IN THE COURT OF APPEALS OF IOWA

No. 8-942 / 08-0763
Filed March 26, 2009

SHARON HUMMEL, Individually
And on behalf of SAVE THE GREEN, INC.,
Plaintiffs-Appellants/Cross-Appellees,

vs.

DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT and the BOARD OF DIRECTORS OF THE DES MOINES INDEPENDENT SCHOOL DISTRICT and MARC WARD, GINNY STRONG, CONNIE BOESEN, TEREE CALDWELL-JOHNSON, DICK MURPHY, PHIL ROEDER, JEANETTE WOODS, JOE JONGEWAARD, NEAL WESTIN, ANDREA HAUER, KATH KAHOUN, DUANE VAN HEMERT, JAMIE WORNSON, and NANCY SEBRING, Individually,
Defendants-Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge.

Plaintiffs appeal from a district court ruling granting summary judgment in favor of defendants, and defendants cross-appeal from the court's denial of their motion for sanctions. **AFFIRMED ON BOTH APPEALS.**

George Qualley IV and Thomas K. Bleyhl of Qualley & Bleyhl, P.L.C., Des Moines, for appellants.

Andrew J. Bracken and Amanda G. Wachuta of Ahlers & Cooney, P.C., Des Moines, for appellees.

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

DOYLE, J.

Sharon Hummel and Save the Green, Inc. (collectively "Hummel") appeal from a district court ruling granting summary judgment in favor of the Des Moines Independent Community School District, its board of directors, superintendent, and members of a review committee. The defendants cross-appeal from the court's ruling denying their motion for sanctions against Hummel. We affirm the judgment of the district court.

I. Background Facts and Proceedings.

The record reveals the following undisputed facts: In June 1999, the school district closed Byron Rice Elementary School, which it had operated at 3001 Beaver Avenue in Des Moines for approximately ninety years. The school building was demolished in the summer of 2000. Since that time, the former school site has remained open space in the Beaverdale neighborhood of Des Moines. Residents in the neighborhood use it as a park and recreational field.

On July 12, 2005, the school board voted to sell the property. A representative of the school district subsequently attended meetings of several Beaverdale neighborhood organizations in order to "develop a process that would not only protect the value of the property for [the school district] but to also be sensitive to the needs of the neighborhood and public interests." Close to one year later, on May 9, 2006, the school board held a special meeting at which it discussed a "conceptual plan" for the sale of the property. The plan contemplated creation of a "seven member Review Committee" to review proposals received by the board for the purchase and development of the property, with the board ultimately "maintain[ing] control over all decisions." The

committee was to be comprised of representatives of the school district and its board, the City of Des Moines, and neighborhood organizations. At later meetings, the school board voted to begin the process to solicit proposals from potential purchasers and selected individuals to serve on the review committee.

The school board received six proposals from developers interested in purchasing the property. The review committee met on September 5, 2006, at a real estate office in Des Moines to review those proposals. It selected three proposals to be presented at a public forum on September 18. It also posted information about all six proposals on two different websites. Following its public presentation of the proposals, the review committee met at a law office on September 21 to discuss which proposal it would recommend to the school board.

At a school board meeting on October 3, 2006, the review committee advised the board to select the proposal it received from Rice Development Partners. Another public meeting was held on October 16 at which six members of the review committee met with members of the community to discuss its recommendation to the board. The school board met the following day to consider the six proposals it received and the recommendation of the review committee. After hearing from the review committee and members of the community, the board voted to select the development proposal submitted by Rice Development. It thereafter approved a resolution for a public hearing

pursuant to Iowa Code section 297.22 (2007)[1] on its proposal to sell the property to Rice Development.

On October 20, 2006, a notice was published in the Des Moines Register announcing the school board would hold a public hearing regarding the proposed sale of the property on October 31, 2006, at 6:00 p.m. "in the Board Room on the first floor of Central Campus, 1800 Grand Avenue, Des Moines, Iowa." After that notice was published, the meeting site was changed to Hiatt Middle School. On October 27, the board posted a notice and tentative agenda for the October 31 meeting in the foyer of the district's main offices. The notice listed the location of the meeting as Hiatt Middle School. The board's executive secretary also faxed the notice with the correct location and a tentative agenda to the media.

