IN THE IOWA DISTRICT COURT IN AND FOR WASHINGTON COUNTY

CITY OF PELLA, IOWA and CITY OF OSKALOOSA, IOWA, Plaintiffs, v. MAHASKA COUNTY, IOWA, Defendant.	CASE NO. EQEQ006593 RULING ON PENDING MOTIONS

This case comes before the Court for ruling on pending motions. At issue is Defendant's Motion to Reconsider Ruling on Partial Summary Judgment and to Grant Summary Judgment and Defendant's Motion for Sanctions, both filed June 29, 2020. Plaintiffs filed a Resistance to the Motion for Sanctions on July 13, 2020, and a Resistance to the Motion to Reconsider and for Summary Judgment on July 24, 2020. Upon agreement of the parties, the Court took the motions under advisement on July 31, 2020, without hearing.

FINDINGS OF FACT

For the purposes of this ruling, the Court adopts and incorporates the factual findings made by the Court in the June 13, 2018, and February 4, 2019, summary judgment rulings.

CONCLUSIONS OF LAW

A motion to reconsider is authorized under Iowa Court Rule 1.904 permitting the court to reconsider, enlarge, or amend findings and conclusions previously made, and to consequently modify judgment ordered. Under the Rule, motions are considered timely if filed within 15 days

of the order or judgment to which it is directed. The Rule also prohibits successive motions unless a modification by the court has been made between motions.

While the court possesses the discretion to re-open the record and consider additional testimony when needed, a motion to reconsider is not a method to retry issues based on new facts. *Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621 (Iowa 1996); *In re Marriage of Bolick*, 539 N.W.2d 357 (Iowa 1995).

Summary judgment is proper only when the entire record demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007) (citing *Carr v. Bankers Trust Co.*, 546 N.W.2d 901, 903 (Iowa 1996)); Iowa R. Civ. P. 1.981(3). An issue of fact is material when a dispute exists that may affect the outcome of the suit, given the applicable governing law. *Fees v. Mutual Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992) (citing *Hike v. Hall*, 427 N.W.2d 158, 159 (Iowa 1988)). The requirement that the issue be genuine "means the evidence is such that a reasonable jury could return a verdict" for the party resisting the motion. *Id.* (citing *Hike*, 427 N.W.2d at 159). In determining whether a motion for summary judgment should be granted, the court "'must determine whether any facts have been presented over which a reasonable difference of opinion could exist that would affect the outcome of the case.'" *Id.* (quoting *Behr v. Meredith Corp.*, 414 N.W.2d 339, 341 (Iowa 1987)).

The party requesting summary judgment bears the burden of proof. *Clinkscales v. Nelson Sec., Inc.*, 697 N.W.2d 836, 841 (Iowa 2005) (citing *Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 677 (Iowa 2004)). "A court entertaining a motion for summary judgment must view the evidence in the light most favorable to the nonmoving party." *Id.* (citing *Harris*, 679 N.W.2d at 677). "Even if the facts are undisputed, summary judgment is not proper if reasonable minds

could draw different inferences from them and thereby reach different conclusions." *Id.* (citing *Walker Shoe Store, Inc. v. Howard's Hobby Shop*, 327 N.W.2d 725, 728 (Iowa 1982)). The nonmoving party should be afforded every legitimate inference that can be reasonably deduced from the evidence. *Id.* (citing *Cent. Nat'l. Ins. Co. v. Ins. Co. of N. Am.*, 522 N.W.2d 39, 42 (Iowa 1994)). However, "[t]he resistance must set forth specific facts constituting competent evidence to support a prima facie claim." *Hoefer v. Wisconsin Educ. Ass'n Ins. Trust*, 470 N.W.2d 336, 339 (Iowa 1991) (citing *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 454 (Iowa 1989); *Prior v. Rathjen*, 199 N.W.2d 327, 330 (Iowa 1972)). The adverse party "may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered." Iowa R. Civ. P. 1.981(5).

Speculation is not sufficient to generate a genuine issue of fact. *Walls v. Jacob North Printing Co.,* 618 N.W.2d 282, 284 (Iowa 2000). "A fact issue is generated if reasonable minds can differ on how the issues should be resolved, but if the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper." *Uhl v. City of Sioux City*, 490 N.W.2d 69, 74 (Iowa App. 1992).

Iowa Court Rule 1.413(1) requires an attorney to sign every motion, pleading, or other paper they file. Said signature is 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.

Violation of the Rule requires the court to impose sanctions, with the primary purpose of deterrence. *Rowedder v. Anderson*, 814 N.W.2d 585 (Iowa 2012).

