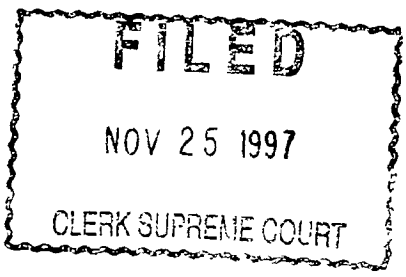
IN THE COURT OF APPEALS OF IOWA 000315

No. 7-280 / 96-0740



TYLER RICH WOOD by his Mother and Next Friend ROCHELLE ROSE NEWCOMB,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR POLK COUNTY,
Defendant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

In this original certiorari proceeding, counsel for unsuccessful plaintiff challenges the district court imposition of sanctions for filing a frivolous civil action. We annul the writ of certiorari. **WRIT ANNULLED.**

Oscar Jones and Arvid D. Oliver, Des Moines, for plaintiff.

Harvey L. Harrison and Catherine C. Dietz-Kilen of Harrison & Dietz-Kilen, Des Moines, for defendant.

Decided en banc.

000316

HUITINK, J.

I. Background Facts and Proceedings.

Rochelle Newcomb sued Diane Sorenson seeking imposition of a constructive trust on death benefits Sorenson received as the named beneficiary of an annuity contract owned by Sorenson's deceased brother, Michael Wood. In her petition, Newcomb claimed an equitable entitlement to these benefits based on Michael Wood's obligation to pay child support for her son, Tyson Wood.

In an earlier filed paternity action, Sorenson alleged Wood was Tyson's father and requested child support from Wood. Although Wood admitted paternity, he died while the paternity action was pending and no judgment for Tyson's support was entered. After Wood's death, Newcomb requested the paternity court impose a constructive trust on Wood's annuity benefits. Because these benefits were payable to a named beneficiary upon Wood's death, the court determined they were not assets of Wood's estate subject to Newcomb's claim and denied her request.

In this case, the court held Newcomb's equitable claim survived Sorenson's motion to dismiss declining to give preclusive effect to the paternity court's ruling. Sorenson's subsequent motion for summary judgment was granted and Newcomb's claim was dismissed. In its summary judgment ruling the court characterized Newcomb's equitable claims in these terms:

> Plaintiff makes no claim that there has been actual or constructive fraud. Plaintiff's claim, when boiled down to its essentials, is that (1) "it just isn't fair for Diane to have the money and not provide for

> Tyson" and (2) "Michael would have wanted Tyson to have the money."

No appeal was taken from this ruling.

Sorenson moved for sanctions against Newcomb and Newcomb's attorneys as provided by Iowa Rule of Civil Procedure 80(a). Sorenson alleged Newcomb's claims "were not well grounded in fact nor were they warranted by existing law or a good faith argument for the extension, modification or reversal of existing law." The district court agreed and entered sanctions against Newcomb's lawyers, ordering them to pay Sorenson $4673 in costs and legal fees she incurred as a result of Newcomb's claim.

The supreme court granted counsels' petition for a writ of certiorari. Counsel claims they filed Newcomb's lawsuit in good faith and it was based on existing Iowa law concerning constructive trusts and Wood's obligation to pay child support.

II. Scope of Review.

The question in this original certiorari proceeding is whether the district court acted illegally or otherwise exceeded its jurisdiction. Iowa R. Civ. P. 306; *Whitlock v. Iowa Dist. Ct.*, 497 N.W.2d 891, 893 (Iowa 1993); *Zimmerman v. Iowa Dist. Ct.*, 480 N.W.2d 70, 74 (Iowa 1992); *Amro v. Iowa Dist. Ct.* 429 N.W.2d 135, 138 (Iowa 1988). We review sanction orders for an abuse of discretion. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). In order to show an abuse of discretion one must generally show the court exercised its discretion "on grounds or for reasons clearly

untenable or to an extent clearly unreasonable." *State v. Blackwell,* 238 N.W.2d 131, 138 (Iowa 1976) (quoting *Weeks v. Burnor*, 132 Vt. 603, 326 A.2d 138, 140 (1974)).

III. The Merits.

Iowa Rule of Civil Procedure 80(a) authorizes imposition of sanctions if a reasonable inquiry discloses the pleading, motion, or paper is (1) not well grounded in fact; (2) not warranted by existing law or good faith argument for the extension, modification, or reversal of existing law; or (3) interposed for any improper purpose such as harassment or delay. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). The district court rejected counsel's contention that Newcomb's theory of recovery was a good faith argument for extension, modification, or reversal of existing law, citing counsel's failure to make reasonable inquiry into the law before filing this action.

In determining whether a reasonable inquiry into the law has been made, the court considers all relevant circumstances including:

a. The amount of time that was available to the signer [of the pleading] to research and analyze the relevant legal issue;
b. The complexity of the factual and legal issue in question;
c. The clarity or ambiguity of existing law;
d. The plausibility of the legal positions asserted;
e. Whether the signer is an attorney or pro se litigant;
f. The knowledge of the signer;
g. Whether the case was accepted from another attorney, and, if so, at what stage in the proceedings;
h. The extent to which counsel relies upon other counsel to conduct the legal research and analysis underlying the position asserted;
i. The extent to which counsel had to rely upon other counsel to conduct the legal research and analysis underlying the position asserted;

j. The resources reasonably available to the signer to devote to the inquiry.

Mathias v. Glandon, 448 N.W.2d at 446.

As noted earlier, Newcomb's theory of recovery was the equitable necessity of a constructive trust to secure support for her child. Counsel acknowledged the absence of any Iowa authority granting the relief they requested under these circumstances. Counsel however cited an Indiana case, *Rollins v. Metropolitan Life Ins. Co.*, 912 F.2d 911 (7th Cir. 1990), in which a constructive trust was imposed on life insurance benefits despite the decedent's designation of a beneficiary other than the decedent's children.