On October 31, 2006, the school board met at Hiatt Middle School and held a public hearing regarding the proposed sale of the property to Rice Development. Members of the community, including Hummel, attended the meeting and expressed their disapproval of the board's proposal. Following the hearing, the school board voted to approve the sale of the property to Rice Development. The board subsequently learned of the error in the notice it published in the Des Moines Register regarding the location of the October 31

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[1] This section provides that

> [b]efore the board of directors may sell . . . any property belonging to the school, the board shall hold a public hearing on the proposal. The board shall set forth its proposal in a resolution and shall publish notice of the time and the place of the public hearing on the resolution. The notice shall also describe the property . . . . Notice of the time and place of the public hearing shall be published at least once not less than ten days but not more than twenty days prior to the date of the hearing in a newspaper of general circulation in the district. After the public hearing, the board may make a final determination on the proposal contained in the resolution.

Iowa Code § 297.22(1)(c).

public hearing. In order to correct the error and ensure compliance with section 297.22, the board voted to hold another public hearing on January 9, 2007. After that hearing, the board again voted in favor of the sale.

On January 18, 2007, Hummel filed a petition against the school district, its board, the district's superintendent, and members of the review committee, alleging all of the defendants violated Iowa's open meetings law, Iowa Code chapter 21.[2] The defendants filed a motion for summary judgment and requested the district court to impose sanctions against Hummel and her attorney pursuant to Iowa Rule of Civil Procedure 1.413(1) and Iowa Code section 619.19. The district court granted the defendants' summary judgment motion, finding the review committee "did not have any policy-making duties. Therefore, the Committee's meetings were not subject to the open meetings law." The court also determined the district's superintendent was not subject to the requirements of chapter 21 pursuant to *Barrett v. Lode*, 603 N.W.2d 766, 768 (Iowa 1999), and it rejected Hummel's claim that the board's notice of the October 31 meeting violated that statute. Finally, the court denied the defendants' motion for sanctions against Hummel and her attorney.

Hummel appeals. She claims the district court erred in entering summary judgment against her because the review committee is a "governmental body" subject to the requirements of chapter 21, and its private meetings on September 5 and 21, 2006, were "meeting[s]" as defined by that statute. She additionally

[2] Hummel's petition also alleged the defendants violated section 297.22. The defendants filed a motion for partial summary judgment as to that claim early in the proceedings, arguing such a claim may only be pursued by timely filing a petition for writ of certiorari, which Hummel did not do. The district court granted the defendants' motion, and Hummel does not challenge that ruling on appeal.

claims the school district and its board violated the statute by failing to give proper notice of the October 31, 2006 meeting.[3] The defendants cross-appeal, claiming the district court abused its discretion in denying their motion for sanctions.

II. Scope and Standards of Review.

We review the district court's summary judgment ruling for the correction of errors at law. Iowa R. App. P. 6.4; *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349, 353 (Iowa 2005).

> If the record shows no genuine dispute of a material fact and that the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. In assessing whether summary judgment is warranted, we view the entire record in a light most favorable to the nonmoving party. We also indulge in every legitimate inference that the evidence will bear in an effort to ascertain the existence of a fact question.

Mason, 700 N.W.2d at 353 (citation omitted). No fact question arises where, as here, the only conflict concerns legal consequences flowing from undisputed facts. *McNertney v. Kahler*, 710 N.W.2d 209, 210 (Iowa 2006).

The district court's order declining to impose sanctions under rule 1.413(1) and section 619.19 is reviewed for an abuse of discretion. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). We find such an abuse when the court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Schettler v. Iowa Dist. Court*, 509 N.W.2d 459, 464 (Iowa 1993).

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[3] She does not challenge the district court's determination that the school district's superintendent was not subject to the requirements of chapter 21.

