STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1460

Allstate Indemnity Company,
Appellant,

vs.

Constantin Starchook, M.D., et al.,
Respondents,

Patrick Bartner,
Respondent,

Angel Soto,
Respondent.

Filed June 21, 2021
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-CV-19-9948

Richard S. Stempel, Luke G. Peters, Stempel & Associates, PLC, Excelsior, Minnesota (for appellant)

Joseph T. Dixon, Alethea M. Huyser, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondents Constantin Starchook, M.D., and Twin Cities Pain Management, PLLC)

David W. Asp, Jennifer L. M. Jacobs, Lockridge Grindal Nauen P.L.L.P., Minneapolis, Minnesota (for respondent Patrick Bartner)

Douglas L. Elsass, David J. Warden, Nilan Johnson Lewis PA, Minneapolis, Minnesota (for respondent Angel Soto)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and Rodenberg, Judge.*

NONPRECEDENTIAL OPINION

ROSS, Judge

An automobile insurer sued a medical clinic, its owner, and two alleged behind-the-scenes operators in a civil complaint worded in speculative fashion with assertions implying fraud and alleging the unlawful practice of medicine. The district court dismissed the complaint through summary judgment and sanctioned the insurer for filing and then maintaining the lawsuit despite never having identified any evidence to support its allegations. The auto insurer argues on appeal that the district court dismissed the suit and ordered sanctions prematurely, without allowing sufficient discovery for it to develop supportive evidence. It also challenges the district court's decision not to amend or stay its scheduling order. The insurer's argument that its allegations have merit lacks merit, as do its related arguments about the scheduling order and sanctions. We therefore affirm.

FACTS

Allstate Indemnity Company filed an amended civil complaint in March 2020 against respondent medical clinic Twins Cities Pain Management PLLC and three individuals allegedly associated with it—the clinic's principal owner Dr. Constantin Starchook and two supposed behind-the-scenes managers, Patrick Bartner and Angel Soto. The three-count complaint sought a judicial declaration of the respondents' fraudulent

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

misrepresentations. The amended complaint alleges first that, because a Florida physician who is no longer licensed in Minnesota "may still have an ownership" interest in the clinic and "there may be" other nonphysicians who are "operat[ing] in the shadows" with an ownership interest, the clinic is violating Minnesota's bar against the corporate practice of medicine. It maintains too that Bartner and Soto have a secret ownership interest. The complaint alleges second that, if the physician who owns the clinic cannot show that the clinic performed the medical services billed to the insurer, the clinic's billing "would constitute a misrepresentation." It asserts that unidentified "confidential informants" have information supporting the insurer's allegations about the clinic's alleged scheming. This allegation included the suggestion that Bartner and Soto offered cash kickbacks to others to incentivize referrals to the clinic, which in turn performed unnecessary and expensive treatment on insurance claimants. The complaint alleges third that the clinic engages in a "predetermined protocol" for patients who should have been given less costly, unspecified, "more conservative" treatment options.

Allstate's speculative amended complaint fits in the context of the case's prehistory. The district court observed that, before filing the complaint, Allstate had unsuccessfully attempted to compel Dr. Starchook to respond to a subpoena *duces tecum* during an arbitration in which Allstate sought to avoid paying claims involving medical care the clinic provided to Allstate's insureds. Allstate's payment-avoidance strategy was to find evidence that might show that the clinic had been unlawfully engaged in the corporate practice of medicine. In this context, the district court in this suit opined that "Allstate

brings this case to conduct the investigation" that it was unable to conduct using the arbitration's subpoena process.

The respondents moved the district court to dismiss the lawsuit for failure to state a legal claim. The district court issued a scheduling order in September 2019 without deciding the motions to dismiss. All parties (except Soto, who had not yet entered an appearance) moved to stay the scheduling order until the district court decided the dismissal motions. The district court neither granted nor denied the motion to stay the scheduling order. It instead informed the parties that they could mutually agree to "move any of the deadlines in the . . . scheduling order" except for the trial date and the deadlines for dispositive motions and nondispositive motions unrelated to discovery.

The district court denied the motions to dismiss, but it did so reservedly, acknowledging "the weakness of the inferences" in Allstate's amended complaint. It denied the motions, expressly relying on Allstate's implicit representation that the "confidential informants" referenced in the complaint would present the evidence that could prove Allstate's claims.

The respondents moved for summary judgment. Then, one day before the discovery deadline, Allstate moved the district court to amend the scheduling order, maintaining that it had believed that the district court had previously stayed the scheduling order in its September order. It maintained alternatively that, by not deciding the various motions to dismiss sooner, the district court left Allstate too little time to conduct discovery. The district court denied the motion. It observed that Allstate could have proceeded with discovery notwithstanding the pending motions to dismiss. And it emphasized that its

September order expressly directed the parties to alter the discovery deadline by agreement and prohibited any change to the motions' deadline or trial date.

