IN THE COURT OF APPEALS OF IOWA

No. 1-084 / 10-0776
Filed April 27, 2011

MELROY BUHR,
Plaintiff-Appellant,

vs.

HOWARD COUNTY EQUITY,
Defendant-Appellee.

Appeal from the Iowa District Court for Howard County, Richard D. Stochl, Judge.

Melroy Buhr appeals the district court's dismissal of his petition against Howard County Equity. **REVERSED AND REMANDED.**

Melroy Buhr, Elma, pro se appellant.

John T. McCoy and Amy Licht of McCoy, Riley, Shea & Bevel, P.L.C., Waterloo, and Glenn L. Smith of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, for appellee.

Considered by Vogel, P.J., and Doyle and Tabor, JJ.

TABOR, J.

Melroy Buhr appeals the district court's dismissal of his petition against Howard County Equity (HCE), a grain cooperative. The district court concluded that Buhr violated Iowa Rule of Civil Procedure 1.413(1) by repeatedly filing papers with the improper purpose of harassing and intimidating HCE. As a sanction for his conduct, the district court dismissed Buhr's cause of action pursuant to rule 1.413(1). Because rule 1.413(1) is not an independent basis for dismissal, we conclude the suit must be reinstated.

I. Background Facts and Proceedings

The dispute between Buhr and HCE stems from HCE's application of herbicide to twenty-eight acres of Buhr's farmland in June 2003. On January 24, 2008, Buhr filed a pro se petition against HCE alleging breach of contract, negligence, and fraud. Buhr sought damages for the loss of yield he sustained as a result of HCE's allegedly improper application of weed-control chemicals.

The issue before us—the propriety of dismissing Buhr's suit as a sanction for violating rule 1.413(1)—arises from Buhr's conduct and the multiple documents he filed in court in conjunction with his claim against HCE. HCE cites several instances that illustrate Buhr's improper behavior before the district court and notes the district court previously admonished and sanctioned Buhr for violating our rules of procedure. For instance, during Buhr's March 30, 2009 deposition, Buhr responded to every question, except those relating to his name and address, with the statement "I cannot answer that question on the grounds I do not have counsel to advise me."

After the deposition, HCE filed a motion to compel discovery and sought sanctions for Buhr's evasive answers under Iowa Rule of Civil Procedure 1.517. After a hearing on May 11, 2009, the court ordered Buhr to answer questions propounded to him during deposition pursuant to rule 1.517(1)(*b*), and cautioned that his failure to answer any such questions "may result in any or all sanctions set forth in Rule 1.517(2)." Pursuant to rule 1.517(1)(*d*), the court also ordered Buhr to pay HCE the reasonable expenses and attorney fees, totaling $500, incurred in obtaining the order.

The court then addressed HCE's request that it dismiss Buhr's petition as a consequence of Buhr's failure to answer questions at the deposition. The court recognized that rule 1.517(2)'s sanctions "include the dismissal of the action." But the court declined to dismiss the suit, explaining that dismissal "is only available to the court after a party has been directed by the court to answer questions," and the "court had not yet ordered plaintiff to answer questions at the time of the deposition on March 30, 2009."

Buhr then filed a series of "petitions" accusing HCE's counsel of tampering with a witness by speaking with a non-party witness's attorney, requesting sanctions against HCE's counsel, asking the court to "issue an arrest warrant on [HCE's counsel] for conspiring against the Plaintiff and tampering with his witness," and further alleging the court was prejudiced against him. HCE resisted.

The court held a hearing on June 22, 2009, to resolve all pending matters. During the hearing, HCE's counsel summed up their view of Buhr's conduct, stating he has made a "series of frivolous motions" and

> has made a number of statements critical and/or disparaging to the Court and the clerk's office and opposing counsel, including alleged willful denial of his constitutional rights, fraud and even treason and suggesting that an arrest warrant be issued. . . . Rather than focusing on the alleged merits of the claim, the . . . plaintiff is generating substantial and unnecessary expense and abusing the subpoena power.