III. Discussion.

A. Iowa Code chapter 21.

Iowa's open meetings law "seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people." Iowa Code § 21.1; *Mason*, 700 N.W.2d at 353. Thus, its purpose is to require meetings of governmental bodies to be open so that the public may attend. *KCOB/KLVN, Inc. v. Jasper County Bd. of Supervisors*, 473 N.W.2d 171, 173 (Iowa 1991). To that end, section 21.3 provides: "Meetings of governmental bodies shall be preceded by public notice as provided in section 21.4 and shall be held in open session unless closed sessions are expressly permitted by law." However, as our supreme court in *Mason*, 700 N.W.2d at 353, recognized, "[n]ot all gatherings . . . are considered 'meetings' under the statute." Section 21.2(2) defines a "meeting" as

> a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties.

The defendants assert the review committee is not subject to the open meetings law because it had no "policy-making duties." We agree.[4]

We believe resolution of this issue is controlled by the court's decision in *Mason*, which emphasized that "[a] gathering of a governmental body must be open to the public only 'where there is deliberation or action upon any matter

[4] Because we agree with the district court that the review committee's meetings did not fall with the statutory definition of a "meeting" subject to the requirements of the open meetings law, we need not determine whether the committee is a governmental body. *See Mason*, 700 N.W.2d at 354.

within the scope of the governmental body's *policy-making* duties.'" 700 N.W.2d at 354 (quoting Iowa Code § 21.2(2)). "Policy-making," according to *Mason*, is more than recommending or advising what should be done. *Id.* (stating that to "*recommend* a course of action is merely to suggest favorably a particular plan of action"). It instead involves "deciding with authority a course of action." *Id.* Thus, the court's opinion in *Mason* clearly forecloses Hummel's argument that "[e]ven if the Committee did not have *authority* to make a final determination that would irrevocably bind the School Board, this does not mean it did not have policy making *duties.*"

Hummel's attempts to distinguish the facts presented in this case from those presented in *Mason* are unavailing. Here, as in *Mason*, we find no support in the record for a finding that the review committee had responsibility for anything more than simply recommending or suggesting to the school board the development proposal it should accept. *See id.* at 356. The board minutes reveal that the review committee was established to "review the [proposals], conduct a public presentation of the proposals and make a recommendation of the favored proposal to the Superintendent. The Superintendent will then forward a recommendation to the board for approval." The board specifically stated it would "maintain control over all decisions." *See id.* (noting the "ultimate authority to accept or reject the development agreement was reserved to the board; the committee's duty was advisory only").

In an affidavit submitted in support of the defendants' summary judgment motion, a member of the review committee stated that he understood the committee's "charge was to consider the various proposals received by the

School District" and to "make a recommendation to the Superintendent regarding which of the six proposals the members of the Review Committee preferred." He did not believe the committee was responsible for or able to eliminate any proposals from the board's consideration. Another member of the committee similarly stated that the board "maintained control of the sale process and retained the authority to decide which proposal, if any of them, would be selected . . . . The School Board did not delegate the decision regarding the sale to the Review Committee." Nor did it "authorize the Review Committee to set the price for the property." Indeed, the record shows that the review committee simply recommended the Rice Development proposal to the superintendent and the school board, and the board later chose to select that proposal.

We do not agree with Hummel that there is "no evidence in the record that the School Board did any independent investigation or deliberation into any of the proposals submitted for the purchase of Rice Field other than the proposal which was submitted to it by" the review committee. The board minutes set forth a summary of all of the proposals that were submitted to the board. An affidavit of a member of the board states that the board members "discussed the various proposals and the possible sale of the property at the School Board meeting on October 17, 2006." Hummel's assertions to the contrary are nothing more than bare conclusory statements, which are insufficient to defeat a properly supported motion for summary judgment. *See* Iowa R. Civ. P. 1.981(5); *Winkel v. Erpelding*, 526 N.W.2d 316, 318 (Iowa 1995) ("To mount a successful resistance, the challenger must come forward with *specific facts* constituting competent evidence in support of the claim advanced." (emphasis added)). Because there

are no facts in the record to support a finding that the review committee had anything more than an advisory function, the district court correctly concluded that the board's September 5 and 21, 2006 meetings were not required to be open to the public.

