STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0963

Jacques Lafrenier, et al.,
Appellants,

vs.

Joseph Berger,
Respondent.

Filed January 21, 2025
Reversed and remanded
Bratvold, Judge

Sherburne County District Court
File No. 71-CV-22-873

Eric Johnson, Johnson Tax Law P.C., St. Paul, Minnesota (for appellants)

Jacob E. Lanthier, Hellmuth & Johnson, PLLC, Edina, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellants challenge the district court's order granting respondent's motion for sanctions and awarding a money judgment to respondent. Appellants argue that the district court abused its discretion by imposing sanctions under Minn. R. Civ. P. 11.03 and Minn. Stat. § 549.211 (2024), raising two issues. First, appellants contend that respondent's motion was "blocked" because appellants took corrective action under the safe-harbor

provisions of the rule and statute. Second, appellants urge that the record does not support the district court's findings or its decision to impose sanctions. Because the parties disputed whether appellants corrected the alleged sanctionable conduct and the district court did not decide this threshold factual issue, we reverse the district court's decision to award sanctions. We therefore do not address the second issue. Thus, we reverse and remand for further proceedings consistent with this opinion.

FACTS

The following summarizes the district court's factual findings and, when helpful to understand the issues on appeal, includes other record evidence.

Appellant Jacques LaFrenier worked as an independent contractor for respondent Joseph Berger's company, Installing Coolers Etc. LLC (Installing Coolers), until 2017.[1] In 2018, LaFrenier did not work for or receive payments from Installing Coolers.

In February 2021, the Internal Revenue Service (IRS) notified LaFrenier of an income-tax deficiency for 2018; the IRS notice referred to $45,163 in compensation reported on a Form 1099 filed by Installing Coolers. LaFrenier initiated proceedings in the United States Tax Court to dispute the deficiency. In May 2022, LaFrenier and the IRS stipulated that there was "no deficiency in income tax due" from LaFrenier for 2018 and no penalty due.

[1] The caption is taken from the district court record. Minn. R. Civ. App. P. 143.01 ("The title of the action shall not be changed in consequence of the appeal."). The caption spells appellant's name "Lafrenier," which we do not change. Because appellant's brief spells his name "LaFrenier," we incorporate that spelling into our opinion.

On July 21, 2022, LaFrenier sued Berger—not Installing Coolers. The complaint alleged six causes of action related to the IRS deficiency notice: injurious falsehood, breach of contract and fiduciary duty, defamation, intentional infliction of emotional distress, negligence, and fraud. In support of these claims, the complaint alleged that Berger filed a Form 1099 falsely reporting that Berger paid LaFrenier $45,163 as compensation in 2018 and that the IRS notified LaFrenier that he had a tax deficiency. The complaint also alleged that LaFrenier contacted Berger and asked him to correct the Form 1099, Berger refused to do so, and LaFrenier "was forced to litigate the issue" in the United States Tax Court, which reversed the deficiency. The complaint also alleged that Berger "acted with the intent to harm" LaFrenier or otherwise knew or should have known that the false Form 1099 would harm LaFrenier. The complaint alleged damages for "professional fees" in the tax court proceedings as well as "mental stress and anguish."

In September 2022, LaFrenier moved to amend his complaint to add a claim for punitive damages. Berger opposed LaFrenier's motion to amend and submitted affidavits from Berger and Installing Coolers' accountant, both of whom averred that Berger never personally submitted tax forms to the IRS. The accountant attested that "the first time [she] heard about an issue with a Form 1099 for [LaFrenier] was in March 2021" and that, in response, she submitted a Form 1099 to the IRS that stated Installing Coolers paid LaFrenier $0 in 2018. The accountant also averred that, in 2019, Installing Coolers submitted a corrected Form 1099 to the IRS that reported paying $45,163 to LaFrenier in tax year 2016. Both Form 1099s that reported Installing Coolers' payments to LaFrenier in 2016 and 2018 were attached to the accountant's affidavit.

