IN THE COURT OF APPEALS OF IOWA

No. 23-0054
Filed March 6, 2024

DUPACO COMMUNITY CREDIT UNION,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR LINN COUNTY,
Defendant.

Appeal from the Iowa District Court for Linn County, Valerie L. Clay, Judge.

A credit union and its attorneys seek certiorari review following an award of sanctions for failing to adequately investigate claims made in pleadings. **WRIT ANNULLED.**

McKenzie R. Blau of O'Connor & Thomas, P.C., Dubuque, for appellant.

Scott A. Shoemaker of Scott Shoemaker and Associates, P.L.C., Cedar Rapids, for appellee.

Considered by Tabor, P.J., Buller, J., and Vogel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2024).

BULLER, Judge.

In this certiorari action, we review sanctions imposed against two attorneys and their client, Dupaco Community Credit Union ("Dupaco"). The district court imposed sanctions after concluding the attorneys violated their professional obligations when they filed pleadings without reasonably inquiring into asserted facts. Because the district court did not abuse its discretion, we annul the writ and allow the order for sanctions to stand.

I. Background Facts and Proceedings

The alleged attorney misconduct arose from estate proceedings. Dupaco electronically filed a claim in probate through a non-attorney agent, Amy Manning, asserting it was owed a debt. The claim was signed by Manning and listed a Dubuque address and P.O. Box 179. The estate sent Dupaco a notice of disallowance by first class and certified mail to the P.O. box listed on the claim and subsequently filed an affidavit of mailing.

Seventy days after the notice was mailed, Dupaco requested a hearing and asserted in pleadings through attorney McKenzie Blau that the notice was never sent to Dupaco by certified mail at the address on the claim. The estate resisted and attached the affidavit of mailing, the return receipt signed by Ron LeConte, and a printout of the tracking history from the United States Postal Service (USPS) website. The court directed Dupaco to address these contentions, and Dupaco—in a filing signed by Blau—asserted the notice was "never received by [Dupaco] at P.O. Box 179 or at any other address associated with [Dupaco], whether by certified mail, ordinary mail, or otherwise." Dupaco further asserted that LeConte was "not an agent or representative of [Dupaco]" and was actually "an agent of the

United States Postal Service." Last, Dupaco claimed the USPS printout did not confirm delivery, but instead showed an "individual" picked up the mail. As Dupaco's attorneys described this pleading later, they asserted "an interloper" who worked for USPS "had signed for the disallowance without authorization and the disallowance never was received by Dupaco."

A few weeks later, attorney Thomas Bright joined Blau in representing Dupaco. At a July 1 hearing, Bright orally represented to the court that "the notice of disallowance was not actually sent via certified mail to the address listed in the claim." The estate's attorney argued that LeConte was a long-time courier for Dupaco, "under contract by [Dupaco] to retrieve their mail pieces from the P.O. box and to deliver them to [Dupaco]'s loading dock." Bright responded that "from [his] conversations with Ms. Manning," LeConte was a "representative of the United States Postal Service" who was not authorized to receive mailings and sign for them on behalf of Dupaco. Bright further claimed "no one affiliated with Dupaco, as an employee of Dupaco or someone authorized to receive their mail, had any knowledge of these mailings at any time." In total, Bright represented at least seven times at the hearing that the notice was never mailed, received, or handled by anyone associated with Dupaco. Bright also argued witness testimony was necessary to resolve the issue, and an evidentiary hearing was scheduled for about sixty days later.

A week before the scheduled evidentiary hearing, the estate filed an affidavit from LeConte. LeConte's affidavit established he owned and operated a delivery service known as "Swift Delivery" and had been authorized by Dupaco to retrieve mail from its P.O. Box and deliver it to their office for more than ten years.

LeConte testified he was authorized to sign for certified mail and had done so "on a regular basis" while contracted with Dupaco. He believed his signature confirming receipt of the notice by certified mail was authentic. And he testified he was not an employee or agent of USPS.

