STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1255

Christopher Roller,
Appellant,

vs.

Wagner, Falconer & Judd, Ltd. c/o Dan Smith,
Respondent,

Alexander Gese, et al.,
Respondents,

Honorable Judge Mark Boris,
Defendant.

Filed March 15, 2011
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 27-CV-09-22812

Christopher Roller, Redwood Falls, Minnesota (pro se appellant)

Mark A. Solheim, Paula Duggan Vraa, Larson · King, LLP, St. Paul, Minnesota (for respondent Wagner, Falconer & Judd)

Richard B. Allyn, Robins, Kaplan, Miller & Ciresi L.L.P., Minneapolis, Minnesota (for respondents Alexander Gese, et al.)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Stauber, Judge.

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

KALITOWSKI, Judge

Pro se appellant Christopher Roller challenges the district court's award of summary judgment in favor of respondents, arguing that discovery was insufficient and reversal is necessary to reopen discovery. We affirm.

D E C I S I O N

Appellant commenced this action against Wagner, Falconer & Judd Ltd. (WFJ) "c/o Dan Smith via PrePaid Legal," alleging that a conflict of interest exists with WFJ and Smith, an attorney at WFJ, for declining to represent him. Appellant amended his complaint to add defendants Judge Mark Boris, Alexander Gese, and "Bosley." In his amended complaint, appellant discussed a conciliation court claim he had brought against Bosley Inc. Gese represented Bosley in that action, which Judge Boris dismissed. Appellant admitted in his amended complaint that he did not timely appeal the adverse judgment. Appellant concluded his amended complaint by stating that he is "suing WFJ, and each of the parties involved, for $1 trillion for fraud (conflict of interest), attempted murder of [appellant] by the defendants, and the molestation of [appellant's] daughter by the defendants."

Bosley, Gese, and WFJ (respondents) moved to dismiss for failure to state a claim on which relief can be granted. WFJ also moved to dismiss for insufficiency of process. The district court denied the motions to dismiss and concluded that appellant had "pleaded sufficient facts to constitute claims for breach of fiduciary duty, assault, battery and intentional infliction of emotional distress." After the close of discovery,

respondents moved for summary judgment. The district court granted the motions and dismissed the claims against WFJ with prejudice. The district court also dismissed the action against Judge Boris, stating that the court did not know who the judge was and that "[i]t does not appear he was served in this case."

I.

A district court "has wide discretion to issue discovery orders," and normally an order will not be overturned without clear abuse of that discretion. *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007). The district court may issue orders compelling discovery. Minn. R. Civ. P. 37.01. Under Minn. R. Civ. P. 56.06, a party opposing a summary-judgment motion may move the district court to deny or continue the motion because the nonmoving party should be permitted to conduct additional discovery. Here, appellant failed to ask the district court to continue the summary-judgment motion to allow for more discovery.

Appellant argues that discovery was incomplete because "[s]o far it's only been written, and [he] wish[es] to conduct oral interrogation to find out if perjury happened . . . ." The district court's scheduling order required completion of discovery by January 31, 2010, and submission of all motions by February 28, 2010. Appellant received Gese and Bosley's responses to two sets of interrogatories and his document requests before the discovery deadline. Gese also offered to answer written deposition questions before the discovery deadline, but appellant did not pursue this. Appellant submitted a motion to compel discovery, including depositions, more than one month after the motions deadline. The district court allowed appellant to serve written

deposition questions on respondents. Appellant only provided questions to WFJ, and WFJ answered the questions. In his interrogatories, appellant asked respondents, among other questions, to "[d]escribe the hatred that . . . ensues when thinking of Chris Roller," and whether they "discriminate[d] against Chris Roller because of his religious beliefs, mentality and his legal endeavors," adding, "{No direct or clear answer} . . . indicates extreme hatred toward Chris Roller's attributes."

Appellant received the discovery he timely requested. Because his additional requests did not conform to the scope of discovery allowable under Minn. R. Civ. P. 26.02 and because appellant did not request a continuance, the district court did not abuse its discretion by failing to continue respondents' summary-judgment motions to allow for additional discovery.

II.

On appeal from summary judgment, we review de novo whether a genuine issue of material fact exists and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). We view the evidence in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). A defendant is entitled to summary judgment when the record reflects a complete lack of proof on an essential element of the plaintiff's claim. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). And "[m]ere speculation, without some concrete evidence, is not enough to avoid summary judgment." *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993).

In support of their summary-judgment motions, respondents adduced evidence through an affidavit and responses to appellant's interrogatories that none of them (1) had formed an attorney-client relationship or other fiduciary relationship with appellant; (2) had threatened appellant; (3) had physical contact with appellant; (4) knew if appellant had a daughter; or (5) acted in a way so as to intentionally inflict emotional distress. Appellant did not introduce any evidence to support his claims. Consequently, the district court did not err in granting summary judgment in favor of respondents.

WFJ also raised insufficiency of process as a jurisdictional bar in its motions to dismiss and for summary judgment. "[A] civil action is commenced, and the court thereby acquires jurisdiction, when personal service upon the defendant is actually made as prescribed by statute or rule." *Doerr v. Warner*, 247 Minn. 98, 103, 76 N.W.2d 505, 511 (1956). Minnesota's rules of civil procedure require a plaintiff to serve a summons and a copy of the complaint on the defendant. Minn. R. Civ. P. 3.01-.02. Appellant filed a summons and complaint with the district court on September 10, 2009. The only affidavit of personal service on WFJ in the record is from March 16, 2010, more than five months after WFJ's initial motion to dismiss. We conclude that dismissal for lack of personal jurisdiction is proper.

The district court has wide discretion in determining whether a dismissal shall be with prejudice. *Falkenstein v. Braufman*, 251 Minn. 444, 452, 88 N.W.2d 884, 889 (1958). On this record, dismissal of appellant's claims against WFJ with prejudice was not an abuse of discretion.

Affirmed.