The district court denied LaFrenier's motion to amend the complaint to add punitive damages in a January 2023 order. The district court first noted that a claim for punitive damages is not an independent cause of action. Because LaFrenier's memorandum in support of his motion focused on only one of his asserted causes of action—injurious falsehood—the district court's analysis considered that LaFrenier cited no legal authority showing that Minnesota had recognized this tort. The district court stated that LaFrenier cited one Minnesota legal authority, but it involved "slander of title to real estate and tortious interference with contract." The district court concluded that LaFrenier lacked "an underlying cause of action to which a claim for punitive damages could attach" for two reasons: (1) the tort of injurious falsehood "has not been recognized in the State of Minnesota" and (2) LaFrenier's other causes of action "lack a prima facie showing in the record."

Several months later, in April 2023, Berger moved for summary judgment. Berger argued that he was entitled to judgment as a matter of law because Minnesota does not recognize the tort of injurious falsehood and LaFrenier's other causes of action lacked evidence to prove an essential element of each claim.

On May 10, 2023, LaFrenier opposed Berger's summary-judgment motion. LaFrenier's memorandum did not address any of the arguments in Berger's summary-judgment motion. LaFrenier instead stated that, after reviewing "internal documentation" filed with Berger's summary-judgment motion, he realized that Berger "did not file the erroneous Form 1099 for 2018" with the IRS. LaFrenier also stated that "[i]t appears substantially certain" that the tax-deficiency notice "resulted from" an IRS

error. LaFrenier pointed out that, in 2019, Installing Coolers "filed a corrected Form 1099 for 2016" reporting compensation of $45,163, "which is exactly the amount" stated in the IRS deficiency notice for 2018. LaFrenier remarked that "the obvious conclusion is that the [IRS] erroneously inputted the 2016 corrected number as the 2018 number" for LaFrenier's income. LaFrenier contended, however, that Berger "is still the cause" of LaFrenier's "litigation fees before the Tax Court" because Installing Coolers—not Berger—"failed to provide a copy of the corrected Form 1099 for 2018" to LaFrenier or his accountant as they had requested in March 2021.

On May 12, 2023, Berger served a motion for sanctions on LaFrenier and his attorney, appellant Eric William Johnson, but did not file it. Berger argued that LaFrenier and Johnson (appellants) (1) sued Berger "personally for claims based on no evidentiary support or any likelihood to obtain such evidentiary support after further investigation"; (2) made "false statements" and brought a "meritless Complaint" to harass Berger and force him to incur litigation costs; (3) made "material misrepresentations" that LaFrenier had a "false Form 1099," even though LaFrenier "knew" this document "did not exist"; (4) asserted "legal claims" that were "unwarranted by law, or not based on a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law"; (5) refused to voluntarily dismiss the complaint "after being provided verifiable proof that it lacks any basis in law or fact"; and (6) made "new legal claims" in opposition to Berger's summary-judgment motion "without any legal authority or identification of an existing cause of action." Berger demanded that appellants voluntarily

dismiss the complaint and reimburse Berger for "his reasonable attorneys' fees and costs incurred to defend against the meritless Complaint."

Ten days after being served with Berger's motion for sanctions, on May 22, 2023, LaFrenier filed a "Notice of Non-Objection." The notice was four sentences long and stated that LaFrenier "does not now object" to Berger's summary-judgment motion, entry of final judgment, and dismissal of the complaint with prejudice.

On May 23, 2023, the district court granted Berger's summary-judgment motion. The one-page order stated that the district court received LaFrenier's notice of nonobjection and therefore dismissed the complaint and its claims "in their entirety." The order did not discuss the merits of the summary-judgment motion.

On June 8, 2023, Berger filed an amended motion for sanctions against appellants. Berger's memorandum first argued that the district court "has jurisdiction" to consider and award sanctions after LaFrenier withdrew his opposition to summary judgment. Berger then argued that LaFrenier's complaint was "meritless" because (1) the injurious-falsehood claim was "not based on a good-faith argument to establish a new law," (2) the other claims in LaFrenier's complaint "were never supported by evidence or legal authority," and (3) no law or evidence supported LaFrenier's claim that Berger was personally liable. Finally, Berger argued that the complaint was "presented for an improper purpose"—to "harass and annoy" Berger and to "force" Berger to incur substantial defense fees. Berger maintained that LaFrenier's "motivation" was "to get retribution for the false belief" that Berger "purposefully filed a false Form 1099."

