IN THE COURT OF APPEALS OF IOWA

No. 7-573 / 06-0163
Filed October 24, 2007

KATHRYN S. BARNHILL,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR POLK COUNTY,
Defendant.

Appeal from the Iowa District Court for Polk County, Douglas Staskal, Judge.

Kathryn Barnhill appeals the district court's ruling that she violated Iowa Rule of Civil Procedure 1.413 and sanction of $25,000 to pay toward the opposing party's attorney fees. **AFFIRMED.**

Kathryn Barnhill of Barnhill & Associates, P.C., West Des Moines, pro se.

Wade Hauser III of Ahlers & Conney, P.C., Des Moines, and J. Stan Sexton, Kansas City, Missouri, for defendant.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

Kathryn Barnhill appeals the district court's ruling that she violated Iowa Rule of Civil Procedure 1.413 and sanction of $25,000 to pay toward the opposing party's attorney fees. We affirm.

I. Background Facts and Proceedings

An understanding of the procedural history of this case is essential to ruling on the issues presented to this court. As the district court notes, "This case has a long and complex procedural history. The court file now comprises twenty-one volumes." Specific facts relevant to the merits of this appeal will be stated in the analysis of this case where appropriate.

The original controversy arose from allegations that Tamko Roofing Products, Inc. (Tamko) manufactured and sold defective roofing shingles which were installed on plaintiffs' homes or structures by plaintiff Jerry's Homes, Inc. (Jerry's Homes). In 1998 Jerry's Homes, represented by Barnhill, filed suit against Tamko in state court. The purpose of the lawsuit was to either compel Tamko to repair the roofs on over 400 houses built by Jerry's Homes or, in the alternative, recover sufficient damages for Jerry's Homes to make the repairs itself. Jerry's Homes asserted that Tamko promised it would repair the damages to the shingles when problems first arose with the quality of the shingles. The case was removed to federal court based on diversity. Most of the claims were dismissed on summary judgment, including the claims for breach of express and implied warranty and fraud. A jury returned a verdict in favor of Jerry's Homes for just over $1 million, but the federal magistrate judge granted Tamko's post-trial motion to vacate the verdict. The magistrate's ruling was affirmed on appeal

to the Eighth Circuit Court of Appeals. *Jerry's Homes, Inc. v. Tamko Roofing Prods., Inc.,* 40 F. App'x 326 (8th Cir. 2002).

In March 2001 Barnhill filed a class action lawsuit in state court against Tamko and David Humphreys, Tamko's president and CEO. The class consisted of persons who had either directly or indirectly purchased the allegedly defective shingles through Jerry's Homes. The class also included Jerry's Homes, itself, as a representative plaintiff. After its fourth and final amendment, the petition made allegations against Tamko and Humphreys of (1) breach of express warranty, (2) breach of implied warranty, (3) fraudulent misrepresentation, (4) negligent misrepresentation, (5) rescission due to impermissible liquidated damages, (6) rescission due to unconscionability of express warranty, and (7) violation of a Missouri statute prohibiting unfair business practices. The petition asserted that Humphreys "at all times relevant hereto directed and controlled the actions of [Tamko] with respect to the allegations herein." For the most part, the allegations made no distinction between Tamko and Humphreys.

Discovery was conducted throughout 2001. In late 2001 and early 2002, plaintiffs filed a motion for class certification, and defendants filed motions for summary judgment on every allegation of plaintiffs' petition. Despite defendants' urging during a status conference with the court that the summary judgment motions be resolved before the class certification motion, the district court scheduled the class certification motion for hearing. After the hearing, the court certified the case as a class action against both defendants. Defendants made an interlocutory appeal to the Iowa Supreme Court that ordered the district court to rule on the pending motions for summary judgment. Judge Rosenberg then

dismissed six of the seven counts against Humphreys and a substantial part of the case against Tamko. In particular, he dismissed the claims of Jerry's Homes and another plaintiff on the ground that they were res judicata as a result of the federal lawsuit. This left only the fraudulent misrepresentation claim pending against Humphreys. On appeal, our court of appeals affirmed the dismissal of the six claims against Humphreys and reversed the district court's failure to grant summary judgment on the final claim of fraudulent misrepresentation. *Sharp v. Tamko Roofing Prods., Inc.,* No. 02-0728 (Iowa Ct. App. Nov. 15, 2004). Judge Staskal subsequently granted summary judgment in favor of Tamko on the two remaining issues. We affirmed his dismissal of these claims. *Sharp v. Tamko Roofing Prods., Inc.,* No. 05-1372 (Iowa Ct. App. Oct. 11, 2006). At the end of more than five years of litigation, every allegation was finally dismissed on summary judgment.

