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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-789**

Paragon Bank,
Appellant,

vs.

TurningPoint Management, Inc.,
Respondent.

**Filed January 11, 2011
Affirmed
Bjorkman, Judge**

Blue Earth County District Court
File No. 07-CV-09-1183

Chris E. Royal, Kevin Koepke, Koepke Law, Ltd., Plymouth, Minnesota (for appellant)

James H. Turk, Beth A. Serrill, Blethen, Gage & Krause, PLLP, Mankato, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Toussaint, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the district court's award of attorney fees and costs to respondent pursuant to Minn. Stat. § 549.211 (2010). Because appellant waived the argument it advances on appeal by failing to present it to the district court, we affirm.

FACTS

Appellant Paragon Bank instituted this lawsuit alleging that respondent TurningPoint Management, Inc. interfered with and induced the breach of a settlement agreement between appellant and Reiner Eisen, an officer, director, and shareholder of Wells Co-Pack Foods, Inc. In its answer, respondent denied the allegations and asserted that appellant's claims were "frivolous, without merit and that [respondent] is entitled to an award of its attorneys' fees, costs and disbursements pursuant to Minn. Stat. § 549.211." In connection with a joint motion for a protective order and to compel discovery responses, respondent submitted an affidavit by Eisen stating that no one "working on [respondent's] behalf did anything to interfere with the Settlement Agreement." After receiving this affidavit, appellant offered to stipulate to dismissal of the action without prejudice, noting that "[a]nother suit on these same claims in light of Mr. Eisen's affidavit would appear to be frivolous." Respondent refused to stipulate and appellant moved for voluntary dismissal without prejudice pursuant to Minn. R. Civ. P. 41.01(b). Respondent opposed the motion, arguing that the claims should instead be dismissed with prejudice, and requested sanctions.

During the motion hearing, respondent renewed its request for attorney fees and costs. Appellant objected on the basis that its conduct did not warrant sanctions. The district court ordered dismissal of the action with prejudice and granted respondent's request for attorney fees and costs pursuant to Minn. Stat. § 549.211. In its order, the district court instructed respondent to submit detailed billing and expense information.

By letter, appellant requested leave to file a motion for reconsideration pursuant to Minn. R. Gen. Pract. 115.11. The letter did not challenge the procedural aspects of the sanctions award. Believing that a communication from the district court regarding finalization of the sanctions award granted its request, appellant filed a formal motion for reconsideration. In the motion, appellant argued for the first time that the sanctions award was procedurally improper. The district court subsequently denied leave to seek reconsideration and directed entry of judgment in the amount of \$12,531.19. This appeal follows.

DECISION

Section 549.211 sets forth the procedural requirements for seeking and imposing a sanctions award. A motion for sanctions must be made separately from other motions or requests and must be served 21 days before filing to permit the party against whom sanctions are sought to withdraw or correct the challenged pleading or paper. Minn. Stat. § 549.211, subd. 4(a). Alternatively, the district court may award sanctions on its own initiative, provided it first issues an order to show cause. *Id.*, subd. 4(b).

Appellant argues that the imposition of sanctions under Minn. Stat. § 549.211 was improper because the procedural requirements were not met. Respondent asserts that appellant waived this argument by failing to raise it in the district court. Generally, an appellate court will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). But this is not an “ironclad rule.” *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002) (quotation omitted).

This court may address issues “as the interest of justice may require.” Minn. R. Civ. App. P. 103.04.

Appellant contends that it was not in a position to argue the procedural issue because respondent did not bring a stand-alone motion for attorney fees. Appellant also points to its letter request and motion for reconsideration as evidence that it properly raised its procedural argument in the district court. We disagree. “Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances.” Minn. R. Gen. Pract. 115.11. A reconsideration motion does not provide a vehicle for presenting additional facts or arguments or to supplement the record on appeal. *Midway Nat’l Bank of St. Paul v. Bollmeier*, 462 N.W.2d 401, 404-05 (Minn. App. 1990), *aff’d*, 474 N.W.2d 335 (Minn. 1991); *see also* Minn. R. Gen. Pract. 115.11 1997 advisory comm. cmt. Appellant’s letter requesting reconsideration did not assert the procedural defense, and the district court did not authorize a motion for reconsideration. Accordingly, we conclude that appellant’s assignment of error was not properly argued to and considered by the district court.

We also conclude that the interest of justice does not warrant consideration of appellant’s argument on appeal. The record reflects that appellant had notice that respondent was seeking sanctions under section 549.211 from the beginning of the litigation. Appellant had the opportunity to raise the procedural requirements of the statute prior to and during the motion hearing. Indeed, appellant argued against sanctions at the motion hearing, but failed to assert any procedural deficiencies. On this record, we

conclude that appellant waived its procedural argument by failing to raise it in the district court.

Affirmed.