STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1610

In re the Marriage of:
David Michael Kedrowski, petitioner,
Appellant,

vs.

Olga Kedrowski,
Respondent.

Filed July 6, 2020
Reversed
Ross, Judge
Concurring in part, dissenting in part, Reyes, Judge

Hennepin County District Court
File No. 27-FA-15-6991

David Kedrowski, St. Louis Park, Minnesota (pro se appellant)

Olga Kedrowski, St. Louis Park, Minnesota (pro se respondent)

Considered and decided by Ross, Presiding Judge; Reyes, Judge; and Slieter, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

David and Olga Kedrowski divorced in 2018. Since then, David has waged a postdecree campaign comprised of numerous motions and what the district court saw as inappropriate correspondence. After the district court disposed of several postdecree motions, and with no substantive issues pending, it initiated frivolous-litigant proceedings

against David under Minnesota General Rule of Practice 9.01, deemed him a frivolous litigant, and issued sanctions. We reverse the district court's frivolous-litigant order because the district court's authority to grant relief under rule 9.01 terminated when it decided all pending issues in the underlying postdecree litigation.

FACTS

Appellant David Kedrowski and respondent Olga Kedrowski married in March 2010, had a child in 2011, and separated in August 2015. David petitioned for dissolution and the case came before a district court referee in October 2015. Throughout the litigation, David threatened to sue Olga's attorney and sent him correspondence that might be euphemistically described as uncivil. David also sued Olga in a separate case (which was ultimately dismissed by summary judgment). *Kedrowski v. Kedrowski*, No. 27-CV-16-17983 (Minn. Dist. Ct. Feb. 19, 2017) (amended complaint).

The district court dissolved the marriage after a two-day trial in December 2017. Its April 2018 judgment and decree also divided property, determined child custody, established a parenting-time schedule, ordered David to pay child support and temporary spousal maintenance, and awarded Olga conduct-based attorney fees. David moved the district court to order a new trial, correct portions of the record, and amend its findings. He also moved for temporary relief from, or modification of, his maintenance and support obligations, as well as vacation of the judgment and decree based on fraud and the discovery of new evidence. And he moved for sanctions against Olga's attorney. In August 2018, the district court denied David's motions for a new trial, amended findings, and sanctions, but held the modification requests under advisement.

David appealed in September 2018 from the April 2018 judgment and decree and the August 2018 order denying his motions for amended findings or a new trial. *See Kedrowski v. Kedrowski*, No. A18-1529 (Minn. App. Sept. 17, 2018) (notice of appeal). He meanwhile pursued other relief in the district court, seeking the referee's removal and a decision on his modification requests. In correspondence to the district court and Olga, he described himself as a "tireless litigation machine . . . who will not stop whether he wins this or not." The district court denied David's motions for temporary relief, modification, and vacation. David then filed another motion for modification of spousal maintenance and child support, a notice to remove the referee, and a request for reconsideration. Next David moved to amend the order denying his modification request. In December 2018, David again moved for sanctions against Olga's attorney.

In February 2019, the district court denied David's motions to reconsider and to correct the record. On April 5, 2019, the district court disposed of the remaining issues except for a request to remove the referee. It denied David's modification requests on the merits, reasoning that his conclusory statements failed to demonstrate any substantial change in circumstances. It granted in part his request for amended findings and issued an amended order that same day. And it denied David's request for sanctions. It also resolved minor issues involving the division or enforcement of the judgment's division of the parties' property.

After the district court decided all the substantive issues before it, its order went further. It announced that it would convene a hearing to determine whether David was a frivolous litigant and whether an order for security or sanctions was appropriate, citing

Minnesota General Rules of Practice 9.01 and 9.06(b). The order recounted the history of David's "concerning behavior," which included his having filed the later-dismissed lawsuit against Olga in 2017, filing the two postdecree motions "with no supporting factual basis," refusing to pay the amount awarded to Olga, failing to cooperate to effectuate the property settlement, repeatedly threatening lawsuits, repeatedly deriding Olga's attorney, and repeatedly expressing an overly litigious intent. The order also precluded David from filing any motions before the district court decided the rule 9 frivolous-litigant matter. David later sent correspondence seeking a hearing date for motions to disqualify the referee, amend findings, stay the proceedings and judgment, and hold the rule 9 hearing. On April 11, 2019, the district court set a rule 9 hearing for June 6, 2019, and ordered that no other motions from David would be heard until after it issued an order following that hearing.

The referee recused from the case because David was "in contact with at least one member of [the referee's] family regarding th[e] litigation." The district court conducted a rule 9 hearing as scheduled. David argued in part that the hearing was procedurally improper because he had no action remaining in the district court. The district court rejected David's argument and announced that it would take the matter under advisement.

In the meantime, we issued our opinion deciding David's earlier appeal, affirming the district court in all respects. *See Kedrowski v. Kedrowski*, No. A18-1529, 2019 WL 3000760, at *6 (Minn. App. July 1, 2019). David criticized the panel members in correspondence to the court but did not petition for further review.

