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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0371**

In re the Marriage of: Robert William Bessenbacher, petitioner,
Appellant,

vs.

Olga Sergeyevna Bessenbacher,
Respondent,

County of Itasca, intervenor,
Respondent.

**Filed December 28, 2020
Affirmed
Connolly, Judge**

Itasca County District Court
File No. 31-FA-14-2754

Robert W. Bessenbacher, Grand Rapids, Minnesota (pro se appellant)

Olga Sergeyevna Bessenbacher, Grand Rapids, Minnesota (pro se respondent)

Heather Marie Roy, Itasca County Attorney, Grand Rapids, Minnesota (for respondent
County of Itasca)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Gaitas,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

In this post-dissolution proceeding, appellant-father, pro se, challenges the district court's determination that appellant is a frivolous litigant. Because we see no abuse of discretion in that determination, we affirm.

FACTS

Appellant Robert Bessenbacher and respondent Olga Bessenbacher were married in 1997. Two of their seven children are no longer minors; the others are now 17, 15, 13, 11, and 5 years old. The parties' marriage was dissolved in 2016; the district court adopted their mediated agreement on parenting issues in January and issued a decree deciding financial issues in March.

Three months later, in June 2016, there was a hearing on: (1) appellant's motions for amended findings and modifications to custody, parenting time, and child support; (2) his request for an order that respondent enroll the children in public or online school; (3) his request that respondent be arrested for violating parenting time, and (4) his motion for parenting exchanges to occur at a location other than the Wellstone Family Safety Center (WFSC), and on respondent's motions for amended findings, conduct-based attorney fees, and modifications of the parenting-time schedule based on changes to WFSC's operating times. In August 2016, the district court denied both parties' motions for amended findings on procedural grounds, appellant's other motions, and respondent's motion for conduct-based attorney fees; it also directed the parties to work with WFSC to develop a parenting-time schedule that fit the WFSC schedule.

Three months later, in November 2016, there was a hearing on both parties' motions. Appellant had filed motions (1) to modify spousal maintenance and child support; (2) for contempt of court, parenting-time relief, income-tax relief, and attorney fees; (3) to vacate and dismiss an Order for Protection (OFP); and (4) for relief from an order requiring the parties to use WFSC; respondent had filed motions for contempt of court, relief in parenting and financial matters, and attorney fees. In February 2017, the district court issued an order (1) denying appellant's motions; (2) granting respondent's motion for contempt of court based on appellant's failure to pay respondent the parties' 2015 tax refund as a form of temporary maintenance; (3) requiring appellant to pay conduct-based attorney fees to respondent based on the frivolity of his motions and his failure to comply with a court order concerning payment of maintenance; and (4) clarifying that the January 2016 parenting-time order granted appellant additional holiday parenting time with the youngest child and required the oldest child to engage in therapeutic visits with respondent.

In June 2017, after another hearing, the district court issued an order declining to change the parenting-time schedule, granting respondent some temporary relief, setting a date for an evidentiary hearing, and appointing a guardian ad litem (GAL). Appellant challenged the order, which this court affirmed in *Bessenbacher v. Bessenbacher*, No. A17-0339, 2017 WL 3585124 (Minn. App. Aug. 21, 2017) (*Bessenbacher I*).

Following a hearing in May 2018, the district court issued an order: (1) adopting the parties' stipulation that appellant have sole legal and physical custody of the oldest child; (2) reaffirming the award of sole legal custody of the six younger children to respondent and awarding her sole physical custody; (3) modifying parenting time to give appellant a

small increase of time with most of the children; (4) reserving appellant's parenting time with one child, based on her mental-health needs; (5) denying appellant's motions to modify child support and maintenance and to not use the WFSC, and (6) granting respondent's motion to declare appellant a frivolous litigant and imposing preconditions on his filing of future motions. Appellant again challenged the order, and *Bessenbacher v. Bessenbacher*, No. A18-2152, 2019 WL 3543695, at *3 (Minn. App. Aug. 5, 2019) (*Bessenbacher II*) affirmed all provisions of the order except the grant of respondent's motion to declare appellant a frivolous litigant, which it reversed because respondent waited only 14 of the 21 days required by Minn. R. Gen. Prac. 9.01 between serving and filing a frivolous-litigant motion.

