STATE OF MINNESOTA
IN COURT OF APPEALS
A11-999

Neng Por Yang,
Appellant,

vs.

Diane M. Hanson, et al.,
Respondents,

William C. Strait, et al.,
Respondents,

Ann Marie Holland, et al.,
Defendants,

Corey J. Ayling, et al.,
Respondents,

Kevin C. Quigley, et al.,
Respondents,

Esquire Deposition Services,
Defendant,

Neumann Reporting,
Respondent.

Filed January 30, 2012
Affirmed
Peterson, Judge

Scott County District Court
File No. 70-CV-10-26402

Neng Por Yang, Minneapolis, Minnesota (pro se appellant)

Lori A. Swanson, Attorney General, John S. Garry, Assistant Attorney General, St. Paul, Minnesota (for respondents Diane M. Hanson, et al.)

Jason M. Hiveley, Andrea B. Wing, Iverson Reuvers, Bloomington, Minnesota (for respondents William Strait, et al.)

Michael A. Klutho, Jeffrey R. Mulder, Bassford Remele, A Professional Association, Minneapolis, Minnesota (for respondents Corey J. Ayling, et al.)

Kevin C. Quigley, Hamilton, Quigley & Twait, St. Paul, Minnesota (for respondents Kevin C. Quigley, et al.)

Neumann Reporting, St. Paul, Minnesota (respondent)

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

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

PETERSON, Judge

This appeal is from judgments dismissing appellant's claims arising out of the issuance of harassment restraining orders against appellant that appellant claims were fraudulently obtained. Appellant asserts that the district court erred by (1) granting respondents' motions to dismiss without considering appellant's arguments and submissions, (2) dismissing claims against respondent-district court judges based on judicial immunity, (3) denying appellant's motions for default judgment against certain respondents and to strike pleadings, (4) imposing conditions on future filings by appellant, and (5) awarding costs to respondents. We affirm.

FACTS

Appellant Neng Por Yang met Ann Marie Holland in January 2007, when respondent Esquire Deposition Services assigned her to be the court reporter at a

deposition that appellant had scheduled in an unrelated action. After meeting Holland, appellant became convinced that Holland was not a licensed court reporter and, instead, was a government spy conducting covert surveillance of him, and he began stalking her.

Holland filed a complaint against appellant with the Shakopee Police Department and obtained a harassment restraining order (HRO) against appellant. Appellant continued to engage in the same type of conduct that resulted in the issuance of the HRO, and a second HRO was issued for a 50-year period. This court affirmed the issuance of the second HRO. *Holland v. Yang*, No. A09-2321, 2010 WL 3119485 (Minn. App. Aug. 10, 2010). During part of the HRO proceedings, Holland was represented by respondent McGrann Shea Carnival Straughn & Lamb Chartered. Respondent Corey J. Ayling is an attorney employed by McGrann Shea.

Appellant brought a lawsuit in the federal district court against several of the respondents in this case and others alleging that the HROs were issued based on false police reports, fraudulent representations, and participation in Holland's alleged identity-switch scheme. In the federal action, appellant asserted claims for violations of 42 U.S.C. § 1983, conspiracy to deprive appellant of the equal protection of the laws, false arrest, false imprisonment, malicious prosecution, defamation, negligence, aiding and abetting Holland's alleged identity-switch scheme, abuse of process, fraudulent nondisclosure, negligent and intentional infliction of emotional distress, and fraudulent procurement of a judgment. The federal district court sua sponte dismissed appellant's lawsuit as baseless and frivolous. *Yang v. City of Shakopee*, No. 09-3216, 2009 WL 5217017 (D. Minn. Dec. 30, 2009).

Yang initiated this action against McGrann Shea, Ayling, the district court judges who issued the HROs, numerous municipal employees involved in the HRO proceedings, Holland, another court reporter, and Esquire. Alleging that all of the parties participated in an identity-switch scheme perpetrated by Holland and assisted Holland in obtaining the HROs based on fraudulent allegations, appellant asserts claims for violating and conspiring to violate 42 U.S.C. § 1983, abuse of process, defamation, aiding and abetting Holland in obtaining the HROs, intentional infliction of emotional distress, negligence, and fraudulent procurement of a judgment.

Appellant filed motions for default judgment against certain respondents and to strike respondents' answers and pleadings. Respondents moved to dismiss for failure to state a claim or, alternatively, for summary judgment and for an order barring appellant from filing frivolous lawsuits. The district court dismissed the claims against the judges based on judicial immunity, denied Yang's motions as "baseless and moot," dismissed the lawsuit for failure to state a claim, granted respondents' motion for an order imposing conditions on future filings by Yang, and awarded respondents $696.40 in costs. This appeal followed. This court dismissed the appeal relating to claims against Holland, Barrick, Archer, and Esquire due to appellant's failure to properly serve the notice of appeal on those parties.

