IN THE COURT OF APPEALS OF IOWA

No. 0-710 / 10-0089
Filed January 20, 2011

KATHRYN S. BARNHILL,
Plaintiff-Appellant/Cross-Appellee,

vs.

IOWA DISTRICT COURT,
Defendant.

GLENWOOD PARK, L.C., JACK GETHMANN and TORDSEN FARM MANAGEMENT, INC.,
Plaintiffs,

vs.

CITY OF MARSHALLTOWN, IOWA,
Defendant-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Marshall County, William J. Pattinson, Judge.

Plaintiffs' attorney, Kathryn Barnhill, appeals from the district court's ruling imposing sanctions upon her and dismissing her motion for sanctions against the City of Marshalltown and its attorney. The city cross-appeals. **WRIT SUSTAINED IN PART AND ANNULLED IN PART; AFFIRMED ON APPEAL AND CROSS-APPEAL.**

Kathryn S. Barnhill of Barnhill & Associates, P.L.L.C., West Des Moines, for appellant.

David P. McManus of Sole, McManus & Willems, P.C., Cedar Rapids, for appellee.

Heard by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

SACKETT, C.J.

Plaintiffs' attorney, Kathryn Barnhill, appeals from the district court's ruling imposing sanctions upon her and dismissing her motion for sanctions against the City of Marshalltown and attorney David McManus. The city cross-appeals, contending the court should have ordered a higher monetary sanction against Barnhill and should have also imposed sanctions against Barnhill's firm and its clients, Glenwood Park, L.C. and Jack Gethmann. We sustain the writ in part and annul the writ in part on Barnhill's appeal on the impositions of sanctions. We affirm on Barnhill's appeal and the city's cross-appeal for failure to assess additional sanctions.

I. BACKGROUND. The City of Marshalltown initiated a condemnation action on land owned by Glenwood Park, L.C. for the purpose of a road extension project. Jack Gethmann is the registered agent for Glenwood Park. Kathryn Barnhill, and her son, Jonathan Barnhill, represented Gethmann and Glenwood Park in the condemnation proceedings. David McManus represented the city in the proceedings.

Iowa Code section 6B (2007) sets forth procedures for eminent domain. On June 4, 2008, the sheriff signed a "Notice of Appraisement of Damages and Times for Appeal" directed to Jack Gethmann, David McManus, F & M Bank a/k/a Security Bank, and Jonathan Barnhill. It notified the persons and entities that the commissioners assessed and appraised the damages sustained by reasons of the condemnation for the West Merle Hibbs Boulevard Extension and awarded attorneys fees and costs to Jonathan Barnhill of $1147.50, and Kathryn

Barnhill of $1200. It also awarded mileage to Jonathan Barnhill of $48.50. Finally it awarded Jack Gethmann $12,604 for land and improvements.

Iowa Code 6B.18(1) (2007) provides that:

> 1. After the appraisement of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail, to the condemner and the condemnee of the date on which the appraisement of damages was made, the amount of the appraisement, and that any interested party may, within thirty days from the date of the mailing the notice of the appraisement of damages, appeal to the district court of the county in which the real estate is located by giving written notice to the sheriff that the appeal has been taken. The sheriff shall endorse the date of mailing of notice upon the original appraisement of damages.

Apparently on June 4, the sheriff mailed notice of the award to Jack Gethmann, Jonathan Barnhill, F & M Bank, a mortgage lien holder on the subject property, and David McManus. There is evidence an incorrect address was used for Jack Gethmann, but allegedly Jonathan Barnhill advised Jack Gethmann of the award.

On June 26, 2008, Jonathan Barnhill filed in the district court, an appeal of the commission's award on behalf of his clients. He faxed several copies of the notice of appeal to the sheriff.

Iowa Code 6B.18 (2) provides:

> 2. An appeal of appraisement of damages is deemed to be perfected upon filing a notice of appeal with the district court within thirty days from the date of mailing the notice of appraisement of damages. The notice of appeal shall be served on the adverse party, or the adverse party's agent or attorney, and any lien holder and encumbrancer of the property in the same manner as an original notice within thirty days from the date of filing the notice of appeal unless, for good cause shown, the court grants more than thirty days. . . .

