IN THE COURT OF APPEALS OF IOWA

No. 8-552 / 97-1932

SUE BARTON and BECKY UTLEY, Co-administrators of the Estate of ROBERT ALAN BARTON,

Plaintiffs-Appellees,

vs.

D. STOREY, INC.

Defendant-Appellant,

and

CATERPILLAR, INC.,

Defendant.

FILED
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COURT

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

Defendant D. Storey, Inc., appeals from a district court ruling denying its motion for sanctions against plaintiffs. **AFFIRMED.**

Robert DuPuy and Jeffrey L. Goodman of Pingel and Templer, P.C., and Joel H. Dorman, Des Moines, for appellant.

Roxanne Conlin of Roxanne Conlin & Associates, P.C., Des Moines, Tom L. Drew of Drew Law Firm, P.C., Des Moines, Alfredo Parrish & Paige E. Fiedler of Parrish, Kruidenier, Moss, Dunn & Montgomery, Des Moines, and Marion H. Pothoven of Pothoven, Blomgren & Stravers, Oskaloosa, for appellees.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Defendant D. Storey, Inc. ("Storey") appeals from a district court ruling denying its motion for sanctions against plaintiffs. Storey contends plaintiffs failed to conduct a reasonable investigation and inquiry into the facts and the law before filing suit. Storey also contends it was improperly added as a defendant in the case for the purpose of defeating federal diversity jurisdiction. We affirm.

Robert Barton was killed on June 29, 1994, when the scraper he was operating overturned and caught fire. Barton's estate filed suit on September 14, 1995, against Caterpillar, Inc. and Storey. Caterpillar is an out-of-state corporation that manufactured the scraper. Storey is an Iowa corporation that acted as a broker in the sale of the scraper to Saxton, Inc. Saxton was Barton's employer at the time of the accident. Plaintiffs alleged in the petition Storey failed to warn of a defective and dangerous condition on the scraper.

Storey moved for summary judgment claiming it had no actual knowledge of any defects and no reason to know of any defects because it had never been in possession of the scraper. Thus, Storey argued it had no duty to warn and no liability as a retailer. Plaintiffs did not resist the motion and summary judgment was granted in favor of Storey on November 22, 1996. Plaintiffs later settled with Caterpillar before the scheduled trial in May of 1997.

Storey filed a motion for sanctions pursuant to Iowa Rule of Civil Procedure 80(a) on May 12, 1997. Storey alleged it incurred legal fees and expenses in the sum of $9902.04 in the defense of plaintiffs' action. Hearing was held to the court on

June 6, 1997. The district court overruled Storey's motion on August 25, 1997.

I. STANDARD OF REVIEW. This court's review is for abuse of discretion. *Breitbach v. Christenson*, 541 N.W.2d 840, 845 (Iowa 1995). The district court's ruling will be disturbed on appeal only if clearly erroneous. *Mathias v. Gladson*, 448 N.W.2d 443, 445 (Iowa 1989). We will not find an abuse of discretion unless such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. "Unreasonable" in this context means not based on substantial evidence. *Schettler v. Iowa Dist. Ct.*, 509 N.W.2d 459, 464 (Iowa 1993).

II. REASONABLE INVESTIGATION INTO THE FACTS. The purpose of rule 80(a) is to discourage parties and their counsel from filing frivolous lawsuits and to deter the misuse of pleadings, motions, or other court papers. *Hearity v. Iowa Dist. Ct.*, 440 N.W.2d 860, 864 (Iowa 1989). Parties and their counsel are in violation of rule 80(a) if, *before the petition was signed and filed*, they did not conduct a reasonable inquiry as to the facts or law of the case. *Mathias*, 448 N.W.2d at 445. The district court enumerated six factors from *Mathias* that were relevant to the issue of a reasonable investigation of the facts.[1]

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[1] The six factors are as follows:

a. the amount of time that was available to the signer to investigate the facts;

b. the complexity of the factual and legal issues in question;

c. the extent to which pre-signing investigation was feasible;

d. the extent to which pertinent facts were in possession of the opponent or third parties or otherwise not readily available to the signer;

e. the resources reasonably available to the signer to devote to the inquiry; and

f. the extent to which the signer was on notice that further inquiry might be appropriate.

