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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1283**

Jane Doe,
Appellant,

vs.

Empire Entertainment, LLC, d/b/a The Pourhouse,
Respondent,

metroConnections, Inc.,
Defendant.

**Filed May 8, 2017
Affirmed
Rodenberg, Judge**

Hennepin County District Court
File No. 27-CV-16-4003

Peter J. Nickitas, Peter J. Nickitas Law Office, L.L.C., Minneapolis, Minnesota (for appellant)

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Considered and decided by Rodenberg, Presiding Judge; Ross, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

In this collateral-order appeal, appellant challenges the district court’s denial of her request to proceed as “Jane Doe” in this lawsuit alleging negligence, invasion of privacy,

intentional infliction of emotional distress, and negligent infliction of emotional distress. Appellant argues that the district court abused its discretion when it denied her request to proceed under a pseudonym because her claims against respondent involve matters of “utmost intimacy.” Because Minn. R. Civ. P. 10.01 requires a plaintiff to include his or her name in the title of the complaint, and because we see no abuse of any discretion the district court might have to permit noncompliance with the rule, we affirm.

FACTS

Appellant is a professional musician and entertainer, performing what she describes as “multi-genre” and “family” shows. She was hired to do a show involving Hawaiian dance for a company party on January 29, 2016. Appellant claims that, while she was changing costumes at this event, respondent Empire Entertainment LLC and defendant metroConnections Inc. permitted her image to be captured by a security camera. Appellant sued both defendants for negligence, invasion of privacy, and intentional and negligent infliction of emotional distress, seeking monetary damages. Appellant styled the original complaint under a “Jane Doe” pseudonym, and filed an affidavit with the district court in which she provided her legal name and explained that she wished to proceed under a pseudonym because of the risk of harm to her career, reputation, and relationships if it were public knowledge that she had been filmed while partially nude. Important to appellant’s claims is that none of her professional performances involve any nudity.

In response to appellant’s request to sue under a pseudonym, metroConnections Inc. moved the district court for an order denying appellant’s request and dismissing the case for insufficiency of process under Minn. R. Civ. P. 12.02(c), because appellant’s suit papers

did not identify her by name as required by Minn. R. Civ. P. 4.01, 10.01. Appellant argued to the district court that cases captioned with pseudonyms are legion within Minnesota and should be permitted in a case like hers, involving matters of “utmost intimacy.”

The district court granted, in part, the motion to dismiss for insufficiency of process. The district court denied appellant’s request to proceed under a pseudonym, directed her to amend the complaint’s caption to include appellant’s legal name, and directed appellant to use her true name in all future pleadings. The district court explained that the rules of civil procedure require appellant to use her name on the pleadings. The district court alternatively declined to exercise any discretion it might have to permit appellant to proceed by a pseudonym, concluding that the public’s interest in an open and transparent judiciary outweighed appellant’s claimed privacy interest.¹

This appeal followed.

D E C I S I O N

Appellant argues that the district court erred in denying her request to proceed under a pseudonym because it failed to consider “judicially recognized factors” favoring pseudonymity. Appellant also argues that the district court abused its discretion by concluding that appellant’s reasons for requesting permission to proceed using a pseudonym were insufficient and in characterizing her claimed privacy interest as

¹ The district court addressed other matters in the same order, but none of those other issues is raised in this appeal.

“changing clothes.”² Respondent argues that the Minnesota Rules of Civil Procedure do not permit parties to use a pseudonym in the pleadings.

We first consider whether the Minnesota Rules of Civil Procedure permit a plaintiff to proceed in an action under a pseudonym. “Construction and application of the Minnesota Rules of Civil Procedure is . . . a question of law that we review de novo.” *Eclipse Architectural Grp. v. Lam*, 814 N.W.2d 692, 696 (Minn. 2012). “If the language of a rule is plain and unambiguous, we follow the rule’s plain language.” *Gams v. Houghton*, 884 N.W.2d 611, 616 (Minn. 2016). We do not read a rule “in isolation;” rather, we read the rules “in light of one another.” *Madison Equities, Inc. v. Crockarell*, 889 N.W.2d 568, 572 (Minn. 2017).

The Minnesota Rules of Civil Procedure provide that the “summons shall state . . . the names of the parties.” Minn. R. Civ. P. 4.01. “Every pleading shall have a caption setting forth . . . the title of the action,” and “[i]n the complaint, the title of the action shall include the names of all the parties.” Minn. R. Civ. P. 10.01. “The rules applicable for captions, signing, and other matters of form of pleadings apply to all motions and other documents provided for by these rules.” Minn. R. Civ. P. 7.02(b). The plain language of these rules requires appellant, as a party to the action, to include her name in the summons and complaint.

² After oral argument, appellant filed supplemental citations to legal authorities and a memorandum responding to legal authority cited by respondent during oral argument. Respondent objected to one of appellant’s supplemental letters as violating the scope of Minn. R. Civ. App. P. 128.05. We have considered appellant’s submissions to the extent they address the specific issues raised at oral argument.