The district court issued its rule 9 order in August 2019. It determined that David was a frivolous litigant, ordered him to submit any future filings to the district court for

review, and required him to post a $10,000 bond as security for any future sanctions. The district court rested its decision on David's overly litigious conduct, harassing and inappropriate correspondence, his failed lawsuits, and his tendency to respond "in a compulsive, escalating fashion when he receives a ruling [that is] not in his favor." The district court determined that prior sanctions had proven ineffective and that less severe sanctions would not protect Olga or the court from David. It described David's "constant and repetitive litigation" as "a burden on court staff and resources." David appeals.

D E C I S I O N

David asks us to reverse the district court's frivolous-litigant order, arguing that the order was untimely under rule 9, that the district court violated his due-process rights, that the district court abused its discretion by determining he was a frivolous litigant, and that the security and filing restrictions were improper. Construing and applying the terms of the rule presents no easy question; the circumstances here offer a round hole, and although the rule is not square, it is certainly oblong. The dissenting opinion presents fair points in this regard. But for the reasons that follow, we resolve this appeal by concluding that the district court's order was unauthorized as untimely under rule 9.01. We therefore decline to address David's other arguments.

We begin by clarifying that the focus of our analysis is the *timing* of the district court's order rather than its substance; we are determining *when* rule 9.01 relief was available, not *whether* David's conduct rendered him a frivolous litigant. Minnesota General Rule of Practice 9.01 defines the period during which the district court may grant frivolous-litigant relief:

> Relief under this rule is available *in any action or proceeding pending in any court of this state, at any time until final judgment is entered*. Upon the motion of any party or on its own initiative and after notice and hearing, the court may, subject to the conditions stated in Rules 9.01 to 9.07, enter an order: (a) requiring the furnishing of security by a frivolous litigant who has requested relief in the form of a claim, or (b) imposing preconditions on a frivolous litigant's service or filing of any new claims, motions or requests.

(Emphasis added.) Compliance with rule 9's procedural requirements is mandatory. *Phelps v. State*, 823 N.W.2d 891, 894 (Minn. App. 2012).

David contends that the district court lacked authority to issue its frivolous-litigant order because final judgment in the matter had already been entered and there were no underlying issues pending. David's argument requires us to interpret rule 9.01, a question of law we review de novo. *See Lennartson v. Anoka-Hennepin Indep. Sch. Dist. No. 11*, 662 N.W.2d 125, 129 (Minn. 2003). In construing court rules, we first consider the rule's plain language and its purpose. *Rubey v. Vannet*, 714 N.W.2d 417, 421 (Minn. 2006); *see also Vandenheuvel v. Wagner*, 690 N.W.2d 753, 755 (Minn. 2005) ("[T]he words of a court rule, like those of a statute, must be taken and construed in the sense in which they were understood and intended at the time the rule was promulgated." (quotation omitted)). Although the language of the rule does not precisely fit the circumstances so as to either easily affirm or reverse, we conclude that the district court issued relief under rule 9 outside the temporal bounds described in rule 9.

The phrase "until final judgment is entered" refers to the time that a judgment with determinative effect "is entered" in the district court.

Rule 9 authorizes a district court to issue frivolous-litigant relief only "until final judgment is entered." Minn. R. Gen. Prac. 9.01. David reasons that final judgment was entered on August 1, 2019, when his deadline to petition the supreme court for further review of our July 1, 2019 opinion lapsed. *See* Minn. R. Civ. App. P. 117, subd. 1 ("Any party seeking review of a decision of the Court of Appeals shall separately petition the Supreme Court. The petition with proof of service shall be filed with the clerk of the appellate courts within 30 days of the filing of the Court of Appeals' decision."). We begin our analysis by clarifying that the phrase "until final judgment is entered" refers to the entry of a judgment with a "final" determinative effect, not the time at which a judgment "becomes final," as David contends.

We use the term "final" to describe decisions in two contexts relevant to this case. In one context, the term "final" refers to the process by which a judgment "becomes final." Generally, district court judgments and orders "*become[] final* if a timely appeal is not taken." *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 765 (Minn. 2005) (emphasis added). If no timely appeal is taken, then typically "the district court's jurisdiction to amend the order is terminated." *Marzitelli v. City of Little Canada*, 582 N.W.2d 904, 906 (Minn. 1998). A decision of our court similarly becomes final if the supreme court denies a petition for further review, or if the time to petition for further review expires. *See Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 176 (Minn. 1988); *see also* Minn. R. Civ. App. P. 136.02.

