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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0111**

Ronald Hurlbut,
Appellant,

vs.

Cory O. Hoffman, et al.,
Respondents.

**Filed August 12, 2013
Reversed and remanded
Hooten, Judge**

Traverse County District Court
File No. 78-CV-11-172

Ronald R. Frauenschuh, Jr., Ortonville, MN (for appellant)

Don R. Krassin, Wahpeton, North Dakota, (for respondents)

Considered and decided by Cleary, Presiding Judge; Hooten, Judge; and Klaphake, Judge.*

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges the district court's denial of his request for an award of attorney fees in connection with his efforts to satisfy a prior judgment against respondent. Because the district court erred in applying the standard for an award of attorney fees, we

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

reverse and remand for consideration of an appropriate amount of attorney fees to be awarded to appellant.

FACTS

This appeal arises out of a loan from appellant Ronald Hurlbut to respondent Cory Hoffman¹ in late 2009 or early 2010. Hoffman signed a promissory note for \$20,000 and agreed that Hurlbut was to receive a possessory lien in a trailer owned by Hoffman. As part of the agreement, Hoffman also gave appellant an original title certificate to the trailer. However, on May 24, 2010, Hoffman sent Hurlbut's attorney a letter stating that there was a bank lien on the trailer and that holding the title "would do him no good."² The record also reflects that a duplicate title was issued to Hoffman on May 21, 2010.

After Hoffman defaulted on the note, Hurlbut initiated a civil action against Hoffman for repayment of the \$20,000. The parties eventually stipulated to judgment in favor of Hurlbut in the amount of \$20,868.81, and on December 8, 2010, the parties agreed that enforcement of the judgment would be stayed for six months to permit Hoffman to sell the trailer in order to satisfy the judgment. As part of the settlement, the parties agreed that Hurlbut would maintain possession of title to the trailer, which was to constitute a possessory lien pursuant to Minnesota law, and that "the sale of any of the inventory or equipment that was inside of the trailer or the sale of the trailer would be a fraudulent conveyance" and would be treated "as a fraudulent conveyance if the proceeds

¹ While numerous individuals are listed as respondents for purposes of this appeal, this opinion focuses upon the conduct of Cory Hoffman, who will hereinafter be referred to as "Hoffman."

² This bank lien was released as of September 28, 2010.

of that sale did not go directly to [appellant].” In August 2011, when Hoffman still had not paid the judgment, Hurlbut attempted to levy the trailer through the Traverse County Sheriff’s Office. However, he was unable to do so because, as of April 2011, the trailer had been retitled in the name of Hoffman’s mother.

After learning that Hoffman sold his trailer to his mother, Hurlbut served a complaint against Hoffman and his parents on August 30, 2011, alleging fraudulent conveyance, conversion, and fraudulent misrepresentation and seeking attorney fees and damages in excess of \$20,000. Hurlbut’s complaint alleges that after the settlement agreement, Hoffman and his parents claimed that the title was lost, when in fact the trailer had been sold to a relative for much less than its fair market value. In an answer served on September 14, 2011, Hoffman and his parents denied the allegations set forth in Hurlbut’s complaint, including a denial that the sale of the trailer had been fraudulently conveyed.

In a motion served on October 12, 2011, Hurlbut requested that the district court order defendants to turn over the trailer to him for a private sale, pay his attorney fees and costs; strike the answer of defendants due to their failure to show up for a deposition; and grant leave to amend the complaint to include the defendant’s attorney. In conjunction with the motion, Hurlbut also filed a rule 11 notice for the failure of defendants to attend a scheduled deposition and the failure of Hoffman to disclose that he was not the owner of the trailer. In an amended complaint filed on October 13, 2011, Hurlbut alleged fraudulent conveyance, conversion, and misrepresentation against Hoffman and his parents, requested attorney fees and sanctions against Hoffman and his parents, and

alleged that Hoffman's attorney assisted in the fraudulent conveyance. The amended complaint requested that Hoffman, his parents, and his attorney be declared "jointly and severally liable for the attorney's fees and damages in excess of \$20,000." In their amended answer, Hoffman, his parents, and his attorney entered a general denial, but admitted that Hoffman's attorney "believe[d] [that] the trailer was conveyed" in April 2011.