An exception to the requirement that a party be named in the pleadings is provided in Minn. R. Civ. P. 9.08. A party ignorant of the name of an opposing party, who alleges such ignorance in the pleadings, is permitted to designate that party by any name until the opposing party's true name is discovered, at which point "the action may be amended by substituting the true name." Minn. R. Civ. P. 9.08. The rule has no application here.

There are several statutes that expressly permit confidential or pseudonymous pleadings. Minn. Stat. § 145.4247 (2016) permits a district court to allow a party to proceed anonymously in certain civil actions concerning abortions, where the woman upon whom the abortion was performed or attempted does not give consent to disclosure of her name. Minn. Stat. § 145.4247, subd. 4. If there is no written consent from the woman, "anyone, other than a public official, who brings an action under [Minn. Stat. § 145.4247, subd. 1], shall do so under a pseudonym." *Id.* The recently enacted Minn. Stat. § 604.31 (2016) creates causes of action for nonconsensual dissemination of private sexual images and nonconsensual sexual solicitation, and expressly requires district courts to allow confidential filings in cases brought under the statute in order to protect the plaintiff's privacy. Minn. Stat. § 604.31, subd. 5. These statutory exceptions are not applicable to appellant's claims.

In support of her argument that the rules of civil procedure permit a party to sue under a pseudonym, appellant notes the many Minnesota civil cases that have been titled with a pseudonym. *See Doe v. Minn. State Bd. of Med. Exam'rs*, 435 N.W.2d 45 (Minn. 1989) (involving allegations of a physician's medical and sexual misconduct); *State ex rel. Doe v. Madonna*, 295 N.W.2d 356 (Minn. 1980) (involving plaintiffs who were confined

for mental illness); *Doe 76C v. Archdiocese of St. Paul & Minneapolis*, 801 N.W.2d 203, (Minn. App. 2011) (involving allegations of sexual abuse that occurred when plaintiff was a minor), *rev'd sub nom. Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150 (Minn. 2012); *Doe 43C v. Diocese of New Ulm*, 787 N.W.2d 680 (Minn. App. 2010) (involving allegations of sexual abuse); *Doe v. F.P.*, 667 N.W.2d 493 (Minn. App. 2003) (involving sexual conduct between plaintiff and priest); *review denied* (Minn. Oct. 21, 2003); *Does 1-22 v. Roman Catholic Bishop of Fall River*, 509 N.W.2d 598 (Minn. App. 1993) (involving allegations of sexual abuse). But these cases do not inform our decision because none of those cases raised on appeal the question of whether a party may sue using a pseudonym.³ *Webster v. Fall*, 266 U.S. 507, 511, 45 S. Ct. 148, 149 (1925) (“Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.”).

Unlike the Doe cases cited by appellant, this case presents a challenge to appellant’s proposed use of a pseudonym. And the language of rule 10.01 is plain and unambiguous. The rule requires that a party be identified by name unless an exception applies. No exception applies here. Therefore, “we follow the rule’s plain language.” *Gams*, 884 N.W.2d at 616. Appellant is required to provide her name in the pleadings. Although there

³ We observe, by way of dictum, that a defendant facing claims of a highly sensitive nature, brought by a plaintiff who wishes to use a pseudonym, may choose as a matter of strategy not to challenge such pseudonym use before the district court. Forcing a person to disclose her name by insisting on strict application of all rules could be viewed in some quarters and in some cases as unseemly.

have been Doe proceedings in Minnesota in the past, their existence does not “negate the plain language” of the rule. *Madison Equities, Inc.*, 889 N.W.2d at 573 n.3.

Appellant also argues that Minn. R. Civ. P. 26.03 would permit the district court to grant a request for the use of a pseudonym in the caption of the complaint. Rule 26.03 concerns discovery. It is not a rule governing the form of pleadings. It does not apply here.

Appellant argues that the rules of civil procedure should be applied so as to permit a party to proceed under a pseudonym in cases of “utmost intimacy,” arguing that the district court should have applied certain “judicially recognized factors” when it considered her request. Minnesota appellate courts have not adopted a test to be applied by district courts when considering a plaintiff’s request to proceed under a pseudonym. Appellant urges us to adopt something similar to tests used by federal courts when they are faced with a request for use of a pseudonym. She asks that we hold that the district court abused its discretion by failing to consider the federally recognized factors concerning the plaintiff’s interest in proceeding under a pseudonym.

