

NO. A06-02107

State of Minnesota
In Court of Appeals

In the Matter of the Petition of:

Michael C. Rollins

for the Establishment of a Cartway

BRIEF OF RESPONDENTS IVAN AND LOIS KRUEGER

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I. STATEMENT OF ISSUES

A. **Did The Trial Court Err In Affirming The Cass County Board Of Commissioners' Denial Of Rollins' Petition For Cartway Pursuant To Minn. Stat. § 164.08, Where The Proposed Cartway Would Have Been Contained Entirely On An Island Accessible Only Across Water, And Not Connected To Any Road, Public Or Private?**

The Trial Court affirmed the Cass County Board of Commissioners' denial of the petitioned-for cartway, agreeing with the County Board's interpretation and application of the cartway statute.

Horton v. Township of Helen, McLeod County, Minnesota, 624 NW 2d 591 (Minn. Ct. App. 201)

Minn. Stat. § 164.08

In Re: the Matter of Daniel, 656 NW 2d 543 (Minn. 2003)

B. **Did The Trial Court Abuse Its Discretion In Awarding The Kruegers Reasonable Expenses And Attorney's Fees Incurred In Opposing Rollins' Motions For Sanctions?**

The Trial Court found that Rollins' Motion for Sanctions was not warranted by existing law and had been presented for an improper purpose, made in bad faith, and warranted sanctions—it awarded the Kruegers \$4,732 as reasonable attorney's fees incurred in defending Rollins' motion for sanctions.

Minn. R. Civ. P. 11.03

Minn. Stat. § 549.211

Uselman v. Uselman, 464 NW 2d 130 (Minn. 1999).

II. STATEMENT OF THE CASE AND FACTS

After unsuccessfully attempting over a six year period to claim an easement across Respondent Krueger's property, Rollins sought to accomplish through a legislative petition what he could not accomplish through the courts, and filed a Petition for a Cartway before the Cass County Board of Commissioners. The Cass County Board denied Rollins' request for a cartway following a hearing on December 20, 2005. Appellant Rollins appealed the Board's denial of his cartway petition to the Cass County District Court, and also brought a motion for sanctions against the Kruegers and against Cass County based on legal positions taken by their respective attorneys pursuant to the cartway petition hearing before the Board.

The District Court affirmed the decision of the Cass County Board of Commissioners denying the petitioned-for cartway, denied Rollins' motion for sanctions and awarded the Kruegers reasonable attorney's fees incurred in defending the motion for sanctions, finding it had been brought in bad faith and for an improper purpose. Appellant Rollins now seeks review by this Court of the Trial Court's affirmation of the County Board's decision and the award of attorney's fees.

Rollins' proposed cartway is entirely contained on an island, which is by definition accessible only by water and not connected to any road, public or private. Rollins owns property on the west lake shore of the island, with access both directly from the water, and over a platted public foot trail identified as the Muckwa-Mini-Zing Trail which abuts Leech Lake on the east side of the lake and traverses across the north side of

the island (“platted trail”). The Kruegers own property on the east side of the lake abutting the platted trail. Rollins’ petitioned-for cartway incorporated most of the platted trail, but then cuts off and bisects the Kruegers’ property, running across the portion of the land most desirable for building and general use. And, for at least the past seven years, Rollins has accessed his property via either the platted trail or directly from his own dock. Thus, Rollins already had two points of access; his petitioned-for cartway would have provided a third.

