IN THE SUPREME COURT OF IOWA

Supreme Court No. 23-2069
Delaware County Court No. 01281 CDDM008294

Matthew Kraus,
Appellant,

v.

Molly Kraus,
Appellee.

Appeal from the Iowa District Court in and for Delaware County
The Honorable Thomas A. Bitter, Judge

Appellee's Amended Brief

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Statement of the Issues Presented for Review

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II. The district court levied appropriate sanctions against Matthew for his frivolous filing.

Routing Statement

This case may be properly transferred to the Court of Appeals as it presents the application of existing legal principles. Iowa R. App. P. 6.1101(3)(a).

Statement of the Facts

The marriage

Molly and Matthew married on April 27, 2013 in Hopkinton, Iowa. They resided in Hopkinton during their marriage, and had two sons, BAK born in 2011 and BSVK born in 2013. While living in Hopkinton, the boys attended

school in the Maquoketa Valley Community School District. (D0061 Temp. Order p. 1, 4.24.21). On January 21, 2021, Matthew retained attorney John Carr and filed for divorce, seeking shared physical care of the boys. (D0001 Pet. p.1-2, 1.21.21). Molly retained Attorney Stephanie Fueger to represent her in the divorce proceedings and filed an answer to Matthew's petition seeking primary physical care of the boys. (D0010 Ans. p. 2, 3.5.21). Shortly after the divorce was filed, the marital home was sold, and Matthew rented a home in Hopkinton, and Molly moved to an apartment 25 minutes away in Dyersville near her longtime employer. On April 10, 2021, Matthew was arrested for operating a motor vehicle while intoxicated. The boys were not in the vehicle at the time. At the temporary matters hearing on April 20, 2021, the district court awarded Molly primary physical care of the boys and afforded Matthew liberal visitation. (D0061 Temp. Order p. 1-4, 4.24.21).

A year later, Molly sought to modify the temporary order due to Matthew's worsening alcohol abuse. Molly stated that, subsequent to the entry of the temporary order, Matthew had sought treatment in the emergency room for alcohol abuse, lost his employment as a heavy equipment operator at Boomerang due to excessive drinking-related absences and had caused several law enforcement visits to his home as well as a Department of Human Services investigation into potential child abuse. (D0124 App. to Modify Temp. Order p. 1-21, 5.31.22). In June of 2022, Matthew went to The Abbey Addiction

Treatment Center in Bettendorf, Iowa for a 30-day program for his alcohol abuse. (D0175 Dep. 7 L:2-14) In July of 2022, Matthew agreed to reduce his visitation with the boys during the pendency of the divorce proceedings. (D0134 Order Amending Temp. Order p. 1-3, 7.22.22). After completing rehab, in August of 2022, Matthew was hired by Connolly Construction as a heavy equipment operator. (D0175 Dep. 26 L:16-24).

One of the main disputes between the parties in the divorce proceedings was whether the boys would move to the Western Dubuque Community School District. Molly sought primary physical care and requested that the boys attend school in Western Dubuque, which is the district based on her residence. Matthew sought shared care and wanted the boys to remain in the Maquoketa Valley Community School District based on his address in Hopkinton. (D0201 Hrg. 34 L:5-25; D0175 Dep. 9 L:2-13). Another contested issue was visitation. After Matthew agreed to the decrease in his visitation in July of 2022, he claimed that the boys were not as happy because they did not get to see him or their cousins and friends as much. (D0175 Dep. 23 L:3-25, 24 L:3-18, 25 L:23-25, 26 L:1-5).

Divorce decree entered November 22, 2022

Despite these disagreements and after multiple mediation sessions attended by both the parties and their respective attorneys, the parties were eventually

able to resolve all issues in their divorce through a stipulation and agreement signed by both parties, which was incorporated into a decree and approved by the district court on November 22, 2022 ("the decree"). Per their agreement, Molly would have primary physical care of the boys and Matthew would have the same reduced amount of visitation he previously agreed to in July of 2022. The parties also agreed that, beginning with the 2023 – 2024 school year, the boys would be enrolled in the Western Dubuque Community School District, the school district in which Molly resided. (D0136 Stip. p. 1-10, 11.15.22; D0137 Decree p. 1-4, 11.22.22). At the time of the decree, Matthew was working for Connolly Construction earning $54,000 annually and Molly was working for Tomy International earning $45,000 per year. The decree required Matthew to pay Molly $850 per month in child support. (D0136 Stip. p. 1-10, 11.15.22; D0137 Decree p. 1-4, 11.22.22).