After Buhr was unable to provide authority for his position,[1] the court read Iowa Rule of Civil Procedure 1.413 to him and explained that "[a]ny document you sign in this court that is not based in existing law, has not been properly researched or you cannot give me a proper argument why existing law should be modified, subjects you to sanctions." The court explained to Buhr that he was "sitting before [it] citing things that aren't anywhere based in law" and cautioned that "if you're going to continue to file these types of pleadings, you are going to find yourself getting sanctioned . . . on a repetitive basis." The court further warned that "sanctions may include dismissal with prejudice."[2]

In its order entered August 5, 2009, the court concluded Buhr filed pleadings that were "blatantly in violation of Iowa Rule of Civil Procedure 1.413(1)," stated sanctions against Buhr were appropriate, but stayed the imposition of sanctions. The court explained:

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[1] For example, in response to Buhr's argument that HCE's counsel was not allowed to speak with a non-party witness's attorney, the court asked Buhr to state "what law says in the state of Iowa opposing counsel cannot meet with a witness who is not a party to the case." Buhr was unable to support his argument.

[2] The court further told Buhr, "you sign pleadings that are inflammatory and demeaning, you subpoena attorneys which are not subpoenable. . . . What you're going to find yourself doing is ending up with a dismissed lawsuit."

> The pleading makes accusations that the Court is biased and prejudiced against the plaintiff. The pleading accuses defense counsel of tampering with witnesses and obstructing justice and seeks sanctions against [HCE's counsel] for interviewing a potential plaintiff witness. Pleadings such as this are viewed by this Court as a means to harass the defendant and needlessly increase the costs of this litigation. As such, this Court finds that the plaintiff, as self represented litigant, is subject to sanctions for his conduct. However, this Court will stay the imposition of sanctions so long as Plaintiff refrains from filing needless, senseless pleadings throughout the remainder of this litigation. If further improper pleadings are filed by the plaintiff, counsel for the defendant is directed to bring those pleadings to the attention of this Court and sanctions, including possible dismissal, will be imposed.

In December 2009, HCE moved to dismiss Buhr's petition with prejudice based on several grounds: Buhr failed to comply with the district court's order requiring him to pay the $500 sum for the reasonable expenses and attorney fees incurred in obtaining the order to compel; Buhr issued subpoenas to two witnesses in violation of rule 1.701(2) "because the subpoenas were not executed by the Clerk or a licensed attorney, but by Plaintiff Buhr, himself;" and because of "all concerns noted regarding Plaintiff's prosecution of this claim, as noted in Defendant's prior resistances and responses to Plaintiff's Motions and Petitions in this matter." Buhr resisted, alleging the motion to dismiss was "filed solely to harass and intimidate the Plaintiff and increase the cost of litigation as it is not well grounded in fact and law." He furthered contended that "defendant's attorney has had Ex Parte discussions with the court."

Buhr filed another series of "petitions," including but not limited to, a "Petition for Expanded Media Coverage," a "Petition to Modify Trial Dates," and a "Petition to Set Aside Order for Sanctions Against Plaintiff." In support of the last petition, he cited "the 1857 Constitution of the State of Iowa" and argued the

court "could not take property from the Plaintiff without due process of law in favor of Defense council." He further contended the court violated his rights because the August 5 order "intimidat[ed], harasse[d], and threaten[ed] the Plaintiff into forgoing his above named rights." Buhr also filed a Petition to the Court for Notice and Demand not to Violate Plaintiff's Constitutional Right, wherein he "demand[ed] . . . that the Court . . . Protect the Constitutional Rights of the Plaintiff and inform the Plaintiff of any issues where his rights might be compromised."

On February 17, 2010, the court held a hearing to address pending matters. In support of its motion to dismiss, HCE argued that Buhr "violated three court orders which would justify" dismissing the suit: (1) the order sanctioning Buhr $500 for refusing to respond to HCE's deposition questions; (2) the order that Buhr refrain from filing frivolous papers to harass or intimidate HCE, and; (3) a pre-trial order requiring Buhr to disclose exhibits, witnesses, and other information.

