STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0018

Elaine McDonnell Anderson, petitioner,
Respondent,

vs.

Jack Richard Anderson,
Appellant.

Filed August 27, 2012
Affirmed
Wright, Judge

Hennepin County District Court
File No. 27-FA-279957

Barbara R. Kueppers, Minneapolis, Minnesota (for respondent)

Jack Richard Anderson, Edina, Minnesota (pro se appellant)

Considered and decided by Wright, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

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

WRIGHT, Judge

In this child-custody dispute, appellant-father argues that the district court erred by denying his motion to remove the district court judge for actual prejudice and by sealing the district court file. We affirm.

FACTS

The marriage of appellant Jack Richard Anderson and respondent Elaine McDonnell Anderson, now known as Elaine McDonnell, was dissolved in October 2002. The parties subsequently entered a stipulated custody agreement that provided sole physical custody of the parties' two children to McDonnell. In October 2009, the district court granted McDonnell's motion for sole legal custody of the children. Anderson appealed the October 2009 custody order and alleged judicial prejudice and bias. We affirmed the district court's custody order and concluded that Anderson's allegation that the district court exhibited judicial prejudice or bias was without merit. *Anderson v. Anderson*, No. A09-2367, 2011 WL 205312 (Minn. App. Jan. 25, 2011) (*Anderson I*), *review denied* (Minn. Mar. 15, 2011).

While Anderson's first appeal was pending before us, Anderson moved the district court to modify his parenting time. Following a hearing, the district court issued a July 2010 order that restricted Anderson's parenting time. The district court ruled that Anderson could petition to modify his parenting time only after he satisfies certain conditions, including completion of a psychological evaluation and compliance with any recommendations of that evaluation. Subsequently, Anderson twice moved the district court to modify his parenting time. In June 2011, the district court denied the most recent motion without a hearing because the motion did not assert or demonstrate that Anderson had satisfied the conditions of the July 2010 order. Anderson appealed the July 2010 and June 2011 orders and again alleged judicial bias. *Anderson v. Anderson*, No. A11-1411,

2012 WL 1470230 (Minn. App. Apr. 30, 2012) (*Anderson II*). Concluding that Anderson's allegations of judicial bias were unfounded, we affirmed. *Id.* at *3.

On July 27, 2011, Anderson sought removal of the district court judge for actual bias. The district court issued a scheduling order that set time limits for each party's argument on the motion and denied Anderson's request for a hearing before a jury on his motion. McDonnell subsequently moved for a protective order sealing portions of the district court record. Following an October 3, 2011 hearing, the district court found that Anderson failed to demonstrate actual prejudice and denied Anderson's motion. Finding that Anderson's allegations against McDonnell are inflammatory and, if viewed by the public, may adversely affect McDonnell's employability and the children's lives, the district court granted McDonnell's motion for a protective order. Because of the substantial number of pleadings filed in this matter and the difficulties attendant to sifting through and redacting every document, the district court sealed the entire district court file. This appeal followed.

D E C I S I O N

I.

Anderson first challenges the district court's denial of his motion to remove the district court judge for actual prejudice. When seeking to remove a judge for cause, under Minn. R. Civ. P. 63.03, a party's motion must first be brought before the judge who is the subject of the motion; and if denied, the motion may be reconsidered by the chief judge. Minn. R. Gen. Pract. 106. A judge who has presided at a motion or other proceeding may not be removed absent an affirmative showing of prejudice demonstrated

by the presiding judge. Minn. R. Civ. P. 63.03. A judge who can preside fairly over the proceedings is not "required to step down upon allegations of a party which themselves may be unfair or which simply indicate dissatisfaction with the possible outcome of the litigation." *Carlson v. Carlson*, 390 N.W.2d 780, 785 (Minn. App. 1986) (quotation omitted), *review denied* (Minn. Aug. 20, 1986). Absent an abuse of discretion, we will not disturb a district court's decision to deny a motion to remove a judge for alleged bias. *Id.*

Anderson contends that the district court judge demonstrated prejudice and bias in four ways—by declining to reverse orders issued by the referee who had presided over this matter, by ordering Anderson to undergo a psychological evaluation, by ignoring Anderson's motions and evidence, and by crediting false evidence and testimony provided by McDonnell and the guardian ad litem. These allegations all relate to events that occurred before Anderson's second appeal in August 2011. Our prior decisions in this matter held that earlier determinations rejecting claims of judicial prejudice or bias are legally sound. *Anderson II*, 2012 WL 1470230, at *3; *Anderson I*, 2011 WL 205312, at *4. The law-of-the-case doctrine prohibits a party from relitigating issues—either in the district court or in a second appeal—after an appellate court has decided those issues. *Sigurdson v. Isanti Cnty.*, 448 N.W.2d 62, 66 (Minn. 1989); *cf. Wilcox v. Hedwall*, 186 Minn. 500, 501, 243 N.W. 711, 712 (1932) ("As a general rule all questions involved and which might have been raised on a former appeal are concluded by the decision on such appeal."). Therefore, our review is limited to Anderson's allegations for the period after he filed his second appeal on August 10, 2011.