Allstate's summary-judgment response failed to support its factual allegations with evidence sufficient to merit a trial. The district court granted summary judgment against Allstate and rebuked its lack of effort to marshal evidentiary support: "Since the filing of this case over one year ago, Allstate has put in little effort to actually conduct any investigation of Twin Cities Pain Management using the civil discovery tools available to it." It added, "Allstate's laissez faire attitude toward this litigation has created the predicament in which it now finds itself—summary-judgment motions with little to no evidence." The district court concluded that Allstate provided no admissible evidence creating a fact dispute over any triable issue of fraud or the corporate practice of medicine. It observed that Allstate had identified none of the so-called confidential informants, let alone provided any affidavit of their testimony corroborating the complaint allegations.

The respondents moved the district court to award sanctions under rule 11.03 of the Minnesota Rules of Civil Procedure, arguing that Allstate's suit alleged facts lacking evidentiary support and constituted harassment. The district court pointed out the serious and personal nature of Allstate's allegations against the clinic and the named alleged principals. It described the original and amended civil complaints as "a damning indictment." It recounted, "Allstate's counsel has . . . been sanctioned in litigating the issue of allegations of violation of the corporate practice of medicine doctrine previously." It scolded Allstate for having relied on the complaint's reference to three "confidential informants" to avoid the respondents' motions to dismiss only then to fail to identify these

alleged witnesses or provide any testimony from them to oppose summary judgment. It highlighted that the respondents rather than Allstate offered the only relevant evidence submitted at summary judgment and that this evidence refuted Allstate's allegations. It described Allstate's suit as "surely a novel collateral attack on the [arbitration] decision[s]" against Allstate in favor of Allstate's insureds for the payment of medical claims. It concluded that "Allstate instituted this litigation, at best, cavalierly and, at worst, just to harass Dr. Starchook and the other [respondents] and dissuade Dr. Starchook from treating the patients that make up some of his practice." The district court determined that Allstate's conduct violated rule 11.03, and it ordered Allstate to pay the respondents about $200,000, covering their costs to engage in discovery and argue the multiple motions.

Allstate appeals the summary-judgment dismissal and the sanctions order.

DECISION

Allstate raises three arguments on appeal. It first argues that the district court improperly failed to stay the scheduling order pending resolution of the respondents' motion to dismiss and, relatedly, that the district court wrongly refused to amend the scheduling order after it denied the motions to dismiss. Allstate next challenges the summary-judgment decision, arguing that the district court should have permitted additional discovery instead. And it finally challenges the award of sanctions. None of these arguments prevail.

I

Allstate first challenges the district court's failure to stay the scheduling order pending resolution of the respondents' motion to dismiss. The district court should issue a

scheduling order soon after an action is filed. Minn. R. Civ. P. 6.02; Minn. R. Gen. Prac. 111.03(a). The order will include deadlines for discovery and for pretrial motions, which will control the litigation unless the order is modified on a party's showing of good cause. Minn. R. Civ. P. 16.02. District courts have considerable discretion in scheduling matters, and we will not reverse its decision absent an abuse of that discretion. *Mercer v. Andersen*, 715 N.W.2d 114, 123 (Minn. App. 2006). Allstate contends on appeal that it provided the district court with good cause to amend the order.

We are not persuaded that Allstate provided good cause, let alone good cause so clear that the district court was compelled to stay the scheduling order's deadlines when the parties jointly sought a stay. Allstate bases its good-cause argument on the parties' stated desire to avoid unnecessary discovery expenses while the district court considered the motions to dismiss. Rather than issue a stay, the district court accommodated the parties' desire to avoid unnecessary discovery costs by allowing them to adjust the discovery deadline by agreement. Allstate has not shown how this accommodation was insufficient either to achieve its cost-avoidance objective or how a judicially imposed stay was necessary for Allstate's ability to discover evidence to prepare for trial or to defend summary judgment. So even if we assume that the district court should have granted the joint motion to stay, Allstate has shown no prejudice by the district court's declining to do so.

Likewise we see no abuse of discretion in the district court's denying Allstate's later unilateral motion to amend the scheduling order. Allstate fails to establish that it brought the motion having good cause. Allstate so moved just one day before discovery was

scheduled to end and after the respondents had already submitted their motions for summary judgment. As the district court pointed out, Allstate could have, but failed to, pursue discovery while awaiting the result on the motions to dismiss despite knowing that the court would not alter the dispositive-motion deadline. The district court did not rely on this deficiency alone. Rather than immediately deny Allstate's motion to amend the scheduling order, the district court offered Allstate the chance to demonstrate that denying the motion would prejudice it. The court invited Allstate "to file an offer of proof as to what it intends to find through discovery and exactly what discovery it wishes." The correspondence that followed easily justifies the district court's eventual denial.

