

*\This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A21-1301**

Darwin Boutain, et al.,  
Appellants,

vs.

Aaron Peterson,  
Respondent.

**Filed May 31, 2022  
Affirmed in part, reversed in part, and remanded  
Worke, Judge**

Beltrami County District Court  
File No. 04-CV-21-900

Michael L. Jorgenson, Charlson & Jorgenson, P.A., Thief River Falls, Minnesota (for appellants)

Patrick S. Rosenquist, Rosenquist Law Office, Grand Forks, North Dakota (for respondent)

Considered and decided by Worke, Presiding Judge; Reilly, Judge; and Frisch, Judge.

**NONPRECEDENTIAL OPINION**

**WORKE**, Judge

Appellant tenants argue that the district court (1) erred by dismissing their declaratory-judgment action for failure to state a claim upon which relief can be granted and (2) abused its discretion by awarding attorney fees and costs to respondent landlord.

We affirm the district court's grant of respondent's motion to dismiss but reverse and remand the attorney-fee award.

## FACTS

### *Facts from complaint and lease agreement*

In 2015, appellants Darwin and Dena Boutain entered into a lease agreement with a trust to rent farmland owned by the trust. The lease provided that half the annual rent was due on March 1 and the other half on November 1 of each year for 2017 to 2020 and that full annual rent was due on March 1 of each year for 2021 to 2025. The lease provided that failure to pay rent timely voided the lease, but it allowed tenants to request a 30-day extension to pay rent, subject to the landowner's approval.

The trust sold the farmland to T.N. In late 2020, the Boutains discovered that respondent Aaron Peterson mowed through their bean fields, put up deer stands and no trespassing signs, and made other alterations on the property. They felt that these actions excluded them from the property. They told T.N. that they would not pay the portion of rent due in November 2020. T.N. agreed.

In January 2021, Peterson bought the farmland from T.N. on a contract for deed. On an unspecified date, Peterson's attorney notified the Boutains of Peterson's intent to terminate the lease. The Boutains did not timely pay the rent due on March 1, 2021. The parties apparently met to discuss the lease on March 10. The Boutains assert that a new oral lease agreement was reached, but that Peterson changed his mind the next day when he texted them to say that he no longer wanted tenants on the property. On March 18, 2021, the Boutains tried to pay the March rent. They simultaneously requested a 30-day

extension to pay rent. That same day, Peterson notified the Boutains of his intent to evict them. Five days later, Peterson rejected the rent payment and extension request and reiterated his intent to evict the Boutains.

On April 1, 2021, the Boutains filed a complaint seeking declaratory judgment under Minn. Stat. § 555.01 (2020) “confirming the lease agreement between the parties.” They also filed an ex parte motion for a temporary restraining order (TRO) and a motion for a temporary injunction prohibiting Peterson from terminating the lease.

***Filings and proceedings after complaint***

Peterson moved to dismiss the Boutains’ complaint and deny their other motions. He also sought attorney fees under the lease agreement. Peterson attached affidavits, the lease agreement, his contract for deed with T.N., screenshots of text messages between the parties, and several letters between the parties’ attorneys.

The Boutains responded with a motion to deny Peterson’s motion to dismiss, attaching an affidavit and screenshots of additional text messages between the parties.<sup>1</sup>

The submissions attached to various filings reveal disputes over the use of the property, terms of the lease, and whether either party had breached the lease, as well as the Boutains’ desire for a new lease agreement.

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<sup>1</sup> The Boutains styled their response as a motion to deny Peterson’s motion to dismiss, but they requested no affirmative relief. We note that the proper response to a motion to dismiss is a memorandum opposing the motion, and we therefore construe the Boutains’ response as such.

### *District court orders*

The district court held a hearing on April 28, 2021. After converting Peterson's motion to one for summary judgment based on consideration of documents outside the pleadings, the district court granted the motion. The district court denied the Boutains' motions for a TRO and temporary injunction. It also granted Peterson's request for attorney fees, basing its decision on sanctions under Minn. R. Civ. P. 11.02 and Minn. Stat. § 549.211 (2020) rather than on the lease.

The Boutains moved for amended findings under Minn. R. Civ. P. 52.02 and for relief from the judgment under rule 60.02(f). The district court held a hearing. It then issued an order (the second order) granting in part the motion for amended findings, granting Peterson's motion to dismiss (this time under rule 12.02(e)), granting Peterson's motion for attorney fees, and denying the Boutains' motions for temporary relief.

In the second order, the district court stated that the facts alleged in the Boutains' complaint, taken as true, show that the Boutains breached the lease agreement and rendered the lease void. The district court alternatively reasoned that, even if it considered the documents outside the pleadings and converted the motion to dismiss to a motion for summary judgment, it would grant summary judgment in favor of Peterson. Finally, the district court awarded further attorney fees under rule 11.02 and section 549.211. This appeal followed.

## DECISION

### *Motion to dismiss*

The Boutains argue that because they presented facts showing that the parties were negotiating a new lease agreement, thereby explaining their failure to pay rent timely, the district court erred by dismissing their complaint. We are not persuaded.

A complaint must “contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought.” Minn. R. Civ. P. 8.01. The district court may grant a motion to dismiss the complaint if it “fail[s] to state a claim upon which relief can be granted.” Minn. R. Civ. P. 12.02(e). But the district court may do so only if “there is no way to construe the alleged facts—and the inferences drawn from those facts—in support of the [nonmoving party]’s claim.” *Hansen v. U.S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 326 (Minn. 2019). A pleading survives a motion to dismiss if it gives “fair notice to the adverse party of the incident giving rise to the suit with sufficient clarity to disclose the pleader’s theory upon which his claim for relief is based.” *Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 503 (Minn. 2021) (quotation omitted). In determining a motion to dismiss, the district court may consider documents and statements referenced in the complaint without converting the motion to one for summary judgment. *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004).

