

**CIVIL PROCEDURE—Voluntary Dismissal of a Plaintiff's Case Does Not Divest the Court of Jurisdiction to Hear a Motion to Impose Sanctions Under Iowa Rule of Civil Procedure 80(a)—*Darrah v. Des Moines General Hospital*, 436 N.W.2d 53 (Iowa 1989).**

Margaret M. Darrah filed a claim for medical malpractice against Des Moines General Hospital and Doctor Martin S. Rosenfeld on July 8, 1986.<sup>1</sup> Darrah voluntarily dismissed her suit without prejudice on July 20, 1987.<sup>2</sup> Later, the defendant, Doctor Rosenfeld, filed a motion requesting sanctions pursuant to Iowa Rule of Civil Procedure 80(a) [hereinafter Rule 80(a)].<sup>3</sup> The district court denied the motion,<sup>4</sup> holding the voluntary dismissal terminated its jurisdiction.<sup>5</sup>

In a second case, Mitchell Ostrem filed a malpractice action against Doctor Martin S. Rosenfeld and Doctor N. K. Pandeya on November 17, 1986.<sup>6</sup> Thirteen months later, Mr. Ostrem voluntarily dismissed his case.<sup>7</sup> On December 17, 1987, defendants' counsel filed a motion for Rule 80(a) sanctions against plaintiff's counsel.<sup>8</sup> Similarly, the district court, with a dif-

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1. Appellant's Brief at 1, *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d 53 (Iowa 1989) (No. 87-1632).

2. *Id.* at 3.

3. *Id.* It should be noted Des Moines General Hospital did not participate in the appeal. *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d at 53. The full text of Rule 80(a) provides:

Pleadings need not be verified unless special statutes so require and, where a pleading is verified, it is not necessary that subsequent pleadings be verified unless special statutes so require. Counsel's signature to every motion, pleading, or other paper shall be 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. If a motion, pleading, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee. The signature of a party who is not represented by counsel shall impose a similar obligation on such party.

IOWA R. CRV. P. 80(a).

4. *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d at 53.

5. *Id.*

6. Appellant's Brief at 1, *Ostrem v. Rosenfeld*, 436 N.W.2d 53 (Iowa 1989) (No. 88-176).

7. *Id.* at 2. Mr. Ostrem dismissed his case due to his failure to secure an expert witness. *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d at 53.

8. Appellant's Brief at 5, *Ostrem v. Rosenfeld*, 436 N.W.2d 53 (Iowa 1989) (No. 88-176).

ferent judge presiding, denied the motion for lack of jurisdiction.<sup>9</sup>

The Iowa Supreme Court consolidated these two cases on appeal to address the question of whether a court retains jurisdiction to hear Rule 80(a) motions after the plaintiff voluntarily dismisses the case.<sup>10</sup> The Iowa Supreme Court unanimously *held*, reversed and remanded.<sup>11</sup> A voluntary dismissal of a plaintiff's case does not divest the court of jurisdiction to hear a motion to impose sanctions under Iowa Rule of Civil Procedure 80(a). *Darrah v. Des Moines General Hospital*, 436 N.W.2d 53 (Iowa 1989).

Rule 80(a) provides in pertinent part:

Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate . . . 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. . . . If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction.<sup>12</sup>

The court addressed this case as one of first impression.<sup>13</sup> However, the court had ruled before on the timeliness of a Rule 80(a) motion as it applied to an award of attorney fees in *Franzen v. Deere & Co.*<sup>14</sup>

In *Franzen*, Deere filed an application for attorney fees, pursuant to Rule 80(a).<sup>15</sup> Deere had been successful in two previous appeals of a products liability suit initiated by *Franzen*.<sup>16</sup> The instant appeal was an attempt by Deere to require *Franzen* to pay the attorney fees from the two prior appeals.<sup>17</sup> The Iowa Supreme Court denied the application, holding the district court lacked jurisdiction to review the application because the final judgment had already been affirmed in previous appeals.<sup>18</sup> Although Rule 80(a) does not specifically set forth a time limitation for filing a motion, the language of the rule requires the motion be filed while the lawsuit is pending, "not in a separately filed action at law or equity."<sup>19</sup> The rule provides

9. *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d at 53.

10. *Id.*

11. *Id.* at 55. Justice Carter concurred only in the result. *Id.*

12. IOWA R. CIV. P. 80(a).

13. *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d at 54.

14. *Franzen v. Deere & Co.*, 409 N.W.2d 672 (Iowa 1987).

15. *Id.* at 673.