On June 26, 2008, Kathryn Barnhill filed an application for a temporary injunction on behalf of Gethmann and Glenwood Park, requesting the court to prohibit the city from doing work on the condemned land until the appeal was resolved. She also filed a petition alleging the condemnation was invalid and the award insufficient. The court denied the motion for a temporary injunction on July 28, 2008.

Jonathan Barnhill first provided the sheriff with instructions for service of the notice of appeal from the condemnation award and a service fee on August 1, 2008. The sheriff served the Marshalltown city administrator the notice of appeal on August 4, 2008.

The city then sought to dismiss the appeal, contending the city and other interested parties were not timely served the notice of appeal. It argued Gethmann and Glenwood Park were required to serve the notice of the appeal within thirty days of filing it in the district court, and more than thirty days expired between the June 26 filing and the August 4 service upon the city administrator.

In early September 2008, Kathryn Barnhill filed two additional civil actions against the city based on the condemnation, one for trespass, and another seeking a writ of certiorari alleging that the condemnation proceedings were illegal. The city filed motions to dismiss these actions. The motions to dismiss came on for hearing on September 22, 2008. Kathryn Barnhill argued the time for appeal never began because notice was never sent to Glenwood Park, L.C., and Gethmann never personally received notice of the award for it was mailed to the incorrect address. She also claimed there was good cause for the delay in

service because she gave instructions for proper delivery to the sheriff but the sheriff did not follow the instructions. She also argued that the county sheriff probably knew the proper way to serve the city. On November 3, 2008, Kathryn Barnhill filed the application for writ of mandamus for which she was later sanctioned. The application asked the court to order the city to serve a copy of the award to Glenwood Park.

In a January 20, 2009 ruling, the district court granted the city's motion to dismiss the appeal, the petition for injunction, and the petition alleging the condemnation was illegal. It found that the city's notice of the award to Glenwood Park's and Gethmann's attorney of record was tantamount to notice to the client. It also determined Glenwood Park and Gethmann did not serve the notice of appeal on the city within the required thirty days and did not provide good cause for the failure. It reasoned Kathryn Barnhill only needed to take simple steps to ensure proper service was made and should not expect the sheriff to make proper service without any instructions. It also dismissed Gethmann's and Glenwood Park's application for writ of mandamus.

On December 18, 2008, the city filed a motion for sanctions. It argued Kathryn Barnhill's representation in the condemnation matters violated Iowa Rule of Civil Procedure 1.413(1) and Iowa Code section 619.19. It argued Kathryn Barnhill filed pleadings without first making reasonable inquiries, and the pleadings were filed for improper purposes—to harass, create delay, or increase the cost of litigation. It also sought sanctions against Kathryn Barnhill's clients, Gethmann and Glenwood Park, on the same grounds. Kathryn Barnhill then also

filed a motion for sanctions against the city's attorney, McManus, arguing the city's motion for sanctions was designed to harass and intimidate Kathryn Barnhill and her clients. In addition, she urged McManus misled the court in other respects during the condemnation litigation.

A hearing on the motions for sanctions was held on February 4, 2009. The court found the majority of Kathryn Barnhill's filings advanced valid legal arguments, at least initially. It granted sanctions for Kathryn Barnhill's conduct in filing the application for a writ of mandamus and the supplement to it. It ordered Kathryn Barnhill to pay the city's attorney fees of $7142.68, for its work in responding to the application for writ of mandamus. It ordered her to pay an additional $5000 payable directly to the court to deter future violations. It denied the city's motion to sanction Gethmann and Glenwood Park, finding no evidence the clients directed or approved Kathryn Barnhill's conduct. It also denied Kathryn Barnhill's motion for sanctions against McManus as being without merit.

Kathryn Barnhill appeals the court's ruling contending (1) her conduct was not a violation of rule 1.413(1), (2) the amount of the sanction was an abuse of discretion, (3) the court did not have authority to issue a sanction payable to the court, and (4) McManus and the city should have been sanctioned. The city cross-appeals, arguing a higher monetary sanction amount should have been awarded, and the court should have also sanctioned Gethmann and Glenwood Park.