In another context, the term "final" describes a judgment's determinative effect upon the issues being litigated: "A final judgment ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *T.A. Schifsky & Sons, Inc. v. Bahr Constr., LLC*, 773 N.W.2d 783, 788 (Minn. 2009) (quotations omitted). Stated another way, "The word 'final' when used to designate the effect of a trial court's judgment or order means that the matter is conclusively terminated so far as the court issuing the order is concerned." *City of Chaska v. Chaska Township*, 135 N.W.2d 195, 197 (Minn. 1965).

David's argument presumes that rule 9.01's use of the term "final" refers to the time at which the district court's judgment and decree *became* final. But a plain-language reading of rule 9.01 informs us that the phrase "until final judgment is entered" does not refer to the time at which a decision "becomes final." The rule applies the verb phrase "is entered" to the subject "final judgment." Minn. R. Gen. Prac. 9.01. The limiting phrase "until final judgment is entered" plainly refers to the actual entry of a judgment rather than the passive process by which a judgment becomes final. This is consistent with our understanding that appeals may be taken "from a final judgment" entered in the district court, *see* Minn. R. Civ. App. P. 103.03(a), despite the fact that "final judgments" often "become final" at a date well after their entry. If the supreme court intended rule 9.01 to permit relief until a decision becomes final, it would have adopted language saying so. We are satisfied that the rule does not refer to the point when a judgment becomes final but the point when a final judgment "is entered." Minn. R. Gen. Prac. 9.01.

We also observe that the phrase does not refer to the judgment entered by the clerk of appellate courts. *See* Minn. R. Civ. App. P. 136.02. In David's previous appeal, judgment on our July 1 opinion was not entered until October 4, 2019, long after the August 1, 2019 expiration of David's deadline to petition for further review and the district court's August 8, 2019 entry of its rule 9 order. *See Kedrowski v. Kedrowski*, No. A18-1529 (Minn. App. Oct. 4, 2019) (judgment). Rule 9 applies only "in all trial courts of the state," informing us that rule 9's provisions regard district court proceedings. Minn. R. Gen. Prac. 1.01. If this were not so, the rule's safe-harbor provision requiring notice and an opportunity to cure, *see* Minn. R. Gen. Prac. 9.01, as well as the grant of authority to the district court to dismiss claims for failure to meet security requirements, *see* Minn. R. Gen. Prac. 9.03, would present conflicts between district and appellate court jurisdiction. For instance, a district court could not dismiss a claim for failing to post security if that claim were pending review on appeal and awaiting an appellate judgment.

We conclude that the phrase "until final judgment is entered" refers to an entry of judgment in the district court, which is consistent with our understanding that district courts enter final judgments with determinative effect.

Rule 9 applies in proceedings other than those pending the entry of a strictly defined "final judgment."

That the phrase "until final judgment is entered" refers to an entry of a judgment with determinative effect in the district court rather than the time at which a decision "becomes final" does not end the discussion. We must next consider the meaning of

the phrase "final judgment." We must do so to determine whether and when rule 9 frivolous-litigant relief was available during this case.

Rule 9 does not define the phrase "final judgment." Generally, a judgment is "[a] court's final determination of the rights and obligations of the parties in a case." *Black's Law Dictionary* 970 (10th ed. 2014). The rules of civil procedure define a judgment similarly as meaning "the final determination of the rights of the parties in an action or proceeding." Minn. R. Civ. P. 54.01. But we know that judgments are distinguished from final decisions and final orders. *See*, *e.g.*, Minn. R. Civ. App. P. 103.03(a), (f), (g). And particularly relevant here, a dissolution proceeding results in a judgment while a denial of a motion to modify maintenance or child support results instead in an order. *See* Minn. R. Civ. App. P. 103.03(a), (h).

Under the most literal definition of the phrase "final judgment," rule 9.01 relief was available at least until the district court's judgment and decree was "entered" on April 5, 2018. This is because a dissolution judgment and decree is a "final judgment" in the sense that it resolves the dissolution litigation on its merits, *see Schifsky*, 773 N.W.2d at 788, and because it results in the entry of an appealable, final judgment. *See* Minn. Stat. § 518.145, subd. 1 (2018); Minn. R. Civ. App. P. 103.03(a). We observe that a judgment and decree is a "final judgment" even though it remains subject to a variety of postdecision motions, like motions for amended findings, new trials, or vacation. *See* Minn. Stat. § 518.145, subd. 2 (2018); Minn. R. Civ. P. 52.02. But the mere availability of a new trial, amended findings, reopening, or vacation does not render the "final judgment" nonfinal. It is only the district court's granting of relief that potentially renders an existing final judgment

nonfinal, either by vacating or replacing it. In other words, if a district court denies the requested relief of a new trial, amended findings, or vacation, its final judgment remains a final judgment. Adopting this interpretation avoids the untenable conclusion that rule 9 relief is not available in dissolution cases on the theory that they never result in the entry of a "final judgment." The authority to grant rule 9 relief sits broadly in "all [the] trial courts" of Minnesota, Minn. R. Gen. Prac. 1.01, and nothing in rule 9 suggests that the rule excepts dissolution proceedings.