ANALYSIS

Defendant's Motion to Reconsider and for Summary Judgment

In this case, the Court has already ruled on two motions for summary judgment filed by the Plaintiffs. In the first ruling, filed on June 13, 2018, the Court stated that there was no rational legal basis to invalidate the 28E agreement, and that it did not violate public policy. The Court further ruled that the agreement was not indefinite, and Mahaska County was not deprived of its legislative and governmental functions or powers. On February 4, 2019, the Court ruled on Plaintiffs' second motion for summary judgment. In this ruling, the Court built upon the first ruling and stated that Mahaska County was bound by the amendment and termination provisions of the agreement, and that the County must allow its SCRAA representative to attend meetings and participate in good faith. Defendant now seeks for the Court to reconsider its previous two ruling and find the 28E agreement contrary to established law and void.

The first determination the Court must address is whether the consideration of the Defendant's argument is allowed procedurally. Rule 1.904 sets forth a 15-day timeliness deadline for motions for reconsideration. Without question, both summary judgment rulings were filed over a year before this motion. The Court further notes that Defendant did file a Motion to Reconsider on June 28, 2018, seeking expanded rulings on a number of topics for error preservation as Defendant desire to appeal the first summary judgment ruling.[1] The Court filed an order on June 29, 2018, declining to make any enlargement, amendment, or modification of its June 13, 2018 ruling. As such, Defendant's June 29, 2020, motion at issue here is a successive motion in regards

[1] The record shows no such appeal has been filed yet.

to the first summary judgment ruling, and thusly prohibited by Rule 1.904(4). Therefore, this motion may only request reconsideration of the Court's second summary judgment ruling, though indisputably untimely.

Defendant seeks to overcome this procedural hurdle by arguing to the Court's inherent power to review its own decisions and to correct errors at law. In support of this position, Defendant cites numerous cases in which courts have modified previous rulings, including those with years between the ruling and the modification. *See Matter of Estate of Workman*, 903 N.W.2d 170 (Iowa 2017); *Waddell v. Univ. of Iowa Cmty. Med. Servs., Inc.*, 924 N.W.2d 537, 2018 WL 4638311 (Iowa Ct. App. 2018). Further, Defendant argues that Rule 1.904 does not deprive the Court of the authority to review the past summary judgment rulings.

Our court rules were created by the Supreme Court in accordance with Iowa Code section 602.4201 and Article 5, Section 4 of the Iowa Constitution. Courts have routinely held that the rules have the same force and effect of statutes, and that violation of the rules nullifies them. *State v. Mootz*, 808 N.W.2d 207 (Iowa 2012); *Halvorson v. City of Decorah*, 257 Iowa 453, 133 N.W.2d 232 (Iowa 1965). The Iowa Supreme Court has stated, "[p]rocedural rules are not always merely technical. They represent the best means of trying lawsuits by orderly procedures so that all may know what may and what may not be done." *Windus v. Great Plains Gas*, 255 Iowa 587, 600, 122 N.W.2d 901, 908 (Iowa 1963). The Court cautioned that parties, though their counsel, should not be allowed to ignore "plain mandates of the rule with ample opportunity to abide by them. To do so would be to abrogate the rule and to reward negligence or inattention." *Id.* at 909.

It is undisputed by the parties or by the Court that the adoption of Rule 1.904 did not strip the Court of its inherent authority. However, the Rule is clear that successive motions are prohibited unless the exception is met, which is has not been here. Unlike other Rules, the Court

is not given discretion to excuse noncompliance based upon good cause. Therefore, giving the Rule the proper effect of law, the Court may not disobey this explicit prohibition, as Defendant would seem to suggest. Doing so would abrogate the Rule and reward noncompliance with the Rules.

The Defendant's Motion to Reconsider, as a result, can only pertain to the second summary judgment ruling filed by the Court on February 4, 2019. In the ruling, the Court made the following three rulings:

1. The Court denied the Plaintiffs' Motion for Summary Judgment on Defendant's counterclaim concerning the closure of 220th Street.
2. The Court ordered Mahaska County to abide by the amendment and termination provisions of the 28E agreement.
3. The Court ordered Mahaska County to allow its SCRAA representative to attend and participate in good faith in the SCRAA meetings.

Defendant's arguments all concern the legality of the agreement, and do not directly go to the specific orders of the Court in the second summary judgment ruling. The Court already determined as a matter of law that the 28E agreement at question here is valid and enforceable, and the agreement did not violate public policy. Should Defendant wish to challenge this ruling, it may do so through the appropriate vehicle, which is not a successive motion to reconsider. Based upon this limited scope, the Court declines to reconsider, enlarge, or modify its previous ruling.