Amidst these appeals, Humphreys filed a motion for sanctions against all named plaintiffs and their attorney, Barnhill, pursuant to Iowa Code section 619.19 and Iowa Rule of Civil Procedure 1.413(1) asserting:

> None of the claims pursued by plaintiffs in this case against Humphreys were well grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. For example and without limitation, Ms. Barnhill has signed pleadings and motions while pursuing claims against Humphreys for breach of contract and breach of contract-related causes of action notwithstanding the fact that no contract between Humphreys and plaintiffs ever existed. Therefore, it appears plaintiff's claims against Humphreys were interposed for improper purposes of harassing Humphreys and causing needless and wrongful costs of litigation.

After Humphreys filed a brief in support of his motion for sanctions, Barnhill filed an original and amended resistance to the motion and a reply brief.

On September 7, 2005, Judge Staskal declined to enter sanctions against the plaintiffs, but found that Barnhill had violated Iowa Rule of Civil Procedure 1.413. Specifically, he stated:

> The major exception to the rule of independent corporate identity is the doctrine of 'piercing the corporate veil.' The doctrine is not at issue here. Barnhill does not claim that there was ever any basis in fact or law for ignoring Tamko's separate corporate existence. Rather, the sole basis upon which she seeks to justify all of the claims asserted against Humphreys is that corporate officers are personally liable for the torts they commit even if they are acting on behalf of their corporation. The very serious problem with this argument at the outset is that only two of the five claims asserted in the original Petition, and of the seven claims asserted in the Petition as finally amended, are tort claims. . . . Barnhill makes no attempt to explain the factual or legal bases for asserting the rescission claim that was asserted against Humphreys in the original Petition or the two rescission claims that were asserted against him in the Petition as finally amended. It is obvious that claims for rescission of a contract are contract, not tort, claims. It is a violation of Rule 1.413 for an attorney, without explanation, to assert a breach of contract claim against a corporate officer where only the corporation is a party to the contract. Therefore, Barnhill violated Rule 1.413 by asserting contract rescission claims against Humphreys.
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> [T]he manner in which this [fraudulent misrepresentation] claim was pled against Humphreys violated Rule 1.413 because Barnhill pled facts that were literally untrue, as follows:
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> > 61. Defendant Tamko **and Defendant Humphreys** made express representations to Plaintiffs and the classes they represent.
> >
> > 63. Defendant Tamko **and Defendant Humphreys made these express representations in various media both in writing and by oral sales presentations** when in fact they did not have a reasonable basis for making those representations.
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> *Supplemented Fourth Amended Class Action Petition.* (emphasis added). The allegations in paragraph 61 are not true as they pertain to Humphreys because he had no contact with any of the Plaintiffs except for an alleged conversation with an officer of Jerry's Homes in 1995. Further, even if a corporate officer is liable for torts he personally commits, that does not make all of the corporation's acts the acts of that officer. While it would have been acceptable for Barnhill to allege that Humphreys was responsible

for the alleged misrepresentations, it is not acceptable, in the court's view, to allege that Humphreys *made* the representations in the warranties and other literature.

However, there is a more egregious violation of Rule 1.413 in the assertion of this claim at all. One of the fundamental elements of a misrepresentation claim is that the injured party relied on the alleged misrepresentation. Thus, in the Petition, Barnhill alleges:

> 74. Plaintiffs acted in reliance on the truth of the representations and were justified in relying on the representations.

Supplemented Fourth Amended Class Action Petition. At least the majority, if not virtually all, of the Plaintiffs in this case, other than Jerry's Homes, did not themselves purchase Tamko shingles and, therefore, could not possibly have relied on any representations from anyone in deciding to purchase the shingles.

. . . .

In summary, Barnhill asserted a claim of reliance on behalf of a class of persons, the vast majority of whom undoubtedly had no involvement whatsoever in choosing Tamko shingles and who therefore could not possibly have relied on any representations in deciding to purchase them. Moreover, when challenged in the district court to specifically show evidence of a Plaintiff who did rely on Tamko representations, she made false statements about the evidence of reliance by the two Plaintiffs she chose.