The only purported wrongful conduct claimed by Rollins in his motion for sanctions against the Kruegers was that their attorney Timothy Grande, who represented the Kruegers during the Cartway proceedings, made certain legal assertions in the context of that proceeding (App. 123). Mr. Grande had sent a letter dated December 15, 2005 to the Cass County Board of Commissioners opposing Rollins’ Petition for a Cartway. Mr. Grande outlined the legal basis for denying the Petition, the supporting facts, and provided Orders from the Trial Court that had handled a previous trial rejecting Rollins’ claims for an easement, which included pertinent legal findings regarding the parties’ access to their property and lack of basis for the claimed easement. During the Cartway proceedings, Mr. Grande did not submit or present anything to any Court, for any purpose, but only to the County Board of Commissioners. Indeed, the instant lawsuit—the appeal of the denial of Rollins’ Petition for a Cartway—had not even been instigated until after the purported wrong conduct by Mr. Grande occurred and after the Board’s decision denying the cartway.

Rollins did not allege in his motion for sanctions, nor did he provide the requisite 21-day notice period regarding, any actions by either the Kruegers or Mr. Grande that were improper or could under any circumstances support his motion. Rather, he simply disagreed with the legal position taken by the Kruegers and by the County Board of Commissioners in denying the Cartway statute; Rollins' brief in support of his motion for sanctions simply duplicated his legal arguments on the merits of his underlying appeal of the Board's Decision to the District Court.

III. ARGUMENT

A. The Cass County Board Of Commissioners Properly Denied Rollins' Cartway Petition.

1. Standard of Review for Appeal of County Board of Commissioners' Denial of Rollins' Cartway Petition

Under Minnesota law, a town or county board acting on a petition for the establishment of a cartway acts in a legislative capacity, and a review of the Board's decision by a District Court is narrow. *Son Oil Co. v. Village of New Hope*, 300 Minn. 326, 333, 220 N.W. 2d 256, 261 (1974). The District Court does not review *de novo* such matters on appeal. *Lieser v. Town of St. Martin*, 255 Minn. 153, 159, 96 N.W. 2d 1, 6 (1959). On the contrary, a County Board's decision is entitled to deference, and "this Court will affirm even though we may have reached a different conclusion." *Horton v. Township of Helen, McLeod County, Minnesota*, 624 N.W. 2d 591, 595 (Minn. Ct. App. 2001) citing *Cable Communications Board v. Nor-West Cable Communications Partnership*, 356 N.W. 2d 658, 699 (Minn. 1984). See also, *Schwardt v. County of*

Watonwan, 656 N.W. 2d 383, 386 (Minn. 2003) (Counties have wide latitude in making land use decisions, and courts will not interfere as long as there is a rational basis for it).

A town or county board's refusal to grant a cartway petition will be reversed on appeal only when: (1) the evidence is clearly against the decision; (2) an erroneous theory of law was applied; or (3) the town board acted arbitrarily and capriciously, contrary to the public's interest. *Horton*, 624 NW 2d at 595, citing *Lieser*, 255 Minn. at 159, 96 N.W. 2d at 5-6; *Rask v. Town Board of Hendrum*, 173 Minn. 572, 574, 218 N.W. 115, 116 (1928).

2. The evidence in the record is not clearly against the Board's Decision

The County Board received, reviewed, and relied upon ample evidence in support of its decision to deny Rollins' Petition for a cartway across the Kruegers' property. The undisputed evidence in the record established that both the Kruegers' property and Rollins' property are on an island in the middle of Leech Lake, completely surrounded by and accessible only by water. There are no roads connecting to the island.

Rollins had actual physical access to his property, and indeed for the past seven years had been directly accessing his own property directly from the water to his own dock, or by the public foot trail along the island's north side. Similarly, Rollins' proposed Cartway would not connect to a public road, as required, but simply to the same body of water on the opposite side of the island. Moreover, there is no factual dispute over Leech Lake is a navigable water way—it is via this water that Rollins has direct access to his property. This is the uncontroverted evidence, which is not clearly against the Board's Decision, but rather in full support thereof. Rollins' convoluted arguments

on Appeal about Leech Lake being a navigable waterway is not relevant in determining whether or not he—in reality—has access to his lot or to whether the proposed cartway connects to a public road. Such arguments are not evidence, but merely Rollins’ legal spin on the evidence and on the facts. Rollins’ attempt to present his own legal interpretations of the term “navigable waterways” as a statement of fact is disingenuous, and does not support his claim that the evidence weighed against the Board’s Decision.