We also note there are no facts in the record to support Hummel's apparent assertion that the review committee falls within certain purely advisory groups included in the statutory definition of "governmental body" in section 21.2(1)(e) and (h). Those paragraphs define a "governmental body" subject to the requirements of the open meetings law to include:

> *e.* An advisory board, advisory commission, or task force created by the governor or the general assembly to develop and *make recommendations on public policy issues*.
>
> . . . .
>
> *h.* An advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and *make recommendations on public policy issues.*

Iowa Code § 21.2(1)(e), (h) (emphasis added).

The court in *Mason* recognized that these specified advisory groups, unlike other governmental bodies,

> would be subject to the open-meetings requirement when they deliberate or act within the scope of their duty to develop and make recommendations on public policy issues. But as to all other governmental bodies, the legislature left unchanged the definition of "meeting," including the requirement that the body act in its policy-making role.

700 N.W.2d at 355. However, as in *Mason*, the "fact that the legislature made specified advisory groups subject to the open meetings law is of no assistance to" Hummel because the review committee "was not created by the governor, by

the general assembly, by statute, or by executive order of the state or a political subdivision of the state so as to fall within paragraphs (*e*) or (*h*) of section 21.2(1)." *Id.* It is thus not one of the statutorily-specified advisory groups allowed to "make recommendations on public policy issues" rather than engage in actual policy-making yet remain subject to the open-meetings requirement.

We must next determine whether, as Hummel claims, the school district and its board violated chapter 21 by failing to give proper notice of the board's October 31, 2006 meeting. Iowa Code section 21.4(1) requires a governmental body to "give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to apprise the public of that information." Hummel contends the school district and its board ran afoul of this provision because the notice published in the Des Moines Register on October 20, 2006, listed an incorrect location for the board meeting held on October 31.

Hummel's argument ignores the fact that after the notice with the wrong location was published in the Des Moines Register, the school board posted another notice of the October 31 meeting in the foyer of the school district's main offices. That notice, which was posted on October 27, 2006, listed the correct location of the meeting. The board's executive secretary also faxed the notice with the correct location to the media. We believe the October 27, 2006 notice "sufficiently apprised the public and gave full opportunity for public knowledge and participation." *KCOB/KLVN,* 473 N.W.2d at 173. It also complied with the requirements of section 21.4(1) and (2), which provide:

> 1. . . . Reasonable notice shall include advising the news media . . . and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly

> designated for that purpose at the principal office of the body holding the meeting . . . .
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> 2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body . . . .

See KCOB/KLVN, 473 N.W.2d at 176 (stating in evaluating whether a governmental body complied with the procedures set forth in chapter 21, "the standard is substantial rather than absolute compliance with the statutory requirements").

We do not agree with Hummel that "[e]ven if the faulty notice was a mere innocent error, it was still a violation of the law." Although "notice is an important tool utilized to accomplish openness, it is not the primary purpose of chapter 21." *Id.* at 173. Instead, as we previously acknowledged, the primary purpose of the open meetings law is to "require meetings of governmental bodies to be open and permit the public to be present." *Id.* Here, members of the media and the community, including Hummel herself, were present at and participated in the October 31st meeting. Moreover, ignoring the October 27, 2006 notice and interpreting chapter 21 in manner urged by Hummel would lead to an impractical if not absurd result. It would, in effect, preclude a governmental body from rescheduling a meeting or changing its location. That surely cannot have been the legislature's intent. We therefore conclude the district court did not err in determining the school district and its board satisfied the notice requirements set forth in section 21.4. This brings us to the defendants' claim on cross-appeal: whether the district court abused its discretion in denying their motion for sanctions.

B. Sanctions.

The defendants sought imposition of sanctions against Hummel and her attorney pursuant to Iowa Rule of Civil Procedure 1.413(1) and Iowa Code section 619.19, arguing the open meetings law claims against them were "not well grounded in fact or law, and . . . were filed for an improper purpose—using the judicial system as a political weapon." In reviewing a district court's denial of a motion for sanctions under rule 1.413(1) and section 619.19 for an abuse of discretion, "[w]e are mindful the rule and statute directs the court to impose a sanction when it finds a violation." *Mathias*, 448 N.W.2d at 445. However, "[t]he question presented to the district court under rule [1.413(1)] and section 619.19 is not whether a court shall impose sanctions when it finds a violation—it must; instead, the question is how to determine whether there was a violation." *Id*.

