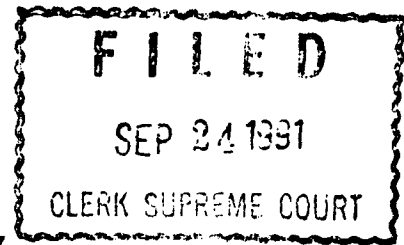


IN THE COURT OF APPEALS OF IOWA

No. 0-690 / 89-1232

IN THE MATTER OF THE ESTATE OF DALE E. DEREMIAH,
Deceased.



JIMMY DEREMIAH and JAMIE DEREMIAH,

81

Appellants.

Appeal from the Iowa District Court for Polk County,
Gene L. Needles, Judge.

Appellants and their attorney appeal a district court ruling dismissing their motion for sanctions but granting appellees' motion for sanctions and awarding appellees attorney fees. **REVERSED IN PART AND AFFIRMED IN PART.**

Leslie Babich of Babich, Bennett and Nickerson,
Des Moines, for appellants.

Carol L. Senty, Des Moines, and Jeffrey G. Flagg of
Flagg & Flagg, Des Moines, for appellee Jo Ann Jensen.

Considered by Oxberger, C.J., and Donielson and
Schlegel, JJ.

SCHLEGEL, J.

Dale Deremiah died August 20, 1988. His will left a portion of his estate to his son and grandson, Jimmy and Jamie Deremiah, and to his mother, Ruby, who was named executor.

After Dale's death Jo Ann Jensen contacted attorney Carol Senty concerning her claim that she was the common law wife of Dale. In September Jensen filed an election to take against the will. In October 1988 the attorney for the estate filed an application for declaratory judgment concerning this issue. Leslie Babich, as attorney for Jimmy and Jamie, filed, inter alia, a resistance to Jensen's claim in the declaratory judgment action. Later Senty contacted Jeffrey Flagg to be co-counsel to try the declaratory judgment action.

In June 1989 Jensen dismissed her motion for declaratory judgment. She then filed a claim in probate for services rendered to the decedent.

Following the dismissal, Jimmy and Jamie Deremiah filed a motion for sanctions pursuant to Iowa Rule of Civil Procedure 80(a). Jensen filed a resistance to this motion as well as a motion for sanctions on behalf of herself. Following a hearing, the district court denied the Deremiahs' motion for sanctions, but granted Jensen's motion for sanctions and awarded her attorney fees. The Deremiahs then filed this appeal. Subsequently, Jensen's claim for services was denied.

The Deremiahs and Babich contend the district court erred in: (1) failing to grant sanctions against Jensen; (2) finding they lacked standing to file a Rule 80(a) motion for sanctions; (3) determining their sanction motion was waived since it was a compulsory counterclaim to a prior dismissed action; and (4) granting Jensen's application for sanctions against them and awarding her attorney fees. Jensen seeks attorney fees for this appeal.

We use an abuse of discretion standard in reviewing sanction orders under rule 80. Fields v. Iowa Dist. Court, 468 N.W.2d 38, 40 (Iowa 1991); Mathias v. Glandon, 448 N.W.2d 443, 445 (Iowa 1989). The finding of fact may be disturbed on appeal only if clearly erroneous. Mathias, 448 N.W.2d at 445. In addition, a district court's conclusion as to the legal sufficiency of the pleading, ordinarily reviewed de novo, is to be reviewed under an abuse of discretion standard. Cooter & Gell v. Hartmarx Corp., 496 U.S. ___, ___, 110 S. Ct. 2447, 2458, 110 L. Ed. 2d 359, 379 (1990). In order to show an abuse of discretion, one generally must 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, 606, 326 A.2d 138, 140 (1974)).

I.

We address first the appellants' motion for sanctions against Jensen under Iowa Rule of Civil Procedure 80(a).