3. The County Board applied the correct theory of law in denying the cartway

The gravaman of Rollins’ arguments in support of both his Petition and this appeal, is that Minn. Stat. §164.08 Subd. 2 mandates the granting of his Petition. He is wrong. In a tortured and internally inconsistent argument, Rollins essentially claims that the waters of Leech Lake do not constitute a public road for purposes of establishing access to his own property directly, but that the same waters on the east side of the island somehow do constitute a public road for purposes of connecting the cartway at the other end. Not only is this proposition logically inconsistent, but it is contrary to the facts in this case, legal precedent, and common sense.

a. The proposed cartway would not connect to a public road

The “cartways statute” (M.S. §164.08) states that a cartway shall be established connecting the Petitioner’s land with a public road if the Petitioner has no access to his property except over a navigable waterway or over the lands of others. M.S. §164.08, subd. 2 (2005) (Emphasis added). Despite Rollins’ attempts to distort the plain meaning

of this statute, Rollins' proposed cartway does not connect to a public road, and thus was properly denied.

Rollins attempts to circumvent the plain language of the statute by arguing that courts have found navigable waters to be considered public highways, and therefore the water somehow becomes a road. As an initial matter, this argument misrepresents the findings of the Courts he cites. For example, the case *Page v. Mille Lacs Lumber Co.*, 53 Minn. 492, 55 N.W. 608 (1893), cited by Rollins in his brief, involved a logging stream that had been blocked by one party, who was then sued for nuisance. Far from providing Rollins with support for the broad proclamations proposed in his brief, the *Page* case stated "the general doctrine in reference to the underlying use of navigable streams as public highways is that each person has an equal right to the reasonable use." *Id.* at 609. The cases Rollins cites do not redefine water as roads, but rather provide guidance on the permissible restrictions or use of water as public highways. Rollins' arguments make impermissible and unsupported leaps in logic and law, and are thus without merit.

The cartway statute and relevant statutes defining roads and highways themselves are also inconsistent with Rollins' legal position. Minn. Stat. §160.02 defines county highways, roads or highways, and town roads as "those roads which have heretofore then or which hereafter may be established, constructed, or improved" by town or county boards—a lake obviously does not fall within this definition, either as contained in the Statute itself or as commonly understood by the general public.

Every resident, whether accessing their own property or the platted trail on the other side of the island must necessarily cross the lake to reach the island—there is no

public road leading to the island. And significantly, the lake itself cannot be a public road in this context; to find this it is would mean the cartway at issue would be unnecessary. For this reason also, Rollins' Petition for a cartway was properly denied.

b. The Amended Cartway Statute Supports the Board's Decision

The fallacy of Rollins' attempt to equate the use of the term "navigable water" in other contexts with the Cartway statute's requirement that a Cartway connect to a "public road" has been reinforced recently by an amendment to the cartway statute. The legislature amended the cartway statute in 2004 to add the statutory language "over a navigable waterway [or]." Ignoring the obvious detrimental implications this has to his claim, Rollins seizes upon this amended language in support of the proposition that he qualifies for a cartway because he has no other access "except over navigable waterways or over the land of another." Rather than support his original petition and this appeal, however, the amended statute clarifies that, for purposes of its own application, navigable waters do not constitute a public road.

The legislature amended the cartway statute in response to a Minnesota Supreme Court case which held that since the Petitioner in that case had access to his property via a navigable waterway, he did not meet the statutory requirements for establishing the necessity of a cartway over the land of another. *In re: the Matter of Daniel*, 656 N.W. 2d 543, 546 (Minn. 2003). The amendment specifically excluded such access as constituting a public access for purposes of establishing a cartway.