Together with the Motion to Reconsider, Defendant contends it is entitled to summary judgment on the assertion that the agreement is illegal and unenforceable. In essence, Defendant seeks to overturn the Court's prior two summary judgement rulings by making new arguments

concerning the alleged illegality of the agreement. Summary judgment is only proper when the party is entitled to judgment as a matter of law. The Court, above, has already found that Court's June 13, 2018 ruling that the agreement is legal and valid remains in force. As such, the Court finds that Defendant is not entitled to judgment as a matter of law.

Defendant's Motion for Sanctions

Defendant argues that sanctions are warranted under Rule 1.413 for Plaintiffs alleged failure to cite controlling statutory and case law and for pursuing a claim of promissory estoppel.[2] Defendant further cites to Iowa Rule of Professional Conduct 32:2:3 for the rule that a lawyer shall not knowingly fail to disclose adverse controlling legal authority to the court. Plaintiffs argue that the statues and case law referenced by Defendant are not applicable, and therefore not controlling, and that promissory estoppel claim was not frivolous.

The Court finds that Rule 1.413 has not been violated and no sanctions are required. The case and statutes named by Defendant, while relevant to the issues in this suit, are not clearly controlling as argued. At the very least, there is plenty of room for argument concerning applicability as evidenced by the parties extensively briefing the issue here. Further, the fact that neither Defendant's prior counsel nor the Court cited these sources when the legality of the agreement was first argued in early 2018 cuts against Defendant's argument. The Court does not think the situation here is the conduct envisioned to be prohibited by Rule 1.413.

Plaintiffs' claim of promissory estoppel was added to their petition upon amendment. No formal definition of what constitutes "frivolous" is contemplated by the Rule. However, the Iowa

[2] The statutes identified by Defendant are Iowa Code Chapters 330 and 330A. The case is *Marco Dev. Corp. v. City of Cedar Falls*, 473 N.W.2d 41 (Iowa 1991).

Supreme Court has held that "there is a fine line between zealous advocacy and frivolous claims." *Barnhill v. Iowa Dist. Court for Polk Cnty*, 765 N.W.2d 267, 279 (Iowa 2009). The Court looks to whether the attorney was acting in good faith in making their filings. *Id.*

Defendant argues that Plaintiffs' promissory estoppel claim must be frivolous because no formal action was taken by Defendant concerning the 220th Street road closure or the construction of a service road. Plaintiffs argue that Defendant did convey an intent to disconnect 220th Street, which Plaintiffs relied upon, and that evidence of no formal action taken by Defendant came later in discovery.

"The perfect acuity of hindsight has no place" in Rule 1.413 motion for sanctions; therefore, the Court cannot judge the reasonableness of the claim with the benefit of discovery having been conducted, but must do so with what as available at the time the claim was added. *Schettler v. Iowa Dist. Court for Carroll Cnty.*, 509 N.W.2d 459, 468 (Iowa 1993); *Harris v. Iowa Dist. Court for Johnson Cnty*., 570 N.W.2d 772 (Iowa 1997). The letter sent by Mahaska County Engineer, Jerome T. Nusbaum, submitted as Plaintiffs' Exhibit D, makes the statement that the street would be closed upon the environmental determination by the Federal Aviation Administration (FAA). Without reaching the merits of the promissory estoppel claim, the Court finds the claim to be reasonable and made in good faith regarding the closure of 220th Street.

Concerning the construction of a service road as plead in Count V – Promissory Estoppel, the Court notes the pleadings state that the construction of a service road was a component of the Environmental Assessment that the parties filed with the FAA. The pleadings further state that it was after the Environmental Assessment was approved by the FAA that Defendant formally rejected the plan. Plaintiffs have alleged that Defendant agreed to plan to construct a service road

and that Plaintiffs relied upon that agreement to their detriment. Again, without reaching the merits or making any findings of fact, the Court finds the claim to be reasonable and made in good faith.

RULING

For the reasons stated above, it is the ruling of the Court that:

1. Defendant's Motion to Reconsider and to Grant Summary Judgment is denied.
2. Defendant's Motion for Sanction is denied.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
EQEQ006593	CITY OF PELLA IOWA AND CITY OF OSKALOOSA V MAHASKA COUNTY

So Ordered

Crystal S. Cronk

Crystal S. Cronk, District Court Judge
Eighth Judicial District of Iowa