During discovery, Hoffman admitted that he obtained a duplicate title for the trailer and provided Hurlbut with the original title, informing him that "it was no good." He also admitted that he sold the trailer to his mother without a written contract for the initial sum of \$100, and that he informed his attorney of the sale. Hoffman's mother admitted that she was aware that her son owed Hurlbut \$20,000, but she claimed that the \$100 paid to her son was only intended as a down payment on the trailer. During his deposition, Hoffman admitted that the sale of the trailer delayed Hurlbut's collection of the judgment against him.

The parties do not dispute that by February 22, 2012, during the pendency of Hurlbut's fraudulent conveyance and fraud lawsuit against Hoffman and his parents, Hurlbut's judgment against Hoffman in the amount of \$20,868.81 was satisfied. Hurlbut eventually filed a second motion for rule 11 sanctions, as well as a motion for summary judgment seeking attorney fees against respondent and his parents arising out of the alleged fraud. The district court found that the parties "understood that they were at least attempting to create a lien" despite the failure to place appellant on the title, and that "[Hoffman] obtain[ed] a new title by falsely representing that the old one had been lost."

The district court described his actions as “a fraudulent act,” but concluded that it was not clear whether his parents’ actions constituted fraud. The district court denied Hurlbut’s request for attorney fees under the Uniform Fraudulent Transfers Act, Minn. Stat. §§ 513.41–.51 (2012), on the basis that attorney fees are not listed as a remedy under the act. In also denying appellant’s claim for attorney fees under Minn. R. Civ. P. 11 and Minn. Stat. § 549.211 (2012), the district court explained:

One or more Defendants[s] herein may have delayed the collection process through the fraudulent transfer, but the act(s) causing that delay occurred after resolution of the first case and before institution of the second. The obtaining of a new title by claiming it was lost, and the subsequent transfer of the trailer for nominal consideration to a family member, was fraudulent and may even have been criminal, but the Court does not find it to be *litigation* conduct or conduct during the pendency of this action, and thus these sanctions do not apply, even though Plaintiff was unjustly caused to incur attorney fees as a result.

The district court dismissed appellant’s complaint with prejudice since the underlying judgment had been paid during the pendency of appellant’s complaint. This appeal follows.

D E C I S I O N

On appeal, Hurlbut argues that, given Hoffman’s bad faith and fraud, the district court failed to make adequate findings to effectuate appellate review and erred by denying his request for fees. “Fee awards under Minn. Stat. § 549.211 and rule 11 are discretionary with the district court and will not be altered on appeal absent an abuse of discretion, but appellate courts review de novo a district court’s construction of statutes

and rules, including Minn. Stat. § 549.211 and rule 11.” *In re Rollins*, 738 N.W.2d 798, 803 (Minn. App. 2007).

Hurlbut bases his claim for attorney fees upon Minn. R. Civ. P. 11.02, which states that “[b]y presenting to the court . . . a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,” the following:

- (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; and
- (d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Minn. R. Civ. P. 11.02; *see also* Minn. Stat. § 549.211, subd. 2 (2012). The prior version of section 549.211, Minn. Stat. § 549.21, was “a statutory codification of the common law rule that attorney fees are recoverable where the unsuccessful party has acted in bad faith, vexatiously, or for oppressive reasons” and was “intended to punish individuals who abuse the legal process to harass opponents or delay resolution of a dispute.” *Anderson v. Medtronic, Inc.*, 382 N.W.2d 512, 515 (Minn. 1986); *see also Pfleiderer v. Pfleiderer*, 591 N.W.2d 729, 733–34 (Minn. App. 1999) (noting repeal of Minn. Stat.

§ 549.21 and that, while Minn. Stat. § 549.211 has similar purpose, it has different procedural requirements). However, “the current version of section 549.211 does not require an explicit finding of ‘bad faith.’” *Cargill, Inc. v. Jorgenson Farms*, 719 N.W.2d 226, 234 (Minn. App. 2006).