Two days later, Blau and Bright moved to dismiss their request for a hearing. They indicated "it ha[d] recently come to Dupaco's attention that Ron LeConte owns a delivery service that contracts with Dupaco to receive mail that is sent to Dupaco's P.O. Box." They maintained Dupaco never received the notice of disallowance but conceded it was sent by certified mail. The court canceled the hearing.

The estate moved for sanctions against Dupaco, attorneys Blau and Bright, "or all of them" for making arguments unsupported by existing law, "fail[ing] to perform even the most rudimentary investigation into the facts on their claim," and presenting false or misleading facts to the court. Relying on Iowa Rule of Civil Procedure 1.413(1) and Iowa Code section 619.19 (2021), the estate sought $24,351.45 in fees, costs, and expenses.

Dupaco filed a lengthy resistance to the sanctions motion. In this pleading, Blau and Bright repeatedly cast aspersions on the testator and the estate's attorney and complained it was unfair that the estate's arguable debt would not be paid due to Dupaco's failure to timely claim the debt. Blau and Bright disclosed a "second investigation" in which it took them less than a day to determine LeConte was, in fact, "hired to pick up mailed items at Dupaco's P.O. box." This investigation was conducted the same day the estate filed LeConte's affidavit, but Dupaco did not disclose this to the court until weeks after. Despite confirming

LeConte's work for Dupaco, Blau and Bright only admitted LeConte "may have been authorized to receive and sign for certified mail" at the P.O. box.

At a contested sanctions hearing, Blau and Bright called Manning as a witness to explain her investigation. Manning testified she first learned about the notice of disallowance through Iowa Courts Online website and then got in touch with the attorneys. She testified she learned about LeConte from the estate's resistance and she could not find him on the company phone directory or intranet. She also asked a mailroom employee if the employee knew LeConte, and the mailroom employee said LeConte "dropped off our mail" and "her assumption [was] he worked for the post office." Manning explained that, when a second employee investigated, the employee quickly discovered LeConte worked as a courier for Dupaco.

Bright argued for himself, Blau, and Dupaco at the sanctions hearing. He maintained "there were so many questionable facts surrounding this alleged mailing [of the notice] . . . there was reason to believe it hadn't actually been given on the day that was set forth in the affidavit [of mailing completed by the estate lawyer]." Bright maintained that, even after presented with the certified mailing records, he still doubted the affidavit. And he complained again about the unfairness of Dupaco not having its debt against the estate paid, despite the untimely claim. The court reporter's transcript also reflects Bright made air quotes when referring to the certified "mailing," even though the mailing was proven at that point by the affidavit of mailing and USPS records.

Under questioning by the court, Bright admitted no investigation was conducted between June 1 (when Dupaco knew LeConte had signed for the

certified mail) and August 24 (when the "second investigation" discovered LeConte's relationship with Dupaco in a single business day). Also under questioning by the court, Bright asserted his conversation with Manning was sufficient to investigate the facts, regardless of whether anyone else at Dupaco knew about LeConte's relationship to the company and the improbability of the "interloper" assertion. The court also questioned the estate's attorney about his billing, inquiring why he billed more than fifty hours of research. The estate attorney explained he "was mystified by the nature of the allegations" made by Dupaco and its attorneys "and it took . . . a great deal of time to make sense . . .of them."

The district court—at the invitation of Dupaco and its attorneys—evaluated each of Dupaco's pleadings independently. The court found the initial request for a hearing did not warrant sanctions but the subsequent reply pleading and false oral statements did. Specifically, the district court found Blau and Bright did not conduct a reasonable investigation into the facts regarding Manning's belief LeConte worked for USPS—which turned out to be based on "essentially, second-hand assumptions of a mailroom employee." The court found Blau and Bright acted unreasonably when they made no effort to confirm whether LeConte worked for USPS, even though they had at least one week to reply to the estate's resistance and could have sought an extension of time if necessary. The court found, at minimum, "Dupaco and its attorneys certainly should have conducted the inquiry [into LeConte's employment] before the July 1 hearing," but the investigation did not actually happen until August 24.