With respect to the first order, HCE explained that Judge Harris entered an order sanctioning Buhr $500 for deliberately refusing to respond to deposition questions and that Buhr failed to pay that sum. HCE stated it believed Buhr's conduct was a "deliberate violation of a court order and proper grounds for dismissal." With respect to the second order, HCE cited several motions filed by Buhr, including those for sanctions against HCE's counsel and for expanded media coverage, as instances of frivolous and harassing motions that exhibit a "pattern of willful misconduct in violation of this Court's order filed on August 5,

2009." HCE further alleged Buhr violated the pre-trial order of June 22, 2009, which required Buhr to produce exhibits, witness lists, briefs, and any jury instructions seven days before trial, by failing to produce the materials. HCE contended Buhr "ignored those rulings, which has prejudiced the defendant by the amount of expense for each one of these petitions and motions filed requires a response, and then a hearing." "For all of these grounds" HCE stated, "specifically, the violation of those three court orders, we would request that the Court dismiss this matter with prejudice."

The district court dismissed Buhr's action against HCE in an order entered April 12, 2010. The court concluded he repeatedly violated Iowa Rule of Civil Procedure 1.413(1) by continuing "to file pleadings that are not supported by Iowa law . . . for the purpose of harassment or intimidation" and that dismissal was an appropriate sanction. The court explained it previously imposed a monetary sanction on Buhr for filing numerous pleadings in violation of rule 1.413(1)[3] and warned him that if he filed further improper pleadings the court would impose sanctions, including dismissal of his suit. The court further explained that while it "recognizes everyone's right to due process, that right is conditioned upon the party's willingness to comply with court rules. [Buhr's] failure to comply with those rules requires the dismissal of this action."

Buhr filed a notice of appeal on May 11, 2010, challenging the district court's chosen sanction—dismissal of his suit. He contends that dismissal was

[3] The court "stayed the imposition of [those] sanctions . . . contingent upon [Buhr's] restraint from filing needless, senseless pleadings throughout the remainder of this litigation."

improper, particularly because the dismissal "[was] completely due to nonlawyer mistakes due to lack of knowledge of the rules of court."

HCE resists and urges us to affirm the dismissal. HCE argues that dismissal was appropriate because Buhr "received substantial notice that dismissal was a potential sanction for his conduct and had the chance to be heard on that issue," and because Buhr repeatedly filed frivolous motions and unfounded statements that "clearly violated the requirement of Rule 1.413(1)." HCE asserts, moreover, that we should affirm the dismissal of Buhr's suit as a "valid and necessary exercise of the District Court's inherent power to dismiss cases" or pursuant to Iowa Rule of Civil Procedure 1.945.

II. Scope and Standard of Review

Although no party raises the question, we first address whether a petition for writ of certiorari would have been the proper vehicle to seek review of the district court's determination on rule 1.413 matters. *See Sprous v. Iowa Dist. Ct.*, 595 N.W.2d 777, 778 (Iowa 1999). Certiorari is appropriate to review claims that the district court has exceeded its discretion. *Id.* But in other contexts, such as contempt actions, parties may directly appeal dismissals as a matter of right. *See State v. Iowa Dist. Ct.*, 231 N.W.2d 1, 4 (Iowa 1975). Regardless of the proper means for challenging this dismissal sanction, we shall proceed as though the proper form of review was sought. Iowa R. App. P. 6.108.

HCE asserts that a district court's order for sanctions should be reviewed for an abuse of discretion, citing *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). But in this case we are reviewing the court's ruling on a motion to

dismiss. "We review a district court's ruling on a motion to dismiss for correction of errors at law." *Ritz v. Wapello Cnty. Bd. of Supervisors*, 595 N.W.2d 786, 789 (Iowa 1999). Even if our review were for an abuse of discretion, we still must correct an erroneous application of the law. *See Barnhill v. Iowa Dist. Ct.*, 765 N.W.2d 267, 272 (Iowa 2009).

III. Analysis

The district court dismissed Buhr's action against HCE in an order entered April 12, 2010. The court concluded Buhr repeatedly violated Iowa Rule of Civil Procedure 1.413(1) and that dismissal was an appropriate sanction under that provision. Buhr challenges the dismissal of his suit.

Rule 1.413(1) provides in pertinent 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.

Iowa R. Civ. P. 1.413(1).