Hoffman does not specifically contest the district court’s finding that he engaged in fraudulent conduct for purposes of this appeal. However, he argues that an award of attorney fees “applies only to situations in which a party acts in bad faith with respect to the litigation itself as opposed to bad faith in the underlying action which is the basis of the suit.” *Anderson*, 382 N.W.2d at 515. The district court, in denying Hurlbut’s claim for attorney fees, adopted this reasoning to conclude that Hurlbut is not entitled to attorney fees for the delay in collection caused by Hoffman’s fraudulent conveyance of the trailer.

While the district court is correct that rule 11.02 does not extend to Hoffman’s alleged fraudulent conveyance, which took place independent of any court proceedings, the district court’s analysis disregards the fact that Hoffman, as part of the settlement agreement in the action leading up to the judgment, specifically agreed that the sale of the trailer without the knowledge and consent of Hurlbut would be a fraudulent conveyance. Yet, while at the same time acknowledging that the trailer was conveyed by April 2011, the answers interposed to Hurlbut’s complaint and amended complaint generally deny Hurlbut’s fraudulent-conveyance claims. The record conclusively establishes that Hoffman entered into the settlement agreement and subsequently transferred the trailer to a third party in direct contravention of the settlement terms, thus prohibiting and delaying

full execution of the settlement and resulting in the initiation of Hurlbut's second complaint and consequent attorney fees.³ Thus, to the extent that Hoffman continued to delay payment of the underlying judgment by interposing defenses to Hurlbut's fraudulent-conveyance action that were, as to him, without any evidentiary support or were frivolous, Hurlbut would be entitled to attorney fees at least from the time such defenses were initially interposed.⁴

This reasoning is consistent with this court's opinion in *Weber v. Sentry Ins.*, which concluded that injured litigants were entitled to attorney fees pursuant to Minn. Stat. § 549.21 after they entered into a settlement agreement with the tortfeasor's insurer, but the insurer stopped payment on a check issued to the appellant as part of a valid settlement agreement, thereby "forc[ing the injured litigants] into litigation to enforce a valid settlement." 442 N.W.2d 164, 168 (Minn. App. 1989). While not specifically discussed, this reasoning assumes that the failure to abide by the terms of the settlement agreement constituted bad faith with respect to the litigation itself. Hurlbut's litigation regarding the fraudulent conveyance of the trailer is analogous insofar as it was necessitated by Hoffman's failure to comply with the terms of the settlement agreement and then, without any evidentiary support, continued delay of payment of the judgment

³ While we disagree with the district court's underlying legal analysis with regard to the applicability of rule 11 and section 549.211 to Hoffman's conduct in this litigation, its finding that Hoffman engaged in a fraudulent conduct is sufficient for this court to permit appellate review of appellant's claim for attorney fees.

⁴ While the district court is correct that the Uniform Fraudulent Transfer Act does not specifically enumerate attorney fees as a permissible form of relief, Minn. Stat. § 513.47(a)(3)(iii) (2012) provides that a creditor, as part of a fraudulent-transfer action, "may obtain," "in accordance with applicable Rules of Civil Procedure," "any other relief the circumstances may require."

by frivolously denying that a fraudulent conveyance took place in his answers to Hurlbut's complaint and amended complaint.

To the extent that Hoffman interposed answers denying, without any evidentiary support, that there was a fraudulent conveyance, and insofar as Hoffman persisted in this frivolous defense throughout the litigation of Hurlbut's fraudulent-conveyance lawsuit, Hoffman's conduct is subject to sanctions and attorney fees under rule 11.⁵ Because Hoffman's frivolous defense was interposed in order to further delay his payment of the underlying judgment to Hurlbut, the district court erred in denying Hurlbut's request for attorney fees and costs. Accordingly, we reverse and remand for consideration of an appropriate amount of attorney fees and sanctions against Hoffman, his parents, or his attorney, or all of them, pursuant to Minn. Stat. § 549.211, subd. 5(a) (2012).

Reversed and remanded.

⁵ Because we find that the district court erred as a matter of law by concluding that it did not have the authority to award attorney fees and costs under rule 11, we remand this matter to the district court to determine who should be responsible for payment of attorney fees and costs and to determine an appropriate amount of fees and sanctions.