

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A24-0873**

In Re the Appeal from the Findings and Order Redetermining Benefits of Otter Tail  
County Ditch No. 52.

**Filed December 16, 2024  
Reversed  
Reyes, Judge**

Otter Tail County District Court  
File No. 56-CV-20-23

Richard M. Chodek, Ashby, Minnesota (self-represented appellant)

Hannah J. Schacherl, John C. Kolb, Rinke Noonan, Ltd., St. Cloud, Minnesota (for  
respondent Otter Tail County Commissioners)

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

**SYLLABUS**

Minn. R. Civ. P. 6.01(e) adds three days to the 21-day safe-harbor period for a  
motion for sanctions under Minn. R. Civ. P. 11.03 when the nonmoving party “has the right  
. . . to do some act” and is served with the motion by mail.

**OPINION**

**REYES, Judge**

Appellant argues that the district court (1) erred when it determined that the three-  
day extension for service by mail under Minn. R. Civ. P. 6.01(e) did not apply to  
respondent’s motion for sanctions under Minn. R. Civ. P. 11.03; (2) lacked subject-matter

jurisdiction over respondent's motion for sanctions;<sup>1</sup> and, therefore, (3) abused its discretion by imposing sanctions on him. Because the district court abused its discretion by determining that rule 6 did not apply to motions served under rule 11, we reverse.

## FACTS

This litigation began in 2019 when self-represented appellant Richard M. Chodek appealed the redetermination of benefits for a ditch affecting his property to the district court. A jury trial on the redetermination of benefits began on December 7, 2022. Leading up to trial, respondent Otter Tail County Commissioners (the county) expressed concern that Chodek did not have sufficient evidence to support his claims and that he would attempt to argue issues that were not before the district court. On November 16, 2022, following a meet-and-confer between the parties, the county served Chodek via U.S. Mail with a motion for sanctions under Minn. R. Civ. P. 11.03(a), subd. 1.<sup>2</sup> However, the county had ample time to serve Chodek with a motion for sanctions before November 16, 2022, because its motion identified potentially sanctionable behavior by Chodek “[s]ince filing the [n]otice of [a]ppeal” in 2019, including the fact that his original claims “lack[ed] evidentiary support”; that since “[d]iscovery for this appeal began in October 2020,” Chodek did not produce “evidentiary support for the allegations and factual contentions

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<sup>1</sup> Appellant labels his argument as one of subject-matter jurisdiction. However, appellant fails to provide any legal support or analysis showing that the district court lacked subject-matter jurisdiction. Rather, appellant's substantive argument is that the district court wrongly determined that his actions were sanctionable and improperly imposed a sanctions award against him. We conclude that there is no proper subject-matter-jurisdiction argument before us to analyze.

<sup>2</sup> Service by mail is complete upon mailing. Minn. R. Crim. P. 5.02(c).

proclaimed” in his notice of appeal; and that he “used discovery requests, motions, proposed exhibits, and proposed witnesses to harass and cause unnecessary costs of litigation.”

On December 8, 2022, the second day of trial, the district court granted the county’s motion for judgment as a matter of law (JMOL) and orally dismissed the case. That same day—22 days after the county served its motion for sanctions on Chodek—the county filed the motion for sanctions under rule 11.03 with the district court. Pursuant to that rule, a nonmoving party “shall not” not file its motion with the district court “unless, within 21 days after service of the motion” the nonmoving party has not taken corrective action. *See* Minn. R. Civ. P. 11.03(a)(1). In response, Chodek argued that the county filed its motion for sanctions prematurely because he was entitled to three additional days to take corrective action as provided in rule 6 because the county served the motion by mail.<sup>3</sup>

On April 5, 2023, the district court granted the county’s motion for sanctions, including attorney fees, against Chodek for the period of November 16, 2022, to the date of the sanctions hearing on January 13, 2023.<sup>4</sup> The district court determined that the additional three days for service by mail under rule 6 did not apply when computing the safe-harbor period for motions for sanctions under rule 11. The district court reasoned that,

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<sup>3</sup> The district court issued a written order supplementing its JMOL decision on February 24, 2023, and issued an amended order on April 4, 2024, remedying clerical errors.

