STANDARD OF REVIEW

Appellant also argues that the “courts below erroneously assessed the evidence and ignored the full spectrum of factors adopted by this court in finding that Dupaco and its counsel violated Rule 1.413,” and thus further review is warranted. (Application at 23). This argument fails for two reasons.

A. Further Review Would Be Improper Because Appellant Raises a Question of Fact and Reviewing Courts Must Generally Defer to the District Court on Questions of Fact

1. Findings of Fact Are Not Generally Reviewable on Certiorari

First, Appellant raises a question about the sufficiency of evidence. Sufficiency of evidence is a question of fact, and not a question of law. *See McMurry v. Jahn*, 202 N.W. 758 (Iowa 1925).

Questions of fact are not generally reviewable on certiorari. *Smith*, 30 Iowa at 536. A reviewing court is bound by the district court's findings of fact, if those findings of fact are supported by substantial evidence. *Zimmerman*, 480 N.W.2d at 74. and appellate review may only correct erroneous applications of law. *Weigel*, 467 N.W.2d at 280.

2. Appellant's Assertions are Factually False and The District Court Considered the Appropriate Factors

Even if findings of fact were reviewable by this Court, Appellant's assertions are factually false, and this further review is improper. In *Weigel*, the Court set out four factors useful in determining whether or not an 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*, this 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*.¹ *Matthias*, 448 N.W.2d at 446.

It is clear from the record that the District Court gave appropriate weight to 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

¹ 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.

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).

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 took 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). Instead, 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. (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).

3. The District Court Found Two Separate Instances of Sanctionable Conduct so Reversal on the Single Ground Alleged by the Appellant Would Not Change the Ultimate Outcome, Making Further Review Improper.

Secondly, even if the lower courts failed to consider the *Weigel* factors as they related to the investigation in the identity of Ron LeConte, such a finding is not sufficient to reverse the court of appeals. The district court found that the Appellant's misrepresentation that the notice of disallowance was never sent by certified mail, despite it have been sent by certified mail was sufficient to impose sanctions on the appellants. (App. at 184). The court of appeals affirmed this finding. (Opinion at 10).

B. This is Not the Type of Case Typically Reviewed by the Supreme Court and Therefore Further Review Would Be Improper.

Finally, even if the Court of Appeals has erred by applying an improper standard of review, such an error is immaterial. This matter is before this Court on Appellant's Application for Further Review. Further review of this matter by this Court is improper. Iowa R. App. P. 6.1103(1)(b) admonishes that "further review by

the supreme court is not a matter of right, but of judicial discretion.” The rule goes on to state that “[a]n application for further review will not be granted in normal circumstances.” *Id.* Indeed, the rule lists four types of cases that are indicative of the character of cases that this Court will consider for further review. They are (1) The court of appeals has entered a decision in conflict with a decision of this court or the court of appeals on an important matter; (2) The court of appeals has decided a substantial question of constitutional law or an important question of law that has not been, but should be, settled by the supreme court; (3) The court of appeals has decided a case where there is an important question of changing legal principles; (4) The case presents an issue of broad public importance that the supreme court should ultimately determine. This matter falls into none of these categories and therefore further review would be improper in this matter.

III. APPELLANT’S APPLICATION FOR FURTHER REVIEW SHOULD BE DENIED BECAUSE THE COURT OF APPEALS APPLIED THE APPROPRIATE STANDARD IN REVIEWING THE AMOUNT OF THE SANCTIONS IMPOSED BY THE DISTRICT COURT.

Appellant further urges that the district court abused its discretion in awarding the Estate sanctions in an amount equal to forty hours of legal services. They assert that such an award is arbitrary and is made for a purpose inconsistent with the aims of Rule 1.413. Appellant further asserts that the district court failed to sufficiently consider the factors set out by this Court in *Rowedder v. Anderson*, 814 N.W.2d 585 (Iowa 2012). (Application at 28-32) This argument bears no merit.

A. The District Court’s Award of Sanctions Equal to Forty Hours of Legal Services is Not an Abuse of Discretion Because it is Based on Substantial Evidence.

