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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-559**

Minnesota/North Dakota Bricklayers Benefit Funds,  
Respondent,

vs.

All Agape Construction, LLC, et al.,  
Defendants/Debtors,  
BNM Construction, Inc.,  
Appellant.

**Filed December 19, 2011  
Affirmed  
Stoneburner, Judge**

Anoka County District Court  
File No. 02CV081035

Marcus A. Jarvis, Jarvis & Associates, P.C., Burnsville, Minnesota (for appellant)

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respondent)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and  
Worke, Judge.

**UNPUBLISHED OPINION**

**STONEBURNER**, Judge

Appellant garnishee challenges (1) a January 24, 2011 order prohibiting the  
Anoka County Court Administrator from accepting any pleadings or filings from  
appellant in the respondent garnishor's lawsuit against the judgment debtor absent prior

written judicial authorization; (2) judgment entered on February 2, 2011 pursuant to a January 31, 2011 order for entry of judgment against appellant; and (3) a March 8, 2011 order denying permission for garnishee to file Rule 60 and Rule 62 motions seeking a stay of the “judgment of [January 31, 2011]” and to set aside “Judgment/Order[s]” of October 13, 2010, January 4, 2010, January 21, 2010 and January 31, 2010.”<sup>1</sup> We affirm.

## **FACTS**

Respondent, Trustees of the Minnesota and North Dakota Bricklayers and Allied Craftworkers Fringe Benefit Funds (Bricklayers) is a judgment creditor of defendants All Agape Construction, LLC and Robert Griffin (judgment-debtor). Bricklayers served several garnishment summonses on various entities, including appellant BNM Construction, Inc., a general contractor that periodically employs judgment-debtor. BNM responded to the first garnishment summons with a timely nonearnings disclosure and was discharged. Bricklayers served additional summonses on July 31, 2010, August 19, 2010, and August 26, 2010. BNM did not respond to any of these summonses until September 15, 2010, at which time it sent a nonearnings disclosure stating that, as of September 15, 2010, BNM had no money or property of judgment-debtor. On the same date, Bricklayers moved for entry of judgment against BNM, noticing a hearing for November 5, 2010. On September 27, 2010, BNM served Bricklayers with nonearnings disclosures dated August 5, 2010, August 20, 2010, September 4, 2010, and September

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<sup>1</sup> By Order dated June 7, 2011, this court delineated the scope of BNM’s appeal, and we do not reach issues raised by BNM on appeal that are outside the scope of the appeal as defined by the order, including all of BNM’s challenges to the October 13, 2010 order.

27, 2010, despite the fact that no garnishment summonses had been served on any of those dates.

On October 13, 2010, counsel for BNM appeared at a hearing on Bricklayers' s objection to an exemption filed by a garnishee bank and objected to the proceedings, claiming that BNM was an affected party that did not receive notice of the hearing. The district court, concluding that BNM was not a party to those proceedings, denied BNM the opportunity to be heard, sustained Bricklayers' objection and ordered entry of judgment against the garnishee bank.

Counsel for BNM made several unsuccessful attempts to have the October 13, 2010 order vacated, and Bricklayers sought sanctions against BNM's attorney for frivolous motions and arguments with respect to that order. BNM then sought sanctions against Bricklayers' s counsel.

The sanction motions were heard on January 21, 2011, and resulted in two orders from the district court. The first, dated January 21, 2011, denied both parties' motions for sanctions, issued a standing order prohibiting counsel for Bricklayers and counsel for BNM from filing any future motions for sanctions related to the October 13, 2010 hearing or the November 5, 2011 hearing without prior authorization from the district court, and prohibited counsel for BNM from filing any motions or documents in the underlying action "unless and until" BNM was made a party to the action. The second order, dated January 24, 2011, references the January 21, 2010 order and directs the Anoka County Court Administrator not to accept any pleadings or filings from BNM's

attorney or schedule any hearings requested by BNM's counsel, without prior authorization from the district court.