Anderson asserts that the district court exhibited prejudice and bias by limiting his time to argue his motion to remove the district court judge and by preventing him from presenting his argument to a jury. A motion to remove a judge for prejudice or bias must be heard first by the judge who is the subject of the motion. Minn. R. Gen. Pract. 106. Rule 106 does not authorize the use of a jury for this type of proceeding. The Minnesota Rules of Family Court Procedure grant a district court judge discretion to limit the amount of time parties may use to present oral arguments and evidence supporting or opposing a motion. Minn. R. Fam. Ct. P. 303.03(d). The district court's scheduling order and denial of Anderson's jury request are consistent with these rules. The district court provided equal time for each party to present its oral argument. Nothing in the record even suggests that in doing so the district court demonstrated prejudice or bias.

Anderson also challenges the decision to deny his motion to remove the district court judge on the ground that it was based solely on his oral argument. The district court, he contends, did not consider the written arguments and exhibits he submitted in support of his motion. The district court's order does not address individually each example of prejudice that Anderson alleged; nor does it refer to specific documents that Anderson submitted in support of those allegations. This, however, does not demonstrate any legal deficiency in the district court's decision. At the conclusion of the October 3 hearing, the district court judge stated: "I have the Court's record. I'm going to review it. I have everyone's motion. I think I understand your respective positions completely, and I'll take it under advisement and issue an order." The district court's order reflects a well-reasoned consideration of the evidence and application of the law. *See McKenzie v.*

State, 583 N.W.2d 744, 747 (Minn. 1998) (observing that an appellate court reviewing a claim of judicial bias presumes that the judge discharged all judicial duties in a proper manner). Anderson has neither identified an error in the district court's legal conclusions nor demonstrated that the district court ignored the evidence presented.

Anderson also contends that the district court exhibited prejudice and bias by denying his motion to proceed in forma pauperis. Because Anderson moved for a waiver of transcript fees associated with the October 3 motion hearing before the district court had issued its order on that motion, the district court initially denied Anderson's motion to proceed in forma pauperis as premature. But when Anderson filed a subsequent, timely motion to proceed in forma pauperis, the district court granted the motion. Neither judicial prejudice nor bias is evident in these decisions.

We conclude on the record before us that the district court did not abuse its discretion by denying Anderson's motion to remove the district court judge. Minn. R. Civ. P. 63.03; *Carlson*, 390 N.W.2d at 785. Accordingly, Anderson is not entitled to relief on this ground.

II.

The district court sealed the district court file[1] because it found that Anderson's allegations against McDonnell were inflammatory and could adversely affect McDonnell and the parties' children. Anderson challenges the district court's decision.

[1] We are mindful that "a file may contain several 'records.'" Minn. R. Pub. Access to Recs. of Jud. Branch 3, subd. 5.

Court records are presumed public absent at least one of several enumerated exceptions. Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 1 (providing that "[a]ll case records are accessible to the public" except in limited circumstances). One exception applies to court records that are made inaccessible to the public under court rules or orders. *Id.*, subd. 1(g)(2). Minnesota Rules of Civil Procedure 26.03 grants the district court authority "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." When documents and other discovery are filed with the district court, it "is no longer bound by Minn. R. Civ. P. 26.03, and it has inherent authority to issue orders to protect the confidentiality of documents and other records." *In re GlaxoSmithKline plc*, 732 N.W.2d 257, 269 (Minn. 2007). But we consider the factors found in Minn. R. Civ. P. 26.03 and *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197 (Minn. 1986), when reviewing a decision to seal a district court file. Minn. R. Pub. Access to Recs. of Jud. Branch 4, advisory comm. cmt.-2005. We also are mindful of the common-law presumption in favor of access to civil court records. *Minneapolis Star & Tribune Co.*, 392 N.W.2d at 205. This common-law right of access also is not absolute. *Id.* A district court may deny access to court files and records if the interests supporting the denial of access outweigh the interests favoring access. *Id.* at 205-06 (recognizing that courts have supervisory power over court files and records). We review a district court's decision to restrict access to court documents for an abuse of discretion. *Id.* at 206.

The district court found that, because of the "inflammatory" nature of Anderson's allegations against McDonnell, both McDonnell and the children may be adversely

affected if the allegations are viewed by the public. Our careful review of the record supports these findings. The record includes Anderson's repeated yet unfounded allegations regarding McDonnell's health, character, and fitness as a mother. Anderson has repeatedly threatened to disseminate documents from the record that contain these allegations to numerous local, national, and international politicians, government agencies, news organizations, and religious organizations if McDonnell does not negotiate custody and parenting time with him. The district court found such threats credible, in part because Anderson previously has reported serious yet unfounded allegations against McDonnell to the authorities.

The district court also found that "the harm to the public if access were restricted is negligible." We agree. The legal dispute and the documents at issue here involve two minor children and the personal disputes of their parents. These matters implicate substantial privacy interests, but they are not matters of significant public interest. *See Minneapolis Star & Tribune Co.*, 392 N.W.2d at 206 (concluding that privacy interests of litigants and possible future intrusion into litigants' private lives outweighed public interest in settlement documents in wrongful death action against airline). The district court's decision strikes a legally sound and appropriate balance between important, competing interests. The protective order does not deny Anderson *access* to the district court file. Rather, the protective order limits Anderson's ability to *disseminate* the contents of the district court file to others.

The district court's protective order is well within its authority under its supervisory power over court files and the rules of civil procedure "to protect a party or

person from annoyance, embarrassment, oppression, or undue burden or expense." Minn. R. Civ. P. 26.03. The interests protected by limiting access to the district court file substantially outweigh those favoring public access. The district court exercised its discretion appropriately by sealing the district court file.

Affirmed.