In addition to the unreasonably incomplete investigation into LeConte, the district court found Blau did not conduct an adequate investigation when she asserted the notice was not sent by certified mail. As the court put it, "Blau was either confused by the information she found on the USPS tracking site or was attempting to confuse or mislead the court." Or, as put more bluntly a bit later in the ruling, "The court is unable to explain what Blau was looking at when she reached her conclusions." The court noted that, even if Blau made a mistake rather intentional misrepresentation, the false assertions "did cause confusion and waste of time for both [the estate attorney] and the court to work through."

The district court also considered whether sanctions would deter future misconduct and found they would. The court found the attorneys "ha[d] not acknowledged any responsibility for [their] own actions in this case" and concluded no reasonable attorney would have behaved as they did. The court also found Dupaco had engaged in "a pattern of miscommunication and mistakes in this matter."

Based on these findings, the district court imposed sanctions in the reduced amount of $14,387.60. The court assessed $5000 against attorney Blau, $2000 against attorney Bright, and $7387.60 against Dupaco. Dupaco and its attorneys filed a notice of appeal, then sought certiorari review in their proof brief. *See Hearity v. Iowa Dist. Ct.*, 440 N.W.2d 860, 862 (Iowa 1989) ("Review of a district court's order imposing sanctions is not by appeal, but rather is by application for issuance of a writ of certiorari."). The supreme court granted certiorari review under Iowa Rule of Appellate Procedure 6.108 and transferred the case to our court for resolution.

II. Standard of Review

We review sanctions orders for an abuse of discretion. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). "The question presented to the district court . . . is not whether a court shall impose sanctions when it finds a violation [of what is now rule 1.413 and Iowa Code section 619.19]—it must; instead, the question is how to determine whether there was a violation." *Id.* If supported by substantial evidence, we are bound by the district court's fact findings. *Id.*

III. Discussion

The district court found Blau and Bright violated Iowa Rule of Civil Procedure 1.413 and Iowa Code section 619.19, both of which impose "three duties known as the reading, inquiry, and purpose elements." *Barnhill v. Iowa Dist. Ct.*, 765 N.W.2d 267, 272 (Iowa 2009) (citation and quotation marks omitted). If an attorney files a pleading in violation of any of these three duties, the attorney has violated the rule and the Code, and the court must impose a sanction. *Id.* The analysis focuses on "the time the paper is filed" and measures attorney conduct to determine whether it was "reasonable[ ] under the circumstances," judged against the standard of "a reasonably competent attorney admitted to practice before the district court." *Id.* (citation omitted). The reasonableness of an attorney's inquiry into facts and law depends on various factors, including but not limited to:

> (a) the amount of time available to the signer to investigate the facts and research and analyze the relevant legal issues;
> (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 the possession of the opponent or third parties or otherwise not readily available to the signer;
> (e) the clarity or ambiguity of existing law;
> (f) the plausibility of the legal positions asserted;

> (g) the knowledge of the signer;
> (h) whether the signer is an attorney or pro se litigant;
> (i) the extent to which counsel relied upon his or her client for the facts underlying the pleading, motion, or other paper;
> (j) the extent to which counsel had to rely upon his or her client for facts underlying the pleading, motion, or other paper; and
> (k) the resources available to devote to the inquiries.

Id. at 273.

The primary purposes of the rule and Code section are to "maintain a high degree of professionalism in the practice of law" and "discourage parties and counsel from filing frivolous suits and otherwise deter misuse of pleadings, motions, or other papers." *Id.* "Sanctions are meant to avoid the general cost to the judicial system in terms of wasted time and money." *Id.* In other words, the rule, Code section, and resulting sanctions have both general- and specific-deterrence purposes. *See id.* Sanctions also have the secondary purpose of partially compensating parties victimized by attorney misconduct. *Rowedder v. Anderson*, 814 N.W.2d 585, 591–93 (Iowa 2012).

Applying this case law, we turn to the district court's ruling on Blau, Bright, and Dupaco's investigation into the facts supporting claims in the pleadings. (Like the district court, we elect to not rely on the estate's allegation that Dupaco and its attorneys failed to investigate the law, as we find the failure to investigate the facts dispositive.) In short, 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.