In regards to the negligent misrepresentation claim the district court found:

> [T]he law is clear that a claim of negligent misrepresentation applies only to persons who are in the business of supplying information. . . . It does not apply to product sellers who supply information about the product in connection with its sale. . . . Even if the [rule] did not apply to those who are "distributors and other suppliers" of the Tamko shingles, those persons, with the exception of Jerry's Homes, are not Plaintiffs. It is hardly a defense to asserting a frivolous claim against particular defendants to argue that the claim should legitimately be asserted against someone else.
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> [E]ven if [Humphreys] is personally guilty of making a negligent misrepresentation, he is not personally in the business of selling shingles or of selling information regarding the shingles.
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> Finally, one of the elements of this claim, like the fraudulent misrepresentation claim, is that the Plaintiffs relied on the information. Making that assertion violates Rule 1.413 for reasons already discussed above.

Regarding the claim of violation of the Missouri statute, the district court stated:

> Before asserting this claim specifically created by a state statute, a reasonably competent attorney would stop to consider whether the statute contained any jurisdictional or venue requirements. A reasonably competent attorney would then discover what the court of appeals pointed out – that the statute itself requires actions under it to be brought in Missouri. Therefore, Barnhill's assertion of this claim violated Rule 1.413.

After Judge Staskal ruled that Barnhill violated rule 1.413, Barnhill filed a response to his ruling. Her brief to this court is verbatim of her response to Judge Skaskal's ruling with the exception of one additional page. In his order imposing sanctions, Judge Skaskal considered and rejected her arguments, interpreting them as a motion to reconsider. In his order, Judge Staskal stated:

> In summary, the pleadings and other documents filed by Barnhill in this case have in general such a confusing, convoluted, self-contradictory and elusively vague, ambiguous, indirect and constantly shifting quality as to compel the conclusion that the case was made up as it went along. It is as though Barnhill said whatever needed to be said at each step to just get past the moment, whether there was a legitimate basis for saying it or not. In the process, Barnhill has violated Rule 1.413(1).

He then sanctioned Barnhill and ordered her to pay Humphreys $25,000 of the nearly $150,000 he had incurred in attorney's fees defending the case. Barnhill appeals.

II. Standard of Review

We review a decision on imposing sanctions for an abuse of discretion. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). The proper means to review a trial court's order imposing sanctions is by writ of certiorari. *Id.* Certiorari is a procedure to test whether a lower board, tribunal, or court

exceeded its proper jurisdiction or otherwise acted illegally. Iowa R. Civ. P. 1.1401; *Backstrom v. Iowa Dist. Court*, 508 N.W.2d 705, 707 (Iowa 1993), *cert denied,* 511 U.S. 1042 (1994). "Relief through certiorari is strictly limited to questions of jurisdiction or illegality of the challenged acts." *French v. Iowa Dist. Ct.*, 546 N.W.2d 911, 913 (Iowa 1996). Although our review is for an abuse of discretion, we will correct erroneous application of the law. *Weigel v. Weigel,* 467 N.W.2d 277, 280 (Iowa 1991). The district court's findings of fact, however, are binding on us if supported by substantial evidence. *Zimmermann v. Iowa Dist. Ct.,* 480 N.W.2d 70, 74 (Iowa 1992).

An abuse of discretion occurs when the district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Schettler v. Iowa Dist. Ct.*, 509 N.W.2d 459, 464 (Iowa 1993). A ground is unreasonable if it is not based on substantial evidence. *Id.* at 464-65. We are only permitted to sustain the proceedings below, annul the proceedings wholly or in part, or prescribe the manner in which either party may proceed. *Harris v. Iowa Dist. Ct.*, 570 N.W.2d 772, 776 (Iowa Ct. App. 1997). We may not substitute an amended order for that of the district court. *Id.*

III. Merits

The district court found that Barnhill violated Iowa Code section 619.19 (2005) and Iowa Rule of Civil Procedure 1.413(1). The statute and rule are identical in substance. Iowa Code section 619.19 reads as follows:

> 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.
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> 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.

By signing her name, the signor is certifying that she: (1) has read the document, (2) has concluded after reasonable inquiry into the facts and law that there is adequate support for the filing, and (3) is acting without any improper motive. *Weigel*, 467 N.W.2d at 280. These are referred to as the "reading, inquiry, and purpose elements." *Id.* It is only whether the attorney made a reasonable inquiry into the facts and the law that is at issue in the present case.