Post-decree

On December 7, 2022, two weeks after the decree was entered, the parties were having a disagreement via text message about what time Matthew was to pick up the boys on a Wednesday when there was no school. Matthew claimed the exchange time was 2PM and Molly stated that Matthew's parenting time began at 5:30 p.m. The decree provided that, "Matt shall have visitation with the minor children every Wednesday from after school or, if no school, 5:30

p.m. until the next morning ….” (D0136 Stip. p. 3, 11.15.22). When Molly sent Matthew a photo of the applicable paragraph in the stipulation stating that his parenting time would begin at 5:30 p.m., Matthew responded with, “Don’t worry, that’ll be getting changed soon,” followed by a smiley-face emoji. (D0160 Mtn for Sanctions p. 41, 8.24.23).

Just 51 days after the decree was entered, Matthew retained a new attorney, Thomas Viner, and filed a petition for modification of the decree on January 12, 2023. In support of his petition for modification, Matthew claimed that “substantial and material changes” had occurred since the decree and that “the current custody, care and visitation orders are no longer in the best interest of the children” and that child support, “may need adjusted.” Matthew prayed that the court award shared physical care of the children to the parties instead of Molly having primary physical care. (D0143 Pet. for Mod. p. 1-2, 1.12.23). Right after the petition for modification was filed, Molly’s attorney requested that the frivolous petition be dismissed as it was not filed in good faith. (D0201 Hrg. 59 L:13-24, 76 L:20-22). This request was ignored by Matthew and his counsel.

Molly was in the dark as to why Matthew sought to modify the decree only 51 days after it had been entered by the district court. Prior to filing the petition for modification, Matthew had not made Molly aware of any issues or changes involving the boys or Matthew’s financial status. (D0201 Hrg. 9 L:15-25, 10

L:1-9). The decree required the parties to exchange information concerning the boys, including information about "illnesses, injury, sickness or other conditions affecting the health or welfare of the children . . . . and behavioral issues resulting in disciplinary action (whether at home or at school) . . . . within 24 hours of the same." (D0136 Stip. p. 5, 11.15.22). Likewise, Molly had not personally observed any changes in the boys prior to the modification being filed in January. The boys' school, which was still in the Maquoketa Valley Community School District at the time, had similarly not alerted Molly to any concerns or issues with the boys. (D0201 Hrg. 13 L:1-18).

On January 18, 2023, several days after Matthew filed his petition for modification, Molly learned through her attorney that Matthew was claiming that their youngest son had made a statement about bringing a gun to school if he had to switch to Western Dubuque schools. (D0165 Ex. MM p. 8, 9.28.23). Matthew contended that their son said this on November 30, 2022, right after he told his sons they had to switch to Western Dubuque schools the following August. In response to his son's purported threat to bring a gun to school, Matthew testified that he,

> **. . . . told [my son] that was not acceptable, and other than that we just kind of left it alone.**

(D0175 Dep. 12 L:2-12, 13 L:3-23, 14 L:3-17, 15 L:1-4; Emphasis added). Matthew admitted that he did not inform Molly of their son's purported threat

to bring a gun to school until after he filed the modification action. Matthew also did not notify the boys' school or the boys' counselor about the alleged gun threat until four months later in March of 2023. (D0175 Dep. 17 L:9-21).

At Matthew's deposition on May 9, 2023, when asked what had changed in the 51 days since the decree had been entered, Matthew claimed that his oldest son also told him in February of 2023 that he would do anything to get expelled from Western Dubuque schools. Matthew's deposition was the first time Molly had heard this allegation from Matthew about their oldest son. (D0175 Dep. 18 L:1-25). Matthew also testified at his deposition that the boys were not as happy because they did not get to see him or their cousins and friends as much. (D0175 Dep. 23 L:3-25, 24 L:3-18, 25 L:23-25, 26 L:1-5).

As to why child support may need to be adjusted after 51 days, Matthew argued at his deposition that his annual salary was not $54,000, the amount he agreed to in the stipulation, but that it was closer to $49,000. Matthew claimed the $54,000 figure did not consider that he was laid off during the winter months in 2023 when he received unemployment instead of his salary. (D0201 Hrg. 37 L:6-25, 38 L:1-18). Matthew testified at his deposition that he had been employed in the construction industry for many years and that it was common for him to experience periods of layoffs in the winter months. (D0175 Dep. 26 L:10-25, 27 L:1-25).

On August 24, 2023, Molly filed a motion for sanctions against Matthew alleging that Matthew's petition for modification violated Iowa Rule of Civil Procedure 1.413 as it was not well grounded in fact or warranted by existing law or by a good faith argument for the modification of existing law. Specifically, Molly argued that Matthew knew there was no substantial change in circumstances warranting a modification of the decree, he simply wanted to rehash the provisions of the decree he regretted in the hopes he would get a more favorable outcome this time. (D0160 Mtn for Sanctions p. 1-8, 8.24.23). Matthew resisted Molly's motion. The hearing on Molly's motion for sanctions was held on October 3, 2023 before Judge Thomas A. Bitter. (D0189 Order Sanctions p. 1, 10.23.23). Both Molly and Matthew testified at the hearing and counsel for each party gave an oral argument. (D0201 Hrg. 1-87).