<sup>4</sup> Chodek appealed the district court’s order (1) granting the county attorney fees and (2) granting JMOL to the court of appeals on June 5, 2023. This court dismissed Chodek’s attorney-fee claim as premature because the amount of attorney fees had not yet been determined but allowed review of the order granting JMOL to proceed. This court affirmed the district court’s grant of JMOL in December 2023. *In re Otter Tail Cnty. Ditch No. 52*, No. A23-0825 (Minn. App. Dec. 14, 2023).

because rule 11 provides that motions for sanctions “shall be served as provided in [r]ule 5,” and because Minn. R. Civ. P. 5.02(c) provides that service is complete upon mailing and makes no reference to rule 6, therefore, the rule 6 provision adding time to respond when a motion is served by mail does not apply to motions under rule 11. In March 2024, the district court awarded the county \$26,992.50 in attorney fees against Chodek. This appeal follows.

### ISSUE

Did the district court abuse its discretion when it determined that Minn. R. Civ. P. 6.01(e) did not apply to a motion for sanctions under Minn. R. Civ. P. 11.03?

### ANALYSIS

Chodek argues that the district court abused its discretion when it misapplied the law by determining that the three additional days for service by U.S. Mail under rule 6 did not apply to a motion for sanctions under rule 11.<sup>5</sup> His argument is persuasive.

We review a district court’s decision on a motion for sanctions for an abuse of discretion. *See Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011), *rev. denied* (Minn. Mar. 15, 2011). A district court abuses its discretion when it “makes findings of fact [that] are not supported by the record, *misapplies the law*, or resolves the matter in a manner that is contrary to logic and the facts on record.” *Sinda v. Sinda*, 949

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<sup>5</sup> While Chodek’s argument mentions rule 11, it primarily focuses on the application of the additional three days provided by rule 6 to Minn. Stat. § 549.211 (2022). Because rule 11 and Minn. Stat. § 549.211 are “almost identically worded” and because the district court’s order only analyzed the applicability of rule 6’s provision adding three days to a motion served by mail to rule 11 motions for sanctions and not section 549.211, our analysis focuses on rule 11. *See Johnson v. Johnson*, 726 N.W.2d 516, 519 (Minn. App. 2007).

N.W.2d 170, 175 (Minn. App. 2020) (emphasis added). Appellate courts review a district court’s interpretation of rules de novo. *See Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 500 (Minn. 2021); *Johnson*, 726 N.W.2d at 518. The first step in interpreting a rule is to look at its plain language. *See Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 601 (Minn. 2014). When “the language is plain and unambiguous, that plain language must be followed.” *State v. Dahlin*, 753 N.W.2d 300, 305 (Minn. 2008).

Rule 6.01(e) provides:

*Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party, and the notice or document is served upon the party by United States Mail, [three] days shall be added to the proscribed period.*

Minn. R. Civ. P. 6.01(e) (emphases added).

The purpose of rule 6 is to compute time. *See, e.g., State v. Hugger*, 640 N.W.2d 619, 623 (Minn. 2002); *Soyka v. Comm’r of Revenue*, 842 N.W.2d 682, 685-86 (Minn. 2014); *Wertish v. Salvhus*, 558 N.W.2d 258 (Minn. 1997). Rule 6 applies “in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.” Minn. R. Civ. P. 6.01(a) (emphasis added).

A motion for sanctions under rule 11.03(a), subdivision 1, “shall not be filed with or presented to the court unless, within 21 days after service of the motion . . . the challenged document, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.” The 21-day waiting period required before filing a sanctions

motion under rule 11 is commonly known as the “safe-harbor” period. *Gibson v. Coldwell Banker Burnet*, 659 N.W.2d 782, 789 (Minn. App. 2003).

It is well understood that rule 6 applies in calculating when the safe-harbor period begins and ends because rule 11 does not provide guidance. *See id.* at 786-87, 790 (holding that moving party’s failure to comply with safe-harbor period when it served its motion on opposing counsel and filed it with court on same day required reversal of district court’s award of sanctions); Minn. R. Civ. P. 11.03. We look to rule 6 because, under its plain language, it applies “in computing any time period specified in [the Minnesota Rules of Civil Procedure], in any local rule or court order, or in any statute that does not specify a method of computing time.” Applying rule 6, we look to the date when the party served the motion on the opposing party and the date when the moving party can then file its motion for sanctions, provided the nonmoving party has not taken corrective action, to calculate when the 21 days expires. Minn. R. Civ. P. 6.01(a)(1).