The primary goal of this rule and statute is to require a high degree of professionalism in the practice of law by discouraging parties and their attorneys from filing frivolous lawsuits. *Id.* at 282; *see also Mathias*, 448 N.W.2d at 445. The rule was adopted in response to a growing concern over misuse and abuse of the litigation process. *Mathias*, 448 N.W.2d at 445. An attorney's advocacy role does not supersede her role as an officer of the court. *See Weigel*, 467 N.W.2d at 282. The statute *requires* sanctions to be imposed upon a finding of a violation of the statute to reduce the reluctance of courts to impose sanctions on attorneys who violate their responsibility to the court and other parties. *Mathias*, 448 N.W.2d at 445.

In determining whether there has been a violation of the statute, the attorney's actions must be judged objectively. *Weigel*, 467 N.W.2d at 281. We must decide whether the attorney's actions were reasonable under the circumstances known at the time she signed the documents. *Id.* at 280. Hindsight gained afterward through discovery, hearings, and evidence cannot be considered. *Id.* at 280-81. We must compare the attorney's actions to that of a reasonably competent attorney admitted to practice law in Iowa. *Id.* at 281. Although the statute focuses on the circumstances present upon signing, the rule may also be violated by the signing of a series of filings creating a pattern of conduct. *Mathias*, 448 N.W.2d at 447. The rule applies to each filing. *Id.* Other sanctions are available to address abusive tactics not related to the signing of pleadings, motions, and other papers. *Cf.* Iowa R. Civ. P. 1.517, 1.602(5), 1.701(6).

The district court found that, based on the facts known to Barnhill when she signed the original and four supplemented petitions between March 2001 and March 2002, as well as other court filings thereafter, there was no reasonable support in the law to assert the claims made against Humphreys, the president and C.E.O. of Tamko. The final amended petition alleged the following against Humphreys: (1) breach of express warranty, (2) breach of implied warranty, (3) fraudulent misrepresentation, (4) negligent misrepresentation, (5) rescission based on an impermissible liquidated damages clause, (6) rescission based on the unconscionability of an express warranty, and (7) violation of a Missouri unfair business practices act.

The relevant factors to consider in determining whether an attorney made a reasonable inquiry into the law include: (1) the amount of time that was available to the signer to research and analyze the relevant legal issues, (2) the complexity of the factual and legal issue in question, (3) the clarity or ambiguity of existing law, (4) the plausibility of the legal positions asserted, (5) the extent to which counsel had to rely upon other counsel to conduct the legal research and analysis underlying the position asserted, (6) the resources reasonably available to the signer to devote to the inquiry, and (7) the extent to which the signer was on notice that further inquiry might be appropriate. *Mathias*, 448 N.W.2d at 446-47. We note that Barnhill had ample time to research the facts and the law. This case was brought subsequent to the dismissal of a similar federal case. There is no assertion that Barnhill had to rely on others for her legal and factual research. In her brief, she states that she personally did extensive research. In addition, the longevity of these proceedings afforded her the opportunity to personally depose many witnesses. Keeping these factors in mind, we proceed to our analysis.

A. Breach of Express and Implied Warranties

The district court was correct when it found there was no reasonable basis for a breach of warranty claim against Humphreys. As the district court points out, a breach of warranty claim is a contract claim. An officer of a corporation is not liable for the contracts of the corporation unless personally guaranteed by the officer, and Barnhill never made any claim for piercing the corporate veil. *See* Iowa Code § 490.830(4) (2001). Barnhill, however, argues that a breach of warranty claim can be a tort claim when it involves safety hazards. Regardless

of whether this contention is supported by law, there were never any allegations that the shingles caused harm to any person or property. Therefore, the alleged inadequacy of the shingles was only a "defect of suitability and quality," which, as Barnhill points out, is litigated through contract law.

Relative to the breach of warranty claims, Barnhill may have correctly interpreted the dicta in *Tomka v. Hoechst Celanese Corp.*, 528 N.W.2d 103 (Iowa 1995), as providing for a warranty claim within tort law, but the facts of this case fail to support such a claim. *Tomka* holds that when a product fails in its intended purpose the action is within contract law, but when the product causes harm beyond the consequences of its failure to satisfy its intended purpose, the action is within tort law. *Tomka*, 528 N.W.2d at 107. Barnhill alleged only that the shingles were inadequate to accomplish their purpose of protecting the buildings from the weather. There was never a claim made that the shingles caused harm to any person or property. The relief sought in the lawsuit was only repair or replacement of the shingles, not compensation for damages caused by the shingles. Stating that the shingles were blowing off is not a sufficient assertion to make a claim for personal or property damage beyond that caused by the failure of the shingles to protect the buildings.