The district court entered an order granting Molly's motion for sanctions on October 23, 2023. In finding that Matthew violated Rule 1.413, the district court noted that the uncorroborated statement allegedly made by the parties' youngest son was the only basis for Matthew's request to change physical care. There were no other changes. The district court was not convinced the statement had even been made given Matthew's failure to bring the gravity of the statement to anyone's attention and the boys' solid performance at their new school in Western Dubuque. (D0189 Order Sanctions p. 3, 10.23.23).

The district court also found Matthew's request to modify child support to be without merit because even if Matthew's salary was reduced to $49,000, it would not result in a 10% deviation in the child support amount which is required for a modification under Iowa Code § 598.21C(2)(a). Furthermore, the alleged basis for the modification – that claimed reduction in income due to winter layoff – was known by Matthew prior to him agreeing to entry of the Decree. The district court dismissed Matthew's petition for modification and requested that Molly's counsel file an attorney fee affidavit for the court's review prior to assessing monetary sanctions. (D0189 Order Sanctions p. 1-4, 10.23.23).

Matthew filed a motion to reconsider on November 1, 2023, and Molly filed a resistance where she stated,

> Is it believable that a parent would hear their child claim to act out with violence and be so concerned about the statement to file a Petition for Modification but not to otherwise alert a single other person about the statement? The [district court] correctly answered that question "No" in finding [Matthew's] testimony on this point was not credible and….there was no good faith basis to support the Modification.

(D0192 Mtn to Reconsider p. 1, 11.1.23; D0194 Res. to Mtn to Reconsider p.3, 11.7.23). Molly's counsel filed an application and affidavit in support of attorney fees, requesting $7,226.65 in sanctions against Matthew. Molly's counsel included billing entries with her application and affidavit. On December 1, 2023, the district court denied Matthew's motion to reconsider

and assessed sanctions against Matthew in the amount of $7,226.65. (D0193 App. for Atty Fees p. 1-16, 11.1.23; D0195 Supp. Atty Fees p. 1-4, 11.7.23; D0196 Order for Judgment p. 1, 12.1.23). Matthew appealed. (D0197 Notice of Appeal p. 1, 12.18.23).

ARGUMENT

Iowa Rule of Civil Procedure 1.413 requires that all motions and pleadings must, to the best of the signer's knowledge and belief after reasonable inquiry, be well grounded in fact and either warranted by existing law or by a good faith argument for the modification of existing law. Iowa R. Civ. P. 1.413. Rule 1.413 further provides that if a motion or pleading is filed in violation of the rule, the court "**shall** impose upon the person who signed it, a represented party, or both, an appropriate sanction." (*Id.*; Emphasis added).

The rule creates three independent duties known as the "reading, inquiry, and purpose elements." *Barnhill v. Iowa Dist. Court for Polk Cnty.*, 765 N.W.2d 267, 272-73, 276-77, 279 (Iowa 2009). Each duty is independent of the others, and a breach of one duty is a violation of the rule. *Harris v. Iowa Dist. Ct.,* 570 N.W.2d 772, 776 (Iowa Ct.App.1997). Compliance is determined at the time the paper is filed and not with hindsight gained from evidence discovered later. *Id.*; *Weigel v. Weigel*, 467 N.W.2d 277, 280-81 (Iowa 1991). The test is

"reasonableness under the circumstances." *Schettler v. Iowa Dist. Court,* 509 N.W.2d 459, 466 (Iowa 1993). A party or his attorney need not act in subjective bad faith or with malice to trigger a violation. Nor may a party or his attorney use ignorance of the law or legal procedure as an excuse. *Barnhill,* 765 N.W.2d at 273.

One of the primary goals of the rule is to maintain a high degree of professionalism in the practice of law. *Weigel,* 467 N.W.2d at 282. The rule is intended to discourage parties and counsel from filing frivolous suits and otherwise deter misuse of pleadings, motions, or other papers. *Hearity v. Iowa Dist. Ct.,* 440 N.W.2d 860, 864 (Iowa 1989). Sanctions are meant to avoid the general cost to the judicial system in terms of wasted time and money. *Breitbach v. Christenson,* 541 N.W.2d 840, 846 (Iowa 1995). Because rule 1.413 is based on Federal Rule of Civil Procedure 11, courts look to federal decisions applying rule 11 for guidance. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989).

Preservation of Error

Molly agrees that Matthew preserved error on this issue.