Respondent moved again to have appellant declared a frivolous litigant, first on financial issues, then on all issues. Both motions were filed more than 21 days after service. Following a hearing, the district court issued an order finding that respondent had complied with the Minn. R. Gen. Prac. 9.01 requirement to wait more than 21 days after service before filing her frivolous-litigant motions, concluding that appellant's conduct met the frivolous-litigant criteria specified in Minn. R. Gen. Prac. 9.02, and requiring appellant to post a bond of \$2,500 to file any future motions and to present his motions to the district court for pre-approval of their legal merit.¹

¹ Appellant's motions (1) to modify child support and spousal maintenance; (2) to modify legal and physical custody, modify parenting time, modify the WFSC terms, appoint a GAL, and compel answers to discovery requests; (3) to modify custody and parenting time for one of the children; and (4) for immediate custody of that child were stayed pending resolution of the frivolous-litigant motion.

Appellant challenges the determination that he is a frivolous litigant.

D E C I S I O N

A district court's determination that a party is a frivolous litigant will be overturned only if the district court has abused its discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 290, 295 (Minn. App. 2007). The district court here determined that appellant met the seven criteria for a frivolous litigant set out in Minn. R. Gen. Prac. 9.02.

As to the first criterion, the frequency and number of claims pursued with an adverse result, the district court found that appellant litigated spousal maintenance three times and child support four times within 21 months of the decree and, within three weeks of this court's affirming the denial of his prior motions, he moved to modify them again. After agreeing to sole legal custody with respondent for all the children in 2015, he sought sole legal custody of the oldest child in 2016, sought either sole or joint legal custody of all the children in 2017, sought sole legal custody again in 2018, unsuccessfully appealed the denial of that motion, and filed the pending motion within two months of this court's affirmance of the denial in *Bessenbacher II*. He also unsuccessfully challenged the WFSC orders three times.

As to the second criterion, the district court found no reasonable probability that appellant will prevail on his motions because appellant's financial motions are based on discretionary spending in categories the court has refused to recognize and on budgets the district court has found unreasonable, and those refusals and findings have been affirmed by this court in *Bessenbacher I* and *Bessenbacher II*. Appellant's parenting motions are generally time-barred by Minn. Stat. § 518.18, subd. 1(b), (c) (2018) (precluding such

motions within two years of the disposition of a prior motion except in cases of endangerment or willful denial of parenting time). He has never alleged endangerment or willful denial of his parenting time.

As to the third criterion, whether appellant's motions have been made for the purpose of harassment, the district court found that appellant "is repeatedly re-litigating the same issues for purposes of harassing [respondent]," that his abuse of respondent began in 2002 and continued until the parties' separation in 2014, and that he uses the court system as a conduit for harassment.

As to the fourth criterion, the injury incurred by other litigants and to the efficient administration of justice as a result of appellant's motions, the district court found that respondent has had to meet with her attorney, compile documents, and prepare responsive pleadings to deal with appellant's repeated motions, as well as interrupt the children's homeschooling to attend hearings, and that the motions interfere with the efficient administration of justice because they use the court's time, staff time, and legal aid resources.

As to the fifth criterion, the effectiveness of prior sanctions in deterring frivolous claims, the district court found that appellant had been ordered to pay \$2,827 in conduct-based attorney fees for filing frivolous motions in February 2017, had filed several frivolous motions since then, had not paid the attorney fees, and had discharged the obligation in bankruptcy. He also tried appealing in this court and filing another motion in the district court to vacate the OFP portion of the February 2017 order. Sanctions do not prevent appellant from filing further motions.

As to the sixth criterion, the likelihood that sanctions will be an adequate safeguard or provide a means to compensate respondent, the district court found that monetary sanctions have little effect on either party, because appellant has a substantial income and respondent, who is on legal aid, does not incur attorney fees. The district court also found that nonmonetary sanctions, such as a requirement that the district court approve the filing of any further motions from appellant, are necessary to protect respondent from appellant's "pattern of frivolous and harassing litigation."