II. STANDARD OF REVIEW. "[R]eview of the district court's sanction order against an attorney is by an application for issuance of a writ of certiorari

rather than by appeal." *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). Appeal, however, "is the appropriate procedure for challenging the denial of a motion for sanctions." *Id.* We will treat Kathryn Barnhill's notice of appeal as if the proper form of review was submitted. *See* Iowa R. App. P. 6.108 (stating that if a case is initiated by a notice of appeal, but another form was proper, we shall not dismiss the case but shall proceed as if the proper form of review was submitted); *Everly v. Knoxville Cmty. Sch. Dist.*, 774 N.W.2d 488, 492 (Iowa 2009). Our review of a ruling imposing sanctions under rule 1.413 is for an abuse of discretion. *Id.* Nonetheless, we will correct erroneous applications of law we find in the exercise of that discretion. *Weigel v. Weigel*, 467 N.W.2d 277, 280 (Iowa 1991). We are bound by the district court's factual determinations if they are supported by substantial evidence. *Zimmermann v. Iowa Dist. Ct.*, 480 N.W.2d 70, 74 (Iowa 1992).

III. SANCTIONS AGAINST BARNHILL. Iowa Rule of Civil Procedure 1.413(1) provides in relevant part:

> Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: counsel has read the motion, pleading, or other paper; that to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation. . . . If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion 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. The signature of a party shall impose a similar obligation on such party.

Iowa Code section 619.19 echoes this rule.[1] The rule is designed to maintain a high degree of professionalism in the practice of law and discourage misuse of pleadings and other filings. *Barnhill v. Iowa Dist. Ct.*, 765 N.W.2d 267, 273 (Iowa 2009). If there is indeed a violation, the court must impose sanctions. *Mathias*, 448 N.W.2d at 446. The rule imposes three duties on attorneys, namely the responsibilities of reading, inquiry, and purpose. *Barnhill*, 765 N.W.2d at 272. The attorney must certify:

> (1) that [s]he has read the petition, (2) that [s]he has concluded after reasonable inquiry into the facts and law that there is adequate support for the filing, and (3) that [s]he is acting without any improper motive.

Weigel, 467 N.W.2d at 280. We judge the attorney's conduct in an objective manner, considering whether she acted reasonably under the circumstances with

---

[1] Iowa Code section 619.19 provides:

> Pleadings need not be verified unless otherwise required by statute. Where a pleading is verified, it is not necessary that subsequent pleadings be verified unless otherwise required by statute.
>
> The signature of a party, the party's legal counsel, or any other person representing the party, to a motion, pleading, or other paper is a certificate that:
>
> 1. The person has read the motion, pleading, or other paper.
>
> 2. To the best of the person's knowledge, information, and belief, formed after reasonable inquiry, it is grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.
>
> 3. It is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation.
>
> If a motion, pleading, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.
>
> If a motion, pleading, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose upon the person signing, the 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.

what was known only by the attorney at the time the paper was filed. *Barnhill*, 765 N.W.2d at 272.

A. Conduct. The city contends Kathryn Barnhill violated the reasonable inquiry and purpose duties. Inquiry under the rule demands the attorney certifies the signer made a reasonable investigation and is satisfied that the filing is "'well grounded on the facts and . . . 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 (quoting Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1335, at 59 (3d ed. 2010)). Whether the inquiry into the facts and law is "reasonable" depends on the time available for the attorney to investigate, the attorney's reliance on the client for facts supporting the pleading, the plausibility of the legal position taken, and the attorney's reliance on another member of the bar. *Id.*

The "purpose duty" requires the attorney to certify that the filing "is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation." Iowa R. Civ. P. 1.413(1); Iowa Code § 619.19(3). It "'seeks to eliminate tactics that divert attention from the relevant issues, waste time, and serve to trivialize the adjudicatory process.'" *Barnhill*, 765 N.W.2d at 273 (quoting *Hearity v. Iowa Dist. Ct.*, 440 N.W.2d 860, 866 (Iowa 1989)). An improper purpose may be based on bad faith or malice, but also can be based on negligence and professional incompetence. *Id.* "A party or [the] attorney cannot use ignorance of the law or legal procedure as an excuse." *Id.*

The district court specifically found Kathryn Barnhill's application for a writ of mandamus and a supplement to the writ, were filed for an improper purpose. It found those filings ignored applicable statutes on the function of a writ of mandamus and service of process. The court determined these filings were a misguided effort to avoid the mishandling of the condemnation award appeal. It concluded, "No reasonably competent attorney would have attempted this maneuver and I am satisfied that the Application was filed for an improper purpose."