The rule embodies three duties referred to as the "'reading, inquiry, and purpose elements.'" *Barnhill*, 765 N.W.2d at 272 (citation omitted). "Each duty is independent of the others, and a breach of one duty is a violation of the rule." *Id.*

If a party violates rule 1.413(1), the court must impose "an appropriate sanction." Iowa R. Civ. P. 1.413(1). The rule imposes sanctions for the purpose of deterring the proscribed conduct and avoiding the cost to our judicial system in terms of wasted time and money. *Barnhill*, 765 N.W.2d at 273. Because the district court sanctioned Buhr for filing motions with an improper purpose—to harass and intimidate—this case centers on the third element: the litigant's purpose.

"The 'improper purpose' clause seeks to eliminate tactics that divert attention from the relevant issues, waste time, and serve to trivialize the adjudicatory process." *Hearity v. Iowa Dist. Ct.*, 440 N.W.2d 860, 866 (Iowa 1989) (citation omitted). The policy behind the rule is to "deter misuse of pleadings, motions, or other papers." *Barnhill*, 765 N.W.2d at 273. Importantly, one need not act in subjective bad faith or with malice to violate the rule. *Id.* And, one's ignorance of the law or legal procedure provides no excuse for violating the rule. *Id.* Instead, "[t]he rule 'was designed to prevent abuse caused not only by bad faith but by negligence and, to some extent, professional incompetence.'" *Id.* (citation omitted).

We employ an objective standard of reasonableness when confronted with conduct alleged to run afoul of this rule. *Weigel v. Weigel*, 467 N.W.2d 277, 281 (Iowa 1991). "The test is 'reasonableness under the circumstances,' and the standard to be used is that of a reasonably competent attorney admitted to practice before the district court." *Barnhill*, 765 N.W.2d at 272 (citation omitted). Pro se litigants may be subject to sanctions. *Citizens State Bank v. Harden*, 439 N.W.2d 677, 682–83 (Iowa Ct. App. 1989) (stating "[r]ule [1.413] applies to the

Hardens as the 'signer' of the pleadings because they appeared pro se" and affirming sanctions imposed against pro se litigant).

As a threshold matter, we disagree with Buhr's argument that his status as a pro se litigant and his unfamiliarity with "the rules of court" exempt him from sanctions. Our supreme court has rejected that position. *See Barnhill*, 765 N.W.2d at 273. Buhr's ignorance of the law or legal procedure provides no excuse for violating rule 1.413 and his status as pro se litigant does not shield him from operation of the rule or imposition of sanctions. *Barnhill*, 765 N.W.2d at 273; *Citizens State Bank*, 439 N.W.2d at 682–83.

Nevertheless, we conclude the district court's dismissal of his action was improper. Our supreme recognized that it has "yet to establish criteria to assist the district court in determining an appropriate sanction" pursuant to rule 1.413(1). *Barnhill*, 765 N.W.2d at 276. But our supreme court has not allowed this rule to serve as a stand-alone ground for dismissing a lawsuit. In *K. Carr v. Hovick*, 451 N.W.2d 815, 817 (Iowa 1990), the court explained, in response to an argument that the district court should have dismissed the suit before trial, that rule 1.413(1) (then numbered as rule 80) "does not provide an independent basis for dismissal."

After reviewing the district court's order, we conclude the court invoked rule 1.413(1) as an independent ground for dismissing Buhr's suit. The court cited no other provision for dismissal of the suit and relied on no reasoning outside of sanctioning Buhr for filing papers with an improper purpose of harassing or intimidating HCE. Rather, it concluded that Buhr violated rule

1.413(1) and dismissed the suit pursuant to that rule, stating "[t]his Court finds that [Buhr's] pleadings are again in violation of Iowa Rule of Civil Procedure 1.413 and, therefore, imposes the ultimate sanction at this time." In light of our supreme court's pronouncement in *K. Carr*, we conclude the district court erred in dismissing Buhr's cause of action because the district court employed rule 1.413(1) as its sole basis for dismissing Buhr's suit.[4] HCE's argument that Buhr was afforded due process before the court dismissed his case is of no avail—providing Buhr a warning and an opportunity to be heard does not create a license to dismiss a case pursuant to rule 1.413(1) when our supreme court has concluded otherwise.