Allstate's attorney wrote first. He acknowledged the failure to conduct discovery during the scheduled period despite having the opportunity to engage in discovery: "I recognize that the Court did not stay discovery in this case and it is my mistake not pursuing discovery while [respondents'] motions were pending. The responsibility is mine . . . ." This admission (plus the fact that Allstate served discovery on the respondents five days before the district court denied the motions to dismiss) undermines Allstate's contention on appeal that it reasonably interpreted the district court's September 2019 order as tacit endorsement of the parties' request to stay discovery. Allstate's letter went on to identify the targets of its planned discovery, along with the discovery methods it would employ. But it failed to provide a prejudice-revealing offer of proof. It described instead what can fairly be described as an exploratory effort, seeking to find evidence that might suggest an organizational or financial relationship between the clinic and respondents as named defendants. The respondents wrote in response, revealing to the district court that they had

already provided Allstate more than a thousand pages of documents but that Allstate had not even looked at them:

> Allstate's requests fail to consider, in any way, the more than 1200 pages of documents it has already received in discovery from Dr. Starchook and his clinic. Based on counsel's document-production software, it appears Allstate has not even downloaded or reviewed the documents that were produced to Allstate on March 16, 2020. Defendants produced this material in response to Allstate's requests, even though Allstate failed to timely serve its discovery.

The circumstances readily support the district court's finding that the respondents complied with the discovery rules and scheduling order while Allstate did not. In this context, we see nothing suggesting an abuse of discretion in the district court's decision denying Allstate's motion to amend the scheduling order.

II

Allstate next challenges the summary-judgment dismissal of the amended complaint. Although we typically review a summary-judgment decision de novo, *Adams v. Harpstead*, 947 N.W.2d 838, 842 (Minn. App. 2020), *review denied* (Minn. Oct. 1, 2020), where, as here, a party challenges the decision based on its assertion that the district court prematurely dismissed the complaint without allowing sufficient discovery, we review for an abuse of discretion, *Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 45 (Minn. App. 2010). Building on the reasons just discussed, we see no abuse of discretion.

We are not persuaded that the district court should have permitted additional time for discovery before deciding the summary-judgment motions. A party that opposes a summary-judgment motion but that cannot present facts to avoid dismissal may present an

affidavit explaining why and ask the district court for additional discovery time. Minn. R. Civ. P. 56.04. Allstate did not submit an affidavit or otherwise seek relief under this rule. It contends that its motions and pleadings nevertheless substantially complied with the rule. We think otherwise, and we cannot say that the district court abused its discretion by failing to grant relief available under a rule that Allstate never expressly invoked.

III

Allstate also contests the district court's sanctions order. A district court has broad discretion in determining whether to impose sanctions under rule 11, and we will not disturb its decision absent an abuse of discretion. *Gibson v. Coldwell Banker Burnett*, 659 N.W.2d 782, 787 (Minn. App. 2003). An attorney must certify that any document he presents to the court is not offered for an improper purpose and that it either has or is likely to have evidentiary support. Minn. R. Civ. P. 11.02(a), (c). Unwarranted claims or those that are intended to harass, delay, or needlessly increase the cost of litigation expose the attorney, law firm, or party to sanctions. Minn. R. Civ. P. 11.03. We must therefore determine whether Allstate's allegations were warranted by evidence.

The district court sanctioned Allstate because, among other things, it found that Allstate made no effort to produce any evidence to prove its serious allegations. The record supports this finding. Allstate rested its most alarming allegations on the ostensibly compelling notion that "confidential informants" possessed evidence that would support Allstate's claim of the respondents' fraud and deceit. But Allstate refused to disclose the identities of the supposed confidential informants, failed to ask the court to allow Allstate to present testimony under seal, and failed to produce any affidavit testimony from them

even after the district court indicated that disclosing their identities was necessary for the amended complaint to survive the summary-judgment motions. Allstate also failed to conduct any substantive discovery during the 11-month period after initiating its suit. Its response to the respondents' summary-judgment motions fell so clearly short of identifying any facts that could salvage the amended complaint that, on appeal, Allstate does not even attempt to challenge the summary-judgment decision on the merits. The district court was concerned that the lawsuit was merely a fishing expedition for evidence to support Allstate's speculative legal theory. But our review of the record informs us that Allstate never even approached the water. We cannot say that the district court abused its discretion by ordering sanctions.

Allstate also asserts that the sanctions award is excessive. The record contradicts the assertion. The respondents were separately sued and were represented by separate counsel, and the amended complaints required them to respond to allegations of an especially serious nature. Allegations that a clinic's physician collaborated with others to engage in fraudulent medical and insurance-related practices along with the unlawful corporate practice of medicine are the kind of accusations that, if proved, could end careers and terminate the services of a health-care provider. The allegations put livelihoods and reputations in jeopardy, without any apparent basis in fact. The circumstances reasonably required the separate respondents to engage in discovery and to file multiple motions to dismiss and motions for summary judgment. They submitted detailed records of the attorney time spent in the litigation, and the record does not support Allstate's contention

that the respondents' attorneys overbilled their clients in terms of either rates or hours. Its contention that the sanctions order is excessive rings hollow. To borrow an apt summary,

> It is unbecoming for the plaintiff[] to hail the defendant[s] into court by means of [unsupported] allegations and then to complain when the defendant[s] hire[] skillful, experienced and expensive advocates to defend against those allegations. Having wrongfully kicked the snow loose at the top, the plaintiff must bear the consequences of the avalanche at the bottom.

Schwarz v. Folloder, 767 F.2d 125, 134 (5th Cir. 1985) (alteration and quotation omitted). We reject Allstate's contention that the sanctions order was excessive.

Affirmed.