In a January 31, 2011 order, the district court granted Bricklayers's motion (heard on November 5, 2010) for judgment against BNM on the garnishment summonses due to BNM's failure to properly respond to the garnishment summonses. Pursuant to this order, judgment was entered against BNM in the amount of \$11,765.72 on February 2, 2011.

Counsel for BNM then sought permission from the district court to file motions under Minn. R. Civ. P. 60 and 62 to stay enforcement of the judgment against it and to set aside the orders of October 13, 2010; January 3, 2011; January 21, 2011, and January 31, 2011.<sup>2</sup> The district court denied permission to file these motions in a March 8, 2011 order. This appeal followed, challenging the January 24, 2011 order restricting filings, the February 2, 2011 judgment and the March 8, 2011 order denying permission to file motions.

## D E C I S I O N

### **I. The district court did not err in granting Bricklayers' s motion for entry of judgment against BNM on its garnishment summonses.**

We first address BNM's challenge to the judgment entered on February 2, 2011. BNM argues that the district court "erred in the application of the law [to the facts] in

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<sup>2</sup> BNM's Rule 62 motion for a stay refers to the January 31, 2011 judgment, but on January 31, 2011, the district court ordered entry of judgment which was entered on February 2, 2011. The January 3, 2011 order referenced in the Rule 60 motion appears to be an order denying BNM's motion to set aside the October 13, 2010 order for entry of judgment against garnishee-bank.

many respects” in making its decision. Garnishment proceedings are governed by Minn. Stat. §§ 571.71 to .932 (2010). “Interpretation of a statute presents a question of law, which we review de novo.” *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011).

BNM first argues that the district court erred by failing to accept an exhibit at the hearing. BNM asserts that the district court erroneously found that it tried to file an affidavit, asserting that the involved document was an exhibit. But however characterized, the admission of any evidence rests within the broad discretion of the district court. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45–46 (Minn. 1997). And “[e]ntitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party’s ability to demonstrate prejudicial error.” *Id.* at 46. BNM has failed to allege or establish prejudice as a result of this evidentiary ruling, therefore, even if we were to conclude that the document should have been admitted, BNM has not established entitlement to any relief, because any error was harmless.

BNM also makes an unclear argument that it was erroneously denied the opportunity to make an oral motion at the hearing. But because BNM has failed to argue any prejudice stemming from this ruling, any possible error was harmless.

BNM’s substantive challenge to entry of judgment on the garnishment summonses appears to be that, because it timely answered the first summons and was discharged, Bricklayers could not serve additional garnishment summonses. BNM asserts that Bricklayers was “just harassing BNM with all these garnishment summons[es].” But a garnishment summons attaches only to nonexempt earnings owed or to be owed by the garnishee to the debtor within a specified time frame surrounding the service of the

garnishment summons and other nonexempt indebtedness or property due or belonging to the debtor in the possession or control of the garnishee at the time of service of the garnishment summons. Minn. Stat. § 571.73, subds. 3 (1)-(3) (2010); *Johnson v. Dutch Mill Dairy, Inc.*, 237 Minn. 117, 121, 54 N.W.2d 1, 3 (1952) (stating that it is a “well-settled principle that a garnishment impounds only those assets in possession of the garnishee at the time of the service of the garnishment summons. It does not reach assets subsequently acquired by the garnishee”). And the supreme court has rejected the argument that discharge from one garnishment summons precludes further garnishment summonses. *Peterson v. Wilson Twp.*, 672 N.W.2d 556, 562 (Minn. 2003) (concluding “that creditors are allowed to file multiple garnishment summonses against the same garnishee”).

Minn. Stat. § 571.75 subd. 1 (2010), governs garnishee disclosures and provides, in relevant part, that the garnishee shall serve a written disclosure on the creditor and debtor, within 20 days after service of a garnishment summons. And a nonearnings disclosure must describe money and property due and owing the debtor by the garnishee at the time of service of the garnishment summons. Minn. Stat. § 571.75, subd. 2 (f) (setting out the requirements of a nonearnings garnishment disclosure form).

