STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1737

Rolanda Schmidt, et al.,
Appellants,

vs.

Kathy Roe,
Respondent.

Filed July 6, 2020
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge

Washington County District Court
File No. 82-CV-19-2522

Damon L. Ward, Ward Law Group, Minneapolis, Minnesota (for appellants)

Gregory M. Miller, Trepanier MacGillis Battina P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Smith, Tracy M., Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

SMITH, TRACY M., Judge

In this second appeal arising from a contract-for-deed dispute between appellant-vendees and respondent-vendor, appellants challenge the district court judgment imposing sanctions against them and dismissing their complaint with prejudice. They argue that the district court abused its discretion by imposing excessive sanctions and erred by dismissing

their complaint with prejudice because they had already voluntarily dismissed their complaint. We affirm in part, reverse in part, and remand.

FACTS

The facts underlying this dispute are detailed in our previous decision in *Roe v. Schmidt*, No. A18-1566, 2019 WL 2079484 (Minn. App. May 13, 2019). In brief, appellants Rolanda and Roger Schmidt purchased a home on a contract for deed and then defaulted on the contract. Respondent Kathy Roe, a personal friend of Rolanda's,[1] agreed to lend the Schmidts money to cure their default by Roe's purchasing the property and selling it back to the Schmidts through another contract for deed. The Schmidts defaulted on this contract as well. The Schmidts also forged Roe's signature to take an insurance check intended to repair storm damage to the property in the summer of 2017.

Roe served a notice of cancellation of the contract for deed on the Schmidts, but Rolanda filed for bankruptcy and the bankruptcy court stayed the cancellation. The parties came to a settlement agreement whereby the Schmidts would obtain other financing to pay off the contract for deed, but the Schmidts failed to do so and the bankruptcy court lifted the stay. The contract for deed was canceled, and Roe filed an eviction action against the Schmidts. That action ended with this court affirming the district court's judgment in favor of Roe. *Roe*, 2019 WL 2079484, at *1.

Ten days after the issuance of this court's opinion, the Schmidts filed the complaint in this case. In it, the Schmidts (1) allege that Roe engaged in fraud, (2) seek to have the

[1] We use first names to distinguish between Rolanda and Roger Schmidt.

earlier judgment set aside, (3) seek to quiet title on the disputed property, (4) allege that Roe was unjustly enriched, and (5) allege that Roe intentionally inflicted emotional distress on them.

At the same time that they filed their complaint, and unbeknownst to Roe, the Schmidts recorded a notice of lis pendens,[2] or "suit pending," with respect to the disputed property. The Schmidts filed the complaint and recorded the lis pendens a week before the district court, on Roe's motion, discharged a previous notice of lis pendens that the Schmidts had recorded on the property while their previous appeal was pending. Roe had moved for discharge of that lis pendens because she had a buyer for the property and was trying to close on the sale.

Roe then discovered that the Schmidts had filed the second notice of lis pendens, again interfering with her sale of the property. Roe promptly moved for the district court to discharge the lis pendens. The district court held a hearing on the matter, and the Schmidts did not make an appearance, so the district court discharged the lis pendens. Roe moved the district court to dismiss the complaint against her and gave the Schmidts notice of her intent to seek sanctions. After the 21-day safe-harbor period had expired without the Schmidts withdrawing their complaint, Roe moved for sanctions under Minn. R. Civ. P.

[2] "A notice of lis pendens may properly be filed only if a party pleads a cause of action in which the title to, or any interest in or lien upon, real property is involved or affected." *Bly v. Gensmer*, 386 N.W.2d 767, 768 (Minn. App. 1986) (quotation omitted). "The purpose of a lis pendens is to warn prospective purchasers that title to property is in litigation which impedes a property owner's right to free alienability of real estate." *Nelson v. Nelson*, 415 N.W.2d 694, 698 (Minn. App. 1987).

11 and Minn. Stat. § 549.211 (2018). The Schmidts submitted no memoranda in response to the motions.