The cartway statute, with its amendment, however, must be read as a whole, with the definitions and interpretations consistently applied throughout, in the context of other

provisions of the statute. *Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 486 (Minn. Ct. App. 2002)("when interpreting statutes, courts should not define each word in isolation, but rather in the context of other provisions in the statute"); *See also Johnson v. State Farm Mut. Auto Insur.*, 574 N.W.2d 468, 471 (Minn. Ct. App. 1998)("a consistent interpretation requires a construction of the provision in the context of other related provisions to determine its meaning.")

All the properties at issue are surrounded by navigable water—the same body of navigable water. Since the statute precludes counting navigable water as constituting a public road for purposes of access to Rollins’ lot, it logically also bars using the same navigable water to establish a connection to a public road at the other side of the island. Rollins cannot “cherry pick” his interpretations and definitions to suit his own agenda, especially when his interpretation is inconsistent with logic and the plain language and any reasonable interpretation of the statute.

c. Rollins’ interpretation of the statute leads to absurd results

When reviewing a statute, a Court is to presume the legislature does not intend absurd or unreasonable results. *State v. Koenig*, 666 N.W. 2d 366, 372 (Minn. 2003), citing *Chapman v. Commissioner of Revenue*, 651 N.W. 2d 825, 831, (Minn. 2002). Rollins’ proposed interpretation and application of the statute would impermissibly do so, in addition to giving inconsistent meanings to the same general terms within the statute.

Under Rollins’ theory each and every land owner on the island would be entitled to his or her own cartway; they each have no access except over navigable waterways or over the lands of others. Thus, Rollins’ next door neighbor could claim a cartway is

necessary to go from his property across Rollins' land to Rollins' dock, under the same theory Rollins advances here. Carried further, each other lot owner could claim cartways criss-crossing the entire island to some other point on the island, thus providing access to the "public road" on the other side of the island. The absurdity of this position is self-evident.

Rollins' also claims that because adverse weather could make direct access to his property difficult at times, he should be entitled to a cartway to travel to the other side of the island to reach calmer waters. This position implies that the same body of water on one side of the island is distinguishable from the water touching the opposite shore. However, he either has to cross over the water or he does not. If he wishes to argue that the statute essentially implies that access over a navigable body of water equals no access whatsoever, then it logically follows that he does not have access to the island at all. Again, this absurd proposition is contrary to reality. Further, as the Court noted in its Decision, to interpret the statute as permitting island residents to establish cartways whenever weather makes it more convenient or restricts travel to one portion of the island "would wreak havoc upon nearly every island on every body of water in Minnesota, and is not permit it under the law. Cartways cannot be established to provide alternative access in every direction the wind blows." (App. 14).

Finally, under Rollins' theory the Court is asked to do by law that which factually impossible, also an absurd result. The statute mandates that in the event a cartway is required, it shall be connected to a public road. Rollins' proposed cartway cannot in reality be connected to a public road. It also cannot, as a matter of legal construction, be

connected to a public road because of the legislature's amendment to the cartway statute which prohibits navigable waterways from constituting public roads. Thus, even if Rollins is correct in stating he does not have access to his land except over navigable waterways or over the land of another, no Cartway on the island could comply with the requirement that it connect to a public road.

4. The Board's decision denying the cartway was not arbitrary, capricious, or contrary to the public's best interest

Rollins premises his assertion the Board's decision was arbitrary and capricious on his unfounded claim that he had met all of the requirements of the cartway statute. Basically he argues that since his Petition was denied, the decision must have been arbitrary or capricious. He then discusses the topography of a bluff on the opposite side of the island abutting the Kruegers' property and potential costs of construction there.

It is completely irrelevant to the issues before this Court, however, what type of topography, or what the cost would be of putting in a cartway or road on the opposite side of the island when Rollins has not established he is entitled to any such access in the first place under the cartway statute. The cartway statute is clear, and requires two conditions be met: 1) The Petitioner has no access to his otherwise landlocked property except over the land of another or over navigable waters, and 2) this cartway is necessary to connect the landlocked property to a public road. The cost or specific location of a petition for a cartway would only become relevant once the Board of Commissioners had determined that a property owner is entitled to a cartway—such issues cannot be used in the circular argument that the Petition for a Cartway is necessary in the first place.