We also recognize that the legislature has allowed for the postdecree modification in subject matters often addressed in judgments and decrees, like parenting plans, child custody, spousal maintenance, and child support. *See* Minn. Stat. §§ 518.18(a), 518A.39, subds. 1–2 (2018). Although determinations on these matters do not really "become[] final" in the sense that the district court is divested of jurisdiction over them, *see Marzitelli*, 582 N.W.2d at 906–07, this is an issue separate from the "final" determinative effect of a decision over the issues pending before the district court. And motions to modify result from materially different, substantially changed circumstances from those on which the preceding decision rested. *See* Minn. Stat. §§ 518.18(d), 518A.39, subd. 2.

But we do not read "final judgment" as described in rule 9 so strictly as to conclude that it refers only to those decisions resulting in the entry of a formally identified "judgment." Otherwise, for example, no rule 9 relief would ever be available during postdecree proceedings initiated after the entry of the judgment. And in *Szarzynski*, we held that the district court erred by failing to apply the rule in that very setting. *Szarzynski v. Szarzynski* 732 N.W.2d 285, 288, 294–95 (Minn. App. 2007). In that case, the district court

had entered a judgment and decree in 2004, after which the parties engaged in a series of maintenance, custody, and parenting-time disputes. *Id.* at 288. After the father filed an "emergency motion to modify custody and enforce his parenting time" in 2006, about two years after the judgment and decree was entered, the mother responded with a motion asking the district court to declare the father a "nuisance litigant." *Id.* at 289. The district court concluded that the father was indeed a nuisance litigant, but it failed to follow the procedural requirements of rule 9. *Id.* at 289, 294–95. We therefore reversed and remanded for the district court to consider whether rule 9's requirements were satisfied. *Id.* at 295. Our holding that the district court erred by failing to apply rule 9 presumed rule 9's applicability in the postdecree proceedings. And rule 9's purpose would be frustrated if the district court could not address frivolous litigation in cases that never result in a strictly defined "final judgment" or in proceedings that follow the entry of a strictly defined "final judgment." When rule 9 was adopted, the advisory committee clarified that the "rule is intended to curb frivolous litigation that is seriously burdensome on the courts, parties, and litigants." Minn. R. Gen. Prac. 9 1999 advisory comm. cmt. Frivolous litigation in postdecision proceedings poses the same (if not greater) risks of needless burden on the courts and parties.

Further framing the rule's scope, the rule defines a frivolous litigant as "[a] person who, after a claim has been finally determined against the person, repeatedly relitigates or attempts to relitigate either[:] (i) the validity of the determination against the same party or parties as to whom the claim was finally determined, or (ii) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final

determination against the same party or parties as to whom the claim was finally determined." Minn. R. Gen. Prac. 9.06(b)(1). A litigant might attempt to effectively relitigate issues by filing repetitive, successive, postjudgment motions. *Id.* But under a restrictive reading of the phrase "final judgment," a district court entertaining a postjudgment motion would be precluded from addressing frivolous conduct contemplated by the rule.

The letter and spirit of the rule are met by construing "final judgment" to include "final orders" and "final decisions," because they share the traits that render a judgment "final." Similar to caselaw defining final judgments, cases define a final order "as one that ends the proceeding as far as the court is concerned or that finally determines some positive legal right of the appellant relating to the action." *In re GlaxoSmithKline PLC*, 699 N.W.2d 749, 754 (Minn. 2005) (quotation omitted); *see also Chaska*, 135 N.W.2d at 197 ("The word 'final' when used to designate the effect of a trial court's judgment *or order* means that the matter is conclusively terminated so far as the court issuing the order is concerned." (emphasis added)). And more generally, a final order is "[a]n order that is dispositive of the entire case." *Black's Law Dictionary* 1271 (10th ed. 2014). Orders granting or denying modification of custody, parenting time, maintenance, or child support are final orders. *See* Minn. R. Civ. App. P. 103.03(g) (rendering final orders in special proceedings appealable), (h) (rendering family court modification orders appealable), 2000 advisory comm. cmt. (explaining that family court modification orders are appealable under subdivision (g) but that subdivision (h) was created to remove confusion); *see also Angelos v. Angelos*, 367 N.W.2d 518, 520 (Minn. 1985).

The district court abused its discretion by entering its rule 9 order after it entered its final order disposing of all pending issues.

Our careful consideration leads us to understand rule 9.01 to mean that relief under the rule is available in any action or proceeding pending in any court of this state, at any time until a final judgment, order, or decision is entered in the district court. And applying the rule so construed, we hold that the district court abused its discretion by considering and granting rule 9 relief after it issued its final order disposing of all motions and issues pending in the litigation.