> The action of mandamus is one brought to obtain an order commanding an inferior tribunal, board, corporation, or person to do or not to do an act, the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station.

Iowa Code § 661.1. Kathryn Barnhill's application for writ of mandamus asked the court to "compel the city to give notice to the condemnee, Glenwood Park, of the appraisement commission award entered by the commission on June 4, 2008." Although the application states that the code requires the sheriff to give notice of the condemnation award to the condemnee,[2] she twice requested the court order the city give notice to Glenwood Park and Gethmann. In the supplement to the application Barnhill recited that the notice to Jonathan Barnhill

---

[2] Iowa Code section 6B.18(1) states in part:

> After the appraisement of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice, by ordinary mail, to the condemner and the condemnee of the date on which the appraisement of damages was made, the amount of the appraisement, and that any interested party may, within thirty days from the date of mailing the notice of the appraisement of damages, appeal to the district court by filing notice of appeal with the district court of the county in which the real estate is located and by giving written notice to the sheriff that the appeal has been taken.

was not sufficient notice to his clients, Jack Gethmann or Glenwood Park, because the sheriff did not inquire whether Barnhill & Associates was authorized to accept notice on behalf of Gethmann or Glenwood Park. The supplement further states:

> In fact, [Barnhill & Associates was] not so authorized and at the time the notice of the award was sent, it was not known by the condemnee, the condemnor or Barnhill & Associates, PC if Barnhill & Associates, PC would even represent the condemnee in any further proceedings.

The district court, in determining this filing warranted sanctions, explained, "Clearly, the district court could not, via mandamus, compel the City of Marshalltown to do something it was not otherwise legally obligated to do." It further stated the allegation that Barnhill and Associates did not represent Gethmann and Glenwood Park at the time of the compensation award "was, at the very best, a reckless misrepresentation, made to avoid the consequences of Mr. Barnhill's failure to timely perfect the condemnation appeal. At the very worst, the allegation was an outright falsehood."

Kathryn Barnhill argues the court abused its discretion in finding this filing was for an improper purpose. She states she had a good faith basis in law and fact for filing the application for a writ of mandamus because her

> working theory of the case was that the city failed to acquire title to the condemned property [because] Jack Gethmann's time for appeal had not begun to run until he was served with notice of the award of the commissioners.

She argues she filed the application for a writ of mandamus asking the court to order the city to force the sheriff to provide proper service since the city was a party to the action. She admits she could have filed the application for a writ

against the sheriff, but argues "it seemed more complicated" than having the city direct the sheriff.

We agree there is evidence supporting the district court's conclusion Kathryn Barnhill filed the writ of mandamus for an improper purpose. She is correct in arguing that the owner of the property should have been served and service on the owner of the land is required by statute.[3] Ordinarily the time for appeal would not have run because Gethmann, as the service agent for Glenwood, had not been mailed a copy of the notice of the appraisement of damages. However, on June 6, 2008, Jonathan Barnhill of Barnhill & Associates filed a notice of appeal, appealing the appraisement of damages by the compensation commission as counsel for Glenwood and Gethmann. While a certificate of service on the notice shows that service copies of it were mailed to the city, its attorney, a lien holder and the sheriff, section 6B.18 requires that the notice of appeal in this circumstance be served in the same manner as an original notice.

Although we find the court did not abuse its discretion in issuing this sanction, we disagree with the court's legal conclusion that service of the notice of the appraisement award to the Barnhill law firm substantially complied with the notice requirements for condemnation actions. The statute requires the sheriff to give written notice "by ordinary mail, to the condemner and the condemnee." Iowa Code § 6B.18. It is undisputed that the sheriff mailed the notice of the

---

[3] We do note that the notice the commission was going to assess damages would indicate that the land is owned by Glenwood Park, L.C. The award was made to Jack Gethmann. The issue of whether this is a defect in the procedure is not before us.

award to an incorrect address for Gethmann. Additionally, the notice provided that money for land and improvements was to go to Gethmann. The application for condemnation shows Glenwood Park, L.C. as the title holder and there is no evidence to contradict that representation; rather, it appears only that Gethmann was the service agent for Glenwood Park. Even though Barnhill's office received a mailed notice as attorney for Gethmann and Glenwood Park, this does not meet the requirements of the statute and we do not endorse the city's failure to provide notice directly to the condemnee. Nevertheless, Gethmann and Glenwood Park were not prejudiced by this failure since they filed a proper notice of appeal challenging the award. *See Parkhurst v. White*, 254 Iowa 477, 481-82, 118 N.W.2d 47, 49-50 (1962) (stating irregularities in notice are examined to determine whether a party has been prejudiced before the notice is found fatally defective). We annul the writ as to this claim.