In making its determination that sanctions were warranted, the district court considered the foregoing criteria and analyzed the legal reasoning expressed by the *Rollins* court. The district court found the absence of any court order requiring Wood to maintain life insurance payable to Tyson or pay child support distinguished this case from the circumstances in *Rollins*. As the district court correctly noted, the only remaining basis for Newcomb's equitable claim was Wood's alleged desire to provide for Tyson's support following Wood's death and his moral obligation to do so.

We, like the district court, are unable to find any factual or legal support for Newcomb's claim. Sorenson was named beneficiary of Wood's annuity in 1989, before Tyson was born. There is no evidence of actual or constructive fraud. Although equitable principles such as unjust enrichment may support imposition of

a constructive trust, *see Regal Ins. Co. v. Summit Guar. Co.*, 324 N.W.2d 697, 704 (Iowa 1982), such principles are not implicated in this case. *In re Estate of Peck*, 497 N.W.2d 889, 890 (Iowa 1993); *In re Estate of Farrell*, 461 N.W.2d 360, 361 (Iowa App. 1990)(It is not the province of the court to dictate familial conscience). Moreover, the law and its rationale for denying equitable relief to disappointed heirs are clearly expressed in *Farrell* and *Peck*. The notion that Sorenson's contractual entitlements must yield to Newcomb's equitable claims under these circumstances is simply implausible.

Based on our deferential standard of review, we are unable to say the district court abused its discretion in finding a rule 80(a) violation. Once that determination was made, imposition of sanctions was mandatory. *K. Carr v. Hovick,* 451 N.W.2d 815, 818 (Iowa 1990). The sanctions imposed, costs and attorney fees, are authorized by rule 80(a) and advance its purpose. *Franzen v. Deere & Co.*, 409 N.W.2d 672, 673-74 (Iowa 1987).

WRIT ANNULLED.

All judges concur, except Cady, C.J., and Vogel, J., who dissent, and Sackett, J., who concurs specially.

SACKETT, J. (concurring specially)

I concur with the majority in all respects.

In interpreting the provisions of Rule 80(a), I am mindful it does not curtail the filing of pleadings espousing novel legal theories that have no reasonable basis to succeed. The pleadings can be filed. Rule 80(a), whether intended or not, is merely premised on the balancing of equities. It gives consideration to the expenses incurred by a defendant sued in a novel lawsuit if the lawsuit should not be successful.

Plaintiff's lawsuit took a position against long-established contract principles. The question is not whether this court would have imposed sanctions. We review only to determine if the trial court abused its given discretion. *Carr v. Hovick*, 451 N.W.2d 815, 818 (Iowa 1990). "Reasonable" is determined as to what existed at the time the pleading was filed, not with hindsight. *See id.* at 817. I find no abuse of the trial court's discretion in imposing sanctions.

While one does not want to leave a child without support from his father, there is no reason to believe that Tyler is not receiving social security benefits payable on his father's account by virtue of his father's death.

CADY, C.J. (dissenting)

I respectfully dissent. I acknowledge the existence of a fine line between an abusive claim and permissive advocacy. Nevertheless, courts must not apply the good faith extension language of rule 80(a) too narrowly, and, in the process, establish an impediment to legal creativity and zealous advocacy. The issue in this case touches a very sensitive area of advocacy, and courts should respond by giving lawyers the necessary freedom to pursue reasoned legal theories and chart needed changes or modification in the law without the threat or fear of sanctions. Procedures adopted to stamp out frivolous lawsuits should not be applied to stifle necessary creativity in the law.

Sanctions should not be imposed under rule 80(a) where the claim is one of first impression, the law in this jurisdiction is not so settled as to render the claim frivolous, and reasoned reliance on other decisions is shown. *See Hudson v. Moore Business Forms, Inc.*, 836 F.2d 1156, 1160 (9th Cir. 1987); *Davis v. A.G. Edwards & Sons, Inc.*, 823 F.2d 105, 108 (5th Cir. 1987); *Nelson v. Piedmont Aviation, Inc.*, 750 F.2d 1234, 1238 (4th Cir. 1984). In this case, Newcomb's lawsuit discloses a good faith argument for an extension of the law. Moreover, the claim is one of first impression in Iowa in an area of uncertain law, and it is supported in part by legal authority from another jurisdiction.

Although claims for the imposition of constructive trusts have been unsuccessfully raised in the context of other familial settings, the request for a constructive trust under these facts is one of first impression in Iowa. Admittedly, the

law would appear to require some underlying enforceable support obligation to justify the imposition of a constructive trust. *See Rollins v. Metropolitan Life Ins. Co.*, 912 F.2d 911, 915 (7th Cir. 1990); *see also In re Estate of Peck,* 497 N.W.2d 889, 890 (Iowa 1993); *In re Estate of Farrell,* 461 N.W.2d 360, 361 (Iowa App. 1990). Nevertheless, the imposition of a constructive trust is an equitable remedy, and is factually driven. *See Regal Ins. Co. v. Summit Guar. Corp.*, 324 N.W.2d 697, 704-705 (Iowa 1982). Here, Newcomb had instituted a support action. Woods had admitted paternity. He died, however, before any judgment was entered defining the extent of his obligation. The question for us does not involve the ultimate success of the claim, but whether it was a reasonable argument. Newcomb's claim should not be found frivolous simply because her legal authority can be distinguished. The decision by the majority to impose sanctions establishes a dangerous course for future advocacy.

Vogel, J., joins this dissent.