Appellants opposed Berger's amended motion for sanctions and argued, first, that the motion "violates the 21-day safe harbor provisions" of Minn. R. Civ. P. 11.03 and Minn. Stat. § 549.211, subd. 4(a), because appellants "took appropriate corrective action within the 21-day period." Appellants also argued that they did not violate Minn. R. Civ. P. 11.02 or Minn. Stat. § 549.211, subd. 2, because (1) the tort of injurious falsehood is "endorsed" by the Restatement (Second) of Torts and was applied by a Minnesota court "in at least one case," (2) LaFrenier's claim that the false Form 1099 "was filed in retaliation directly by [Berger] (or at his direction)" establishes Berger's liability, and (3) Berger "can point to no actions" to "annoy, vex, or harass" Berger or to "prolong the proceedings." Appellants did not address the other causes of action in the complaint.

In his reply memorandum, Berger argued, among other things, that LaFrenier "failed to take adequate steps to remedy his sanctionable conduct." Berger contended that the purpose of rule 11.03 is to deter sanctionable conduct and that the district court "cannot practically deter" rule 11 violations if its authority to sanction "is barred once a party withdraws or voluntarily dismisses a claim." Berger also argued that appellants misrepresented to Berger and the district court that they possessed the "false Form 1099" throughout this litigation. Berger maintained that appellants "never had evidence" that Berger personally filed a "false Form 1099" with the IRS despite having "the full opportunity to obtain the [alleged] document from the [IRS] during the pendency of litigation [LaFrenier] commenced against the agency."

After a hearing, the district court granted the sanctions motion in a written order. The district court first determined, citing caselaw, that it had jurisdiction to consider

sanctions "even after" LaFrenier's claims were dismissed. The district court did not determine whether appellants had taken corrective action under the safe-harbor provision, despite noting that the parties disagreed about this issue. The district court nonetheless then considered the merits of Berger's motion and found that appellants violated rule 11.02 because they "failed to investigate the factual and legal bases" of LaFrenier's claims and "persisted" in the litigation despite lacking "factual and legal bases" for his claims. The district court also found that appellants presented the complaint against Berger "for an improper purpose"—"to prolong this litigation." The district court directed Berger to submit an affidavit "detailing his costs incurred in defending against the complaint."

In December 2023, the district court entered an order awarding Berger $10,000 in attorney fees as a monetary sanction against appellants for violating Minn. R. Civ. P. 11.02 and Minn. Stat. § 549.211, subd. 2, and in a subsequent order, it directed entry of judgment.

This appeal follows.

DECISION

Appellants challenge the district court's judgment and order awarding sanctions for violations of Minn. R. Civ. P. 11.02 and Minn. Stat. § 549.211, subd. 2. This court reviews a district court's decision to impose sanctions for abuse of discretion. *Buscher v. Montag Dev., Inc.*, 770 N.W.2d 199, 210 (Minn. App. 2009) (applying the abuse-of-discretion standard to sanctions under rule 11.03); *Cole v. Star Tribune*, 581 N.W.2d 364, 370 (Minn. App. 1998) (applying the abuse-of-discretion standard to sanctions under Minn. Stat. § 549.211). A district court abuses its discretion when it makes findings "unsupported by the evidence" or "by improperly applying the law." *Sehlstrom v. Sehlstrom*, 925 N.W.2d

233, 239 (Minn. 2019) (quotation omitted). The relevant provisions of Minn. Stat. § 549.211 and Minn. R. Civ. P. 11 are substantially identical regarding the issues on appeal. Accordingly, for the remainder of this opinion, we will refer to rule 11.[2]

Minnesota Rule of Civil Procedure 11 has two parts that relate to the sanctions issue on appeal—certification and sanctions for violations of the certification provision. First, under Minn. R. Civ. P. 11.02, an attorney or self-represented litigant who signs, files, submits, or advocates a pleading or other document to the district court certifies "to the best of the person's knowledge, information, and belief" after a reasonable inquiry that

> (a) [the pleading or document] is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; [and]
>
> (d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief[.]

Minn. R. Civ. P. 11.02.

Second, rule 11 provides that a party or attorney who violates rule 11.02 may be sanctioned "after notice and a reasonable opportunity to respond." Minn. R. Civ. P. 11.03. Sanctions may be initiated by motion or on the court's initiative. Minn. R. Civ. P. 11.03(a).