16. *Id.* at 672; see *Franzen v. Deere & Co.*, 334 N.W.2d 730 (Iowa 1983) (*Franzen I*); *Franzen v. Deere & Co.*, 377 N.W.2d 660 (Iowa 1985) (*Franzen II*).

17. *Franzen v. Deere & Co.*, 409 N.W.2d at 672.

18. *Id.* at 673.

19. *Id.* at 674.

that a sanction may include an "order to pay."<sup>20</sup> This language, according to the court, indicates the order must be "entered in the underlying case itself."<sup>21</sup> In addition, the court stated the phrase "upon motion or upon its own initiative"<sup>22</sup> implies the authority of the district court to impose sanctions "arises in the lawsuit in which the rule 80(a) violations have occurred."<sup>23</sup>

Both Darrah and Ostrem relied on *Franzen* in their briefs.<sup>24</sup> They claimed *Franzen* controlled the disposition of the appellant's motion because the case held a voluntary dismissal was final and terminated the court's jurisdiction.<sup>25</sup> Both appellees began their arguments by citing Iowa Rule of Civil Procedure 215 [hereinafter Rule 215].<sup>26</sup> Rule 215 states in pertinent part: "A party may, without order of court, dismiss that party's own petition, counterclaim, cross-petition or petition of intervention, at any time up until ten days before the trial is scheduled to begin."<sup>27</sup> Asserting they were merely exercising their right to dismiss in accordance with Rule 215, the appellees proposed that when the pleadings are solely defensive, a voluntary dismissal is final and terminates the court's jurisdiction.<sup>28</sup> The appellees cited two cases in support of this proposition, *Witt Mechanical Contractors, Inc. v. United Brotherhood of Carpenters Local 772*<sup>29</sup> and *Smith v. Lally*.<sup>30</sup>

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20. *Id.*; see IOWA R. CIV. P. 80(a), *supra* note 3.

21. *Franzen v. Deere & Co.*, 409 N.W.2d at 674.

22. *Id.*; see IOWA R. CIV. P. 80(a), *supra* note 3.

23. *Franzen v. Deere & Co.*, 409 N.W.2d at 674.

24. Appellee's Brief at 6-7, *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d 53 (Iowa 1989) (No. 87-1632); Appellee's Brief at 7-8, *Ostrem v. Rosenfeld*, 436 N.W.2d 53 (Iowa 1989) (No. 88-176).

25. *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d at 54.

26. Appellee's Brief at 6, *Ostrem v. Rosenfeld*, 436 N.W.2d 53 (Iowa 1989) (No. 88-176); Appellee's Brief at 5-6, *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d 53 (Iowa 1989) (No. 87-1632).

27. IOWA R. CIV. P. 215. The full text of Rule 215 provides:

A party may, without order of court, dismiss that party's own petition, counterclaim, cross-petition or petition of intervention, at any time up until ten days before the trial is scheduled to begin. Thereafter a party may dismiss an action or that party's claim therein only by consent of the court which may impose such terms or conditions as it deems proper; and it shall require the consent of any other party asserting a counterclaim against the movant, unless that will still remain for an independent adjudication. A dismissal under this rule shall be without prejudice, unless otherwise stated; but if made by any party who has previously dismissed an action against the same defendant, in any court of any state or of the United States, including or based on the same cause, such dismissal shall operate as an adjudication against that party on the merits, unless otherwise ordered by the court, in the interests of justice.

*Id.*

28. *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d at 54.

29. *Witt Mechanical Contractors, Inc. v. United Bhd. of Carpenters Local 772*, 237 N.W.2d 450 (Iowa 1976).

30. *Smith v. Lally*, 379 N.W.2d 914 (Iowa 1986).

In *Witt*, the plaintiffs voluntarily dismissed their suit against the defendant labor union.<sup>31</sup> Twelve days after the trial court entered an ex parte order dismissing the action, the defendant made a motion to vacate the dismissal and reinstate the action on the ground it was prejudiced by Witt's dismissal.<sup>32</sup> The Iowa Supreme Court held "[t]he effect of such a dismissal . . . when the pleadings are solely defensive is final and terminates the jurisdiction of the court thereof."<sup>33</sup> Similarly, in *Lally*, the plaintiffs voluntarily dismissed their suit twice.<sup>34</sup> The first dismissal, prompted by a motion for change of venue, was without prejudice.<sup>35</sup> However, in the second dismissal, the plaintiffs failed to obtain an order stating the dismissal was "in the interest of justice."<sup>36</sup> When the plaintiff refiled its action for the third time, the defendants filed a motion for summary judgment, stating the second dismissal operated as an adjudication on the merits.<sup>37</sup> The plaintiffs then made an application to have their second dismissal reflect it was without prejudice.<sup>38</sup> The Iowa Supreme Court, in affirming the defendant's motion for summary judgment, held the voluntary dismissal ended the district court's jurisdiction to modify the second dismissal.<sup>39</sup>