As to the seventh criterion, whether less severe sanctions will provide sufficient protection, the district court found that appellant has said he will continue litigating the same issues until he gets the results he wants and that "a frivolous litigant declaration and preconditions on his filing of motions are necessary to stop [appellant's] vexatious filings and abuses of the legal system."

The six issues appellant raises demonstrate his failure to accept that the only point at issue during the hearing, and therefore on this appeal, is whether the district court abused its discretion in granting respondent's motion to have appellant declared a frivolous litigant or in imposing sanctions.

He argues first that the district court abused its discretion because *Bessenbacher II* reversed the district court's determination that appellant was a frivolous litigant and both res judicata and collateral estoppel preclude reconsideration of that issue. But *Bessenbacher II* did not determine or even address whether appellant was a frivolous litigant; it determined that respondent had not complied with the procedural requirements of Minn. R. Gen. Prac. 9.01 in filing her frivolous-litigant claims. Respondent did comply

with those requirements in filing her post-*Bessenbacher II* frivolous-litigant claims. Nor did *Bessenbacher II* determine that the district court abused its discretion in denying appellant's motions to modify custody, modify parenting time, modify child support and spousal maintenance, and hold respondent in contempt of court. Appellant cites no support for the view that this court's determination that one party has not complied with a procedural rule precludes both the district court and this court from subsequently addressing whether an opposing party is a frivolous litigant.

Appellant's second issue is whether the district court abused its discretion because of "improper procedure" resulting from the dates on which respondent's attorney withdrew from representation and resumed representation during these proceedings. During the hearing, the district court tried to explain to appellant that whether respondent's attorney was representing her at a particular time was "not relevant to the issue of whether or not the motions [appellant] filed are, or should be, declared frivolous." Appellant did not explain at the hearing and does not explain on appeal why the status of respondent's attorney's representation affected respondent's motion to have appellant declared a frivolous litigant.²

Appellant's third issue is whether the district court abused its discretion in modifying the parties' binding agreement without a family court motion and without making findings as to the best interests of the children. During the hearing, respondent's

² Moreover, even if appellant's claims about respondent's attorney's procedure were legitimate, an appeal from the district court's determination that appellant is a frivolous litigant would not be the appropriate forum to address them.

attorney raised a “relevance” objection when appellant asked respondent if she was having financial struggles. The district court sustained the objection and told appellant:

[A] lot of the things that you’re getting off into would be the merits of the financial motion and parenting time motions . . . and that’s why the Court clarified we’re only here to decide the Rule 9 motion and you’re arguing that you have legal arguments you wish to make or . . . additional questions that are directly relevant to that. You’re going beyond what’s relevant to this proceeding.

Appellant replied that his question to respondent was relevant because “there’s some financial issues that the Court needs to address.” The district court said, “[A]gain, we’re not getting to those financial issues . . . What the Court’s ruling is that with regard to disposing of this Rule 9 motion, that it’s not relevant, it’s not necessary. You’re [not] getting to the merits of . . . the Rule 9 motion.” The district court’s order says nothing about parenting time or financial matters. It is not clear what appellant means by saying there are no findings as to the best interests of the children and no family court motion, and in any event there is no decision on these matters for this court to review.

Appellant’s fourth, fifth, and sixth issues are similar. He argues that the district court abused its discretion and made erroneous findings by excluding from a Rule 9 proceeding appellant’s defense of his pending motions (fourth issue), his request for a GAL and his showing of a prima facie case for custody modification (fifth issue), and his claim of unprofessional conduct by respondent’s attorney (sixth issue). He also argues that, rather than rule on his motions, the district court declared him and his motions to be frivolous. But he provides no support for the view that a hearing on one party’s Rule 9 motion is the appropriate place to rule on motions brought by the opposing party.

There is no basis to reverse the district court's determinations that appellant is a frivolous litigant and that restrictions on his future motions are necessary.

Affirmed.