As set forth above, the decision to deny the cartway was supported by substantial evidence in the record and on a correct theory of law. It was not based on subjective or unreasonably vague standards, but rather upon the detailed testimony of a number of witnesses, a legal opinion by Cass County attorney, and a legal position statement by the Krueger's attorney. In sum, the Board's Decision was well-founded, and consistent with the public's interests. This decision is entitled to deference, and the District Court properly affirmed the Board's denial of Rollins' Cartway Petition.

B. The Trial Court Did Not Abuse its Discretion in Awarding the Kruegers' Reasonable Attorney's Fees Incurred in Defending Against Rollins' Improper Motion for Sanctions.

1. Standard of Review for appeal of award of attorney's fees

An award of attorney's fees shall be affirmed unless the District Court abused its discretion by ordering sanctions pursuant to Minn. Stat. §549.211. *Cargill, Inc. v. Jorgenson Farms*, 719 N.W. 2d 226, 234 (Minn. Ct. App. 2006); *Wicker v. City of Maplewood*, 386 N.W. 2d 327, 329 (Minn. Ct. App. 1986). Minn. Stat. §549.211 "allows the District Court, in its discretion, to award reasonable attorney's fees when a party fails to conduct a reasonable investigation to ensure that the pleadings are not being presented for an improper purpose." *Cargill*, 719 N.W. 2d at 234-235. The current version of §549.211 does not require an explicit finding of "bad faith," but rather it is sufficient that the Court find a pleading has been presented for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation." *Id.*

2. Rollins did not base his motion for sanctions on conduct falling under the purview of either Rule 11 or Minn. Stat. § 549.211.

As noted above, The County Board, acting on a Petition for the Establishment of a Cartway, acts in a legislative capacity. *Son Oil Co.*, 220 N.W. at 261. By definition, and under the plain and unambiguous language of both Rule 11 and Minn. Stat. § 549.211, Mr. Grande's presentation of legal theories, and/or other representations to the County Board of Commissioners did not fall under the purview of either the rule or the statute. As such, Rollins sanctions motion had no legal basis whatsoever, had no proper purpose, and was not properly before the District Court. Rather, as the District Court found, Rollins' motion had been brought specifically to harass the Kruegers and to cause needless increases in the cost of litigation, in violation of the very rule and statute under which it was speciously brought.

Rollins had specifically alleged in his brief that attorney Grande had committed sanctionable actions because he "claimed as part of the cartway proceedings that Appellant Michael C. Rollins has two other points of access over water. . . ." (App. 123-124) In responding to this motion, the Kruegers established not only that Mr. Grande had at all times conducted himself properly and consistent with his duties as an attorney, but that there had been no conduct falling under the purview of the rule or statute. (See App. 150 *et seq.*) During the oral argument on Rollins' sanctions motion, Mr. Hendricks, Rollins' attorney, attempted to respond to this fact by claiming that the foundation for his motion for sanction was not statements made to the Board of Commissioners as stated in his brief, but rather positions taken in response to Rollins' motion for summary judgment.

This was filed with the Court over a month after Rollins had served the Kruegers with his motion for sanctions. This was clearly an attempt by Mr. Hendricks to cover the fact that his motion had no legal basis.

Now, in the instant appeal, Rollins claims for the very first time that it was not legal representations made to the Board of Commissioners, nor just Kruegers' summary judgment motion responses, but the Kruegers' Informational Statement submitted to the District Court that was the real basis for his motion. This assertion was never previously argued, asserted, or suggested—it is simply a continuation of the attempt by Rollins and his attorney to obscure their improper conduct.