Without discussing *Witt* or *Lally*, the appellants distinguished *Franzen* from the instant case by arguing a voluntary dismissal is not a final judgment.<sup>40</sup> Appellants argued *Franzen*, which involved a final judgment, did not apply to a situation in which a plaintiff voluntarily dismissed its case and later refiled its initial lawsuit.<sup>41</sup>

The Iowa Supreme Court accepted the appellants' reasoning and adopted the federal courts' interpretation of Federal Rule of Civil Procedure 11 [hereinafter Rule 11], which is analogous to Rule 80(a).<sup>42</sup> The federal

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31. *Witt Mechanical Contractors, Inc. v. United Bhd. of Carpenters Local 772*, 237 N.W.2d at 451.

32. *Id.*

33. *Id.* (citing *Lunt Farm Co. v. Hamilton*, 217 Iowa 22, 27, 250 N.W. 698, 701 (1933); *Lyon v. Craig*, 213 Iowa 36, 40, 238 N.W. 452, 454 (1931); *Ryan v. Phoenix Ins. Co.*, 204 Iowa 655, 656, 215 N.W. 749, 750 (1927); *Eclipse Lumber Co. v. City of Waukon*, 204 Iowa 278, 283, 213 N.W. 804, 807 (1927)).

34. *Smith v. Lally*, 379 N.W.2d at 915.

35. *Id.* The plaintiff voluntarily dismissed the case before the court made any ruling on the motion to change venue. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 916.

40. Appellant's Brief at 6, *Ostrem v. Rosenfeld*, 436 N.W.2d 53 (Iowa 1989) (No. 88-176).

41. *Id.* (citing *Franzen v. Deere & Co.*, 409 N.W.2d at 674; *Szabo Food Servs. Inc. v. Canteen Corp.*, 823 F.2d 1073, 1076 (7th Cir. 1987)).

42. *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d at 55. Federal Rule of Civil Procedure 11 is analogous to Iowa Rule of Civil Procedure 80(a). The full text of Rule 11 provides:

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the

courts have consistently held a voluntary dismissal does not revoke the jurisdiction of a court to hear motions for sanctions under Rule 11.<sup>43</sup>

The Iowa Supreme Court borrowed the analysis of several federal cases in developing its rationale. The court began its analysis of the federal court approach in the case of *Greenberg v. Sala*.<sup>44</sup> In *Greenberg*, the plaintiffs voluntarily dismissed one of the named defendants pursuant to Federal Rule of Civil Procedure 41(a)(1) regarding dismissal of actions.<sup>45</sup> Later, the district court entered an order dismissing the remainder of the named defendants.<sup>46</sup> These defendants, who had learned of the lawsuit against them from a newspaper article, then filed a motion for sanctions under Rule 11.<sup>47</sup> Although the Ninth Circuit Court of Appeals did not impose sanctions on the plaintiffs or their attorney, the court found the motion timely.<sup>48</sup> The court stated, "If Rule 11 was violated, the violation was complete when the complaint was filed."<sup>49</sup> The court reasoned the "expenditure of court resources," in addition to the costs incurred by the defendants in attorney

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party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper, that to the best of the signer'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 unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. *If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney fee.*

FED. R. CIV. P. 11 (emphasis added). The emphasized portion of Rule 11 concerning sanctions also appears in Iowa Rule of Civil Procedure 80(a).

43. 2A J. MOORE & J. LUCAS, MOORE'S FEDERAL PRACTICE ¶ 11.02[4] n.1 (2d ed. Supp. 1988).

44. *Greenberg v. Sala*, 822 F.2d 882 (9th Cir. 1987).

45. *Id.* at 884.

46. *Id.*

47. *Id.*

48. *Id.* at 885-86. It is of interest to note the plaintiffs filed affidavits by Professor Arthur Miller (the drafter of Rule 11), Professor Robert Blakely (the drafter of the federal RICO statute), and Dominic Gentile (Chairman of the ABA Criminal RICO Section), which stated the original complaint complied with Rule 11. *Id.* at 885.