Standard of Review

Review of an order imposing sanctions is reviewable for an abuse of discretion. *Mathias,* 448 N.W.2d at 445. The Court will correct erroneous applications of the law. The district court's findings of fact are binding on the

Court if supported by substantial evidence. *Barnhill*, 765 N.W.2d at 272. Because the district court has the advantage of having a front-row seat to the testimony, the Appellate Court must give deference to the district court's credibility findings,

> A trial court deciding dissolution cases is greatly helped in making a wise decision about the parties by listening to them and watching them in person. In contrast, appellate courts must rely on the printed record in evaluating the evidence. We are denied the impression created by the demeanor of each and every witness as the testimony is presented.

In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984).

I. Matthew's petition for modification violated Rule 1.413 as it was not grounded in fact or warranted by existing law.

A. Rule 1.413 authorizes the district court to levy sanctions against Matthew for filing a baseless petition for modification 51 days after the decree was entered.

Matthew largely does not dispute the district court's factual findings in its order assessing sanctions. Instead, for most of his brief, Matthew shifts the blame, arguing that Molly's sanctions motion was untimely, that Rule 1.413 does not apply to him or his petition for modification and that the rule does not allow courts to dismiss an action as a sanction. None of these arguments have merit. (Matthew's Brief 8-18)

Matthew contends in his brief that Rule 1.413 does not apply to his petition for modification because there is no Iowa case directly on point where a district court levied sanctions based on a petition for modification of a divorce decree. (Matthew's Brief 9-11; D0201 Hrg. 79 L:1-13, 80 L:15-25). The plain language

of Rule 1.413 states that it applies to every "motion, pleading or other paper." The legislature certainly could have drafted the rule to exclude motions, pleadings or other papers filed in family law proceedings, but the rule does not contain any such exceptions. Legislative intent is expressed by omission as well as by inclusion. *Watson v. Iowa Dep't of Transp. Motor Vehicle Div.*, 829 N.W.2d 566, 570 (Iowa 2013). The legislature intended for Rule 1.413 to apply to every, "motion, pleading or other paper," and that intent can be inferred from the legislature's omission of any exclusions to the rule. *Id.*

While there are no Iowa cases imposing sanctions based on a frivolous petition for modification, Iowa district courts have assessed sanctions in family law proceedings. In *In Re Marriage of Stark*, just like Matthew and Molly, Josh and Kelly executed a stipulation resolving all issues in their dissolution action. No. 04-0362, 2004 WL 2676431 at *1 (Iowa Ct. App. Nov. 24, 2004). Later, Josh filed a series of petitions to set aside the dissolution decree, alleging it was obtained through fraud and irregularity. Kelly resisted Josh's attempts to set aside the decree and requested sanctions against Josh and his attorney for filing baseless pleadings. At the preliminary hearing, the district court found Josh had no evidence to support his claim of fraud or irregularity and was appalled at the misuse of the judicial process. *Id.* at *2. The district court denied Josh's petition and assessed sanctions against Josh and his attorney under Rule 1.413. On appeal, the Iowa Court of Appeals affirmed the sanctions. *Id.* at *4.

Matthew similarly contends that Rule 1.413 applies to attorneys but not to him as a party. (Matthew's Brief 14). While most sanctions are awarded against lawyers, rule 1.413 expressly permits the court to sanction a represented party instead of or in addition to the lawyer who signed the pleading. *See* Iowa R. Civ. P. 1.413(1); *Breitbach*, 541 N.W.2d at 845 (noting the rule "is aimed at attorney conduct but may sanction client conduct as well"); *State ex rel. Iowa Dep't of Human Servs. v. Duckert*, 465 N.W.2d 871, 873 (Iowa 1991) (stating that "[a] represented party also bears responsibility for sanctions under the rule"). The Iowa Supreme Court has noted that imposing sanctions on parties can act as a deterrent,

> . . . . a monetary sanction imposed on a represented party sends a message that can assist lawyers counseling other clients to refrain from filing improper or frivolous pleadings.

First Am. Bank v. Fobian Farms, Inc., 906 N.W.2d 736, 745 (Iowa 2018).

Next Matthew complains that Molly's motion for sanctions was untimely. He cannot point to a single case suggesting that Molly's motion for sanctions, filed seven months after the petition for modification, is untimely under the rule. (Matthew's Brief 13, 20, 21). The text of Rule 1.413 contains no deadline for filing a motion for sanctions, however, the Iowa Supreme Court has held that "such motions must be filed expeditiously without undue delay." *Hearity v. Bd. of Sup'rs For Fayette Cnty.*, 437 N.W.2d 907, 909 (Iowa 1989). In *Hearity*, the

Iowa Supreme Court declined to adopt a timeframe shorter than the time to appeal a final judgment, and instead, held that,

> The many considerations which confront an advocate seeking to protect the best interests of a client militate against requiring that a motion for ... sanctions be filed within a time frame shorter than the expiration of the time for appeal from the final judgment.