B. Amount of Monetary Sanction. Barnhill next contends the amount of the sanction was an abuse of discretion and arbitrary. She contends the court did not evaluate the appropriate factors in setting the sanction amount. She also argues the court abused its discretion in considering her husband's financial status and her prior sanctioned conduct in setting an amount. On cross-appeal, the city argues the amount of the sanction should be increased. It contends all of the city's costs and attorney fees should have been awarded because spurious arguments were woven into all of Barnhill's filings in the condemnation proceeding. It also contends the sanctions should be imposed against not just Kathryn Barnhill, but also Barnhill & Associates, through agency principles.

In determining an appropriate amount of sanctions, we consider the reasonableness of the opposing attorney fees, the amount needed to deter future violations, the offending attorney's ability to pay, and the severity of the violation. *Barnhill*, 765 N.W.2d at 277. Additional factors aiding the evaluation are:

> a. the good faith or bad faith of the offender;
> b. the degree of willfulness, vindictiveness, negligence or frivolousness involved in the offense;
> c. the knowledge, experience and expertise of the offender;
> d. any prior history of sanctionable conduct on the part of the offender;
> e. the reasonableness and necessity of the out-of-pocket expenses incurred by the offended person as a result of the misconduct;
> f. the nature and extent of prejudice, apart from out-of-pocket expenses, suffered by the offended person as a result of the misconduct;
> g. the relative culpability of client and counsel, and the impact on their privileged relationship of an inquiry into that area;
> h. the risk of chilling the specific type of litigation involved;
> i. the impact of the sanction on the offender, including the offender's ability to pay a monetary sanction;
> j. the impact of the sanction on the offended party, including the offended person's need for compensation;
> k. the relative magnitude of sanction necessary to achieve the goal or goals of the sanction;
> l. burdens on the court system attributable to the misconduct, including consumption of judicial time and incurrence of juror fees and other court costs;
> m. the degree to which the offended person attempted to mitigate any prejudice suffered by him or her;
> n. the degree to which the offended person's own behavior caused the expenses for which recovery is sought;
> o. the extent to which the offender persisted in advancing a position while on notice that the position was not well grounded in fact or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and
> p. the time of, and circumstances surrounding, any voluntary withdrawal of a pleading, motion or other paper.

Barnhill, 765 N.W.2d at 276-77 (quoting ABA Section of Litigation, *Standards and Guidelines for Practice under Rule 11 of the Federal Rules of Civil Procedure* (1988), *reprinted in* 121 F.R.D. 101, 125-26 (1988)).

The court's award of attorney fees was not arbitrary or an abuse of discretion. The attorney fee amount of $7142.68 was specifically calculated to reimburse the city for the fees associated with the application for a writ of mandamus. The district court added an additional $5000 because it found a higher sanction would help deter future violations. The court did not abuse its discretion in considering Kathryn Barnhill's prior sanctioned conduct. It is one of the factors permitted to be considered. Even though Barnhill contends "the conduct in the present case occurred before the matter in the other was fully adjudicated," we find it was properly considered. Barnhill has an established pattern of questionable litigation tactics that the court was within its discretion to consider.

We do agree with Barnhill that the court should not have considered her husband's profession and assets. Even without considering this evidence, the amount of the sanction is reasonable and within the court's discretion. We also do not find the court abused its discretion in refusing to award a higher amount of attorney fees or by not imposing the sanction on the Barnhill firm as a whole. We annul the writ as to this issue. We affirm on cross-appeal on this issue.

C. Authority to Order Payment to the Court as a Sanction. Barnhill argues the court did not have authority to order a payment to the court as a sanction. The district court found authority to issue this sanction because under

the federal rules of civil procedure, sanctions may include "an order to pay a penalty into court." *See* Fed. R. Civ. P. 11(*c*)(4). The city contends the court was within its discretion in issuing this type of sanction because our courts look to analogous federal rules for guidance in applying our own rules.