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[2] The safe-harbor provisions in Minn. R. Civ. P. 11.03(a)(1) and Minn. Stat. § 549.211, subd. 4(a), are "almost identically worded." *Johnson v. Johnson*, 726 N.W.2d 516, 518-19 (Minn. App. 2007).

"A sanction imposed for violation of [rule 11] shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." Minn. R. Civ. P. 11.03(b). A sanction may be a nonmonetary directive or an order to pay a penalty or reasonable attorney fees and other expenses. *Id.*[3]

Appellants' brief to this court raises two issues. First, appellants challenge whether the record and applicable caselaw support the district court's determination that appellants violated Minn. R. Civ. P. 11.02. Second, appellants contend that Berger was "blocked" by the safe-harbor provision in Minn. R. Civ. P. 11.03 because LaFrenier's nonobjection to summary judgment "conceded the case in full" and "barred" Berger from filing his sanctions motion with the district court.

We understand LaFrenier's argument that Berger's sanctions motion was "blocked" or "barred" to mean that Berger's motion could not be filed with or presented to the district court because LaFrenier took corrective action under the safe-harbor provision. Berger responds that he took all necessary steps to file his sanctions motion and that the district court's decision should be affirmed on the merits. Because we conclude that whether appellants took corrective action under the safe-harbor provision is a threshold issue that

[3] District courts also have inherent authority to impose sanctions as necessary to protect their "vital function—the disposition of individual cases to deliver remedies for wrongs and justice freely and without purchase; completely and without denial; promptly and without delay, conformable to the laws." *State by Cunningham v. Iron Waffle Coffee Co.*, 990 N.W.2d 513, 521 (Minn. App. 2023) (quotation omitted); *see also Patton v. Newmar Corp.*, 538 N.W.2d 116, 118-19 (Minn. 1995) (discussing a district court's "considerable" inherent authority to sanction a party for destroying evidence). Neither Berger nor the district court discussed sanctioning appellants under the district court's inherent authority. Thus, we limit our review to the rule 11 issue presented.

must be resolved before a district court determines the merits of a sanctions motion, we begin with that issue.

A close reading of Minn. R. Civ. P. 11.03 clarifies the steps a moving party is required to take in seeking sanctions and shows the importance of any corrective action if taken:

> A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate Rule 11.02. It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged document, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

Minn. R. Civ. P. 11.03(a)(1). Thus, a party who seeks sanctions under rule 11.03 must (1) move for sanctions separately from other motions, (2) describe the specific conduct alleged to violate rule 11.02, (3) serve the motion on the party it seeks to sanction, (4) wait at least 21 days after service, and (5) may file or present the motion with district court *if* the alleged sanctionable conduct "is not withdrawn or appropriately corrected." *Id.*

The part of rule 11.03 that provides for a 21-day period in which a nonmoving party may withdraw or take corrective action is known as the safe-harbor provision. *Gibson v. Coldwell Banker Burnet*, 659 N.W.2d 782, 790 (Minn. App. 2003). "If the moving party does not follow the procedure provided in rule 11.03(a)(1), the motion for sanctions must be rejected." *Id.* at 789-91 (reversing sanctions award after determining that the moving party did not wait 21 days after service before filing the sanctions motion with the district court).

The parties do not dispute that Berger followed four of the five steps required by rule 11.03—Berger moved for sanctions separately from other motions, described the alleged violations, served appellants, and waited 21 days before filing the sanctions motion in district court.[4]

But appellants contend that they took corrective action under the safe-harbor provision when LaFrenier filed a notice of nonobjection to Berger's summary-judgment motion. Appellants also argue that Berger cannot "have it both ways—use the safe-harbor mechanism of Rule 11 to induce the opposing party to withdraw claims, then seek sanctions despite the withdrawal of claims."

Berger counters that LaFrenier's nonobjection to summary judgment was not a withdrawal and "did not 'appropriately correct[]' his sanctionable conduct." Berger maintains that the purpose of the safe-harbor provision "is not to 'induce the opposing party to withdraw claims'"; it is "a safeguard that allows them to take remedial action before the motion for sanctions is filed." Berger argues, citing examples, that appellants' violations of rule 11 were not limited to opposing Berger's summary-judgment motion.