*27 *Id.* The motion for sanctions in this case was filed well before the expiration of the time for appeal from the final judgment. (D0160 Mtn for Sanctions p. 1, 8.24.23).

More recently in *Dutton,* the Iowa Court of Appeals held that a sixteen-month delay rendered the motion for sanctions untimely. *Dutton, Daniels, Hines, Kalkhoff, Cook & Swanson, P.L.C. v. Iowa Dist. Ct. for Black Hawk Cnty.,* No. 21-1390, 2022 WL 2347197 at *5 (Iowa Ct. App. June 29, 2022). The plaintiff's petition in *Dutton* was served on January 9, 2020, and included the false claim that plaintiff owned the property. Within a month, the defendant had notified plaintiff's counsel that the petition violated Rule 1.413 because plaintiff did not own the property. Still, defendant waited until June 2021 to file its motion for sanctions based on the false ownership claim. *Id.* The Court of Appeals held that the motion for sanctions was untimely as to the violations in the petition given the sixteen-month delay. *Id.*

Here, the frivolous petition for modification was filed on January 12, 2023. (D0143 Pet. for Mod. p. 1-2, 1.12.23). Because the allegations in Matthew's

petition for modification were more complex and not as easily proven false as the claim about ownership of property in *Dutton*, Molly's counsel needed to depose Matthew before filing the motion for sanctions. *Id.* Despite requesting to depose Matthew immediately after the petition for modification was filed, Molly's counsel was not able to depose Matthew until May 9, 2023. (Matthew's Brief 1; D0175 Dep. 1 L:9-10). Once the transcript for Matthew's deposition was received in late June, Molly prepared the motion for sanctions, which was filed on August 24, 2023. (D0160 Mtn for Sanctions p. 1-8, 8.24.23). In discussing the timeliness of motions for sanctions, the Court of Appeals emphasized in *Dutton* that, "[w]e usually wouldn't expect such a motion until after the completion of discovery." *Id.* Molly's motion for sanctions was timely as it was filed soon after completing Matthew's deposition where he confirmed the frivolous nature of his filing. Once Molly gathered the pertinent facts to support her motion for sanctions, she filed the motion, "expeditiously without undue delay." *Hearity*, 437 N.W.2d at 909.

B. Matthew's petition for modification contained no legitimate basis for modifying custody or support under Iowa law.

Under rule 1.413, a reasonable inquiry into the facts and law must be completed before a "pleading, motion or other paper" can be filed with the court. *Mathias,* 448 N.W.2d at 445. A reasonable inquiry is necessary to ensure that the pleading is well grounded in fact. Iowa R. Civ. P. 1.413. This

requirement is critical because pretrial motions under other rules can often fail to screen out pleadings not well grounded in fact. *Nelson v. Lindaman*, 867 N.W.2d 1, 6 (Iowa 2015); *Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994)(Courts deciding motions to dismiss must assume that all facts alleged are true).

Matthew contends that Molly's motion for sanctions amounts to a motion for summary judgment because his petition for modification was ultimately dismissed. He asserts that Molly filed a motion for sanctions as an "end-around to avoid the protections of a motion for summary judgment." (Matthew's Brief 14, 18). In motions for summary judgment, the district court considers whether there is a genuine issue of material fact and views the evidence in the light most favorable to the nonmoving party, who is entitled to every legitimate inference that court may draw from the record. Iowa R. Civ. P. 1.981; *Nelson*, 867 N.W.2d at 6. The district court does not make credibility assessments in ruling on a motion for summary judgment. *Id.*

Because the evidence is viewed in favor of the non-movant, and no credibility determinations are made by the district court, motions for summary judgment are not usually effective at weeding out potentially frivolous claims made by the non-movant. Iowa R. Civ. P. 1.981. Rule 1.413, on the other hand, targets baseless claims like the one made by Matthew in his petition for modification, which would likely slip through the gaps in pretrial screening

devices, like a motion for summary judgment. Matthew cannot complain that rule 1.413 effectively targeted and revealed his baseless allegations simply because a motion for summary judgment may have failed to do the same. Iowa R. Civ. P. 1.981; Iowa R. Civ. P. 1.413.

The ABA Section on Litigation as set forth a list of factors to be considered in determining whether a reasonable inquiry into the facts and law has been made, including the following factors that are relevant here: (e) the clarity or ambiguity of existing law; (f) the plausibility of the legal positions asserted; (g) the knowledge of the signer. *Mathias,* 448 N.W.2d at 446–47 (citing ABA Section on Litigation, *Standard and Guidelines for Practice under Rule 11 of the Federal Rules of Civil Procedure* (1988), *reprinted in* 121 F.R.D. 101, 114 (1988)).