Even if Rollins had intended the Informational Statement to constitute the basis of his motions for sanctions, however, this revelation, after the fact, cannot establish that the District Court abused its discretion in awarding the Kruegers attorney's fees. As Rollins acknowledged in his own brief, the purpose of Rule 11 and the Statute is to deter repetition of similar conduct, and the 21-day notice period is to provide the person accused of improper conduct with notice and an opportunity to cure any improper filings. To retroactively modify the purported bad conduct as Rollins attempts to do in this appeal cannot accomplish either of these goals. To the contrary, the lack of proper identification of the underlying basis for a sanctions motion strengthens the District Court's finding that the motion was done for an improper purpose and to needlessly increase the cost of litigation.

3. Rollins' Motion for Sanctions was brought for an improper purpose, and not warranted by existing law

Even assuming, arguendo, that Mr. Grande had made the complained-of legal representations to the District Court, there was still no basis for Rollin's seeking sanctions. Both Minn. Stat. § 549.211 and Rule 11 require that a representation to the Court, upon information and belief: (1) 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; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) 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 (4) 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.) Minn. Stat. § 549.211 is substantively identical to Rule 11, with minor variations. If counsel files a pleading, written motion, or other paper with the Court and violates one of the subdivisions of Minn. R. Civ. P. 11.03 (b), then the Court may grant sanctions against the offending counsel. *Leonard v. Northwest Airlines, Inc.*, 605 N.W. 2d 425, 432 (Minn. Ct. App. 2000).

The Kruegers submitted legal opinions to the County Board of Commissioners—and/or to the District Court—for a proper purpose. As the attorney representing the land owners over which the cartway would pass, and acting in that capacity, Mr. Grande

submitted to the County Board a legal opinion letter and statements during the petition hearing outlining why the cartway petition ought to be denied. To the extent the Informational Statement submitted to the District Court below is considered, it simply made a factual summary of the easement Trial Court's factual findings and the current case status. This is not only a proper purpose, it is the very purpose for which an attorney is retained—to represent the legal interests of his or her clients.

Any legal contentions outlined by Mr. Grande are consistent with existing law. Indeed, as discussed above, the plain language of the cartway statute, and existing case law fully support the Board of Commissioner's denial of Rollins' Petition, and fully support the District Court's affirmation of that Decision.

Rollins' motion for monetary sanctions, on the other hand, was not warranted—indeed was prohibited—by existing law. Both Rule 11 and the statute forbid awarding monetary sanctions based on a challenge to the other party's legal contentions. Minn. R. Civ. P. 11.03 (b) (1); Minn. Stat. § 549.211, Subd. 5(b). Rollins' purported disagreement with the law supporting the denial of his Petition thus could not, as a matter of law, form the basis for a motion for sanctions, and he provides no legal authority to the contrary. The entire monetary amount sought by Rollins—over \$23,000—was not available as a sanction, which even a cursory reading of the law clearly indicates, had Rollins' attorney taken the minimum required steps to ascertain whether he had any basis for his claim.

Finally, any factual allegations or denial of Rollins' allegations have ample evidentiary support, as found by the Board of Commissioners and District Court. For example, Rollins takes issue with Mr. Grande's statement that Rollins already had two

points of access to his lot. This fact is undisputed—he has direct access to his own dock, and access over a platted access trail across the north side of the island. Similarly, Rollins claims that Mr. Grande falsely asserted there are no public roads connecting the cartway, because the entire cartway would be contained on an island with only water access. This fact is also not disputed—no roads exist leading to the island. What Rollins disagrees with concerning both of these points, is the legal interpretation and application of the cartway statute to these facts. Again, Rollins merely disputes the Kruegers' legal positions, and thus had no basis for his rejected Motion for Sanctions.