Orders imposing sanctions for violations of Iowa R. Civ. P. 1.413 are reviewed for abuse of discretion. *Mathias*, 448 N.W.2d at 445. A reviewing court is bound by the district court’s findings of fact if those findings of fact are supported by substantial evidence. *Zimmerman*, 480 N.W.2d at 74. “Evidence is substantial if ‘a reasonable mind would accept it as adequate to reach a conclusion.’”

Crall, 714 N.W.2d at 619. “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*, 878 N.W.2d 229.

It is well established that the reasonableness of a sanction is a question of fact, not a question of law. *See Tinkham v. Kole*, 252 Iowa 1303, 1308 (1961). *See also MidAmerican Construction, LLC v. Sandin*, 2 N.W.3d 838 (Iowa 2024)(holding reasonableness of a doctor’s fee is a question of fact, not law). Questions of fact are not generally reviewable on certiorari. *Smith*, 30 Iowa at 536.

Even if this not solely a question of fact, the court of appeals applied the correct standard of review in finding that the district court did not abuse its discretion. Contrary to the contentions of the Appellant that the district court “looked only at the attorney fees submitted by Shoemaker,” (Application at 29), the trial court carefully scrutinized the sworn attorney fee affidavit submitted by counsel for the Appellee – exactly the type of evidence that is ordinarily used to determine an award of attorney fees – and the

court examined counsel for the Appellee in the hearing on Appellee's motion for sanctions about the contents of the affidavit in reaching its conclusions about the reasonableness of the sanctions. (App. at 218:10-219:2).

Because the district court based its finding of fact about the reasonableness of the amount of the sanctions on substantial evidence, both a sworn affidavit and live testimony, the district court did not abuse its discretion in setting the value of the sanctions at forty hours' worth of legal services. Because the district court did not abuse its discretion in setting the value of the sanctions, the court of appeals did not err in affirming the district court's decision.

B. Appellant's Argument That the Lower Courts Improperly Treated the Sanctions as a "Fee-Shifting Mechanism" Misrepresents the State of the Law in Iowa.

Appellant contends that that the district court's award of sanctions amounts to nothing more than an improper "fee-shifting mechanism" that is "unreasonable and has no connection with the rule's primary purpose of deterrence." (Application at 27) This argument fails because it misrepresents the purpose of Rule 1.413 by defining the purpose of the rule to narrowly.

While it is true that this Court has stated that the “primary purpose of Rule 1.413 is deterrence, not compensation” *First Am. Bank v. Fobian Farms, Inc.*, 906 N.W.2d 736, 745 (Iowa 2018), it has gone on in the same breath to hold that “[c]ompensation of the opposing party is a secondary purpose of Rule 1.413.” *Id.* In fact, this Court has stated “Perhaps *the most important* secondary purpose is partial compensation of the victims.” *Rowedder*, 814 N.W.2d at 593(emphasis added). “[I]t is ... clear that effective deterrence sometimes requires compensating the victim for attorney fees arising from abusive litigation.” *Barnhill*, 765 N.W.2d at 276.

Since both deterrence and compensation are recognized as purposes of Rule 1.413, the district court did not abuse its discretion in awarding sanction that would compensate the Appellee for Appellant’s improper filings. Because the district court did not abuse its discretion in setting the amount of the sanctions it imposed, the court of appeals properly affirmed the district court’s ruling.

C. *The District Court Did Not Err by Failing to Consider the Factors Set Out in Everly v. Knoxville Comm. Sch. Dist. in Determining the Amount of the Sanctions Awarded.*

Appellant contends that that the district court failed to consider the “*Rowedder*” factors in reaching the amount of the sanctions it awarded and therefore the district court abused its discretion in awarding sanctions. This argument fails for two reasons. First, the district court considered these factors and there is sufficient evidence in the record to show that they had done so, and secondly, even if the district court failed to make specific findings as to these factors, under existing law, such a failing is not fatal to a sanction award under Rule 1.413.