Rule 1.413(1) requires the signer of a petition to certify: "(1) that he has read the petition, (2) that he has concluded after reasonable inquiry into the facts and law that there is adequate support for the filing, *and* (3) that he is acting without any improper motive." *Weigel v. Weigel*, 467 N.W.2d 277, 280 (Iowa 1991) (emphasis added); *accord* Iowa Code § 619.19 (adopting similar certification requirements for parties as well as attorneys). The reasonableness of the inquiry necessarily turns on the facts available at the time of filing, and whether the filing was based on a plausible view of the law. *Weigel*, 467 N.W.2d at 280. The test is an objective one of reasonableness under all relevant circumstances, *id.* at 281, including those factors set forth in *Mathias*, 448 N.W.2d at 446.

In denying the defendants' motion for sanctions, the district court found as follows:

> In the objective sense of "frivolous," the Court cannot say Hummel's motion was frivolous in the present case, for her attorney was able to present a rational argument based upon evidence and existing law in support of her claims. Nor can the Court say that in the subjective sense the claims were frivolous. Hummel's claims were clear and concise. The court is unable to read into her claims that Hummel's purpose was to harass or cause an unnecessary delay in litigation. The Court finds that sanctions against Hummel or her attorney would not be appropriate in this case.

We do not believe the court abused its discretion in so finding.[5]

As our foregoing discussion intimates, "whether a violation has occurred is a matter for the court to determine, and this involves matters of judgment and degree." *Mathias*, 448 N.W.2d at 446 (citing *O'Connell v. Champion Int'l Corp.*, 812 F.2d 393, 395 (8th Cir. 1987)). The district court's determination that the purpose of Hummel's lawsuit was not "to harass or cause an unnecessary delay in litigation," *see* Iowa R. Civ. P. 1.413(1), "rests upon and is informed by the [d]istrict [c]ourt's intimate familiarity with the case, parties, and counsel, a familiarity we cannot have." *O'Connell*, 812 F.2d at 395. The district court is thus "best situated to determine when a sanction is warranted to serve [the] goal of specific and general deterrence." *Dull v. Iowa Dist. Court*, 465 N.W.2d 296, 298 (Iowa Ct. App. 1990). "Such a determination deserves substantial deference from a reviewing court." *O'Connell*, 812 F.2d at 395. This is so because "[t]he

[5] Hummel argues the defendants failed to preserve error on their claim that the district court abused its discretion in denying their motion for sanctions because the "trial Court did not make specific factual findings with regard to the motion for sanctions. Nor did the Court specifically analyze the arguments raised by the School Board." Our review of the record reveals this argument is without merit as the preceding quote from the district court's ruling demonstrates.

imposition of sanctions is a serious matter and should be approached with circumspection." *Id.*; *see also Dull*, 465 N.W.2d at 298 ("Deference to the determination of the courts on the front lines of litigation will enhance these courts' ability to control the litigants before them."). This attitude underlies the court's denial of the defendants' motion for sanctions, and we agree with its approach, *see O'Connell*, 812 F.2d at 395, especially in light of the fact that the defendants' allegation that Hummel and her attorney harbored an improper purpose in filing their petition rests on "factual conclusions, obviously rejected by the district court . . . ." *Dull*, 465 N.W.2d at 298.

We thus cannot say the district court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable in finding that Hummel and her attorney did not bring this lawsuit against the defendants for an improper purpose. *See Schettler*, 509 N.W.2d at 464 ("'Unreasonable' in this context means not based on substantial evidence."). We therefore conclude the court did not abuse its discretion in denying the defendants' motion for sanctions.

IV. Conclusion.

The district court correctly determined that the undisputed facts established as a matter of law that the review committee did not have any policy-making duties. Therefore, its meetings were not subject to the open meetings law in Iowa Code chapter 21. The district court also correctly determined that the school district and its board satisfied the notice requirements set forth in that statute. We therefore affirm the court's ruling entering summary judgment in favor of the defendants. We also affirm the court's denial of the defendants'

motion for sanctions. The court did not abuse its discretion in determining sanctions against Hummel and her attorney were not warranted in this case.

AFFIRMED ON BOTH APPEALS.