Similar to Minnesota’s rules, the federal rules provide that “the title of the complaint must name all the parties.” Fed. R. Civ. P. 10(a). “Where the language of the Federal Rules of Civil Procedure is similar to language in the Minnesota civil procedure rules, federal cases on the issue are instructive.” *T.A. Schifsky & Sons, Inc. v. Bahr Constr., LLC*, 773 N.W.2d 783, 787 n.3 (Minn. 2009). But even where the language of a federal rule is identical to a Minnesota rule, we are not bound by federal interpretations of the federal rule. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014). Use of a pseudonym

in federal courts is “an unusual procedure,” not expressly permitted under Fed. R. Civ. P. 10(a), but is permitted by developed caselaw in “certain limited circumstances,” such as a case involving a plaintiff’s “[s]ignificant privacy interests.” *W.N.J. v. Yocom*, 257 F.3d 1171, 1172 (10th Cir. 2001) (quotations omitted).

A majority of the federal courts of appeals have expressly adopted standards that govern a district court’s discretion concerning whether to allow a plaintiff to proceed pseudonymously. *Doe v. Meglass*, 654 F.3d 404, 410 (3d Cir. 2011); *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189 (2d Cir. 2008); *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004); *Doe v. City of Chicago*, 360 F.3d 667, 669 (7th Cir. 2004); *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067-68 (9th Cir. 2000); *M.M. v. Zavaras*, 139 F.3d 798, 802-03 (10th Cir. 1998); *James v. Jacobson*, 6 F.3d 233, 242 (4th Cir. 1993); *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992); *Doe v. Stegall*, 653 F.2d 180, 185-86 (5th Cir. 1981).

The federal courts of appeals have established a balancing test that considers a plaintiff’s interest in proceeding under a pseudonym against the “public’s strong interest in an open litigation process.” *Meglass*, 654 F.3d at 408. Part of the purpose of Federal Rule of Civil Procedure 10(a)’s requirement that the complaint provide the name of the parties is “the principle that judicial proceedings, civil as well as criminal, are to be conducted in public. Identifying the parties to the proceeding is an important dimension of publicness. The people have a right to know who is using their courts.” *Doe v. Blue Cross & Blue Shield United of Wis.*, 112 F.3d 869, 872 (7th Cir. 1997) (citations omitted). But “[t]he presumption that parties’ identities are public information, and the possible

prejudice to the opposing party from concealment, can be rebutted by showing that the harm to the plaintiff . . . exceeds the likely harm from concealment.” *City of Chicago*, 360 F.3d at 669. The various federal courts of appeals that apply a balancing test agree that it guides a district court’s discretion when considering an exception to Fed. R. Civ. P. 10(a), but the circuits differ on the precise factors to be applied by a district court when weighing the claimed harm against the public’s interest. *Meglass*, 654 F.3d at 408.

Respondent argues that it is the role of the Minnesota Supreme Court and the statutory rule-making process to govern the adoption of a modification to the current rules concerning the form of pleadings. The Minnesota Supreme Court has the power to “regulate the pleadings, practice, procedure, and the forms thereof in civil actions in all courts of this state.” Minn. Stat. § 480.051 (2016). We agree that creating an exception to the requirements of Minn. R. Civ. P. 10.01 is the province of the Minnesota Supreme Court and that the “carefully structured advisory-committee process is the appropriate method for amending the Rules.” *Madison Equities, Inc.*, 889 N.W.2d at 572-73 (citing *Ginsberg v. Williams*, 270 Minn. 474, 484-85, 135 N.W.2d 213, 220-21 (1965)). Minn. R. Civ. P. 10.01 is plain and unambiguous on its face. We decline as beyond our proper role appellant’s invitation to announce a new rule of law adopting some permutation of the federal standard for a party to proceed pseudonymously.

Nevertheless, and assuming for purposes of discussion that Minnesota were to recognize an exception to the rule requiring the parties to be named in the title of the complaint as federal caselaw has developed that exception, we also conclude on this record that the district court did not abuse any discretion that it might have had. It considered the

same general factors considered by federal courts of appeals and concluded that appellant's interest in proceeding under a pseudonym did not outweigh the public's interest in open proceedings. The United States Supreme Court and the Minnesota Supreme Court have recognized a preference for open court proceedings. *Gannett Co. v. DePasquale*, 443 U.S. 368, 386 n.15, 99 S. Ct. 2898, 2908 n.15 (1979) ("For many centuries, both civil and criminal trials have traditionally been open to the public."); *In re GlaxoSmithKline PLC*, 699 N.W.2d 749, 755 (Minn. 2005) (recognizing the policy that "court proceedings and documents enjoy a presumption of openness" (quotation omitted)). The district court considered the fear and harm that appellant claimed she would suffer should her identity be disclosed to the public, and applied a balancing test similar to that used in the various federal courts of appeals. It determined that the claimed harm did not outweigh the public's interest in an open proceeding. Even if we were to adopt an exception to rule 10.01 similar to the federal exception, the district court considered the federal balancing test that appellant requested, and rejected the request in the exercise of its discretion. Appellant disagrees with the district court, but has failed to demonstrate reversible error.

Affirmed.