This court reviews de novo a district court’s grant of a motion to dismiss for failure to state a claim. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). In doing so, “[w]e accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party.” *Id.*

The Boutains' sole cause of action is for a declaratory judgment "confirming the lease" between the parties. The facts alleged in the complaint and provided in the lease agreement referenced therein, however, show that rent was due on March 1; failure to pay rent timely voided the lease; and the Boutains did not pay rent until March 18. Although the lease agreement allowed the Boutains to seek a 30-day extension, it also stated that any extension was subject to the landowner's approval. The Boutains asserted no facts suggesting that Peterson approved an extension. Thus, the facts alleged in the complaint cannot support the Boutains' claim, which we understand to be that the lease remained in effect despite the Boutains' failure to pay rent timely. Further, there appear to be no inferences that can be drawn from the facts pleaded in the complaint and lease that would change this result.<sup>2</sup>

Even if we construe the Boutains' complaint as giving fair notice of their theory that they failed to pay timely because they entered into negotiations for a new lease with Peterson, the complaint still fails to state a viable claim. The supreme court has stated that parties remain bound by an existing agreement even pending negotiation of a new one. *See Hoppman v. Persha*, 248 N.W. 281, 282 (Minn. 1933) (stating that, in the absence of

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<sup>2</sup> We note that the parties submitted information that was not referenced in the pleadings. The Boutains also filed motions for temporary relief seeking to prohibit Peterson from terminating the lease. Additionally, the district court appeared to conduct a summary-judgment analysis in the alternative to its motion-to-dismiss analysis. "But a district court may consider documents referenced in the [pleadings] without transforming a motion to dismiss into one for summary judgment." *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004). Because we conclude that the Boutains' complaint fails to state a claim upon which relief can be granted, we need not address the extra-pleading materials, the Boutains' motions for temporary relief, or the district court's alternative summary-judgment analysis.

evidence that existing lease was cancelled or terminated, tenants were not excused from paying rent under existing lease despite allegations that they were in negotiations for a new lease). The Boutains cite no authority, and we are aware of none, excusing performance of an existing contract when the parties are in negotiations to change that contract. In sum, we conclude that the Boutains' complaint fails to state a claim upon which relief can be granted, and therefore affirm the district court's dismissal of the complaint.

### *Attorney fees*

The Boutains argue that the district court erred by awarding Peterson attorney fees and costs as a sanction under rule 11 and section 549.211. We agree.

An attorney must certify that submissions to the district court are not presented for an improper purpose and are warranted under existing law or a nonfrivolous argument for the extension of existing law. Minn. R. Civ. P. 11.02; Minn. Stat. § 549.211, subd. 2. A district court may impose sanctions on an attorney or party if it determines rule 11.02 has been violated. Minn. R. Civ. P. 11.03; Minn. Stat. § 549.211, subd. 3. But before the district court may impose sanctions, one of two procedures must occur. First, if a party moves for sanctions, that party must serve the to-be-sanctioned party with a motion, separate from any other motion, noticing its intent to seek sanctions. Minn. R. Civ. P. 11.03(a)(1); Minn. Stat. § 549.211, subd. 4(a). And if the issue is not corrected, the party may file the sanctions motion with the court after 21 days. Minn. R. Civ. P. 11.03(a)(1); Minn. Stat. § 549.211, subd. 4(a). Second, the court may sua sponte issue an order describing the offending behavior and requiring the to-be-sanctioned party to show cause as to why it has not violated rule 11.02. Minn. R. Civ. P. 11.03(a)(2); Minn. Stat.

§ 549.211, subd. 4(b). The to-be-sanctioned party must then have an opportunity to be heard on the issue before the district court imposes sanctions. Minn. R. Civ. P. 11.03(a)(2); Minn. Stat. § 549.211, subd. 4(b). We review the district court's imposition of sanctions for an abuse of discretion. *In re Claims for No-Fault Benefits Against Progressive Ins. Co.*, 720 N.W.2d 865, 874 (Minn. App. 2006), *rev. denied* (Minn. Nov. 22, 2006).

Peterson requested attorney fees under the lease agreement. The district court treated Peterson's request for attorney fees as a rule-11 motion and therefore should have followed one of the above procedures. But it followed neither. Peterson did not seek rule-11 sanctions and therefore the rule-11-motion procedures did not occur. And the district court did not issue an order to show cause or provide the Boutains with an opportunity to be heard before imposing sanctions. Thus, the district court abused its discretion by imposing sanctions under rule 11. *See Dyrdal v. Golden Nuggets, Inc.*, 672 N.W.2d 578, 589-90 (Minn. App. 2003) (citing cases in which sanctions awards were reversed for failure to follow rule-11 procedures), *aff'd*, 689 N.W.2d 779 (Minn. 2004). We therefore reverse the attorney-fee award.

However, as noted above, Peterson requested attorney fees under the lease agreement, which provides that “[a]ll legal fees for noncompliance will be covered by renter.” We remand to the district court to determine whether attorney fees are warranted under the lease agreement, and if so, to determine the amount of attorney fees to award.

**Affirmed in part, reversed in part, and remanded.**