FILED
August 28, 2024
OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

IN COURT OF APPEALS

A23-1573

In re the Marriage of:

Teresa Corinne MacNabb, petitioner,

Respondent,

vs.

John Michael Kysylyczyn,

Appellant.

ORDER OPINION

Ramsey County District Court
File No. 62-FA-08-2020

Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant John Michael Kysylyczyn and respondent Teresa Corinne MacNabb divorced in 2010 pursuant to a stipulated agreement that awarded them joint legal and joint physical custody of their two children. Since the dissolution, Kysylyczyn and MacNabb have engaged in voluminous litigation regarding child custody and parenting time, involving more than 40 hearings in district court and 11 appeals as of August 2023, the date of the order being appealed. In 2021, the district court issued an order requiring the parties to obtain prior approval from the court before filing any new motions.

2. In the present appeal, Kysylyczyn challenges an order of the district court, dated August 18, 2023, declaring him a frivolous litigant under Minn. R. Gen. Prac. 9.01.

A "frivolous litigant" is one who repeatedly relitigates or attempts to relitigate a matter after it has been fully determined against the person, "repeatedly serves or files frivolous motions" within a proceeding, or "institutes and maintains a claim that is not well grounded in fact . . . [or] law." Minn. R. Gen. Prac. 9.06(b)(1)-(3). On motion of a party or on its "own initiative," a district court may impose "preconditions on a frivolous litigant's service or filing of any new claims, motions, or requests," after considering the seven factors set out in Minn. R. Gen. Prac. 9.02. Minn. R. Gen. Prac. 9.01, .02(b)(1)-(7). Kysylyczyn maintains that the district court erred because the procedural and substantive requirements of rule 9.01 were not satisfied. We affirm.

3. The frivolous-litigant declaration revolves around Kysylyczyn's efforts to sanction MacNabb for her efforts to collect a 2019 award of attorney fees. As relevant here, Kysylyczyn filed a notice of motion and motion dated July 23, 2022, for sanctions under Minn. R. Civ. P. 11 (the July 23 motion) on the ground that MacNabb had improperly refused to withdraw a 2022 notice of disclosure in connection with her efforts to obtain payment of the 2019 attorney-fee award. Kysylyczyn also filed a motion to vacate the 2019 attorney-fee award pursuant to Minn. R. Civ. P. 60.02. MacNabb filed her first motion in October 2022, seeking a declaration that Kysylyczyn is a frivolous litigant under Minn. R. Gen. Prac. 9.01. After several continuances of the hearing date on these motions, MacNabb filed an amended notice of motion in March 2023 that was essentially the same as the motion she filed in October 2022 seeking to have Kysylyczyn declared a frivolous litigant. Kysylyczyn then filed an amended motion dated March 30, 2023, again seeking rule 11 sanctions against MacNabb and her counsel (the March 30 motion), which was

essentially the same as his July 23 motion. The motions were heard by the district court in April 2023.

4. In a thorough 20-page order, the district court granted the motion to declare Kysylyczyn a frivolous litigant. Focusing on just the last five years, the district court noted that MacNabb requested four post-decree motion hearings and was successful in all four. In that same time period, Kysylyczyn requested six motion hearings, "filed dozens of post-decree motions," and "initiated nine (9) appeals." Of those proceedings, Kysylyczyn "has not been successful with any motion he filed in district court in the last five years" and he "has withdrawn or been unsuccessful [in] every appeal he filed, except for [an appeal of a] contempt" order related to parenting time that was disposed of as being moot by the court of appeals because the parties' child turned 18 during the pendency of the appeal. The district court further noted that "the tone of [Kysylyczyn's] pleadings has been disparaging to [MacNabb] and offensive to her attorneys, prior judicial officers, including Child Support Magistrates, and court staff including the law clerks."

5. In its order, the district court required that, for any new motions, Kysylyczyn must obtain preapproval from the court and must either be represented by an attorney or furnish a $3,000 surety bond or pay that amount into court in lieu of a bond. The district court stayed Kysylyczyn's July 23 and March 30 motions "until such time as [Kysylyczyn] complies with the preconditions and security" requirements set out in the order.

6. Kysylyczyn makes two arguments in his appeal of the district court's order declaring him a frivolous litigant. First, he asserts that, because MacNabb filed her frivolous-litigant motion with the court less than 21 days after serving the motion on

Kysylyczyn, the district court was required to deny MacNabb's motion for failing to comply with the procedural requirements of Minn. R. Gen. Prac. 9.01. Second, Kysylyczyn generally challenges the district court's findings as inadequate.

7. We review a district court's frivolous-litigant determination for an abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 290, 295 (Minn. App. 2007). And we review the district court's factual findings for clear error. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (outlining clear-error standard); *Peterka v. Peterka*, 675 N.W.2d 353, 357-58 (Minn. App. 2004) (applying clear-error standard in a family-law appeal).

8. Rule 9.01 of the general-practice rules states that a frivolous-litigant motion "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 claim, motion, or request is not withdrawn or appropriately corrected." MacNabb acknowledged before the district court that both her original frivolous-litigant motion and her amended motion were filed with the district court less than 21 days after each motion was served on Kysylyczyn.