See Mathias v. Gladson, 448 N.W.2d 443, 446 (Iowa 1989).

The district court reviewed the factors and found as follows with regard to plaintiffs' investigation of the facts:

> In this case, Plaintiffs' counsel had adequate time for a pre-filing investigation. Plaintiffs' petition was filed nine months prior to the running of the statute of limitations. A proper pre-filing investigation was feasible. Counsel had adequate resources to conduct a proper investigation. The difficulty confronting the Plaintiffs was the destruction of the scraper in the conflagration following the accident. Saxton, Inc., the owner of the scraper, did not cooperate with Plaintiffs' attempt to discover the chain of ownership of the scraper or its condition at the time Saxton acquired it from D. Storey, Inc. Saxton was represented by a worker's compensation carrier that was not motivated to assist Plaintiffs in their investigation. The facts were in possession of opposing parties and were not readily available to Plaintiffs' counsel. Plaintiffs reasonably assumed D. Storey, Inc. possessed the scraper long enough to know of a defective condition causing or contributing to the accident. As Plaintiffs' counsel Marion Pothoven explained at the hearing, this difficulty in learning the facts before filing the lawsuit is the reason Plaintiffs "had no idea" what D. Storey, Inc.'s involvement was. The Court concludes Plaintiffs' counsel conducted a reasonable inquiry into the facts before filing suit.

We have reviewed the record and agree with the findings of the district court. Therefore, we affirm on this issue.

III. REASONABLE INQUIRY INTO THE LAW. The district court enumerated four factors from *Mathias* that were relevant to the issue of a reasonable inquiry into the law.[2] The district court reviewed the factors and found as follows with regard to plaintiffs' inquiry into the law:

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[2] The four factors are as follows:

a. the amount of time available to counsel to research and outline relevant legal issues;

b. the complexity of the facts and legal issues;

c. the clarity or ambiguity of existing law; and

d. the plausibility of the legal positions asserted.

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

> Again, Plaintiffs' counsel had adequate time and resources to research the law. The law of products liability is relatively complex. Plaintiffs' counsel appropriately identified the legal issue as whether D. Storey, Inc., as an owner of the scraper, knew or reasonably should have known of an unreasonably dangerous condition of the scraper giving rise to a duty to warn. *See Moore v. Vanderloo*, 386 N.W.2d 108, 116 (Iowa 1986); *Hindel v. R & S Bottling*, 323 N.W.2d 185, 188 (Iowa 1982). Since Plaintiffs had difficulty in learning the extent of D. Storey, Inc.'s possession of the scraper before filing, it was equally difficult for counsel to ascertain the extent of D. Storey, Inc.'s knowledge before filing suit. Plaintiffs' counsel conducted a reasonable inquiry into the law before filing the petition.

We have reviewed the record and agree with the findings of the district court. Therefore, we affirm on this issue.

IV. FEDERAL DIVERSITY JURISDICTION. The district court found plaintiffs conducted an "adequate pre-filing investigation of the law and facts" and concluded they had a right to file suit in Polk County. We agree with the conclusion of the district court the suit was not filed for the improper purpose of defeating federal diversity jurisdiction. We therefore affirm on this issue.

V. FAILURE TO DISMISS. Storey contends it should have been dismissed from the case as soon as plaintiffs discovered their claim had no merit. The district court addressed this issue:

> The Court believes Plaintiffs should have dismissed their claims against D. Storey, Inc. at the earliest opportunity. However, the Court concludes Plaintiffs and their lawyers did not violate Rule 80(a) by waiting for the Court to sustain D. Storey, Inc.'s Motion For Summary Judgment.

We agree. There is no continuing duty under rule 80(a) to dismiss the action even if it is later discovered "the client has no case." *Schettler*, 509 N.W.2d at 465; *Mathias*, 448 N.W.2d at 447.

AFFIRMED.