STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1490
A16-1668

Ramsey County, petitioner,
Respondent,

Bisharo M. Aden, n/k/a Bisharo M. Jama, petitioner,
Respondent,

vs.

Aaron L. Olson,
Appellant.

Filed September 5, 2017
Affirmed
Bratvold, Judge

Ramsey County District Court
File No. 62-F4-06-050008

John J. Choi, Ramsey County Attorney, Jenese V. Larmouth, Assistant County Attorney, St. Paul, Minnesota (for respondent county)

Bisharo M. Jama, Columbia Heights, Minnesota (pro se respondent)

Aaron L. Olson, Minneapolis, Minnesota (pro se appellant)

Considered and decided by Bratvold, Presiding Judge; Jesson, Judge; and Randall, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

BRATVOLD, Judge

In these consolidated appeals, appellant seeks review of the district court's orders denying his motions for modification of child support arrearages and child custody, reasonable accommodations, and declaring him to be a frivolous litigant. We affirm.

FACTS

Child Support

The district court adjudicated appellant Aaron L. Olson as S.O.'s father in 2006. At the hearing, the district court awarded respondent Bisharo Jama (mother) sole physical and sole legal custody of S.O. and set Olson's child support obligation at $197 per month. Olson's child support obligation periodically increased due to cost-of-living adjustments.

In September 2008, Olson moved to modify child support, alleging he had "ongoing medical problems," was disabled, and had submitted a supplemental security income (SSI) application, which was pending. Olson also claimed he was on public assistance. In an order filed December 3, 2008, the district court determined Olson was on public assistance and "suffer[ed] from a claimed disability." The district court granted Olson's request and "reserved" child support "for any month in which [Olson] is receiving public assistance."

In March 2010, Olson moved to modify child support to $0 per month, alleging he was receiving general assistance and disability payments. In an order filed July 2, 2010, the district court noted that Olson owed over $10,000 in child support arrears, and that he failed to verify what benefits he was receiving. Based on the record evidence, the district

court concluded Olson failed to show a substantial change in circumstances, and denied his request.

In October 2012, respondent Ramsey County (the county) moved to modify Olson's child support obligation. In its order, the district court first recognized that Olson was receiving SSI benefits. But the district court also determined Olson "does not have any ability to pay ongoing support or to make monthly payments toward his support arrears." The district court then granted the county's motion and set Olson's monthly child support obligation at $0.

In March 2013, Olson moved to modify his child support arrearages, arguing the Social Security Administration (SSA) had determined he was disabled in 2007 and he was entitled "to reduce the arrearages amount." The child support magistrate denied Olson's request, noting state law does not allow a retroactive adjustment of child support arrearages to a date before service of the motion seeking modification. *See* Minn. Stat. § 518A.39, subd. 2(f) (2016).

In May 2015, Olson moved for sanctions against the county and sought a finding of contempt, claiming the county had miscalculated his child support arrearages. Olson filed the same document a second time. In an October 2015 order, the district court noted that Olson's 2013 motion had raised the same issue, which the child support magistrate decided, and ordered the parties to brief whether Olson's 2015 motion was barred by res judicata and/or collateral estoppel. The district court denied Olson's request for sanctions against the county.

After granting Olson several continuances and a hearing in June 2016, the district court's August 19, 2016 order denied Olson's request to modify child support arrearages and affirmed the October 2015 order denying Olson's request to find the county in contempt. The district court's order reviewed the county's manual audit of Olson's arrearages, which was submitted to the court, and found it established the amount that Olson owed to mother was $8,120.12, not the $10,000 figure the county had provided earlier. The district court also noted, while the county, in 2013, forgave the arrearages Olson owed to the county, mother had not forgiven the arrearages Olson owed to her. Based on the county's submissions, the district court determined Olson owed $8,120.12 in arrearages to mother.

The district court also assessed the impact of earlier motions and orders, concluding "the combined principles" of res judicata and collateral estoppel barred Olson's current motion because it was "predicated on the same cause of action as his 2013 cause of action" and Olson raised "the arrears issue" in 2013. Alternatively, the district court assumed res judicata/collateral estoppel did not apply and concluded the county had properly calculated the arrears amount, based on the manual audit, because it correctly applied the 2008 order as requiring an "ongoing on/off child support determination, not a retroactive one." The district court reasoned "a parent's disability does not automatically turn off a properly accruing support obligation." Stated somewhat differently, the district court concluded the 2008 order "require[d] only a prospective analysis on whether support is charged in a month when [Olson] is not receiving public assistance."