Iowa law relating to actions to modify custody and support is not ambiguous; it is well-settled that the party seeking modification of a decree must prove by a preponderance of the evidence "that conditions since the decree was entered have so materially and substantially changed that the children's best interests make it expedient to make the requested change." *In re Marriage of Frederici,* 338 N.W.2d 156, 158 (Iowa 1983). The court entering the decree must not have contemplated the change in circumstances when it entered the original decree. *Id.* Additionally, the change in circumstances must "be more or less permanent, not temporary." *Id.* Finally, the parent seeking a modification of custody "must prove an ability to minister more effectively to

the children's well-being." *Id.* A party who seeks to modify custody must meet this heavy burden because once a court fixes custody "it should be disturbed only for the most cogent reasons." *Id.*

The uncorroborated statement about bringing a gun to school allegedly made by the parties' youngest son on November 30, 2022 was the only basis for Matthew's request to change physical care. (D0189 Order Sanctions p. 3, 10.23.23). In response to his son's purported threat to bring a gun to school, Matthew testified that he,

> . . . . told [my son] that was not acceptable, and other than that we just kind of left it alone.

(D0175 Dep. 12 L:2-12, 13 L:3-23, 14 L:3-17, 15 L:1-4). The district court did not find Matthew's testimony about the statement credible since Matthew did not inform Molly of their son's purported threat to bring a gun to school until after he filed the modification action on January 12, 2023. (D0189 Order Sanctions p. 3, 10.23.23). Once Molly was made aware of the purported statement on January 18, 2023, her attorney asked Matthew's attorney, "When did this happen? What were the circumstances? . . . Was the school made aware? Please provide this information ASAP." (Matthew's Brief 20). Matthew did not notify the boys' counselor about the purported gun threat until four months later, on March 27, 2023. (D0180 Ex. QQ p. 1-2, 10.3.23). Matthew

never notified the boys' school principal about the purported gun threat. (D0181 Ex. RR p. 2, 10.3.23).

Matthew's position that his son's statement about bringing a gun to school constituted a substantial change in circumstances warranting the modification of custody was not plausible, and therefore sanctionable. Matthew's conduct is measured by an objective standard of reasonableness under the circumstances. *Barnhill*, 765 N.W.2d at 272. No reasonable parent whose son threatened to bring a gun to school would respond in such a cavalier manner with no follow up. No reasonable parent who shares joint legal custody of a child with another parent would find bringing a petition for modification of the decree to be an acceptable way to inform the other parent that her son threatened to bring a gun to school six weeks earlier. No reasonable parent whose child threatened to bring a gun to school would sit idle for four months before finally sharing it with the child's school counselor. The district court was correct in questioning the voracity of Matthew's allegation since Matthew's bland, apathetic reaction to his son's alleged statement that he was going to bring a gun to school is completely inconsistent with maintaining that the same statement constitutes a substantial and material change in circumstances. (D0175 Dep. 12 L:2-12, 13 L:3-23, 14 L:3-17, 15 L:1-4, 16 L:6-25, 17 L:9-21).

Matthew also claims that his child support obligation needed to be modified because his annual salary was not $54,000, the amount he agreed to in the

stipulation, but that it was closer to $49,000. (D0201 Hrg. 37 L:6-25, 38 L:1-18). Iowa Code Section 598.21C(2)(a) defines a substantial change in circumstances necessitating a modification of a child support order as a change in the income of a party that was not contemplated at the time of the decree, and the current child support order varies by more than ten percent from the amount which would be due pursuant to the most current guidelines. Iowa Code § 598.21C(2)(a). Matthew concedes that he was aware of the purported error regarding his salary in the stipulation but signed it anyway. (D0201 Hrg. 37 L:6-25, 38 L:1-3). Matthew argues the $54,000 figure in the stipulation is inaccurate because it did not consider that he was laid off during the winter months in 2023 when he received unemployment instead of his salary. (D0201 Hrg. 37 L:6-25, 38 L:1-18). The alleged error regarding Matthew's salary in the stipulation as well as the possibility of decreased wages during winter layoffs were both known by Matthew prior to him agreeing to entry of the Decree. Because both purported changes were contemplated at the time of the decree, they cannot form the basis for a modification of child support. Iowa Code § 598.21C(2)(a).

Even if Matthew was successful in arguing that he would only earn $49,000 and that was an unexpected, permanent change from what he was earning at the time of the decree, application of the current Iowa Supreme Court Guidelines would not result in a variance of more than ten percent from the

child support obligation in the parties' stipulation. Iowa Code § 598.21C(2)(a). As illustrated by the child support guideline worksheet introduced at the sanctions hearing, Matthew's support obligation would be reduced to approximately $784 per month. Under the current decree, his obligation is $850 per month. The difference between the obligation under the current guidelines and the previous one does not result in a variance of at least ten percent. (D0183 Ex. SS p. 1-4, 10.3.23).

