STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1549

Kallys Albert, Sr.,
Appellant,

vs.

Minneapolis Public Housing Authority, et al.,
Respondents,

Up Town Transfers, Inc.,
Respondent,

Minnesota Department of Revenue,
Respondent.

Filed May 23, 2011
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-CV-10-341

Kallys Albert, Minneapolis, Minnesota (pro se appellant)

Kenneth Van-Arthur Parsons, Minneapolis, Minnesota (for respondents Minneapolis Public Housing Authority, Carol Kubic, and Mary Boler)

Thomas Keith Cambre, Merrigan, Brandt, Ostenso & Cambre, Hopkins, Minnesota (for respondent Up Town Transfers)

Jeremy Daniel Eiden, St. Paul, Minnesota (for respondent department)

Considered and decided by Toussaint, Presiding Judge; Peterson, Judge; and Hudson, Judge.

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

PETERSON, Judge

In this appeal from a summary judgment for respondents, pro se appellant argues that (1) the district court improperly applied the doctrine of res judicata to bar issues that could have been raised in a prior administrative proceeding and a prior eviction action, (2) the district court judge should have recused himself because he was biased against appellant, and (3) appellant should have been granted in forma pauperis status. We affirm.

FACTS

In December 2003, respondent Minneapolis Public Housing Authority (MPHA) terminated appellant Kallys Albert, Sr.'s lease. A three-member hearing panel upheld the termination following a formal hearing. Appellant did not vacate his unit, and, in March 2004, MPHA served an eviction notice. Following a trial, the district court granted an eviction order. This court dismissed appellant's appeal on procedural grounds, the Minnesota Supreme Court denied review, and the United States Supreme Court denied certiorari.

In May 2004, MPHA executed a writ of recovery, and respondent Up Town Transfers removed appellant's property from the apartment. In July 2004, Up Town notified appellant that his property would be sold at a sheriff's sale on August 17, 2004. Appellant sent Up Town a letter stating that he had not received an inventory of his property. Up Town sent appellant an inventory and postponed the sale until September. Appellant did not appear at the sale.

MPHA reconciled appellant's tenant account and determined that he owed $2,464.25 for moving and storage fees, court and service costs, sheriff's fees, unpaid rent, and insufficient-bank-fund charges. In April 2009, MPHA submitted appellant's debt to respondent Minnesota Department of Revenue (MDR) for collection under the Minnesota Revenue Recapture Act (MRRA). Following a hearing, a two-person administrative panel[1] upheld the entire debt based on appellant's failure to present "evidence that the charges were not valid." Appellant requested a review hearing before the MPHA and was told that the MRRA does not provide for a rehearing but that he might "have appeal rights in court." Appellant then sought review in the district court. The district court concluded that the panel's decision was a quasi-judicial decision and dismissed appellant's request for review for lack of jurisdiction because no statute or appellate rule authorized a right of judicial review in the district court.

While appellant's request for review was pending, appellant brought a motion for a temporary restraining order (TRO), seeking to restrain the withholding of his tax refunds, and a motion for a change of venue. Appellant also brought a declaratory-judgment action, claiming that MPHA acted improperly in removing, storing, and selling his personal property; raising defenses to the eviction under Minn. Stat. ch. 504B (2010); claiming that MPHA made fraudulent misrepresentations to support the eviction, that the eviction and removal of his property violated his constitutional due-process rights, and that MPHA wrongfully refused to return his security deposit together with accrued

[1] The case was scheduled to be heard by a three-person panel, but one panel member recused himself because he knew appellant, and appellant agreed to proceed before a two-person panel.

interest; and claiming that submission of his debt to MDR for collection violated his constitutional due-process rights.

The district court denied appellant's motions for a TRO and change of venue as well as the parties' cross-motions for sanctions. This court dismissed appellant's appeal from the denial of the TRO on procedural grounds. In the declaratory-judgment action, the district court granted summary judgment for respondents based on its conclusion that res judicata barred appellant's claims because they could have been raised in the eviction proceeding or in the proceeding challenging submission of his debt to MDR for collection. This appeal challenging the summary judgment for respondents followed.

D E C I S I O N

On appeal from a summary judgment, appellate courts review de novo whether a genuine issue of material fact exists and whether the district court erred in applying the law; in doing so, appellate courts view the evidence in the light most favorable to the party against whom summary judgment was granted. *Peterka v. Dennis*, 764 N.W.2d 829, 832 (Minn. 2009). The district court's application of res judicata is a question of law subject to de novo review. *State v. Joseph*, 636 N.W.2d 322, 326 (Minn. 2001).

> Res judicata operates as an absolute bar to a subsequent claim when: (1) the earlier claim involved the same claim for relief; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; and (4) the estopped party had a full and fair opportunity to litigate the matter. Res judicata applies to all claims actually litigated as well as to all claims that could have been litigated in the earlier proceeding.

Id. at 327 (footnote omitted) (citation omitted).

Submission of debt to MDR

An agency acts in a quasi-judicial manner when it "hears the view of opposing sides presented in the form of written and oral testimony, examines the record and makes findings of fact." *In re Signal Delivery Serv., Inc.*, 288 N.W.2d 707, 710 (Minn. 1980). Unless provided for by ordinance or statute, jurisdiction to review such a decision rests exclusively in the court of appeals by writ of certiorari. *City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 171 (Minn. App. 2000).

Appellant admits that he received notice and an opportunity to contest the validity of the debt at an evidentiary hearing before an administrative panel. *See* Minn. Stat. §§ 270A.06 (stating that MDR "shall, upon request by a claimant agency, render assistance in the collection of any debt owing to the agency"), .03, subd. 2 (defining claimant agency to include "any public agency established by general or special law that is responsible for the administration of a low-income housing program"), .08, subd. 2(b) (requiring claimant agency to "advise the debtor of the right to contest the validity of the claim at a hearing") (2010).