Child Custody

Since the district court's order adjudicating Olson as S.O.'s father in 2006, Olson has filed numerous motions seeking parenting time assistance and custody modification. The motions relevant to this appeal were filed in April 2015, when Olson sought an emergency change in custody based on allegations that police had responded three times to reports of verbal altercations between S.O. and mother. Before the district court issued an order on the April motion, Olson filed another motion on the same issue in June 2015. The district court denied the motion, finding Olson failed to show that S.O. was in immediate danger and there was no good cause why mother should not be notified of the proceedings.

In July and August 2015, Olson again sought an emergency change in custody. The district court again denied the motions, stating that Olson "keeps filing the same motion which was previously denied." At a hearing on another matter in September 2015, Olson again asked the district court to modify custody, and the district court again denied the request, stating the issue was not properly before the court.

In January 2016, Olson filed yet another motion seeking to modify custody, again referring to the June 2015 emergency motion and also alleging that S.O. was a "gifted" child and that mother was unable "to navigate" the gifted school system. During a hearing on his motion, Olson admitted that he wanted custody of S.O. so that he could collect related public benefits. Olson alleged mother physically abused S.O., but conceded he had not taken S.O. to the doctor for treatment or an evaluation. The district court found Olson's testimony was not credible because it was "self-contradicting, vague, and [unsubstantiated]

by the record." In an order filed August 19, 2016, the district court found Olson had not met his burden to prove endangerment and denied his motion to modify custody.

Reasonable Accommodations

During a September 2015 hearing, the district court learned Olson had been secretly recording his conversations with county workers and court administration staff, as well as district court proceedings. In a subsequent order, the district court prohibited Olson from concealing recording devices while in the juvenile and family justice center. The order noted Olson did not mention a mental or physical disability that "required accommodation in the form of an electronic recording device," but the district court nonetheless informed Olson that, if he was requesting reasonable accommodations, he should use the forms provided on the court website.

After that hearing, Olson filed numerous additional requests for reasonable accommodations due to disability, alleging that he had memory issues, joint pain, difficulty using writing instruments, and dry eyes, although he did not use the forms referenced by the district court. In orders filed in December 2015 and January 2016, the district court again directed Olson to submit the relevant forms to support his accommodations request and the court attached a blank form to at least one order.

In the August 19, 2016 order at issue in this appeal, the district court first found Olson had not submitted an accommodations request form or provided any medical documentation supporting his request. The district court stated it was aware that Olson received SSI, but found the only information that Olson provided in support of his accommodations request was "outdated," "unreliable," and uncorroborated. For example,

Olson told the court his relevant diagnoses were joint pain (as of 2007) and dry eyes (as of 2016), but the district court found Olson had refused to verbally discuss his disability or how it impacted his access to the court. Further, the district court noted it did not observe any "obvious disability." Moreover, the court determined Olson's request appeared to be an attempt "to justify his [previous] practice of secretly recording court staff and county employees." Because Olson failed to provide the information needed to grant his request, the district court denied Olson's motion.

Frivolous Litigant

In its August 19, 2016 order, and its amended order filed October 13, 2016, the district court summarized the "lengthy history" of its concern with Olson's voluminous filings. Previously, the district court had set a July 2016 hearing to determine whether Olson was a "frivolous litigant" under Minn. R. Gen. Pract. 9.06(b). Although the district court verbally informed Olson of the hearing date and time, and e-served Olson with notice, Olson did not appear at the scheduled hearing or provide an explanation for his absence.

The district court determined, since September 2015, Olson had "filed approximately ninety documents," including 13 in forma pauperis requests, three of which Olson filed in one day. The district court also found Olson had made repeated and harassing calls to court staff, the district court's law clerk, and the self-help center. Additionally, the district court noted that the federal district court had declared Olson to be a vexatious litigant and restricted him from filing new cases unless his is represented by an attorney or has received prior written authorization by a federal judicial officer. *See Olson v. Ramsey County*, No. 15-3131, 2015 WL 5778478, *3 (D. Minn. Oct. 1, 2015).