Barnhill points out that the uniform jury instructions do not require a description of the damages, but merely the amount of damages. From this she concludes that there was no requirement that she claim damages to a person or property. Yet, it is fundamental in our legal system that, in order to prove an amount of damages, the injury suffered must be proven. *See Patterson v. Patterson's Estate,* 189 N.W.2d 601, 605 (Iowa 1971) (stating that "[i]f it is

speculative and uncertain whether damages have been sustained, recovery is denied"). Any reasonable attorney licensed to practice law would know this. Given the facts known to Barnhill at the point at which she signed the petitions and other court documents, no reasonable attorney would have found the facts sufficient to support a breach of warranty claim under a tort theory. Therefore, there was no basis for such a claim against Humphreys, as CEO and president of Tamko.

B. Fraudulent Misrepresentation

The petition alleged that Tamko and Humphreys made express written and oral representations that Tamko shingles were of superior, long-lasting quality when Humphreys knew the shingles would not meet this standard due to a major defect. Further, the petition alleged that Humphreys limited the warranty in an unfair and unconscionable manner in light of the defect. Barnhill claims that Humphreys should be held liable because he was in charge of all corporate operations, including warranties, research, and development.

Although Barnhill briefed several pages arguing to this court that Humphreys should be held liable for fraudulent misrepresentation because of his numerous acts of approving the representations made, the district court gave Barnhill the benefit of the doubt that Humphreys' actions were sufficient to hold him liable for such representations. Notwithstanding, the district court found that Barnhill had violated rule 1.413 by stating the untrue facts in the petition that Humphreys actually made the representations and by making false statements in court documents that the class of plaintiffs relied on the representations in purchasing the Tamko shingles.

Barnhill claims the assertions in the petition that Humphreys made the false representations were supported by facts. Specifically she claims Humphreys made these representations through the warranties and advertising materials because he had the final authority as to their contents. The court points out that it is not correct to allege that Humphreys *made* the representations, even if he was responsible for the representations in the warranties and literature. In addition, Barnhill points to the evidence that Humphreys had a conversation with Ron Grubb, the president of Jerry's Homes, in which he told Grubb that the problems with the shingles had been fixed because they had changed their sealant in 1995 or 1996. However, there was no evidence that any other plaintiff even knew who Humphreys was. Barnhill claimed in her "Statement of Contested Facts" that plaintiff Hollinger had relied on the information when he selected Tamko shingles. However, the district court found Hollinger's deposition testimony that he relied on the twenty-five year warranty to be insufficient to conclude that he relied on the false information. We agree with the judgment of the district court.

Barnhill asserts that "a plaintiff who alleges fraud by deceit is not required to prove reasonable reliance on the fraudulent misrepresentation by deceit." Regardless of whether this statement of the law is reasonable, the fact remains that Barnhill made a false assertion in the petition and throughout the litigation that plaintiffs did, in fact, rely on the representations. Barnhill claims the law does not require her to prove reliance in cases of material nondisclosure because of the difficulty of proving reliance on information not present. Instead, she claimed reliance can be inferred. Even so, the vast majority of the class of

plaintiffs did not participate in the decision to place Tamko shingles on their house. Therefore, there could be no reasonable inference of reliance on the part of these individuals. Barnhill's numerous statements to the court as to the participation of the individual class members in selecting the shingles for their homes was often times unsupported by the facts. As this court noted when this case was before it, there were only three plaintiffs who stated they had seen a product brochure. *Sharp*, No. 02-0728 (Iowa Ct. App. Nov. 15, 2004). The facts fail to support the contention that the class of approximately seven hundred people in any way relied on information provided by Tamko.

C. Negligent Misrepresentation

The district court found three reasons why Barnhill's claim of negligent misrepresentation was a violation of rule 1.413: (1) The law is clear that no claim of negligent misrepresentation could be enforced against Tamko or Humphreys because claims of negligent misrepresentation apply only to persons who are in the business of supplying information; (2) Even if Humphreys is personally guilty of making negligent misrepresentations, he is not personally in the business of selling shingles or information regarding those shingles; and (3) Barnhill cannot prove plaintiffs' reliance on the information.

Barnhill claims the court's reliance on *Meier v. Alfa-Laval, Inc.*, 454 N.W.2d 576 (Iowa 1990), is misplaced. Specifically, she notes that *Meier* does not specifically hold that a manufacturer can never be liable for negligent misrepresentation. We agree with the district court that the *Meier* case clearly precluded Tamko and Humphreys from being liable for negligent misrepresentation because they were not in the business of supplying

information. In *Meier* the Iowa Supreme Court found that the law warranted a claim of negligent misrepresentation against neither the seller nor the manufacturer of a product because neither was in the business of supplying information. *Meier*, 454 N.W.2d at 582. Research of Iowa law suggests no other theory of holding a manufacturer liable for negligent misrepresentation.