Here, because rule 11 does not explain how to calculate the safe-harbor period when a party is served by mail, we must again look to rule 6. Under rule 6, the date of service of the motion on the nonmoving party begins the 21-day period. *See id.* However, because the county served Chodek by mail, we calculate the safe-harbor period to be the standard 21 days plus an additional three days per rule 6.01(e) if, for example, Chodek “ha[d] the right . . . to do some act.” *See* Minn. R. Civ. P. 6.01(e) (“Whenever a party has the right . . . to do some act . . . within a prescribed period after the service of a notice . . . and the notice . . . is served upon the party by United States Mail, [three] days shall be added to the prescribed period.”) As a result, the period of time for the safe-harbor provision is 24 days

when the moving party serves another by U.S. Mail and the nonmoving party has the right to do some act. We therefore hold that Minn. R. Civ. P. 6.01(e) adds three days to the 21-day safe-harbor period for a motion for sanctions under Minn. R. Civ. P. 11.03 when the nonmoving party “has the right . . . to do some act” and is served with the motion by mail.

We now apply rules 6 and 11 based on their plain language. The fundamental purpose of rule 11 is “deterrence rather than punishment.” *Johnson*, 726 N.W.2d at 517; *see also* Minn. R. Civ. P. 11.03(b) (“A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct.”) When the county served Chodek with the motion for sanctions under rule 11, he had a right “to do some act” to avoid the district court imposing sanctions, such as withdrawing or correcting his complaint. *See* Minn. R. Civ. P. 6.01(e); 11.03(a)(1).<sup>6</sup> Because Chodek had the right to do these acts, the three additional days added to motions served by U.S. Mail under rule 6.01(e) applied and extended the safe-harbor period under rule 11 from 21 days to 24 days. Here, when the county filed its motion for sanctions with the district court on December 8, 2022, only 22 days had passed since the county served Chodek with its motion for sanctions. Because the county was required to wait 24 days from the day it served Chodek via U.S. Mail before filing a motion for sanctions, and failed to do so, its motion for sanctions did not comply with rule 11. As a result, the district court’s determination that the county “complied with all of the timing requirement[s] for service and filing of a motion for sanctions” is erroneous. We conclude that the district court abused its discretion

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<sup>6</sup> Because Chodek had a “right . . . to do some act” under rule 6.01(e), we need not consider whether other provisions of the rule apply.

because it erred by determining that the three-day extension under rule 6 did not apply to a motion for sanctions under rule 11.

The question of Chodek's relief remains. In *Gibson*, this court reversed a district court's order for sanctions awarding attorney fees when the moving party did not comply with the safe-harbor period. 659 N.W.2d at 791 ("Although we agree with the district court that [the party]'s conduct violated rule 11 and we do not take issue with the court's calculation of the sanction, we nonetheless reverse imposition of the sanction because the [moving party] did not satisfy the 21-day safe-harbor provision of rule 11.03(a)(1)."). Similar to the moving party in *Gibson*, the county "had no excuse" for not complying with the safe-harbor provision because it was aware of potentially sanctionable behavior by Chodek dating back to 2019 but waited until November of 2022 to serve him with a notice of sanctions, just weeks before the start of trial. *Id.* at 790. We are cognizant of the fact that reversal here leads to a harsh result. Nevertheless, like in *Gibson*, the county's failure to comply with rule 11's safe-harbor provision when it served Chodek by mail, which added three additional days under rule 6 to the 21-day safe-harbor period "rendered [the] trial court unable to impose sanction[s]" and we must reverse. *Id.* at 783. We therefore reverse the district court's award of attorney fees against Chodek.

## **DECISION**

Minn. R. Civ. P. 6.01(e) adds three days to the 21-day safe-harbor period for a motion for sanctions under Minn. R. Civ. P. 11.03 when the nonmoving party "has the right . . . to do some act" and is served with the motion by mail. Because Chodek had the right "to do some act" and the county served him by U.S. Mail, he was entitled to three additional



days, which extended the safe-harbor period to 24 days. Because we reverse the sanctions award on procedural grounds, we need not reach the merits of the sanctions award.

**Reversed.**