The district court then analyzed each of the seven factors for determining whether to impose sanctions, consistent with the requirements of Minn. R. Gen. Pract. 9.02(b). The district court found Olson was a frivolous litigant, and directed court administration to reject any documents filed in the family court division by Olson unless he is represented by an attorney or has the prior authorization of a district court judge. Olson appeals the district court orders dated August 19, 2016 and October 13, 2016.

D E C I S I O N

I. The district court did not err when it denied Olson's request to recalculate his child support arrearages.

A district court may modify child support if a party establishes substantially changed circumstances that render the terms of the original order "unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a)(1)-(8) (2016). Retroactive modification of child support may occur only to the date that a moving party has served the motion. Minn. Stat. § 518A.39, subd. 2(f). The district court has broad discretion to modify a child support obligation, and its decision will not be overturned unless it has committed clear error by misapplying the law or making findings that are against logic and facts in the record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002).

The district court concluded Olson's motion to modify his child support arrearages was barred by res judicata and collateral estoppel. The district court also determined that, even if res judicata and collateral estoppel did not apply, the 2008 district court order was prospective, lacked "*nunc pro tunc*" language, and therefore could not retroactively modify Olson's child support arrearages. Olson argues the district court erred because it incorrectly

interpreted the 2008 order. More specifically, Olson claims he is not seeking retroactive modification of child support, but an analysis of the 2008 order to calculate his arrearages.

A. Res Judicata and Collateral Estoppel

Res judicata, also called claim preclusion, is a "finality doctrine" that is applied "when a subsequent action or suit is predicated on the same cause of action," which has been previously decided. *Mach v. Wells Concrete Prods. Co.*, 866 N.W.2d 921, 925 (Minn. 2015) (quotation omitted). Collateral estoppel, also known as issue preclusion, applies to issues previously adjudicated. *Id.* at 927. "Under this doctrine, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action." *Id.* (quotation omitted).

The requirements for res judicata and collateral estoppel are similar: (1) the issue/cause of action must be "identical to one in a prior adjudication"; (2) there must be a final judgment on the merits; (3) the estopped party must be "a party or in privity with a party"; and (4) "the estopped party was given a full and fair opportunity to be heard." *Id.* This court reviews de novo whether the doctrines of res judicata or collateral estoppel apply. *Id*. at 925. *See Loo v. Loo*, 520 N.W.2d 740, 743-44 (Minn. 1994) (noting that, while "in a technical sense" res judicata and collateral estoppel do not apply to modification motions in family cases, "the underlying principle that an adjudication on the merits of an issue is and should not be relitigated, clearly applies").

Here, the district court determined Olson's 2015 motion was predicated upon the same cause of action that he raised in 2013, which was decided at that time. We understand Olson's argument on appeal to acknowledge that Minnesota statute does not permit

retroactive modification of child support and to instead argue that the county had incorrectly determined the amount of arrearages. We conclude that Olson is not precluded from litigating this question because the district court had not previously been asked to determine the amount of child support arrearages. Thus, we move to the merits of Olson's argument.

B. Merits

In May 2015, the county sought, among other things, an "[o]rder that [Olson's] child support arrears . . . total $8,120.12." Olson disputed this amount. After a hearing, the district court determined Olson's argument failed based on the 2008 order and granted the county's motion. This court gives a district court's interpretation of its own order great weight. *LaChapelle v. Mitten*, 607 N.W.2d 151, 162 (Minn. App. 2000), *review denied* (Minn. May 16, 2000).

The 2008 order states Olson's "child support obligation is reserved for any month in which [he] is receiving public assistance." The order granted Olson's request to modify child support by suspending his child support obligation for months when Olson "*is receiving*" assistance. (Emphasis added). We agree with the district court that this language is forward-looking from the date of the order and "turns off" support for some months and not others. Given that Olson's child support obligation was terminated in 2012 and the district court meticulously reviewed the amount of arrearages incurred before that time based on the 2008 order, we conclude that the district court did not err in its decision calculating the arrearage amount and denying sanctions and contempt against the county.