The standard to be applied in a child support modification case is clear and unequivocal. The statute provides a built-in threshold for viability. Either Matthew failed to calculate the change in his potential child support obligation based on the current guidelines or Matthew filed this modification knowing that the change did not rise to the level required by Iowa Code Section 598.21C(2)(a). Under either scenario, Matthew's conduct violated Rule 1.413 and warranted sanctions.

C. Matthew filed his petition for modification for the improper purpose of rehashing provisions of the decree he found unfavorable.

Rule 1.413 imposes an obligation not to file pleadings or motions for any improper purpose. The rule specifically includes harassment, unnecessary delay and a needless increase of litigation costs as examples of improper purposes. Iowa R. Civ. P. 1.413. "The 'improper purpose' clause seeks to eliminate tactics that divert attention from the relevant issues, waste time and serve to trivialize

the adjudicatory process. A harassing claim deprives the court of desperately needed time to hear legitimate complaints and results in greater costs to the taxpayers." Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 483, 499 (1987).

Matthew admitted under oath that he filed his petition for modification to change the things he regretted about his agreement with Molly:

> Q. In the stipulation that finalized your divorce that is Exhibit 1, you and Molly agreed that she would have primary care of the boys; right?
> A. Yes.
> Q. And you understood that meant that they would live primarily with her?
> A. Yes.
> Q. And they would have visitation with you on Wednesdays overnight and every other weekend?
> A. Yes.
>
> ***
>
> Q. Did you regret agreeing to that arrangement after the decree was entered?
> A. Yes.
> Q. Did you want shared care of the boys?
> A. Yes.
> Q. Did you wish you had not signed the agreement?
>
> 9
>
> A. Yes.
>
> ***
>
> Q. So it was your intent to do what you could do to get this decree changed to get more time with the boys; right?
> A. Yes.
> Q. And that has been your intent ever since the decree was entered; is that right?

15 A. Yes.

(D0175 Dep. 8 L:4-25, 9 L:1-13, 11 L:9-15

While represented by counsel, Matthew voluntarily signed the stipulation and agreement to resolve his divorce with Molly in November of 2022. (D0136 Stip. p. 9, 11.15.22). Two weeks later, he was taunting Molly via text about modifying the decree, "Don't worry, that'll be getting changed soon," followed by a smiley-face emoji. (D0160 Mtn for Sanctions p. 41, 8.24.23). Matthew's conduct constitutes an improper purpose in violation of Rule 1.413 because it needlessly increased litigation costs by requiring Molly to spend time and money to defend Matthew's quest to get a second bite at the apple. Matthew's demand for a do-over trivialized the adjudicatory process and wasted judicial resources that could have been allocated to legitimate complaints.

II. The district court levied appropriate sanctions against Matthew for his frivolous filing.

Preservation of Error

Molly agrees that Matthew has preserved error on this issue.

Standard of Review

A district court has broad discretion in applying Rule 1.413. The Court's review is for an abuse of discretion, but it will correct erroneous applications of law. *Weigel,* 467 N.W.2d at 280. The district court's determination, "rests upon

and is informed by the [d]istrict [c]ourt's intimate familiarity with the case, parties, and counsel, a familiarity [the Appellate Court] cannot have." *O'Connell v. Champion Int'l Corp.,* 812 F.2d 393, 395 (8th Cir.1987).

Argument

"Sanctions are meant to avoid the general cost to the judicial system in terms of wasted time and money." *Barnhill*, 765 N.W.2d at 273. Although deterrence is the primary goal of rule 1.413, the rule serves other purposes, such as maintaining professionalism in the practice of law. *Id.* Perhaps the most important secondary purpose is partial compensation of the victims. *See id.* at 276. Although this case does not involve Rule 11, the federal rule is instructive in explaining the nature of sanctions: "A sanction imposed under this rule must be limited to what suffices to deter repetition of such conduct or comparable conduct by others similarly situated." Fed. R. Civ. P. 11(c)(4). The Sixth Circuit has pointed out that "although it is clear that Rule 11 is not intended to be a compensatory mechanism in the first instance, it is equally clear that effective deterrence sometimes requires compensating the victim for attorney fees arising from abusive litigation." *Rentz v. Dynasty Apparel Indus., Inc.,* 556 F.3d 389, 400 (6th Cir.2009). The Sixth Circuit has also concluded that *de minimis* sanctions are "simply inadequate to deter Rule 11 violations." *Id.* at 402.

The district court dismissed Matthew's petition for modification and requested that Molly's counsel file an attorney fee affidavit for the court's

review prior to assessing monetary sanctions. (D0189 Order Sanctions p. 1-4, 10.23.23). Molly's counsel filed an application and affidavit in support of attorney fees, requesting $7,226.65 in sanctions against Matthew. Molly's counsel included detailed billing entries from January 12, 2023 to November 7, 2023, and attested in her affidavit that all of the entries were in response to the frivolous petition for modification. On December 1, 2023, the district court assessed sanctions against Matthew in the amount of $7,226.65. (D0193 App. for Atty Fees p. 1-16, 11.1.23; D0195 Supp. Atty Fees p. 1-4, 11.7.23; D0196 Order for Judgment p. 1, 12.1.23).