Under rule 80(a) and Iowa Code section 619.19, sanctions may be imposed if a reasonable inquiry discloses the pleading, motion, or paper is not well grounded in fact, not warranted by existing law or good faith argument for the extension, modification, or reversal of existing law, or interposed for any improper purpose such as harassment or delay. The conduct of counsel is measured by an objective, not a subjective, standard. Mathias, 448 N.W.2d at 445. The Deremiahs assert that Jensen's election to take against the will claiming she was the common-law wife of Dale was not well grounded in fact or law and was made for the purpose of harassing them.

The district court found Jensen's attorneys did some investigation and researched the law so that their pleadings, papers, and motions were filed after reasonable inquiry and not for any improper purpose. We find evidence in the record to support the trial court determination that counsel had exercised reasonable inquiry as to both the facts and the law. A reasonable attorney would have brought suit if confronted with the same circumstances, Fields, 468 N.W.2d at 39, and Senty did not rely solely on Jensen's statement of the facts, see Remsburg & Graer, General Overview of Federal Rule of Civil Procedure 11, 38 Drake L. Rev. 261, 274 (1988-89). The trial court did not abuse its discretion by denying sanctions against Senty, Flagg, and Jensen.

The district court also held the Deremiahs had no standing to file this complaint and their motion for

sanctions was a compulsory counterclaim and waived because not filed prior to the dismissal of Jensen's claim. Because we find the Deremiahs' motion for sanctions should be denied on its merits, we do not consider these issues.

II.

We next address the motion for sanctions against the Deremiahs and Babich. Senty, Flagg, and Jensen requested "relief in the form of sanctions as and for the attorney fees necessary to defend" the Deremiahs' motion for sanctions against them and "further and different relief as the Court may deem just and equitable in the premises" in their resistance to motion for sanctions and motion for sanctions on behalf of Jo Ann Jensen. In sustaining this motion, the district court simply stated: "The Court further concludes that for the reasons set out above supporting why the applicants Jamie and Jimmy Deremiah should not prevail on their motion, the same reasons support Jensen's claim why she should prevail on her motion." The trial court failed to give an explanation for this ruling.

"Absent inherent power, the district court's only source of authority to assess attorney fees . . . is Iowa Rule of Civil Procedure 80(a)." Hearity v. Iowa Dist. Court, 440 N.W.2d 860 (Iowa 1989). The motion by Senty, Flagg, and Jensen does not state a claim for sanctions under rule 80(a) since it fails to allege the Deremiahs or Babich did not make a reasonable inquiry, that any document

was not well grounded in fact, not warranted by existing law, not a good faith argument for the modification of existing law, or interposed for an improper purpose. No evidence was introduced to prove a violation of this rule by the Deremiahs or Babich.

A finding of a violation under rule 80(a) lies in the discretion of the district court. Mathias, 448 N.W.2d at 446. Iowa has adopted guidelines, however, which the court should follow in making a determination as to whether a violation has occurred. These criteria, set out in Mathias, 448 N.W.2d at 446-47, incorporate the American Bar Association standards on the subject. We find the trial court failed to observe these guidelines and, therefore, abused its discretion in awarding Jensen attorney fees.

Senty, Flagg, and Jensen did not bring an action against the appellants for abuse of process, but merely countered the motion for sanctions with a motion of sanctions of their own. If, as the trial court noted, the Deremiahs and Babich had no authority to represent the estate, they should be defendants in a case of abuse of process, not subject to rules for sanctions.

We find there should be no rule 80(a) sanctions against either party. To find otherwise would open the door wide for misuse of the sanctions rule. Rule 80(a) was adopted with the intent to discourage frivolous lawsuits and to deter the misuse of pleadings and motions. Mathias, 448

N.W.2d at 445. We reverse the sanctions imposed against the Deremiahs and Babich and affirm the denial of sanctions against Senty, Flagg, and Jensen. Each party is to pay or her own attorney fees.

REVERSED IN PART AND AFFIRMED IN PART.