The parties disagree about whether the district court determined that appellants took corrective action or failed to do so. Appellants argue that the district court "ignored the

[4] Berger served his initial motion for sanctions on May 12, 2023, claiming that appellants violated rule 11.02 because the complaint was "meritless" and was "presented for an improper purpose," specifically, to "harass and annoy" Berger and "force" Berger to incur substantial defense costs. Ten days later, on May 22, 2023, LaFrenier notified Berger and the district court that he no longer objected to summary judgment or to entry of a final judgment dismissing his claims with prejudice. The district court granted summary judgment and dismissed LaFrenier's complaint. Berger then filed his amended sanctions motion alleging the same violations on June 8, 2023.

safe-harbor provision" and instead discussed inapplicable caselaw. Berger responds in two parts, which we discuss in turn.

First, Berger urges us to conclude that appellants "believe[]" that they dismissed LaFrenier's claims and that the dismissal "withdrew the district court's authority to grant sanctions." While the district court's jurisdiction was raised and decided below, the issue was raised by Berger. Both the district court and Berger relied on *Vegemast v. DuBois* to conclude that the district court had "jurisdiction" to award sanctions after LaFrenier's complaint was dismissed. 498 N.W.2d 763, 765-66 (Minn. App. 1993). And we agree that, in *Vegemast*, we held that the district court had jurisdiction to award sanctions under rule 11.03, even after the nonmoving party voluntarily dismissed all claims. *Id.*[5]

But *Vegemast* was issued before the adoption of the safe-harbor provision in rule 11. *Vegemast* was issued in 1993, while the amendment of rule 11.03 adopting a safe-harbor provision occurred in 2000. *Order Promulgating Amendments to the Rules of Civil Procedure*, No. C6-84-2134 (Minn. Apr. 13, 2000).[6] In *Vegemast*, we considered the 1991 version of rule 11.03 that was in effect at the time and that did not provide the nonmoving party with an option to avoid sanctions by withdrawing or appropriately correcting their

[5] Plaintiff Vegemast sued DuBois for defamation. *Id.* at 764. DuBois moved for summary judgment on all claims and served Vegemast with a sanctions motion. *Id.* Twenty days after service, Vegemast filed a voluntary notice of dismissal of all claims without prejudice under Minn. R. Civ. P. 41.01(a). *Id.* After receiving the notice of dismissal, DuBois filed the sanctions motion, which the district court granted. *Id.* On review with this court, Vegemast contended that the district court "lacked jurisdiction" to award sanctions after all claims were voluntarily dismissed. *Id.*

[6] Minnesota Statutes section 549.211 first gained a safe-harbor provision in 1997. *See* 1997 Minn. Laws ch. 213, art. 1, § 1, at 1921 (providing a statutory 21-day safe-harbor period).

challenged claims or contentions. 498 N.W.2d at 765-66; *Order Promulgating Amendments to the Rules of Civil Procedure*, No. CX-89-1863 (Minn. Sept. 5, 1991).[7]

As a result, *Vegemast* does not help resolve this appeal because appellants' argument urges that, under the safe-harbor provision, they took corrective action by filing a notice of nonobjection to summary judgment and that this "blocked" Berger from filing his sanctions motion with the district court. The second part of Berger's argument contends that the district court "did not abuse its discretion when it determined [LaFrenier] failed to cure his sanctionable conduct." We do not agree with Berger's reading of the district court's decision.

The district court's sanctions order noted that the parties disputed whether appellants took corrective action, but the district court did not determine whether appellants withdrew or appropriately corrected the alleged violations of rule 11.02. This is problematic for two reasons. First, whether a party has withdrawn or taken appropriate corrective action in response to being served with a sanctions motion under rule 11.03 is a question of fact. *In re Supervised Est. of Flatgard*, ___ N.W.3d ___, ___, 2024 WL 4875950, at *4 (Minn. App. Nov. 25, 2024) ("[W]hether a party has withdrawn a frivolous claim within the safe-harbor period is a question of fact."). And we do not make factual findings on appeal. *Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966) ("It is not within

[7] Berger's brief to this court also cites several nonprecedential opinions by this court that rely on *Vegemast* for their conclusions that a district court has jurisdiction to impose rule 11 sanctions after the nonmoving party has voluntarily dismissed their claims. We agree that the cited caselaw relies on *Vegemast* for this point of law, but the nonprecedential opinions, like *Vegemast*, do not discuss whether the nonmoving party's action corrected the alleged rule 11 violations. We therefore do not consider these authorities to be relevant or helpful.

the province of [appellate courts] to determine issues of fact on appeal."); *see also Hoyt Inv. Co. v. Bloomington Com. & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988) ("[A]n undecided question is not usually amenable to appellate review.").