The district court filed its frivolous-litigant order on August 8, 2019, more than four months after it filed its order disposing of all pending substantive issues on April 5, 2019. Indeed, it did not even raise the question of whether it should consider issuing a frivolous-litigant order until its dispositive April 5 order. The district court's April 5 order was a "final" order with determinative effect over all the issues awaiting district court disposition. The order denied David's motions to modify his maintenance and support obligations and was therefore a final, appealable order. Minn. R. Civ. App. P. 103.03(g), (h). The order granted in part David's request for amended findings of the November 2018 order and issued the amended findings simultaneously. It also denied David's request for sanctions. And it resolved minor issues about property division and enforcement.

It is true that the rule 9 proceedings did not "leave[] nothing for the [district] court to do," *Schifsky*, 773 N.W.2d at 788, because, regardless of how the rule 9 proceedings turned out, the district court still had to act to dissolve the stay it simultaneously imposed

on David's ability to file new motions. But this circumstance does not change the April 5 order's final, determinative effect on all litigation issues. Rule 9 proceedings supplement the underlying proceedings, and if the district court's raising issues to be resolved in a rule 9 proceeding triggers the district court's authority to issue rule 9 relief, then the apparently limiting "until" phrase in rule 9 limits almost nothing. The pendency of a question other than rule 9 sanctions is the foundational premise to rule 9's application and the logic of the relief it affords. The rule begins, "Relief under this rule is available *in any action or proceeding pending* in any court of this state." Minn. R. Gen. Prac. 9.01 (emphasis added). Relief under the rule is therefore conditioned on an "action or proceeding" actually "pending" a resolution. *Id*. And when the action or proceeding results from a claim or motion no "action or proceeding" can be "pending" after the claim or motion has been conclusively, finally resolved.

This conclusion finds further support in other provisions of rule 9. A party seeking to initiate rule 9 proceedings must give the purported frivolous litigant an opportunity to withdraw or correct "the challenged claim, motion, or request." Minn. R. Gen. Prac. 9.01. The opportunity to withdraw or correct presumes an existing, pending claim, motion, or request. And when considering whether to require security or impose sanctions under the rule, the district court must consider "whether there is a reasonable probability that the frivolous litigant *will* prevail on the claim, motion, or request." Minn. R. Gen. Prac. 9.02(b)(2) (emphasis added). If a claim, motion, or request was not pending because it had already been resolved, the district court could not determine the reasonable probability of a litigant's success because success is no longer a probability when failure has become an

actuality. Likewise, orders under the rule requiring security "shall only be entered with an express determination that there is no reasonable probability that the litigant will prevail on the claim." Minn. R. Gen. Prac. 9.02(c). The rule also clarifies that the outcome of rule 9 proceedings shall not operate as "a determination of any issue in the action or proceeding or the merits thereof," Minn. R. Gen. Prac. 9.02(d), further indicating that rule 9 proceedings precede a final determination of the issues "in the action or proceeding." And if a rule 9 order requires security but the party fails to furnish it, "the claim(s) subject to the security requirement may be dismissed with or without prejudice as to the offending party." Minn. R. Gen. Prac. 9.03. The district court's discretion to dismiss a claim necessarily presumes the pendency of a claim. Finally, the rule requires that an "action or proceeding [be] stayed" if a rule 9 motion is filed after trial, and it allows a stay "after commencement of trial." Minn. R. Gen. Prac. 9.04. The ability to stay an "action or proceeding" implies an ability to stay the disposition of some pending controversy.

We conclude only that the district court's frivolous-litigant order violated rule 9.01 because the district court issued it after disposing of all pending issues in the underlying litigation. We offer no opinion as to David's other procedural arguments, the merits of the district court's frivolous-litigant determination, or the propriety of the district court's imposing security and filing restrictions.

The dissenting opinion does not convince us to reach a different result.

We have also carefully considered the reasoning of the dissenting opinion. The dissent supposes that David's April 5 requests for various hearings constituted "action[s] or proceeding[s]" that were pending at the time of the district court's rule 9 order. We do

not believe this is accurate. Only one such motion actually existed—David's motion to remove the referee—and the issue of that motion was mooted when the referee recused from the case on April 19, before the district court issued its rule 9 sanctions. We add that David in fact filed no motion after the district court decided all matters on April 5. The dissent considers the nonexistence of any motions as "not relevant" because the district court precluded David from bringing motions. But identifying a circumstance explaining why no action or proceeding is pending still identifies no pending action or proceeding; it merely highlights the procedural impropriety of ordering rule 9 relief after all the litigated issues have already been resolved.

The dissent correctly observes that rule 9 contemplates frivolous "requests." But again, relief is available only in a pending "*action* or *proceeding*," Minn. R. Gen. Prac. 9.01 (emphasis added), and, like the district court, the dissent identifies no authority for its implied proposition that a mere request for a hearing on an unfiled, unserved, nonexistent, potential motion constitutes an "action" or a "proceeding." Most obvious to us, where, as here, the party has presented no motion, a simple request for a hearing on a potential motion of course lacks any of the detail necessary for any court to examine the request's purported impropriety, its injurious effect, or its malicious purpose. *See* Minn. R. Gen. Prac. 9.02(b)(2)–(4).

