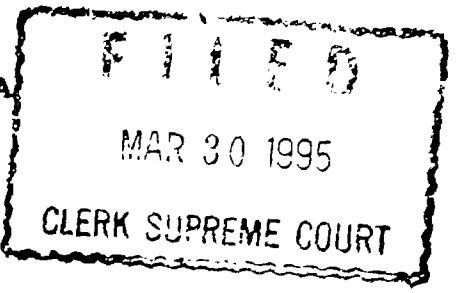
IN THE COURT OF APPEALS OF IOWA



No. 5-017 / 93-1988

KENNETH McCLEARY,

Plaintiff-Appellee,

vs.

DAVID SCIESZINSKI,

Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, James E. Kelley, Judge.

Defendant appeals from a district court order postponing its ruling on his application for sanctions pursuant to Iowa Rule of Civil Procedure 80(a). **REVERSED AND REMANDED.**

David Scieszinski, Wilton, pro se.

Michael J. McCarthy of McCarthy & Lammers, Davenport, for appellee.

Heard by Hayden, P.J., and Cady and Huitink, JJ.

CADY, J.

Defendant, David Scieszinski filed a motion for sanctions pursuant to Iowa Rule of Civil Procedure 80(a) against plaintiff, Kenneth McCleary after McCleary voluntarily dismissed his attorney malpractice claim. McCleary later refiled his petition. The district court declined to consider whether the petition was frivolous until it evaluated McCleary's refiled petition. The court also denied sanctions in the interim. We conclude the court had an obligation to consider whether filing the initial petition merited sanctions. We reverse and remand this case for further proceedings.

On August 5, 1992, McCleary filed a legal malpractice action against Scieszinski. Scieszinski answered and trial was ultimately scheduled for November 1, 1993. On August 30, 1993, McCleary filed a notice of intent to call an expert witness. Scieszinski filed a motion to prohibit the testimony because McCleary failed to give timely notice under Iowa Code section 668.11 (1993). The district court entered an order on September 22, 1993 prohibiting the testimony .

On October 8, 1993, McCleary dismissed his malpractice claim against Scieszinski. On November 8, 1993, Scieszinski filed a motion for rule 80(a) sanctions against McCleary and his counsel, Michael McCarthy, for filing a frivolous claim. The district court ruled that McCleary could voluntarily dismiss his petition as a matter of

right. The court also reasoned that since McCleary subsequently refiled his lawsuit, the issue of whether the claim was frivolous was still a matter for determination by the court. Scieszinski appealed.

Scieszinski claims the district court abused its discretion in failing to grant sanctions. He contends because McCleary dismissed the petition after an adverse ruling on the use of an expert, McCleary filed the petition with an improper motive.

Because the district court delayed its consideration of the rule 80(a) motion we cannot reach the issue Scieszinski places before us. The issue we must determine is whether the district court erred in postponing his consideration of Scieszinski's application for rule 80(a) sanctions. We review the district court's decision for errors at law. Iowa R. App. P. 4; see Darrah v. Des Moines General Hosp., 436 N.W.2d 53, 55 (Iowa 1989).

Rule 80(a) mandates that all motions, pleadings, and papers must, to the best of counsel's knowledge and belief after reasonable inquiry, be well grounded in fact and either warranted by existing law or by a good faith argument for the modification of existing law. The rule further provides if a motion or pleading is signed in violation of the rule, the court, upon motion or its own initiative, shall impose an appropriate sanction upon the person who signed it. Iowa R. Civ. P. 80(a); Mathias v. Glandon, 448 N.W.2d 443, 444 (Iowa 1989). Sanctions are

mandatory when a violation occurs, but whether a violation has occurred is a matter for the court to determine. Mathias, 448 N.W.2d 446.

To facilitate judicial economy and effective determination of the issues, trial counsel, or the court on its own motion, should pursue sanctions at the earliest time after the rule 80(a) violations occur. Darrah, 436 N.W.2d at 55. Likewise, the trial court should decide motions for rule 80(a) sanctions as soon after they are filed as is reasonably practicable. Schettler v. Dist. Court, 509 N.W.2d 459, 465 (Iowa 1993)

We conclude, the district court erred in postponing the consideration of Scieszinski's motion for rule 80(a) sanctions. The court was obligated to consider the initial petition following the hearing on Scieszinski's motion. See id. McCleary's action in refiling the petition after the voluntary dismissal had no bearing on the collateral issue of McCleary's alleged wrongful action in filing the first petition.

Moreover, Scieszinski never alleged a violation of rule 80(a) with regard to the refiled petition. There was, therefore, no perceptible reason for the trial court to delay its ruling on whether the first petition conformed with rule 80(a). Judicial economy and needed symmetry in the appellate process also support our conclusion that the district court should have considered the motion for rule 80(a) sanctions in the first action following the hearing

on the issue. See Mark S. Cady, Curbing Litigation Abuse and Misuse: A Judicial Approach, 36 Drake Law Review 483, 504 (1986-87).

We note that in his motion for sanctions Scieszinski set forth only one reason to support his allegation that McCleary's petition was frivolous. His reason was McCleary's voluntary dismissal after his failure to timely designate experts. If this is the sole basis for the motion, it would be insufficient to support a rule 80(a) violation. A party has an absolute right under Iowa Rule of Civil Procedure 215 to voluntarily dismiss the party's own petition "at any time up until ten days before the trial is scheduled to begin." Venard v. Winter, 524 N.W.2d 163, 167 (Iowa 1994). Thus, even if the trial court accepts Scieszinski's claim that McCleary dismissed his first action to escape the consequences of a failure to designate experts in time, it would not provide a basis for sanctions. The important inquiry in determining a Rule 80(a) violation is the signer's conduct at the time of signing the pleading, motion, or other paper. Mathias, 448 N.W.2d at 447. Rule 80(a) focuses on the event of signing. Id. Other sanctions are available to address abusive tactics unrelated to the signing of pleadings, motions, and other papers. Id.; see Iowa R. Civ. P. 122, 125, 134, 136, 140, 157. We remand this case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Huitink, J., concurs; Hayden, P.J., dissents.

HAYDEN, P.J. (dissenting)

I respectfully dissent. I would affirm the trial court.