Matthew complains in his brief that the sanction amount was "triple what Molly testified she had paid." This is a misstatement of the record. Molly did not testify to a specific amount of attorney fees she had paid, she testified that she did not know the exact amount she paid, but she believed she had paid a few thousand. (Matthew's Brief 24; D0201 Hrg. 27 L:12-22). Molly's failure to recall the precise amount of attorney fees she had paid while being questioned on the witness stand is irrelevant when the district court requested, and Molly's counsel promptly provided, detailed billing entries from January 12, 2023 to November 7, 2023 showing the amount of attorney fees incurred in response to the frivolous petition for modification. Matthew did not challenge the reasonableness of those fees. (Matthew's Brief 23-4). The attorney fees charged to Matthew were reasonable given that Matthew's entire petition for

modification was baseless, causing Molly and her counsel to spend a significant amount of time responding to the frivolous petition for modification.

Matthew also argues that dismissal is not an appropriate sanction. Rule 1.413 provides in relevant part:

> If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, 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.

Iowa R. Civ. P. 1.413(1). The language of rule 1.413 was borrowed from Federal Rule of Civil Procedure 11. *Franzen v. Deere & Co.,* 409 N.W.2d 672, 673–74 (Iowa 1987). The rule does not limit the district court on the type of sanctions which may be imposed but refers to those which are "appropriate." The rule states that an appropriate sanction "may" include expenses and counsel fees. The Advisory Committee states in the comments to Rule 11 that "[t]he court, however, retains the necessary flexibility to deal appropriately with violations of the rule. It has discretion to tailor sanctions to the particular facts of the case, with which it should be familiar." Fed. R. Civ. P. 11 (comments to 1983 amendment).

The Standards and Guidelines for Practice Under Rule 11, which has been cited with approval several times by the Iowa Supreme Court, identifies the dismissal of the action as a potential sanction a district court may impose. ABA,

Section of Litig., *Standards and Guidelines for Practice Under Rule 11 of the Federal Rules of Civil Procedure*, 121 F.R.D. 101, 124 (1988); *First Am. Bank,* 906 N.W.2d at 746; *Rowedder v. Anderson*, 814 N.W.2d 585, 590 (Iowa 2012); *Barnhill,* 765 N.W.2d at 273; *Mathias*, 448 N.W.2d at 446-7.

Here, it was appropriate for the district court to dismiss Matthew's petition for modification because the uncorroborated statement about bringing a gun to school allegedly made by the parties' son was the only basis for Matthew's request to change physical care. The district court was not convinced the statement had even been made given Matthew's failure to bring the gravity of the statement to anyone's attention and the boys' solid performance at their new school in Western Dubuque. Similarly, Matthew's request to modify child support was also baseless because even if Matthew's salary was reduced to $49,000, it would not result in a 10% deviation in the child support amount which is required for a modification under Iowa Code § 598.21C(2)(a). (D0189 Order Sanctions p. 3, 10.23.23).

Matthew argued at the sanctions hearing that he should be allowed to proceed to trial on his baseless modification action. The district court held that "the court doesn't just allow a meritless claim to proceed to trial under the thinking that a remedy can be later applied." (D0189 Order Sanctions p. 4, 10.23.23). The purpose of Rule 1.413 would be thwarted if, upon the district court's determination that a pleading was frivolous under Rule 1.413, the

district court must nevertheless allow the pleading to proceed through the court system, wasting the opposing party's time and money and the court's already-stretched resources. Similarly, if courts were prevented from dismissing frivolous actions, litigants would have little incentive to pursue pre-trial sanctions if the baseless claims would be allowed to proceed to trial anyway.

CONCLUSION

Molly requests that this Court affirm the district court's finding of a violation of Rule 1.413, the imposition of sanctions against Matthew in the amount of $7,226.65 and the dismissal of Matthew's petition for modification.

REQUEST FOR NONORAL SUBMISSION

Molly respectfully requests that this matter be submitted for review without oral argument.

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Proof of Service & Certificate of Filing

I certify that on April 15, 2024, I, the undersigned party or person acting in their behalf, did serve Appellee's Amended Brief on counsel for all parties to this action using the Iowa Judicial Branch EDMS system, which will send notification of such filing to all counsel and all parties to this action.

I further certify that on April 15, 2024, I filed Appellee's Amended Brief with the Clerk of the Iowa Supreme Court using the Iowa Judicial Branch EDMS system.

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Dated this 15th day of April 2024.

/s/ McKenzie R. Blau