**IN THE COURT OF APPEALS OF IOWA**

No. 9-012 / 97-2174
Filed February 24, 1999

**SECURITY BANK,**
Plaintiff-Appellee,

**vs.**

**JOSEPH A. NUGENT,**
Defendant-Appellant.

---

**JOSEPH A. NUGENT,**
Third-Party Plaintiff,

**vs.**

**IOWA CONSULTING AND DEVELOPMENT CORPORATION, and C. DAVID ALBRIGHT,**
Third-Party Defendants.



---

Appeal from the Iowa District Court for Marshall County, M.D. Seiser, Senior Judge, and Carl D. Baker, Judge.

Joseph Nugent appeals from summary judgment dismissing his counter-claim for negligent misrepresentation and denial of related demands for Rule 80(a) sanctions. **AFFIRMED.**

Joseph A. Nugent, West Des Moines, pro se.

Curtis A. Ward of Brooks Ward & Robertson, Marshalltown, for appellee.

Heard by Sackett, C.J., and Huitink and Streit, JJ.

**HUITINK, J.**

***I. Background Facts and Proceedings.***

This case originated with Security Bank's petition to recover the unpaid principle and interest of a promissory note Joseph Nugent co-signed for Iowa Consulting and Developing Corporation and David C. Albright. The bank alleged the note was delinquent because a check tendered to pay the interest due upon renewal of the note was dishonored. Subsequent discovery disclosed no such check had been issued or dishonored as alleged.

The bank's motion for summary judgment included a supporting affidavit conceding this fact and counsel's assurance the petition would be amended if the motion for summary judgment was denied. Because there was no dispute concerning default on the amount of principle and interest due on the note, summary judgment was entered against Nugent in favor of the bank.

Prior to entry of summary judgment, Nugent filed a counter-claim for damages resulting from the bank's negligent misrepresentation concerning a dishonored check. The bank denied Nugent's allegation and affirmatively alleged the statements made in the course of litigation concerning a dishonored check were absolutely privileged. Nugent's counter-claim was dismissed following the district court's favorable ruling on the bank's motion for adjudication of law points asserting this privilege.

Nugent subsequently sought Rule 80(a) sanctions against the bank and its attorney for making false statements in its petition. Nugent claimed the bank's attorney failed to conduct an adequate investigation before filing the petition including the erroneous allegation concerning a dishonored check. The district court denied sanctions citing counsel's reasonable reliance on information furnished by the bank and noted any erroneous allegations were corrected by the affidavit filed in support of the bank's motion for summary judgment.

On appeal, Nugent contends the bank's statements were not privileged and it was error for the district court to conclude otherwise. He also claims the district court's failure to impose Rule 80(a) sanctions was an abuse of discretion.

***II. Nugent's Counter-Claim.***

As noted earlier, Nugent sued the bank for negligent misrepresentation based on statements made in its petition regarding an insufficient funds check. It is well settled that the tort of negligent misrepresentation does not apply to statements made in the course of litigation. *Beeck v Kapalis*, 302 N.W.2d 90, 96-97 (Iowa 1981). We, like the district court, conclude the bank was entitled to judgment as a matter of law on Nugent's counter-claim. *See* Iowa R. Civ. P. 237(c). We affirm on this issue.

***III. Rule 80(a) Sanctions.***

We review the district court's disposition of Nugent's application for Rule 80(a) sanctions for an abuse of discretion. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). The district court abuses its discretion if it acts on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State ex rel. Miller v. National Dietary Research, Inc.*, 454 N.W.2d 820, 822 (Iowa 1990). "Unreasonable" in this context means not based on substantial evidence. *Citizens Aide/Ombudsman v. Rolfes*, 454 N.W.2d 815, 819 (Iowa 1990).

Iowa Rule of Civil Procedure 80(a) provides:

> [c]ounsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: Counsel has read the motion, pleading, or other paper; that to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation . . . . If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it . . . an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee.

The purpose of Rule 80(a) is to deter unnecessary or unfounded filings. *Darrah v. Des Moines General Hospital*, 436 N.W.2d 53, 54 (Iowa 1989).

This rule requires the signer to certify that: (1) the signer has read the petition; (2) the signer has concluded after reasonable inquiry into the facts and law that there is adequate support for the filing; and (3) the signer is acting without any improper motive. Iowa R. Civ. P. 80(a); *Weigel v. Weigel*, 467 N.W.2d 277, 280 (Iowa 1991).

As to the "inquiry element" the signer must:

> Certify that to the best of his knowledge, information, and belief, formed after a reasonable inquiry, the pleading, motion, or other paper is: (1) well grounded on the facts, and (2) warranted either by existing

> law or by a good faith argument for the extension, modification, or reversal of existing law.

*Id.*

The "reasonableness" of the signer's inquiry into the facts and law:

> May depend on such factors as the time available to the signer for investigation; whether the signer had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether the signer depended on forwarding counsel or another member of the bar.

*Id.*

The district court must view the reasonableness of the signer-attorney's judgment "as of the time the paper in question was filed, not with hindsight gained through hearing the evidence at trial." *Id.* (citations omitted). An objective—rather than subjective—standard is used to measure the conduct of the signer-attorney. "The test is 'reasonableness under the circumstances' and the standard to be used is that of a reasonably competent attorney admitted to practice before the district court." *Id.* at 281 (citations omitted).

In ruling on Nugent's request for sanctions, the court stated:

> This court concludes that the motion for sanctions should be denied. It is clear that in preparing the petition which was filed in this case Mr. Ward had to rely on information received from other sources, including his client. This court agrees with the conclusion reached by Judge Seiser that the allegation that the plaintiff had received an insufficient funds check, while wrong, was not made with the knowledge it was false or in reckless disregard of the truth. In response to the defendant's request for production of documents, the plaintiff acknowledged that there were no dishonored checks. Furthermore, in

an affidavit attached to the plaintiff's motion for summary judgment, it was acknowledged that no such check had ever been issued.

Because the record includes substantial evidence to support these findings, we are unable to say the district court acted unreasonably. Moreover, we fail to see how imposition of sanctions under these circumstances advances the purpose of the rule. The record reveals no abuse of discretion or other error attending the district court's judgment and we accordingly affirm on all issues.

**AFFIRMED.**