We recognize that federal courts allow dismissal as a sanction under their equivalent rule—Federal Rule of Civil Procedure 11. *See Carman v. Treat*, 7 F.3d 1379, 1382 (8th Cir. 1993). When interpreting state rules patterned after federal rules, we often look to federal-court interpretations of those federal rules for guidance. *State v. Paredes*, 775 N.W.2d 554, 561 (Iowa 2009). Importantly, however, "[f]ederal case law . . . is not binding, and we are free to develop our own approach to legal questions under the Iowa rule." *Id.* Again, given the

[4] Although not dispositive, we find further support for our conclusion by observing that the other rules of civil procedure explicitly provide for dismissal of a suit as recourse for a party's misconduct before the court while rule 1.413 does not have comparable language. *See, e.g.*, Iowa Rs. Civ. P. 1.517(2)(*b*)(3), 1.945 (urged by HCE for the first time on appeal); *see also Fisher v. Davis*, 601 N.W.2d 54, 60 (Iowa 1999) (stating "we interpret rules in the same manner we interpret statutes"); *cf. State ex. rel. Miller v. Cutty's Des Moines Camping Club, Inc.*, 694 N.W.2d 518, 531 (Iowa 2005) (indicating that inclusion of terms in one location and exclusion of those terms in a second location was intentional and indicates that the terms should not be inferred where they are excluded: "The legislature knew how to limit this provision of the Act to sellers, for elsewhere in the Act the legislature expressly defined and employed the terms 'buyers' and 'sellers.' It did not do so here." (Citations omitted.)).

language in *K. Carr*, we are not at liberty to follow federal case law to decide that rule 1.413 allows for dismissal. Our supreme court has elected to "develop [its] own approach" by finding rule 1.413 "does not provide an independent basis for dismissal." *K. Carr*, 451 N.W.2d at 817.[5] We must apply the approach articulated by our supreme court in *K. Carr*.

Dismissing Buhr's cause of action based solely on this rule also runs contrary to our supreme court's "reluctance to impose rule [1.413] sanctions that may result in discouraging access to the courts to resolve honest disputes that have arguable merit." *Breitbach v. Christenson*, 541 N.W.2d 840, 845 (Iowa 1995). "Any sanction that deprives litigants of their day in court carries due process considerations. These considerations require that the noncompliance involved be premised on willfulness, bad faith or fault."[6] Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 483, 517 (1987). In dismissing based on rule 1.413, the district court did not make a finding that Buhr acted willfully, in bad faith, or was objectively unreasonable.

We further decline to affirm the dismissal on the ground that it was an appropriate exercise of the court's inherent power to dismiss cases or on the

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[5] This interpretation is bolstered by the fact that federal case law allowed for dismissal under Federal Rule 11 before the *K. Carr* decision. For example, in *American Inmate Paralegal Ass'n v. Cline*, 859 F.2d 59, 62 (8th Cir. 1988), our circuit court concluded that "the voluminous amount of frivolous documents submitted by appellants . . . supports the dismissal with prejudice as a Rule 11 sanction." Because the *K. Carr* decision was filed two years later, it appears our supreme court chose to reject the federal approach allowing dismissal.

[6] Federal courts have interpreted "fault" as more than "a catch-all for any minor blunder" a litigant might make. *See Long v. Steepro*, 213 F.3d 983, 987 (7th Cir. 2000). Fault must rise to the level of objectively unreasonable behavior. *See id.* (holding that litigants failure to comply with scheduling order did not warrant sanction of dismissal under federal rules).

ground that it was properly dismissed under rule 1.945, which provides that a "party may move for dismissal of any action or claim against the party . . . if the party asserting it fails to comply with the rules of this chapter or any order of court." The court did not rely on either its inherent power to dismiss cases or rule 1.945 in the present suit and HCE did not urge the court to dismiss Buhr's claim on either ground. *See DeVoss v. State*, 648 N.W.2d 56, 63 (Iowa 2002) (holding that "we will not consider a substantive or procedural issue for the first time on appeal, even though such issue might be the *only* ground available to uphold a district court ruling"). Rather, the district court explicitly invoked rule 1.413, independent of any other rule or power to dismiss that it may have, and employed dismissal as a sanction under that provision. Because rule 1.413(1) "does not provide an independent basis for dismissal," we reverse and remand for further proceedings.[7] *See K. Carr*, 451 N.W.2d 817.

REVERSED AND REMANDED.

[7] Our obligation to follow the precedent established by our supreme court and reinstate Buhr's cause of action should in no way be read to condone his litigation tactics.