In this case, BNM did not serve disclosures within 20 days of the garnishment summonses served on July 31 or August 19, 2010. The September 15, 2010 disclosure was served within 20 days of the August 26, 2010 garnishment summons, but disclosed information as of September 15 rather than August 26 as required by the garnishment statute. The disclosures served on September 27, 2010, were untimely and did not

reference conditions on the date of any of the garnishment summonses. The district court did not err in holding that BNM failed to meet the disclosure requirements of the garnishment statute.

Minn. Stat. § 571.82, subd. 1 (2010), provides, in relevant part, that “[i]f a garnishee fails to serve a disclosure as required in this chapter, the court may render judgment against the garnishee, upon motion by the creditor[.]” Bricklayers brought an appropriate motion for judgment and the district court granted the motion based on BNM’s failure to serve disclosures as required by the statute. BNM does not challenge the computation of the judgment entered. The district court did not err in the application of the law to the facts and did not err in granting Bricklayers’ motion for judgment.

**II. BNM has failed to establish that the district court abused its discretion by restricting filings by its counsel in this action .**

We next address BNM’s challenge to the district court’s January 24, 2011 order prohibiting the court administrator from accepting its counsel’s filings or setting hearing dates requested by its counsel in this action absent prior written authorization of the district court. This order is based on the January 21, 2011 order, ordering BNM’s counsel to refrain from filing any motions or other documents in this action or contacting the court administrator to obtain any hearing dates in this action unless and until BNM is made a party to the action. Because both parties’ motions for Rule 11 sanctions were denied, the filing sanction appears to have been issued under the district court’s inherent authority. *See* 1 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 11.11 (5th Ed. 2009) (stating that “[a] court may impose any reasonable sanction under its inherent

power to control litigation and is not confined to the use of its contempt power”); Minn. Gen. R. Prac. 9.01 (authorizing a court, on its own initiative, to impose preconditions on a frivolous litigant’s service or filing of any new claims, motions or requests).<sup>3</sup> We review a determination that a party is a frivolous litigant under an abuse-of-discretion standard. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

BNM asserts only two bases for challenging the restrictions on filing: (1) the order violates his First Amendment rights and (2) the order violates Minn. R. Prof. Cond. 5.6(b), which prohibits a lawyer from participating in an agreement in which there is a restriction on the lawyer’s right to practice. BNM makes no argument and cites no authority supporting its implied argument that a stranger to litigation has a right to file motions and documents and schedule hearings in actions to which it is not a party.

Regarding the First Amendment challenge, BNM presents no argument or authority. Counsel for BNM merely states: “I construe this order of 01/21/2011 as an infringement on my first Amendment Freedom of Speech – I am being silenced!!” We decline to address BNM’s counsel’s inadequately briefed assertion of a constitutional violation. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating that issues not briefed on appeal are waived). Similarly, other than invoking Minn. R. Prof. Cond.

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<sup>3</sup> At the January 21, 2011 hearing, the district court noted that the case “appears to be quickly spiraling out of control” and stated that the court was going to “get a handle on this litigation, maintain some control, and get some of these issues resolved.” The district court then denied both motions for sanctions and orally issued the standing order that was later reduced to writing precluding both counsel from bringing further motions for sanctions relating to the October 13, 2010 hearing and precluding BNM’s counsel from submitting anything in this action without court permission unless and until made a party to the action.



5.6(b), BNM advances no argument, analysis or authority to supports its assertion that the order violates the rule or that the district court abused its discretion, and this argument is waived also.

**III. BNM has waived any issue related to the March 8, 2011 order.**

BNM characterizes the March 8, 2011 order as a denial of its proposed Rule 60 and Rule 62 motions to stay enforcement of the judgment against it and set aside numerous orders. But the order denied permission for BNM to bring the motions in this action to which BNM has never been made a party and did not address the merits of the proposed motions. And BNM has not provided any argument or analysis or authority challenging denial of permission to bring the motions. Bricklayers argues that the order is not appealable because it is not included in the list of appealable orders in Minn. R. App. P. 103.3. Even if appealable, BNM's challenges are waived due to its failure to brief the issues. *See Melina*, 327 N.W.2d at 20.

**Affirmed.**