We specifically find the district court correctly ruled that an attorney who asserts an "interloper" signed for and seized a party's mail makes a serious accusation—a federal felony. *See* 18 U.S.C. § 1708. Such an accusation requires

more investigation than taking a witness's second-hand hearsay statements, based on self-described assumptions, at face value.

We also agree with the district court that assuming the "interloper" was a USPS employee was so implausible that a reasonably competent attorney would have conducted additional investigation before repeating the assumptions of a mailroom employee. That the estate's lawyer determined LeConte's identity before asserting facts about him is strong evidence a reasonable attorney could and should have taken these steps. We also find it telling that, seven weeks after the estate's attorney accurately described LeConte's identity and relationship to Dupaco during a hearing, Blau, Bright, and Dupaco conducted a "second investigation" that confirmed the information in less than one business day. Last, we agree with the district court's conclusion that the attorneys' repeated assertions claiming the notice of disallowance was never sent by certified mail, even though the estate's filings and Dupaco's own exhibits proved it was, also violated the rule and Code.

The main thrust of Blau and Bright's defense is they believe they reasonably relied on information provided to them by their client's agent, Manning, and no further investigation was necessary. We, like the district court, disagree. "Generally, an attorney must do more than rely on a client's assurance of the existence of facts when a reasonable inquiry would reveal their accuracy." Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 483, 492 & n.66 (1987) (collecting cases). And "if the information provided by a client is inconsistent or otherwise questionable, verification is an absolute necessity." *Id.* "The rule requires that an attorney be satisfied in the existence of

the facts. Mere conjecture, suspicion or rumor are not ingredients of a reasonable factual basis." *Id.* (footnote omitted). "Allegations cannot be made in pleadings which a reasonable factual investigation would disprove." *Id.* at 493. The record here establishes Blau and Bright did little if any investigation to satisfy for themselves that Manning provided accurate information. The claim LeConte was a postal service "interloper" was at best "questionable," and the basis for that claim was "conjecture, suspicion or rumor." *See id.* at 492. Blau and Bright did not fulfill their obligations under rule 1.413 and section 619.19.

In their appellate briefing, Blau, Bright, and Dupaco make several attacks on the district court's ruling, none of which we find persuasive. For example, they claim "[i]t is important to note that several different judges were involved in this case," and they suggest this means we should give less deference to the district court. We reject this argument. Sanctionable conduct is an offense against the court as an institution and the profession as a whole, not the individual judge who presides over a particular hearing. Blau and Bright also claim their false statements "did not relate to the core facts underlying the claim Dupaco filed in [the] estate [case]." This argument displays some sleight of hand; why Dupaco originally filed the claim is irrelevant to this dispute, and the false statements about LeConte and whether the notice was mailed or received concerned the *only* facts of consequence here.

Dupaco and its attorneys also claim the district court impermissibly considered the lack of further investigation after the false statements were called to their attention. We understand this argument to assert that, because additional false papers were not filed, the court should not have considered the lack of

corrective action. We disagree. Even setting aside the rule and Code provision, attorneys have a legal and ethical obligation to "correct a false statement of material fact or law" made to a tribunal, not just a duty to tell the truth in the future. *E.g.*, *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Rhinehart*, 953 N.W.2d 156, 163 (Iowa 2021) (quoting Iowa R. of Prof'l Conduct 32:3.3(a)(1)). This behavior may not have independently supported a sanction, but it was relevant as part of the "pattern of activity" giving rise the sanction. *See First Am. Bank v. Fobian Farms, Inc.*, 906 N.W.2d 736, 748–53 (Iowa 2018). We also find unpersuasive Blau and Bright's contention their lack of public attorney-discipline history should be a mitigating factor when determining rule- and Code-based sanctions, particularly given the district court's finding Dupaco engaged in "a pattern of miscommunication and mistakes in this matter." Contrary to claims made in their 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.