9. The district court acknowledged the procedural requirements of rule 9 but reasoned that the failure to wait the full 21 days before filing the motion was not a fatal error because Kysylyczyn's March 30 motion was essentially the same as his July 23 motion. Kysylyczyn thus had not just 21 days but more than seven months to withdraw his rule 11 motion. During that time period, he not only maintained his motion but filed a second almost identical motion, the March 30 motion. And indeed, in his brief to this court,

Kysylyczyn argues the validity of his motions and evinces an intent to pursue them, not to withdraw them.

10. Kysylyczyn cites two cases as supporting his argument, but both are distinguishable. In the first case he cites, *Szarzynski*, we reversed the frivolous-litigant declaration because the district court failed to apply rule 9 to its analysis and did not reference any of the seven factors district courts are required to consider under section 9.02(b) of the rule. 732 N.W.2d at 294-95. By contrast here, the district court carefully analyzed each of the seven factors set out in Minn. R. Gen. Prac. 9.02. The second case, *Bessenbacher v. Bessenbacher*, No. A20-0371 (Minn. App. Dec. 28, 2020), is a nonprecedential opinion of this court and, as such, is not binding. Minn. R. Civ. App. P. 136.01, subd. 1(c). In addition, that opinion does not involve the history and voluminous proceedings of this case.

11. Finally, we note that rule 9 allows the district court to proceed "on its own initiative." Minn. R. Gen. Prac. 9.01. The rule also allows for the district court to depart from the 21-day waiting period and prescribe its own waiting period. *Id.* In light of these provisions and the unique facts of this case, we discern no abuse of discretion by the district court in its determination that the procedural requirements of rule 9.01 were satisfied.

12. Turning to Kysylyczyn's challenge to the merits of the district court's order declaring him a frivolous litigant, Kysylyczyn focuses largely on his contention that a prior opinion of this court vacated not just the contempt order entered against him but also vacated the 2019 attorney-fee award that is the basis of his July 23 and March 30 motions. *See MacNabb v. Kysylyczyn*, No. A20-1172, 2021 WL 3722084 (Minn. App. Aug. 23,

2021), *rev. denied* (Minn. Nov. 16, 2021). He maintains that the district court thus abused its discretion in concluding that his July 23 and March 30 motions were not likely to succeed. But we clearly stated in our 2021 opinion that we were not vacating "the district court's order awarding attorney fees because that order is not before us." *Id.* at *5. We explained that the "order identified in Kysylyczyn's notice of appeal is the order for the writ of attachment and warrant of commitment" for civil contempt. *Id.* We further explained that the 2019 attorney-fee award was not connected in any way "to attorney services accrued during the contempt proceedings [at issue in the appeal] but rather expressly covers fees generated because of Kysylyczyn's noncompliance with the parenting-time order beginning one year before the August 2019 fee order." *Id.*

13. This court thus made it clear that we were vacating only the contempt order because the child had turned 18 during the pendency of the appeal and not any other orders. *Id.* at *2-3, *5. Kysylyczyn, however, refuses to acknowledge this fact and has persisted in filing motions to vacate and for rule 11 sanctions based on his false contention that the 2019 attorney-fee award was vacated by our August 2021 opinion. Indeed, Kysylyczyn continues to make this argument on appeal. This alone is a significant fact justifying the district court's declaration.

14. The district court, however, cited numerous other examples in support of its determination. For example, in its analysis of factor three, whether Kysylyczyn's filings were made for bad-faith purposes, the district court stated:

> During the[] fifteen years [of this litigation], and more so over the last five (5) years, [Kysylyczyn] repeatedly filed identical or substantially similar motions and provided the court with

> unprompted correspondence. [Kysylyczyn]'s January 1, 2022, motion that included fifty-two requests for relief, and [Kysylyczyn]'s multiple requests for a motion hearing date during the busiest season of [MacNabb]'s work illustrates [Kysylyczyn]'s vexatiousness and animosity towards [MacNabb] and the legal system.

15. Kysylyczyn argues that the district court failed to make any findings as to factor seven, whether a less severe sanction would be sufficient. But the district court made a thorough determination on this factor:

> Although every party is entitled to due process and access to the court system, a party is not entitled to repeatedly and vexatiously file motion after motion simply because he disagrees with a court order. By requiring [Kysylyczyn] to furnish security or imposing preconditions prior to filing future requests, [Kysylyczyn] will still have reasonable access to the court system and will be afforded due process. Yet, it will also protect [MacNabb] from having to respond to unnecessary, frivolous motions. Requiring [Kysylyczyn] to be represented by a licensed attorney or to furnish security is appropriate in this matter. No less severe sanction will sufficiently protect the rights of other litigants, the public, or the courts.

16. Finally, Kysylyczyn argues that the district court erred by failing to enter a formal disposition or hold a hearing on his Minn. R. Civ. P. 60.02 motions to vacate the district court's 2019 attorney-fee award. We find no error here because the district court properly stayed the underlying proceedings pursuant to Minn. R. Gen. Prac. 9.04, and the district court's order expressly allows Kysylyczyn to proceed with his July 23 and March 30 motions so long as he complies with the conditions set out in the order: obtaining preapproval from the court—a requirement that was already in place—and being represented by an attorney or providing $3,000 in security.

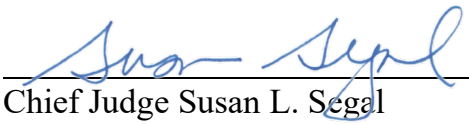
IT IS HEREBY ORDERED:

1. The district court's order is affirmed.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 8/28/24

BY THE COURT



Chief Judge Susan L. Segal