The Iowa rule does not expressly provide that the court may order a sanction payable to the court. It does not expressly exclude it as a potential sanction either. It states, the court shall impose "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). By contrast, the Federal Rule of Civil Procedure 11(*c*) expressly permits the court to order a sanction paid to the court. Under the federal rule,

> [t]he sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

Fed. R. Civ. P. 11(*c*)(4).

Our supreme court has determined that there is substantial similarity between federal rule 11 and Iowa rule 1.413. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). For that reason, "we look to federal decisions applying rule 11 for guidance." *Barnhill*, 765 N.W.2d at 273; *Mathias*, 448 N.W.2d at 445. Our courts have obtained guidance from federal decisions applying rule 11 in various respects, including similar purposes of the rule, the scope of review of sanctions rulings, the factors to consider in setting an amount of sanction, and the due process requirements of the rule. *See Barnhill*, 765 N.W.2d at 276-77;

Mathias, 448 N.W.2d at 445-47; *K. Carr v. Hovick*, 451 N.W.2d 815, 818 (Iowa 1990); *Hearity*, 440 N.W.2d at 864. However, counsel has not supplied nor have we found a case comparing the types of sanctions available under the federal and Iowa rules.

To determine whether a sanction payable to the court is authorized under rule 1.413(1), we apply our rules of construction. *See Drahaus v. State*, 584 N.W.2d 270, 274 (Iowa 1998) (stating that when a rule of civil procedure is ambiguous, we must apply general principles of statutory construction). We search for the legislative intent from the language chosen by the legislature. *McGill v. Fish*, 790 N.W.2d 113, 118 (Iowa 2010). We look to what the legislature said, not what it might or should have said. Iowa R. App. P. 6.904(3)(*m*). Absent a definition provided by the legislature, we give words their common meaning. *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349, 354 (Iowa 2005).

Considering these principles, we find the legislature's decision not to adopt federal rule 11 verbatim instructive. If there are two rules in a subject area, one of which contains a given provision, the omission of that provision in a similar rule is evidence that the rules were not intended to be the same. *See Farmers Co-op Co. v. DeCoster*, 528 N.W.2d 536, 539 (Iowa 1995) ("[W]here a statute with respect to one subject contains a given provision, the omission of such provision from a similar statute is significant to show a different intention existed."). Holding otherwise impermissibly adds words to the rule. *Id.* In the circumstances before us, we find it was error for the court to rely on language in the federal rule for authority to issue a sanction payable to the court. Our rule

does not expressly provide for this sanction. Accordingly, we sustain the writ as to that part of the court's order requiring Kathryn Barnhill to pay $5000 to the court.

IV. SANCTIONS AGAINST THE CITY AND ITS ATTORNEY. Barnhill, on appeal, claims the court abused its discretion in denying her motion for sanctions against the city and its attorney. We find no merit in this contention and affirm the district court's denial of the motion for sanctions.

V. SANCTIONS AGAINST BARNHILL'S CLIENTS. The city on cross-appeal also contends the court abused its discretion in not issuing sanctions against Barnhill's clients, Gethmann, and Glenwood Park. We affirm on this issue.

VI. ATTORNEY FEES. The city requests us to award additional attorney fees. It asks for attorney fees in defending the appeal of the condemnation award, *see Glenwood Park, L.C. v. City of Marshalltown*, No. 09-0172 (Iowa Ct. App. Nov. 12, 2009), and for the present appeal. We decline to do so.

VII. CONCLUSION. We annul the writ in part and sustain it in part. The district court did not abuse its discretion in finding Kathryn Barnhill violated Iowa Rule of Civil Procedure 1.413(1) and annul the writ accordingly. We find the court did abuse its discretion in ordering Barnhill to pay a sanction directly to the court and sustain the writ as to this claim. We annul the writ in all other respects. On appeal and cross-appeal, we affirm the district court's exercise of discretion not to impose sanctions on the city, its attorney, Barnhill's firm, or its clients. We

also affirm the court's determination not to impose higher monetary sanctions against Barnhill.

Costs of this appeal are taxed one-half to each party.

WRIT ANNULLED IN PART AND SUSTAINED IN PART; AFFIRMED ON APPEAL AND CROSS-APPEAL.