D E C I S I O N

I.

"When matters outside the pleadings are presented to a court considering a motion to dismiss, and . . . are not excluded by the court when it makes its determination, the

motion to dismiss shall be treated as one for summary judgment." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 12.02). On appeal from summary judgment, we review the record to "determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law." *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). We view the evidence in the record "in the light most favorable to the party against whom judgment was granted." *Fabio*, 504 N.W.2d at 761. A district court's grant of summary judgment will be affirmed if it can be sustained on any ground. *Horton v. Twp. of Helen*, 624 N.W.2d 591, 594 (Minn. App. 2001), *review denied* (Minn. June 19, 2001).

The district court noted that one of the grounds on which respondents sought dismissal was the application of collateral estoppel, but it did not address that doctrine in its order. "A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But an appellate court may base its decision on a theory not considered by the district court when the theory is "decisive of the entire controversy on its merits" and "there is no possible advantage or disadvantage to either party in not having had a prior ruling by the [district] court on the question." *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 687 (Minn. 1997) (quotation omitted).

Whether a claim is barred by collateral estoppel can be determined as a matter of law when the facts relevant to its application are undisputed. *Reil v. Benjamin*, 584 N.W.2d 442, 444 (Minn. App. 1998), *review denied* (Minn. Nov. 17, 1998). "The

doctrine of collateral estoppel, or issue preclusion, prohibits a party from litigating a previously adjudicated issue." *Opheim v. Cnty. of Norman*, 784 N.W.2d 90, 96 (Minn. App. 2010) (quotation omitted) (citation omitted), *review denied* (Minn. Sept. 29, 2010). For collateral estoppel to apply

> 1) the issue must be identical to one in a prior adjudication; 2) there was a final judgment on the merits; 3) the estopped party was a party or was in privity with a party to the prior adjudication; and 4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Care Inst., Inc.-Roseville v. Cnty. of Ramsey, 612 N.W.2d 443, 448 (Minn. 2000).

All of the claims in this action stem from the assertions that respondents participated in an alleged identity-switch scheme perpetrated by Holland and assisted her in obtaining the HROs based on fraudulent allegations. The assertions that Holland perpetrated an identity-switch scheme and obtained the HROs based on fraudulent allegations are the identical assertions appellant used in opposing issuance of the HROs. In affirming the issuance of the second HRO, this court stated:

> In challenging the district court's issuance of the HRO, [appellant] persists in believing his delusional version of the facts, labeling Holland's testimony "fraudulent" and "perjured." In so doing, [appellant] ignores fundamental principles relating to appellate review of a district-court decision; namely, that credibility determinations are for the fact-finder and that this court defers to a district court's factual findings unless they are clearly erroneous. The record is replete with evidence to support the issuance of the second HRO. While the first HRO was still in effect, [appellant] repeatedly contacted third parties to obtain information about Holland and claimed that she was an imposter. The third parties included her relatives and former employers, government agencies, police departments, and courts.

Holland, 2010 WL 3119485, at *3 (citations omitted). Because this court affirmed the issuance of the HROs and rejected appellant's assertions of an identity-switch scheme and fraudulent allegations, collateral estoppel bars this lawsuit as a matter of law, and the district court properly dismissed it.

II.

The United States and Minnesota Constitutions guarantee the right to due process. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. "Generally, due process requires adequate notice and a meaningful opportunity to be heard." *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 304 (Minn. App. 2007). Whether procedural due process rights have been violated is a question of law reviewed de novo. *Plocher v. Comm'r of Pub. Safety*, 681 N.W.2d 698, 702 (Minn. App. 2004).

Appellant argues that the district court deprived him of due process by rejecting his pleadings and motions without affording him an opportunity to make an argument and objections. But the due process requirement that a party be given a meaningful opportunity to be heard does not require oral argument. *See R.R. & Warehouse Comm'n v. Chi. & N.W. Ry. Co.*, 256 Minn. 227, 235, 98 N.W.2d 60, 66 (1959) (holding opportunity to be heard can be by written or oral argument). Appellant was afforded an opportunity to submit his complaint and numerous motions to the district court. The district court's dismissal of the complaint and denial of the motions were proper and did not constitute a deprivation of due process.