David's requests for hearings on nonexistent motions might well have signaled litigious intent. His history of filing numerous motions might have reasonably convinced the district court that more motions would come. And we are mindful that rule 9 relief is intended to curb future frivolous litigation. But these considerations are relevant to the

rule's purpose and a determination of a litigant's frivolity, not whether a rule 9.01 order is timely, which is our focus today. Speculative potential claims, motions, and requests do not qualify as extant claims, motions, and requests to which the rule applies.

On a more theoretical front, the dissent believes that our approach would allow a frivolous litigant to escape rule 9 sanctions by simply withdrawing his pending claims, motions, or requests before the district court issues its rule 9 order. On one hand, this is hardly a problem since the goal of rule 9 is to deter frivolous litigation, a goal satisfied when the frivolous litigant voluntarily ends the frivolity. On the other, in those presumably rare cases when the district court believes that voluntary withdrawal is not enough, the dissent's concern is illusory; the simplest tool—and indeed, a tool the district court employed here—is the power to prevent any retreat by staying the underlying proceedings until after considering and deciding whether a frivolous-litigant sanction is fitting.

We understand the district court's frustration with David's tactics. And we understand that the frivolous-litigant rule's terms do not precisely fit the terms used in motions to modify family-law decisions. But aligning the rule and the modification proceeding as best we can, we must reverse.

Reversed.

REYES, Judge (concurring in part and dissenting in part)

I concur, through a different analysis, with the majority's conclusion that Minn. R. Gen. Prac. 9.01 applies to final orders. However, I conclude that there is an "action or proceeding pending" on which there has been no "final judgment" for purposes of rule 9.01. I would therefore affirm the district court's determination that father is a frivolous litigant.

In October 2015, appellant David Michael Kedrowski (father) initiated the dissolution of his marriage with respondent Olga Kedrowski (mother), with whom he has one joint child. After more than two years of contentious litigation, the district court issued a judgment and decree in April 2018 dissolving the marriage, dividing property, determining child custody, ordering father to pay child support and temporary spousal maintenance, and awarding mother conduct-based attorney fees.

Father then moved for amended findings, a new trial, and sanctions against mother's attorney, all of which the district court denied in August 2018. It held under advisement his motions to obtain temporary relief from his maintenance and support obligations or to modify them. Father appealed, and we affirmed. *Kedrowski v. Kedrowski*, No. A18-1529, 2019 WL 3000760 (Minn. App. July 1, 2019). In late 2018, during the pendency of his appeal, father sought removal of the district court referee and a decision on his motions for modification. The district court denied his motions in November 2018. Over the next few weeks, father filed (1) a second motion for modification of his maintenance and support obligations; (2) a motion to amend the findings in the November order; (3) a motion for sanctions against mother's attorney; and (4) a notice to remove the district court referee.

He also brought motions to reconsider and to correct the record, both of which the district court denied in February 2019.

On April 5, 2019, the district court denied father's motions for modification and for sanctions, granted in part his motion to amend its findings, and issued an amended order. It also ordered that it would require a hearing on whether father was a frivolous litigant under rule 9 before he could file any additional motions. It outlined his conduct that warranted the hearing. It did not address his notice to remove the referee. In accordance with the district court's order barring him from filing any *motions* before a rule 9 hearing, father filed *requests* for hearings on various issues.

On April 11, 2019, the district court scheduled a rule 9 hearing and ordered that it would not hear any motion from father until after it issued an order on the rule 9 matter. Father requested the district court's basis for ordering a rule 9 hearing sua sponte and demanded that it first hear his motion seeking the referee's removal. On April 19, 2019, the referee recused because father had been in contact with her family regarding the case. After conducting a rule 9 hearing on June 6, 2019, the district court issued its rule 9 order in August 2019 and determined that father was a frivolous litigant based on, in part, his harassing and inappropriate correspondence. This appeal follows.

Father argues that the district court's order was untimely under rule 9 because it had entered final judgment and there were no underlying issues pending.[1] I do not agree.

[1] Father also argues that the security and filing restrictions that the district court ordered were improper, that the district court violated his due-process rights, and that the district court abused its discretion by determining he met the definition of a frivolous litigant.

It is worth noting, at the outset, the differences between family law proceedings and other civil proceedings. This appeal arises in the context of postjudgment motions made under Minn. Stat. § 518A.39 (2018). Following an order for maintenance or support, the district court retains authority to hear motions for modifications of maintenance and support. *See* Minn. Stat. § 518A.39, subd. 1. It retains this "continuing jurisdiction over dissolution proceedings unless an enforceable waiver of the statutory right to seek modification of maintenance exists." *DonCarlos v. DonCarlos*, 535 N.W.2d 819, 820 (Minn. App. 1995) (quotation omitted), *review denied* (Minn. Oct. 18, 1995).[2] Continuing jurisdiction prevents proceedings to modify custody, parenting time, maintenance, and support from being independent of the original dissolution action. *Angelos v. Angelos*, 367 N.W.2d 518, 519 (Minn. 1985). This stands in contrast to other civil proceedings, in which the district court's jurisdiction terminates once "the time for appeal from an order expires without appeal having been taken." *Marzitelli v. City of Little Canada*, 582 N.W.2d 904, 906 (Minn. 1998).