II. The district court did not abuse its discretion when it denied Olson's request to modify child custody.

"If a motion for [child custody] modification has been heard, . . . no subsequent motion may be filed within two years" after a determination on the motion. Minn. Stat. § 518.18(b) (2016). The two-year limit does not apply to a modification motion if the district court determines that the child is endangered in the present living environment. Minn. Stat. § 518.18(c) (2016). "'Endangerment' implies a significant degree of danger or likely harm to the child's physical or emotional state." *Johnson-Smolak v. Fink*, 703 N.W.2d 588, 591 (Minn. App. 2005). We review a district court's denial of custody modification for abuse of discretion. *Geibe v. Geibe*, 571 N.W.2d 774, 777 (Minn. App. 1997). We note the county takes no position on this issue and mother did not file a brief either in the district court or on appeal.[1]

In August 2016, the district court denied the last of Olson's motions to modify custody because he did not establish endangerment. The district court correctly required endangerment because Olson had moved for a custody change in July 2015, less than two years before. In denying Olson's motion, the district court discredited Olson's testimony about S.O.'s education and alleged abuse by mother. On appeal, Olson argues the district court's credibility determination is erroneous. But credibility determinations are the

[1] The county's appellate brief states it has not "adopted a position" on Olson's "many motions" to address custody and parenting time following the district court's decision to award mother sole legal and physical custody of S.O. in 2006. For children like S.O., who receive public assistance under Title IV-D, the county explained its role is limited to enforcing child support after paternity and custody have been determined.

province of the factfinder and will not be disturbed on appeal. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Olson also argues the emergency motion attached to his appellate brief is prima facie evidence of child endangerment. The motion filed with Olson's brief is in the form of a verified affidavit. Olson claims to have filed his affidavit in the district court. After a careful review of the record, we conclude Olson did not file his affidavit in the district court. Thus, Olson asks us to review materials that are outside the record. Minn. R. Civ. App. P. 110.01 (providing that the record on appeal is comprised of the "documents *filed in the trial court*, the exhibits, and the transcript of the proceedings") (emphasis added)). Because the materials are not properly before this court, we do not consider them. *Stageberg v. Stageberg*, 695 N.W.2d 609, 613 (Minn. App. 2005), *review denied* (Minn. July 19, 2005). Further, the affidavit appears to repeat the same allegations that were previously rejected as not credible. Thus, even if the affidavit had been properly before the district court, we would conclude that the district court did not abuse its discretion when it denied Olson's motion to modify custody.

III. The district court did not err when it denied Olson's request for reasonable accommodations.

The state has a duty to "ensure physical and program access [to public services] for disabled persons." Minn. Stat. § 363A.12, subd. 1 (2016). "'Program access' means (1) the use of auxiliary aids or services to ensure full and equal use of or benefit from goods, services, and privileges." Minn. Stat. § 363A.03, subd. 33 (2016). "'Disability' means any condition or characteristic that renders a person a disabled person." *Id.*, subd. 12 (2016). A

disabled person is one who "(1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment." *Id.* Caselaw interpreting equal program access is limited. We note that whether a condition materially limits major life activities "is evaluated based on the plaintiff's specific circumstances." *Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 543 (Minn. 2001) (analyzing disability discrimination in employment). Similarly, we conclude that whether and how a disability limits equal program access requires a consideration of an applicant's specific circumstances.

The district court denied Olson's request for reasonable accommodations because he did not establish in what way his disability limits his participation in court proceedings. The district court reasoned that, without some evidence of Olson's disability and how it affects his access to the courts, it could not determine whether or how to provide reasonable accommodations.

We agree with the district court that Olson failed to establish whether or how his disability limits participation in court proceedings. In fact, despite Olson's claims of joint pain and difficulty using writing instruments, he has submitted lengthy documents that exceed 100 pages, as well as numerous handwritten motions, and he has participated in many court hearings. Thus, the district court did not err when it denied Olson's request for reasonable accommodations.