1. The District Court Considered the *Everly* Factors in Determining the Amount of the Sanctions it Awarded.

In *Everly v. Knoxville Community School District*, 774 N.W.2d 488 (Iowa 2009), this Court set out four factors that the district court should make specific findings about in order to determine a proper sanction under Rule 1.413. *Id* at 495. 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.”² *Id.*

The district court in the case at bar considered each of these factors in turn. The first factor is “the reasonableness of the attorney’s fees.” *Id.* The court engaged in a detailed analysis of the reasonableness of the attorney’s fees, examining both the affidavit submitted by the attorney for the Appellee and examining him about its content in the hearing on sanctions. (App. at 218:10-219:2) The court went on to make specific findings in its order about the reasonableness of the fees, substantially reducing the fees originally requested. (App. at 185-186).

The second and third factors are “the minimum to deter” and “the ability to pay.” *Everly*, 774 N.W.2d at 495. It is clear from the record that the district court considered these factors as well. Instead of assessing a lump-sum sanction award, the court carefully parsed the award among the three actions having found to have violated Rule 1.413. (App. at 186) The district court

² Appellant refers to these as the “Rowedder” factors, referring to *Rowedder v. Anderson*, 814 N.W.2d 585 (Iowa 2012), where they also appear.

ordered the entity with the greatest ability to pay the largest share of the sanctions. (App. at 186).

The final factor is “factors relating to the severity of the violation.” *Everly*, 774 N.W.2d at 495. Again, the district court considered this factor and made its analysis clear in its order. (App. at 185).

There is ample evidence in the record to show that that the district court made specific findings to each of the *Everly* factors. Because this is true, the district court did not abuse its discretion in fixing the amount of sanctions. Because the district court did not abuse its discretion, the court of appeals did not err in failing to reverse the district court’s decision.

2. Even if the District Court Failed to Properly Consider All of the *Everly* Factors, Such a Failure is Not Sufficient to Reverse the District Court’s Ruling.

Even if the district court had not made a specific finding as to one or more of the *Everly* factors, such a failure is not fatal to the imposition of sanctions under Rule 1.413. In *Rowedder*, this court has held that the failure of the district court to make specific findings regarding each of the *Everly* factors while still fixing the

amount of sanction under Rule 1.413 was not an abuse of discretion. *Rowedder*, 814 N.W.2d at 590. Since this court has held that such a failure is not an abuse of direction, the court of appeals did not err in affirming the district court's decision even if it had failed to make a finding regarding one of the *Everly* factors.

D. This is Not the Type of Case Typically Reviewed by the Supreme Court and Therefore Further Review Would Be Improper.

Even if the court of appeals has erred by applying an improper standard of review, such an error is immaterial. This matter is before this Court on Appellant's Application for Further Review. Further review of this matter by this Court is improper. Iowa R. App. P. 6.1103(1)(b) admonishes that "further review by the supreme court is not a matter of right, but of judicial discretion." The rule goes on to state that "[a]n application for further review will not be granted in normal circumstances." *Id.* Indeed, the rule lists four types of cases that are indicative of the character of cases that this Court will consider for further review. They are (1) The court of appeals has entered a decision in conflict with a decision of this court or the court of appeals on an important matter; (2) The court of appeals has decided a

substantial question of constitutional law or an important question of law that has not been, but should be, settled by the supreme court; (3) The court of appeals has decided a case where there is an important question of changing legal principles; (4) The case presents an issue of broad public importance that the supreme court should ultimately determine. This matter falls into none of these categories and therefore further review would be improper in this matter.

CONCLUSION

The decision of the court of appeals was proper. Appellee prays this Court deny Appellant's Application for Further Review and order procedendo in accordance Iowa Ct. R. 6.1103(6), or in the alternative, affirm decision of the court of appeals.

Dated this 9th day of April, 2024.

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CERTIFICATE OF COMPLIANCE

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/s/ Scott A. Shoemaker
Scott A. Shoemaker

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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 9th day of May, 2024.

/s/ Scott A. Shoemaker
Scott A. Shoemaker