The administrative panel found that the charges were valid because appellant "presented no evidence that the charges were not valid." Appellant argues, "The scanty panel decision did not state how, or why MPHA failed to investigate [appellant's] claims, and how it applied the facts against a set standard." An agency's failure to make sufficient findings does not change the nature of the agency's action. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 574 (Minn. 2000) (explaining that an agency acts in legislative capacity when its "acts affect the rights of

the public generally, unlike quasi-judicial acts which affect the rights of a few individuals analogous to the way they are affected by court proceedings"). Rather, the purpose of findings is to facilitate appellate review. *Carter v. Olmsted Cnty. Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998).

Appellant also argues that, because the district court dismissed his request for review for lack of jurisdiction, he did not receive a decision on the merits. But appellant did receive a decision on the merits by the administrative panel. Because the administrative panel acted in a quasi-judicial manner and no ordinance or statute conferred appellate jurisdiction on the district court, appellant's remedy was to file a certiorari appeal in this court within 60 days of notice of the administrative panel's decision. *See* Minn. Stat. §§ 606.01-.02 (2010) (requiring writ of certiorari to be served within 60 days of notice of decision); *see also Hickman v. Comm'r of Human Servs.*, 682 N.W.2d 697, 699 (Minn. App. 2004) (applying Minn. Stat. §§ 606.01-.02).

The fact that appellant incorrectly challenged the administrative panel's decision by seeking review in the district court, rather than by filing a certiorari appeal in this court, does not change the nature of the administrative panel's decision. When the time for filing a certiorari appeal expired, the administrative panel's decision became final, and appellant cannot now revive any claims by bringing an action in the district court. Appellant argues that the administrative panel did not conduct a sufficient investigation of his "rights" and concealed a recording of the hearing that showed that appellant presented evidence supporting his challenge to the debt. These are issues that could have

been raised in a timely certiorari appeal. The district court properly applied res judicata to bar appellant's claims relating to the submission of his debt to MDR for collection.

Because appellant has not shown that the issue whether Up Town complied with statutory procedures for selling his property is an issue that could not have been raised before the administrative panel, we cannot conclude that the district court erred in applying res judicata to bar this claim. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that error is never presumed on appeal and that party seeking reversal has burden of showing error); *see also Heinsch v. Lot 27, Block 1 For's Beach*, 399 N.W.2d 107, 109 (Minn. App. 1987) ("Pro se litigants are generally held to the same standards as attorneys.").

Eviction

Appellant notes the summary nature of an eviction proceeding. *See* Minn. Stat. § 504B.001, subd. 4 (2010) (stating that eviction is "a summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property"). Although appellant's arguments are unclear, he appears to be challenging the application of res judicata to the eviction defenses raised in the declaratory judgment action. Two defenses were statutory defenses that could have been raised in the eviction proceeding. *See* Minn. Stat. §§ 504B.285, subd. 2 (retaliation defense), .315 (restrictions on eviction due to familial status) (2010). Because those defenses could have been raised in the eviction proceeding, the district court properly applied res judicata to bar them. Appellant also cited Minn. Stat. § 504B.225 (2010), which makes it a misdemeanor for a landlord to cause the interruption of utilities with the intent to unlawfully remove a

tenant. Because appellant has not shown that the statute creates a private cause of action, we cannot conclude that the district court erred in applying res judicata to bar appellant's claim under Minn. Stat. § 504B.225.

Bias

"[T]he right to a trial before an impartial judge . . . has long been recognized by the United States Supreme Court." *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005). A violation of the constitutional right to a fair trial may constitute a "trial error" subject to harmless-error analysis or a "structural error" subject to immediate reversal. *Id.* at 252-53. But there is a strong "presumption that a judge has discharged his or her judicial duties properly." *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998).

Appellant argues that the district court was biased because it did not grant appellant's motion for a default judgment against Up Town after Up Town failed to file an answer to the declaratory-judgment action within 20 days. Up Town concedes that it did not file an answer to appellant's complaint within 20 days. Up Town explains that it understood that it was not involved in this litigation based on a conversation between Up Town's president and MPHA's attorney and based on the allegations in the complaint. Up Town filed its answer after being served with a request for admissions. The district court's denial of appellant's motion for a default judgment is insufficient to show bias. *See Riemer v. Zahn*, 420 N.W.2d 659, 661 (Minn. App. 1988) (stating that decision whether to grant relief from default judgment is within district court's discretion); *Howard v. Frondell*, 387 N.W.2d 205, 208 (Minn. App. 1986) ("It is for the [district]

court to determine whether the excuse offered by a defaulting party is reasonable."), *review denied* (Minn. July 31, 1986).

Appellant's argument that the district court judge who issued the summary-judgment order was biased because of his involvement in appellant's divorce case is without merit. The summary-judgment order indicates no bias against appellant, and appellant has failed to show any error in the district court's application of the law.

In forma pauperis

Whether to grant a motion to proceed in forma pauperis is discretionary with the district court, and its decision will not be reversed absent an abuse of that discretion. *Thompson v. St. Mary's Hosp. of Duluth*, 306 N.W.2d 560, 563 (Minn. 1981). "Any court . . . may authorize the commencement or defense of any civil action . . . without prepayment of fees . . . ." Minn. Stat. § 563.01, subd. 3 (2010). "Upon a finding by the [district] court that the action is not of a frivolous nature, the [district] court shall allow the person to proceed in forma pauperis if the affidavit is substantially in the language required . . . and is not found by the [district] court to be untrue." *Id.* Appellant has shown no abuse of discretion in the district court's denial of his request to proceed in forma pauperis.

Affirmed.