The district court scheduled a hearing on the pending motions, but, a week before the hearing, the Schmidts filed a letter with the district court asking for a continuance. That same day, the Schmidts filed a notice that they were voluntarily dismissing their complaint. The district court denied the request for a continuance and held its scheduled hearing. The Schmidts' counsel appeared at the hearing. After the hearing, Roe submitted documentation in support of an award of sanctions and the Schmidts submitted a proposed order and memorandum of law denying sanctions. The district court then issued an order dismissing the Schmidts' claims with prejudice and sanctioning them and their attorney. The district court sanctioned the Schmidts and their attorney jointly and severally in the amount of $41,833.30 and the Schmidts jointly and severally in the amount of $18,514.27.

The Schmidts appeal.

D E C I S I O N

The Schmidts raise multiple arguments challenging the imposition of sanctions and the dismissal of their case with prejudice. But we first address a preliminary matter.

As Roe points out, only the Schmidts, not their counsel, appealed the sanctions against them. An issue not raised in a notice of appeal is not properly before this court. *Cf. City of Ramsey v. Holmberg*, 548 N.W.2d 302, 305 (Minn. App. 1996) (concluding that a respondent's issues were not properly before the appellate court because the respondent had not filed a notice of review), *review denied* (Minn. Aug. 6, 1996). But we may choose to consider sanctions against counsel, and we choose to do so here, for the purpose of

moving this litigation forward. *See Radloff v. First Am. Nat'l Bank of St. Cloud, N.A.*, 470 N.W.2d 154, 156 (Minn. App. 1991) (noting that attorney failed to intervene or file a separate appeal, which could have been consolidated with party appeal, but allowing attorney's "appeal in conjunction with" party appeal, for the purpose of "mov[ing] this protracted litigation along"), *review denied* (Minn. July 24, 1991).

We turn to the Schmidts' challenge to the district court's imposition of sanctions.

I. The district court abused its discretion by imposing the amount of sanctions it did.

Under Minn. R. Civ. P. 11.02, when an attorney presents a document to the court, the attorney certifies that, to the best of that attorney's knowledge, information, and belief, the following is true about the document:

> (a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery[.]

Minn. R. Civ. P. 11.02(a)-(c).

If the district court determines that rule 11.02 has been violated, it may impose appropriate sanctions on the violating party or their attorney. Minn. R. Civ. P. 11.03. "A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." Minn. R.

Civ. P. 11.03(b). The conduct is measured against an objective standard, but sanctions are not appropriate simply because a party does not prevail on the merits. *Radloff*, 470 N.W.2d at 157.

Minnesota statutes also provide an alternative, parallel scheme of sanctions, which describes the manner and procedure in which parties can seek sanctions in civil actions. *See* Minn. Stat. § 549.211 (2018). This statutory scheme overlaps substantially with the rule 11 scheme. *See Johnson ex rel. Johnson v. Johnson*, 726 N.W.2d 516, 518-19 (Minn. App. 2007) (describing procedure and standards under rule 11 and section 549.211).

The standard of review for imposed sanctions is whether the district court abused its discretion. *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011), *review denied* (Minn. Mar. 15, 2011).

A. Violations of rule 11 and Minn. Stat. § 549.211

The district court concluded that sanctions are warranted because the Schmidts' complaint advances allegations not well founded in the facts or the law and was brought to lengthen litigation.

The Schmidts argue that the sanctions are not warranted under rule 11 and Minn. Stat. § 549.211 because both provisions are meant to deter bad-faith litigation and are to be interpreted narrowly. They contend that, consistent with these principles, sanctions are inappropriate because the factual allegations in the complaint are sufficient to plausibly support their claims.

The Schmidts do not cite any authority for their contention that, as long as a complaint alleges facts that, if proved, would support a valid legal claim, the plaintiff

cannot be sanctioned under rule 11. Rule 11 itself implies that facial sufficiency of a complaint is not the limit of the obligations imposed by the rule. For example, under the rule, allegations and factual contentions must have evidentiary support or be likely to have support following reasonable discovery, Minn. R. Civ. P. 11.02(c), and pleadings may not be presented for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation, Minn. R. Civ. P. 11.02(a). To demonstrate a violation of either of those standards, information extrinsic to the complaint may be considered.