49. *Id.* at 885 (citing *Pantry Queen Foods, Inc. v. Lifschultz Fast Freight, Inc.*, 809 F.2d 451, 453-54 (7th Cir. 1987)).

fees, was sufficient for the defendants to have standing under Rule 11.<sup>50</sup>

The Iowa Supreme Court also adopted much of the Seventh Circuit's reasoning in *Szabo Food Services Inc. v. Canteen Corp.*<sup>51</sup> In *Szabo*, the defendant made a motion for attorney fees, pursuant to Rule 11, after the complaint had been voluntarily dismissed by the plaintiff.<sup>52</sup> The court, in granting the defendant's motion, compared the imposition of sanctions to a citation for contempt of court.<sup>53</sup> Because an attorney could not escape a contempt charge by dismissing the case, it logically followed the attorney should not be permitted to avoid sanctions in the same manner.<sup>54</sup>

The Iowa Supreme Court further elaborated on its reasoning in *Darrah* by discussing the spirit behind Rule 80(a). The court stated, "If the plaintiff can terminate the ability of the court to impose sanctions by a voluntary dismissal, the rule's effectiveness would be significantly undermined."<sup>55</sup> This view was similarly expressed by the First Circuit Court of Appeals in *Muthig v. Brant Point Nantucket, Inc.*<sup>56</sup> In *Muthig*, the plaintiff voluntarily dismissed, without prejudice, all claims against Jordan, who was one of the defendants.<sup>57</sup> The plaintiff submitted the remaining claims against the other defendants to the state bar association's Mediation Panel.<sup>58</sup> Later, Jordan made a motion for attorney fees pursuant to Rule 11.<sup>59</sup> Before imposing the requested sanction, the court addressed the issue of whether the plaintiff's voluntary dismissal deprived the court of jurisdiction to hear the motion.<sup>60</sup> The court held a "‘post-dismissal’ exemption to Rule 11 would obstruct the Rule's purpose of discouraging the assertion of baseless claims and defenses."<sup>61</sup>

While the Iowa Supreme Court, in *Darrah*, parallels its interpretation of Rule 80(a) to the federal courts' interpretation of Rule 11, the court did not reverse its earlier decision in *Franzen*.<sup>62</sup> Rather, the court limited the application of *Franzen* to those situations in which the judgment is final.<sup>63</sup>

#### CONCLUSION

*Darrah v. Des Moines General Hospital* clearly establishes a court's authority to consider motions for sanctions after a plaintiff voluntarily dis-

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50. *Id.*

51. *Szabo Food Servs. Inc. v. Canteen Corp.*, 823 F.2d 1073 (7th Cir. 1987).

52. *Id.* at 1076.

53. *Id.* at 1079.

54. *Id.*

55. *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d at 54.

56. *Muthig v. Brant Point Nantucket, Inc.*, 838 F.2d 600 (1st Cir. 1988).

57. *Id.* at 602.

58. *Id.*

59. *Id.*

60. *Id.* at 603.

61. *Id.* at 604.

62. *Franzen v. Deere & Co.*, 409 N.W.2d 672 (Iowa 1987).

63. *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d at 55.

misses a case. No longer will a party be allowed to retract a questionable claim or defense without the threat of the opposing party filing a motion for sanctions under Rule 80(a). Attorneys who work with complex litigation, which often requires discovery before the exact offense can be determined, may frequently be subject to Rule 80(a) motions for merely following the procedure set forth in notice pleading.

In adopting the federal courts' interpretation of the timeliness of motions filed pursuant to Rule 11, the Iowa Supreme Court appears to have also adopted the rule's purpose as articulated by the advisory committee. According to the advisory committee, the purpose of Rule 11 is "to streamline the litigation process."<sup>64</sup> Unfortunately, this holding could potentially increase the popularity of Rule 80(a) motions and increase the amount of litigation before the Iowa courts.<sup>65</sup>

In spite of the potential increase in litigation, the decision in *Darrah* may eliminate many of the frivolous malpractice suits that are filed in the hope of procuring a settlement. This could potentially give doctors or other professionals some relief in the form of lower malpractice insurance premiums.

*Deborah Groene*

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64. FED. R. CIV. P. 11 advisory committee's notes.

65. Both *Darrah* and *Ostrem* asserted the appellants' motions were nothing more than abusive tactics designed to increase their court and litigation expenses. Appellee's Brief at 7, *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d 53 (Iowa 1989) (No. 87-1632); Appellee's Brief at 9, *Ostrem v. Rosenfeld*, 436 N.W.2d 53 (Iowa 1989) (No. 88-176).