IV. The district court did not abuse its discretion when it determined Olson was a frivolous litigant.

On its own initiative, after providing notice and a hearing, a district court may impose restrictions on a frivolous litigant's ability to file new claims, motions, or requests. Minn. R. Gen. Pract. 9.01. A "frivolous litigant" is "[a] person who, after a claim has been finally determined against the person, repeatedly relitigates or attempts to relitigate" the validity of the judgment or any "cause of action, claim, controversy" or any other issue determined by the judgment. Minn. R. Gen. Pract. 9.06(b)(1)(i)-(ii). A person may also be considered a frivolous litigant if he or she "repeatedly serves or files frivolous motions, pleadings, [or] letters" or uses other tactics that are frivolous or intended to cause delay. Minn. R. Gen. Pract. 9.06(b)(2)-(3). In determining whether to impose sanctions on a frivolous litigant, the district court must consider seven factors.[2] Minn. R. Gen. Pract. 9.02(b)(1)-(7). The district court may also consider other relevant factors when determining whether sanctions are appropriate. *Id.* This court reviews a district court's determination that a party is a frivolous litigant for abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

[2] The seven factors are: (1) the number of claims pursued with an adverse result; (2) whether the party has a "reasonable probability" of prevailing on the claim, motion, or request; "(3) whether the claim, motion, or request was made for purposes of harassment, delay, or vexatiousness, or otherwise in bad faith"; (4) "injury incurred by other litigants" and "to the efficient administration of justice as a result of the claim, motion, or request"; (5) the "effectiveness of prior sanctions in deterring" the behavior; (6) whether "imposing sanctions will ensure adequate safeguards"; and (7) "whether less severe sanctions will sufficiently protect the rights of other litigants, the public, or the courts." Minn. R. Gen. Pract. 9.02(b)(1)-(7).

Olson argues the district court erred when it concluded he was a frivolous litigant and imposed sanctions. Olson asserts the record contains no evidence of "malintent," and his repeated filings were caused by "misunderstandings" and/or his disability. Initially, we note that the district court demonstrated great patience in addressing Olson's repeated and voluminous claims.

Olson does not challenge the district court's findings on factors one, five, six, and seven. Briefly summarized, the district court's analysis of these factors resulted in the following findings: "[a]t every step" Olson has filed "frivolous, duplicative, and vague" requests; "prior sanctions yielded few results because Olson failed to comply with court orders; additional sanctions are likely to succeed, as they appear to have worked in federal court; and, less severe sanctions will not sufficiently protect other litigants or the district court.

Keeping in mind the findings that Olson does not challenge, we address the findings that Olson disputes. Initially, Olson challenges the district court's analysis of the second factor, that there was no "reasonable probability" that Olson will prevail on his claims or motions. While Olson is correct that his child support obligation was eliminated and the amount of arrearages was reduced, both changes resulted from the county's motions and its detailed submissions, not from motions filed by Olson. The district court denied Olson's motion to forgive the child support arrearages owed to mother. Moreover, the district court accurately observed that none of Olson's many motions—other than his in forma pauperis and continuance requests—were resolved in his favor. We see no error in the district court's determinations on the second factor.

Olson next disputes the district court's determinations on the third factor, that Olson's "frequent motions [were] made for the purpose of harassment, delay, and vexatiousness." Olson repeatedly filed identical motions, which the district court decided on the merits, causing delays in his case and other cases. Olson also repeatedly violated court orders and rules and sought extensions, which he received, yet he failed to meet the extended deadlines. The district court noted Olson's repeated filings were "just for the aim of getting a different, more favorable result." We conclude that the district court's determinations on the third factor have ample support in the record.

Olson also disputes the district court's findings on the fourth factor, that his actions have injured other litigants. The record establishes Olson injured mother and the county by filing numerous identical or nearly identical motions. The district court specifically found mother and the county had been "inundated" by Olson's motions since July 2015 and Olson failed to properly serve many of his motions. Based on this record, we discern no error in the district court's conclusions on the fourth factor.

The district court appropriately observed that all parties are "entitled to due process and access to the court system," but parties "are not entitled to repeatedly and vexatiously file motion upon motion." We note that the procedural requirements that the district court imposed on Olson are similar to those the federal district court imposed on Olson. We agree with the district court that the requirements are reasonable, likely to control Olson's filings, and provide adequate access for Olson to address legitimate concerns.

Because the district court made specific findings under each factor in Minn. R. Gen. Pract. 9.02(b), and the findings are fully supported in the record, we conclude the district

court did not abuse its discretion in concluding Olson is a frivolous litigant and imposing requirements that Olson either be represented by an attorney or seek approval from a district court judge before filing further motions in Ramsey County's family court division.

Affirmed.