Second, as discussed above, whether a party has taken corrective action within the safe-harbor provision is a threshold issue that must be resolved before a district court determines whether to grant a sanctions motion. According to Minn. R. Civ. P. 11.03(a)(1), a party seeking sanctions cannot file or present its motion "*unless*, within 21 days after service of the motion . . . the challenged document, claim, defense, contention, allegation, or denial *is not withdrawn or appropriately corrected*." (Emphasis added.)

Still, appellants are incorrect in claiming that Berger was "blocked" from filing his sanctions motion because Berger disputed whether appellants took corrective action within the safe-harbor provision. Under rule 11.03 and related caselaw, Berger may present this disputed factual issue to the district court for its determination by filing his motion for sanctions. Under rule 11.03, if a district court determines that a nonmoving party has not withdrawn or appropriately corrected the challenged claims or contentions within the safe-harbor provision, then a district court may decide the merits of the sanctions motion. Minn. R. Civ. P. 11.03; *see also Flatgard*, 2024 WL 4875950, at *4, *7 (affirming district court's decision finding that the nonmoving party did not correct alleged rule 11 violations and awarding sanctions).

Thus, a nonmoving party's *attempt* to correct a rule 11 violation within the safe-harbor provision does not preclude the moving party from filing a sanctions motion or a district court from finding violations and awarding sanctions, as caselaw recognizes.

For example, in *Flatgard*, Carlson submitted a statement of claim against Flatgard's estate. 2024 WL 4875950, at *1. The special administrator disallowed Carlson's claim, and Carlson then petitioned the district court to allow his claim. *Id.* at *2. After the special administrator served Carlson with a sanctions motion arguing that Carlson's petition and "the included claims and allegations" were frivolous, Carlson emailed the special administrator within the safe-harbor period. *Id.* at *2-4. In the email, Carlson stated that he would "withdraw the Petition as written to eliminate any potential violation of the Rules" and that he would "send appropriate documentation" upon his return from a vacation. *Id.* at *2. When Carlson did not respond to the special administrator's requests for clarification, the special administrator filed the sanctions motion after the safe-harbor period ended. *Id.* at *2-3. Carlson then withdrew "the claims set forth in" his statement of claim and petition with prejudice. *Id.* at *3.

In granting the sanctions motion and awarding monetary sanctions, the district court determined that Carlson's email "did not amount to a withdrawal" of his claims because it was "a cagey message that suggested [Carlson] was going to continue to pursue claims and remedies against the Estate, even if in a different form than what was written in the Petition." *Id.* at *4. Carlson appealed, and this court affirmed. *Id.* at *3, *7. We determined that the district court did not clearly err in finding that the email "did not withdraw the challenged claims under rule 11." *Id.* at *5; *see also Buscher*, 770 N.W.2d at 211-12 (affirming rule 11 sanctions against Buscher's law firm, even though Buscher filed amended affidavits in an attempt to address rule 11 violations, and quoting the district court's determination that Buscher's "attempt to cure the errors" did not "cure the harm

that has caused the unnecessary expenditure of court time and attorney time in responding" to the misrepresentations in the original affidavits).

In summary, the district court did not determine the disputed factual issue of whether appellants "withdrew" or "appropriately corrected" the violations of rule 11.02 alleged in Berger's motion. Minn. R. Civ. P. 11.03(a)(1). Without this threshold determination, we conclude that the district court abused its discretion by proceeding to determine that appellants violated rule 11.02 and then awarding sanctions.

Thus, we reverse the district court's order and judgment awarding sanctions and remand for the district court to determine whether appellants withdrew or appropriately corrected the alleged violations of rule 11.02 within the safe-harbor provision. If the district court determines that appellants did not withdraw or appropriately correct the alleged violations of rule 11.02, then it may proceed as it deems appropriate under Minn. R. Civ. P. 11.03 and in a manner consistent with this opinion.

Reversed and remanded.