Our review of the record leads us to conclude that it supports the district court's determination that the Schmidts brought their lawsuit in bad faith. The Schmidts' failure to participate almost at all in the proceedings that they instigated, combined with the timing of the suit in relation to the discharge of the earlier notice of lis pendens, supports the inference that the lawsuit was brought for the improper purpose of lengthening litigation with frivolous claims in order to delay Roe's sale of the property. The Schmidts have submitted no explanation, besides general assertions that they expected to prove their allegations with further discovery, for why they thought they would discover supporting evidence for their claims. This omission is particularly glaring when viewed in the light of the fact that the Schmidts did not raise these claims earlier, despite years of litigation between the parties before this case. *See* Minn. R. Civ. P. 13.01 ("A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction that is the subject matter of the opposing party's claim . . . .").

The Schmidts raise additional arguments against the imposition of sanctions, but none shows that the district court abused its discretion. The Schmidts imply, for instance, that the district court inappropriately relied on conjecture by Roe. While the district court's understanding of the facts may have been based largely on Roe's submissions, the Schmidts have only themselves to blame. The Schmidts did not file with the district court any affidavits or other documents, other than their proposed order and its associated memorandum of law, related to sanctions. Meanwhile, Roe submitted multiple affidavits and documents in support of her motions. Those largely unopposed documents support the district court's determination that the Schmidts brought this complaint in bad faith.[3]

The Schmidts next contend that their action to quiet title was reasonable given that the previous appeal put the title in question. But the previous appeal resolved the issue of the title between the Schmidts and Roe, and the Schmidts filed this action to quiet title *after* this court released its opinion.

Finally, the Schmidts assert that sanctions were improper because they voluntarily dismissed their claims in the early stages of litigation.[4] But the Schmidts only sought to

[3] To the extent that the Schmidts' concerns relate to the district court's hearing on Roe's motions, the Schmidts have included no transcript of the hearing on appeal, precluding our review. *See Sela Invs. Ltd. v. H.E.*, 909 N.W.2d 344, 349 (Minn. App. 2018) (observing that, without a transcript, the scope of an appellate court's review is "limited to issues that can be determined by reference to the available record").

[4] The Schmidts also contend that, because they voluntarily dismissed the case under Minn. R. Civ. P. 41.01, the district court lacked jurisdiction to sanction them. But, even if a plaintiff voluntarily dismisses a suit under that rule, the district court retains jurisdiction to consider a request for sanctions under rule 11. *Vegemast v. DuBois*, 498 N.W.2d 763, 766 (Minn. App. 1993).

dismiss their claims months into proceedings, after Roe had moved for and obtained discharge of the lis pendens, moved to dismiss the complaint, and moved for sanctions.

We conclude that the district court did not abuse its discretion by imposing sanctions on the Schmidts and their attorney under rule 11 and Minn. Stat. § 549.211.

B. Amount of sanctions

The Schmidts contend that the amount of the imposed sanctions was excessive and beyond what was necessary to deter the repetition of offending conduct. The district court calculated the amount of sanctions based on an affidavit from Roe documenting the amount of Roe's legal fees. The majority of those fees were incurred before the Schmidts initiated this case. The complaint in this case was not filed until May 23, 2019, but the district court relied on Roe's attorney's description of legal costs occurring (1) between May 1, 2018, and November 2, 2018, and (2) after November 2, 2018.

Roe defends the amount of sanctions on the basis that courts may impose larger sanctions than the fees incurred in a particular case if the larger amount is necessary to deter future violations, citing *Gibson v. Trs. of Minn. State Basic Bldg. Trades Fringe Benefit Funds*, 703 N.W.2d 864, 871 (Minn. App. 2005), *vacated in part* (Minn. Dec. 13. 2005).[5] In *Gibson*, this court affirmed the award of fees based on legal services provided before a complaint was filed, but it also noted that those services were related to the initial attempt to settle the dispute. 703 N.W.2d at 871.

[5] The supreme court vacated the opinion "only with respect to the award of sanctions" against the represented party in the case. *Gibson v. Trs. of Minn. State Basic Bldg. Trades Fringe Benefit Funds*, No. A05-39, 2005 WL 6240754, at *1 (Minn. Dec. 13, 2005).