Rollins was fully aware that his Motion for Sanctions had no legal basis whatsoever, and was fully aware that he failed to even allege improper conduct falling under the purview of the rule or statute. Indeed, Rollins cited no legal authority whatsoever in support of his sanctions motion—instead he only outlined the requisite 21-day safe harbor provisions of the rule and statute, and claimed he incurred expenses in proceeding with his appeal to the District Court. The 21-day safe harbor provision, however, is predicated upon the existence of some conduct falling under the purview of the statute, which is not present in this case. Rollins failed to allege any conduct which could even arguably be in violation of the rule or statute. As such, the District Court properly denied Rollins' motion.

4. The Kruegers are entitled to attorney's fees and expenses incurred in opposing this motion.

The District Court found that, based on the record and governing legal principles, Rollins had filed his motion for sanctions and attorney's fees knowingly, intentionally,

with an improper purpose, and in bad faith. (App. 11) The Court made express findings that because the basis for Rollins' motion for sanctions was the parties' differing interpretations of Minn. Stat. § 164.08, he had no basis for seeking sanctions. *Id.*

The Court also considered the entire record and history of this dispute. Rollins has been attempting to seize the Kruegers' land since 1999, and has been rejected at every level on every substantive point. Yet, despite his legal theories being uniformly rejected, Rollins continues to take the position that: the Kruegers were wrong during the easement trial, the Trial Court was wrong in finding against Rollins in the easement trial, the Kruegers' attorney was wrong in asserting legal positions on behalf of the Kruegers, the Cass County Attorney was wrong in agreeing with the Kruegers, the Cass County Board of Commissioners was wrong in denying the Petition based on those same legal theories, and the Cass County District Court was again wrong in affirming the Board's Decision. The District Court noted that, especially in light of the universal rejection of the legal positions that Rollins continues to claim are mandated by law, his action in seeking sanctions based on a disagreement with those legal positions "is bold and brazen." (App. 14).

The purpose of Rule 11 and the corresponding statute is to deter frivolous claims and defenses. *Leonard v. Northwest Airlines*, 605 N.W. 2d at 432, citing *Uselman v. Uselman*, 464 N.W. 2d 130, 142 (Minn. 1990). Before signing a document, the attorney or party has an affirmative duty to reasonably investigate the factual and legal basis of the claims and assure no claim is brought for an improper purpose. *Pratt Investment Co. v. Kennedy*, 636 N.W. 2d 844, 851 (Minn. Ct. App. 2001), citing *Radloff v. First National*

Bank of St. Cloud, N.A., 470 N.W. 2d 154, 156 (Minn. Ct. App. 1991), review denied (Minn. 1991). Rollins did not do so in connection with his sanctions motion. In bringing this frivolous motion, Rollins and his attorney violated both Minn. Stat. §549.211, Subd. 2 and Rule 11.02—they made bad faith representations to the District Court for the purpose of harassing and increasing the costs of litigation, unsupported by the law and inconsistent with the facts of this case.

The Krueger's incurred expenses and attorney's fees in responding to and opposing Rollins' improper motion, on top of the expenses incurred in responding to Rollins' meritless appeal of the County Board's Decision before the District Court. Minnesota Statutes Section 549.211, Subd. 4(a) provides that "The Court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion." The Kruegers incurred \$4,732 in reasonable expenses and fees in opposing Rollins' motion for sanctions. The District Court found this amount reasonable, especially "[i]n light of the billing by Appellant's attorney requesting \$23,000 in attorney's fees." (App. 14) Moreover, the purpose of deterring such bad-faith conduct in the future could only have been served by awarding fees and costs to the Kruegers. This award of fees was properly within the Court's discretion. Rollins' has offered nothing in support of his claim that the District Court abused this discretion.

V. CONCLUSION

For all of the aforementioned reasons, Respondents Ivan and Lois Krueger respectfully request that this Court affirm the District Court's affirmation of the Decision

of the Cass County Board of Commissioners, and affirm the District Court's attorney's fees award in favor of the Kruegers in the amount of \$4,732.

Date: January 5, 2007.

By



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