In addition, district courts resolve section 518A.39 proceedings with an order, rather than a judgment. *See* Minn. R. Civ. App. P. 103.03(a), (h); *see also, e.g.*, *Angelos*, 367 N.W.2d at 519; *Huso v. Huso*, 465 N.W.2d 719, 720-21 (Minn. App. 1991). Modifications under section 518A.39 "are *sui generis* and do not fit within the reasons for the rules with respect to finality of judgments." *Angelos*, 367 N.W.2d at 519.

[2] The parties do not indicate any waiver of their right to seek modification of maintenance, and parties cannot waive a child's right to financial support, which this proceeding also involves. *See Aumock v. Aumock*, 410 N.W.2d 420, 421 (Minn. App. 1987).

I. The language of Minn. R. Gen. Prac. 9.01 includes final orders.

Determining whether the district court timely granted rule 9.01 relief requires interpretation of the rule, which is an issue of law that this court reviews de novo. *See Rubey v. Vannett*, 714 N.W.2d 417, 421 (Minn. 2006). Rule 9.01 provides that "[r]elief under this rule is available *in any action or proceeding pending in any court of this state, at any time until final judgment is entered*." (Emphasis added.) A district court may grant relief under rule 9 on a party's motion or on its own initiative. Minn. R. Gen. Prac. 9.01. A "frivolous litigant" is a person who "repeatedly relitigates or attempts to relitigate" the validity of an issue already decided, who "repeatedly serves or files frivolous motions, pleadings, [or] letters," or who uses tactics that are frivolous or intended to cause delay. Minn. R. Gen. Prac. 9.06(b). We review a district court's ultimate determination that a party is a frivolous litigant for an abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 290, 295 (Minn. App. 2007).

In interpreting a court rule, we apply its plain language if it is unambiguous. *Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 605 (Minn. 2016). "We do not read [court rules] in isolation but read them in light of one another, interpreting them according to their purpose." *Mingen v. Mingen*, 679 N.W.2d 724, 727 (Minn. 2004). "Ambiguity exists only if the language of a rule is subject to more than one reasonable interpretation." *Jaeger*, 884 N.W.2d at 605 (quotation omitted). If a rule is ambiguous, we will look beyond its plain language. *Madison Equities, Inc. v. Crockarell*, 889 N.W.2d 568, 571-72 (Minn. 2017).

Rule 9.01 refers to "final judgments," which do not occur in proceedings under section 518A.39. Based on this, there appear to be three reasonable interpretations of rule

9.01 as applied to section 518A.39 proceedings. First, it could preclude a district court from granting rule 9 relief in a dissolution matter after entry of a judgment and decree, which would make relief unavailable in section 518A.39 proceedings. Second, it could allow a district court to grant relief at any time, in near perpetuity, because the proceedings do not end with a final judgment. Third, a "final judgment" could refer to a "final order." Because rule 9.01 is subject to more than one interpretation, it is ambiguous. We therefore look to its purpose and policy considerations.

As the majority notes, rule 9 "is intended to curb frivolous litigation that is seriously burdensome on the courts, parties, and litigants." Minn. R. Gen. Prac. 9 1999 comm. cmt. The first interpretation would deprive litigants and district courts of the ability to curb frivolous litigation, contrary to the purpose of rule 9. The second would leave all family law litigants exposed at any time to the possibility of frivolous-litigant proceedings against them. The Minnesota Rules of General Practice also give district courts some flexibility by providing that "[a] judge may modify the application of these rules in any case to prevent manifest injustice." Minn. R. Gen. Prac. 1.02. Considering the inequity of the first two interpretations, the *sui generis* nature of proceedings under Minn. Stat. § 518A.39, the purpose of rule 9, and the district court's ability to "modify application of the rules," the most reasonable interpretation of rule 9.01 is one in which "final judgment" includes a "final order."