We do not reject the idea that a district court may, for deterrence purposes, impose sanctions that are greater than the opposing party's legal fees incurred in response to inappropriate conduct. But the district court did not cite deterrence as the basis for the amount of sanctions imposed here. Rather, the basis for a large part of the sanctions appears to be a determination that the Schmidts' conduct in previous litigation was unreasonable and harassing. But rule 11 and section 549.211 require certain procedural steps—including notice and a safe-harbor period to correct oppressive conduct—before sanctions may be imposed, and those steps were not taken in the earlier litigation. We conclude that it was an abuse of discretion to impose attorney fees for past litigation as sanctions in this case, and we reverse. Because we affirm the determination that there was a violation of rule 11 and section 549.211, however, we remand to the district court the issue of what sanctions should be imposed.

II. The district court abused its discretion by dismissing the case with prejudice.

The Schmidts argue that they had an "absolute right to dismiss an action" without prejudice in this case. A plaintiff may voluntarily dismiss his or her lawsuit, without order of court, "by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment." Minn. R. Civ. P. 41.01(a). The dismissal is without prejudice, unless the notice of dismissal states otherwise or the plaintiff has previously dismissed an action in federal or state court based on or including the same claim. *Id.* Appellate courts review the district court's consideration of a voluntary dismissal under rule 41 for abuse of discretion. *Butts ex rel. Iverson v. Evangelical Lutheran Good Samaritan Soc'y*, 802 N.W.2d 839, 841 (Minn. App. 2011).

Roe moved to dismiss the Schmidts' claims with prejudice. A week before the hearing on Roe's motion, the Schmidts gave notice of voluntary dismissal of their claims. After the hearing, the district court granted Roe's motion and dismissed the Schmidts' complaint with prejudice.

Roe argues that the Schmidts could not voluntarily dismiss the case without a stipulation from Roe or a court order. But, because Roe had not filed an answer or a motion for summary judgment, the Schmidts could still voluntarily dismiss the action unilaterally under the plain language of rule 41.01(a).

Roe cites multiple cases, including unpublished cases, for the reasonable proposition that rule 41.01(a) is "intended to allow for the voluntary dismissal of the lawsuit before a [r]espondent becomes substantially involved with the case." *See id.* at 844 (reversing the district court's grant of a voluntary dismissal under rule 41.01(b) because it would prejudice the defendants in their motion for summary judgment); *County of Anoka v. Petrik*, No. CX-98-574, 1998 WL 531864, at *1 (Minn. App. Aug. 25, 1998) (holding that a party could not voluntarily dismiss her action after the state moved for dismissal or alternatively for summary judgment), *review denied* (Minn. Oct. 29, 1998)[6]; *Altimus v. Hyundai Motor Co.*, 578 N.W.2d 409, 412 (Minn. App. 1998) (noting that a district court's decision to deny a motion for voluntary dismissal after the defendants had answered and moved for summary judgment was governed by rule 41.01(b)); *see also U.S. Bank v. Byrkit*,

[6] While Roe argues that this case is analogous to *Petrik*, nothing in Roe's motion to dismiss or the district court's order indicates that they were treating the motion to dismiss as a motion for summary judgment.

No. A12-0972, 2013 WL 490817, at *4 (Minn. App. Feb. 11, 2013) (reversing district court's decision to dismiss claims with prejudice when party voluntarily dismissed the claims without prejudice); *Vegemast*, 498 N.W.2d at 766 (discussing a motion for attorney fees under rule 11 after a voluntary dismissal under the earlier version of rule 41.01). But none of those cases holds that something other than an answer or a motion for summary judgment can prevent a plaintiff from voluntarily dismissing a case under rule 41.01(a)—indeed, many of the cases do not even consider rule 41.01(a).

Roe also suggests that, because the 21-day safe-harbor period had expired, the district court had the discretion to dismiss the case with prejudice as a sanction under rule 11. But nothing in the district court's order indicated that it was dismissing the complaint with prejudice as a rule 11 sanction. We therefore reverse the dismissal of the Schmidts' claims with prejudice.

We remand the case to the district court for (1) correction of the record to reflect a dismissal without prejudice and (2) a determination of the sanctions against the Schmidts and their attorney, consistent with this opinion.

Affirmed in part, reversed in part, and remanded.