Appellant also argues that he did not receive a fair hearing because the district court was biased against him as shown by its support of Holland and respondents' fraud

in connection with the HRO proceedings and by its acknowledgment of Holland as a court reporter. As already discussed, this court upheld the issuance of the second HRO, finding the record "replete with evidence" supporting its issuance. *Holland*, 2010 WL 3119485, at *3. And both this court and the federal court concluded that appellant's allegations against Holland and others were without merit, this court describing them as "delusional" and the federal court describing them as "frivolous and malicious." *Id.*; *Yang*, 2009 WL 5217017, at *4-5. Because issuance of the HRO was supported by evidence in the record and because appellant's allegations against Holland and others are without merit, Yang's claim of bias fails.

III.

A judge or judicial officer cannot be held liable in a civil action for acts done in the exercise of judicial authority. *Myers v. Price*, 463 N.W.2d 773, 775 (Minn. App. 1990), *review denied* (Minn. Feb. 4, 1991). Furthermore, "[j]udicial immunity applies to determinations and acts in a judicial capacity however erroneous or by whatever motives prompted." *Id.* (quotation omitted). "If a claim is barred on immunity grounds, the governmental entity is entitled to judgment as a matter of law and dismissal is proper." *S.J.S. v. Faribault Cnty.*, 556 N.W.2d 563, 565 (Minn. App. 1996), *review denied* (Minn. Jan. 21, 1997).

Appellant argues that the HRO judges' acts were done outside the exercise of judicial authority because the judges conspired in Holland's alleged fraudulent prosecution of appellant. But this court rejected appellant's claim of fraud in affirming the issuance of the HRO, so collateral estoppel bars this claim.

Appellant also argues that judicial immunity does not apply because venue was improper. But Minnesota district courts are courts of general jurisdiction. Minn. Stat. § 484.01 (2010). And venue in civil cases is not jurisdictional. *Peterson v. Holiday Recreational Indus., Inc.*, 726 N.W.2d 499, 504 (Minn. App. 2007), *review denied* (Minn. Feb. 28, 2007). Therefore, the HRO judges acted within their judicial authority, and immunity applies.

IV.

A district court may award default judgment when a party against whom relief is sought fails to plead or otherwise defend within the required time. Minn. R. Civ. P. 55.01. The decision to grant or deny a motion for default judgment is reviewed for an abuse of discretion. *Black v. Rimmer*, 700 N.W.2d 521, 525 (Minn. App. 2005). The district court "may order any pleading not in compliance with Rule 11 stricken as sham and false, or may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Minn. R. Civ. P. 12.06.

The district court denied appellant's motions as "baseless and moot." Because appellant's claims in this lawsuit are barred by collateral estoppel, the district court properly denied default judgment. The district court properly denied the motion to strike because the allegations in the pleadings were material and pertinent to this lawsuit and supported by attached exhibits.

V.

District courts may impose preconditions on a frivolous litigant's filing of claims and motions. Minn. R. Gen. Pract. 9.01(b). The determination that a party is a frivolous litigant is reviewed for an abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

Appellant characterizes the order imposing preconditions on his filing of claims and motions as an injunction, but the order is not an injunction; therefore, the analysis applicable to an injunction does not apply. Appellant also claims that he was denied an opportunity to respond to the request for a preconditions order. Respondents requested a preconditions order in a memorandum of law supporting their motion for dismissal or summary judgment, filed in February 2011. Appellant had the opportunity to respond to the preconditions request in the memorandum he filed opposing summary judgment and at the March 17, 2011 hearing. Appellant did not provide a transcript of the hearing, so this court cannot review his claim that he was not afforded an opportunity to respond at the hearing. An appellant has the burden of providing an adequate record for review. *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995). Appellant has not shown that the district court abused its discretion in imposing preconditions on appellant's filing of claims and motions.

VI.

Minn. R. Civ. P. 54.04(b) allows a prevailing party to recover costs and disbursements by filing an application within 45 days after entry of final judgment. The other party has seven days after service of the application to file a written objection.

Minn. R. Civ. P. 54.04(c). A notice of appeal from an award of costs and disbursements must be filed within seven days after service of notice of the award and must be reviewed by a district court judge. Minn. R. Civ. P. 54.04(e). An award of costs and disbursements is reviewed for an abuse of discretion. *Illinois Farmers Ins. Co. v. Brekke Fireplace Shoppe, Inc.*, 495 N.W.2d 216, 221-22 (Minn. App. 1993).

Appellant refers to the award as one for attorney fees, but the only award was $696.40 in costs and disbursements to municipal respondents. The award is supported by respondents' application, and appellant did not object to it until he filed the notice of appeal in this court. We, therefore, affirm the award.

Affirmed.