II. There is an "action or proceeding pending" here on which there has been no "final order" for purposes of rule 9.01.

A final judgment is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *T.A. Schifsky & Sons, Inc. v. Bahr Constr., LLC*, 773 N.W.2d 783, 788 (Minn. 2009) (quotation omitted). A "final order" that is appealable is "one that ends the proceeding as far as the court is concerned or that finally determines some positive legal right of the appellant relating to the action." *In re GlaxoSmithKline PLC*, 699 N.W.2d 749, 754 (Minn. 2005) (quotations omitted); *see also City of Chaska v. Chaska Township*, 135 N.W.2d 195, 197 (Minn. 1965) ("[A] 'final' . . . judgment or order means that the matter is conclusively terminated so far as the court issuing the order is concerned."). Nonetheless, as evidenced by the procedural history of this case, a party in a family law proceeding may appeal a district court's denial of a motion for modification while continuing to litigate other matters in the district court, such as by filing a new motion for modification or other requests for relief. *See Perry v. Perry*, 749 N.W.2d 399, 402-04 (Minn. App. 2008).

Here, after the district court's April 5, 2019 order denying father's motion for modification and all motions except for his request for disqualification of the referee, father requested a hearing on (1) his motion to disqualify; (2) a motion to amend findings;[3] (3) a stay pending a ruling on amending the findings; (4) a stay pending appeal; and (5) the rule 9 matter. He also requested (6) that the district court stay enforcement of its judgment until

[3] It does not appear that father had a motion to amend findings before the district court at the time of this request.

hearing those motions and (7) that the referee recuse. Father's requests for hearings on various other issues are "action[s] or proceeding[s] pending" at the time of the district court's rule 9 order.

Father's numerous requests indicate that there was more than "nothing for the court to do but execute the judgment." *Schifsky*, 773 N.W.2d at 788 (quotation omitted). The district court did not consider these requests while the rule 9 matter was pending, but, after assigning the case to a district court judge following the referee's April 19, 2019 recusal, it did again reassign the case in response to a notice father filed on April 26, 2019, to remove the district court judge. The district court also had to lift the stay it imposed on father's ability to file new motions pending resolution of the rule 9 matter. Once the district court lifted its stay, father would be able to litigate the matters for which he previously sought a hearing. If the district court ruled father was not a frivolous litigant, father's litigation would move forward unimpeded. If the district court ruled father to be a frivolous litigant, he could pursue his litigation subject to the conditions set by the district court. And one of the matters on which father had requested a hearing was a request to amend the findings of fact in the April 5, 2019 order. A motion for amended findings could lead to an alteration of that order. *See* Minn. R. Civ. P. 52.02 (addressing motions for amended findings of fact). To determine that the action or proceeding was finally resolved before August 8, 2019, would strip father of the right to move the district court to amend the findings in its earlier order, as he had requested a hearing to do.

The majority notes that father did not file any motions after the district court's April 5, 2019 order. But the district court in its April 5, 2019 order barred him from filing any

motions. And, rather than file new motions following the district court's order determining that he is a frivolous litigant and imposing sanctions, as father had done following earlier orders, he appealed. Given these limitations on father's ability to file motions, that he ultimately filed none is not relevant here.

Further, rule 9 contemplates action by a litigant other than motions. For example, when a party seeks to initiate a rule 9 proceeding, the opposing party has an opportunity to withdraw or correct "the challenged claim, motion, *or request*." Minn. R. Gen. Prac. 9.01 (emphasis added). In considering whether to impose sanctions or require security, the district court must consider "whether there is a reasonable probability that the frivolous litigant will prevail on the claim, motion, *or request*" and why "the claim, motion, *or request* was made." Minn. R. Gen. Prac. 9.02(b)(2)-(3) (emphasis added). And a frivolous litigant may be someone "who in any action or proceeding repeatedly serves or files frivolous motions, pleadings, *letters, or other documents*." Minn. R. Gen. Prac. 9.06(b)(2) (emphasis added). Because family law proceedings give the district court continuing jurisdiction, a litigant can continue to file requests and correspondence discussed in rule 9 with the district court despite it issuing an appealable order. Here, it is undisputed that father had made multiple *requests* for hearings.

Finally, applying the rule as the majority does would allow litigants to avoid rule 9 proceedings in family law matters despite filing motions and making other requests. The rule itself allows a litigant to withdraw motions that serve as the basis for a rule 9 motion, but, because a litigant can be declared frivolous based on actions other than motions, the rule does not appear to require that the subject litigant have any pending motions in order

for a district court to grant rule 9 relief. Therefore, outside of family law proceedings, the district court could initiate rule 9 proceedings with no motions pending before it, so long as it had not yet entered final judgment. In the family law setting, to require a pending motion would allow a litigant to submit frivolous motions repeatedly only to withdraw them before the district court can make a rule-9 determination, thereby evading rule 9 sanctions while engaging in conduct that would subject them to it in other contexts. It would also allow a family law litigant to file frivolous correspondence and requests without rule 9 recourse, even though a frivolous-litigant determination may also be based on that conduct. This is counter to the purpose of rule 9. *See* Minn. R. Gen. Prac. 9 1999 comm. cmt.

Because, here, there is an action or proceeding pending on which there has been no final order for purposes of rule 9 and because the record supports the district court's findings of fact and does not otherwise show that it abused its discretion, I would affirm the district court's determination that father is a frivolous litigant.