On the facts, Dupaco and its attorneys assert they should not have been expected to know about LeConte because he operated under the name "Swift Delivery" and his relationship with Dupaco was based on an oral rather than written agreement. But these are problems of Dupaco's creation. Dupaco chose to contract with LeConte as a courier and rely on an oral agreement. This does not excuse Blau and Bright's failure to investigate; if anything, these business practices by Dupaco favor requiring more—rather than less—investigation of

implausible claims, such as the allegation a postal worker committed a felony by intercepting the mail.

Dupaco and its attorneys also continue to make a false or misleading claim in this appellate proceeding when they allege the estate "incorrectly addressed the notice of disallowance." Dupaco and its attorneys have shifted their argument slightly on appeal, now complaining that the address used for the certified mail should have listed "Dupaco" instead of "Amy Manning" as the recipient. An insurmountable problem with this argument is that the only address Dupaco provided on its claim listed "Amy Manning" as the addressee and the P.O. box as the only complete address. Consistent with the district court's observation, we find the estate mailed the notice to the only complete address Dupaco provided and Dupaco's claims otherwise are false or misleading.

Blau, Bright, and Dupaco also complain in a footnote that the district court "expected a post-filing apology" and object that the court's ruling noted "[c]ounsel has not acknowledged any responsibility for the attorneys' own actions in this case." The lack of remorse or acceptance of responsibility was a proper consideration. Not only did the failure to correct the false statements likely constitute a separate violation of the rules of professional conduct, our case law recognizes that—even in criminal cases—courts may consider an offender's "lack of remorse . . . highly pertinent to evaluating his need for rehabilitation and his likelihood of reoffending." *State v. Knight*, 701 N.W.2d 83, 88 (Iowa 2005); *see State v. West Vangen*, 975 N.W.2d 344, 355–56 (Iowa 2022) (re-affirming *Knight*). If criminal offenders can be penalized at sentencing for not expressing remorse or taking responsibility, despite the protections of the Fifth Amendment, an attorney's

failure to do the same can be considered an aggravating factor in assessing intent and determining sanctions.

Last, Dupaco and its attorneys claim the district court "ignored the *Rowedder* factors and assessed sanctions in an excessive amount." As a preliminary note, we observe the appellate brief is signed only by Blau, and that neither she nor Dupaco request the sanction be apportioned differently than the district court's ruling. On the substantive challenge to the amount of sanctions, we do not agree with Dupaco and its attorney. The district court exercised its discretion appropriately when it reduced the requested amount by almost half, from $24,351.45 to $14,387.60. The gist of Dupaco's complaint is that the district court did not make a necessary finding the fees sought were reasonably necessary to defend against the sanctionable motions. We see no abuse of discretion in the district court's implied determination otherwise, and we are confident the court considered the relevant factors based on the questions asked by the court at the sanctions hearing. *See Rowedder*, 814 N.W.2d at 591 (affirming sanctions even though the district court failed to expressly consider one of the factors). We find Blau, Bright, and Dupaco cannot reasonably complain about the considerable research undertaken by the estate lawyer given their unusual and ultimately false claim that a postal-employee "interloper" had stolen mail. The false factual statements identified in this opinion permeated litigation over the claim (and some even persist on appeal). The district court could have reasonably concluded all billable work identified by the estate lawyer was triggered by the sanctionable conduct; it was not an abuse of discretion to consider about half of the billable work an appropriate sanction.

IV. Disposition

Overall, we find the arguments Blau, Bright, and Dupaco advance in mitigation do little more than highlight or reinforce the district court's rationale for imposing sanctions. We annul the writ of certiorari and decline to disturb the sanctions imposed. And we, like the district court, find the attorneys' false statements violated Iowa Rule of Civil Procedure 1.413 and Iowa Code section 619.19. We direct the clerk of appellate courts to transmit a copy of this opinion to the Attorney Discipline Board. *See* Iowa R. of Prof'l Conduct 32:8.3 (on the duty to report misconduct); Iowa Code Judicial Conduct 51:2.15(B) (same).

WRIT ANNULLED.