D. Rescission

The rescission claims made against Humphreys are obviously contract claims and were invalid for the same reasons as the warranty claims. These reasons have been sufficiently set out above and in the district court's ruling. Therefore, no further analysis is required.

E. Violation of Missouri Statute

Even though Barnhill points out that violation of the Missouri statute was never pled against Humphreys, he was in fact required to defend against the claim. In her resistance to defendants' motion for summary judgment filed with the court, Barnhill concluded that "material facts exist which impose personal liability on Defendant Humphreys and preclude summary judgement in favor of Defendant Humphreys on the issue of violation of the Missouri Unfair Business Practices Act."

Barnhill argues that the jurisdiction and venue requirements of the Missouri statute could be read to require only that the challenge be brought in *any* court in which the transaction took place. This is not a reasonable interpretation of the statute.

Even giving Barnhill the benefit of the doubt that it was proper to pursue some of the claims she raised, she still made additional claims against

Humphreys that were not supported by the law and facts and thus not proper. Humphreys was forced to defend himself against these improper claims. The district court, therefore, did not abuse its discretion in granting Humphreys motion for sanctions and subsequently sanctioning Barnhill $25,000.

AFFIRMED.

Miller, J., concurs; Vaitheswaran, J., dissents.

VAITHESWARAN, J. (dissenting)

I respectfully dissent. Plaintiffs' counsel named the president of Tamko individually on the ground that he "directed and controlled" the actions of Tamko. Subsequent filings articulated her view that Mr. Humphreys "directed, authorized, or participated" in the claimed conduct. This allegation finds support in Iowa law. *See Haupt v. Miller*, 514 N.W.2d 905, 907 (Iowa 1994) ("As a general rule, corporate officers are individually liable to third parties for their torts, even when occurring while they act in their official corporate capacity" and "To maintain a tort claim against a director in his or her personal capacity, a plaintiff must first show that the director specifically authorized, directed or participated in the allegedly tortious conduct."). Therefore, I believe the fourth amended petition was "grounded in fact" and "warranted by existing law or a good faith argument for extension, modification, or reversal of existing law." Iowa R. Civ. P. 1.413(1).

In reaching this conclusion, I have considered defense counsel's assertion that plaintiffs' counsel may have made unsubstantiated verbal statements to the court. I believe this assertion is irrelevant to the sanctions analysis. *See Mathias v. Glandon*, 448 N.W.2d 443, 447 (Iowa 1989); Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 483, 496 (1986-87) ("misstatements of law, failure to disclose directly adverse authority and omission of critical facts may violate an attorney's code of ethics, but they do not violate an attorney's duty to make a legal inquiry under the rule unless no 'plausible good faith argument' is advanced") (citation omitted).

I have also considered defense counsel's critique of the factual allegations against Mr. Humphreys, including the choice of words in those allegations.

Given our state's emphasis on notice-pleading, "[t]he lack of factual specificity in the pleadings must not be used as the gauge in determining a violation of the standard." Cady, 36 Drake L. Rev. at 494.

Nor is it relevant that the plaintiffs were ultimately unsuccessful in their efforts to pin liability on Mr. Humphreys. *Id.* at 492 ("The rule does not establish a standard which results in sanctions simply because the factual claim later falls victim to summary adjudication."). While certain counts of the fourth amended petition were weaker on the merits than others, "the duty [under rule 1.413] is not breached when merely one argument or sub-argument behind a valid pleading or motion is without merit." *Id.* at 496.

Rule 1.413 recognizes the right of attorneys to make good faith arguments for modification of existing law. To that end,

> Close scrutiny of an attorney's duty under the rule can have the effect of stifling legal creativity, repressing vigorous advocacy, multiplying expansive satellite litigation over sanctions, and creating a danger of arbitrary and inconsistent enforcement. The rule was not intended to chill an attorney's enthusiasm or creativity in pursuing legal or factual theories.

Id. at 495 (citation omitted).

There is no question "the line between an abusive claim and zealous advocacy can be extremely fine." *Id.* at 497. I am not convinced plaintiffs' counsel crossed that line. Accordingly, I would reverse the sanctions rulings.