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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1910**

In re the Marriage of:
Maria Rothen, petitioner,
Respondent,

vs.

Jason David Rothen,
Appellant.

**Filed July 8, 2019
Affirmed in part and reversed in part
Ross, Judge**

Fillmore County District Court
File No. 23-FA-14-914

Sarah N. Palm, Law Offices of Southern Minnesota Regional Legal Services, Inc., Albert
Lea, Minnesota (for respondent)

Jason D. Rothen, Rushford, Minnesota (pro se appellant)

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

In this acrimonious child-custody dispute, the district court answered Jason and
Maria Rothen's competing contempt motions by finding Jason in contempt and restricting
his ability to file motions. Jason challenges the district court's contempt finding and its

motion-filing restriction. Because the evidence supports the district court's contempt finding, we affirm in part. But because the district court did not follow the required procedure to restrict the filing of future motions, we reverse in part.

FACTS

Jason and Maria Rothen divorced in November 2015 under a stipulated judgment granting Maria sole physical custody of their four children. In 2018 their 14-year-old daughter insisted on moving to live with Jason. During litigation, the parties agreed that Jason would take sole physical custody of that daughter. Five months later, their other daughter refused to return to Maria's home after parenting time with Jason. Maria moved the district court to order Jason to return her, and Jason moved for emergency temporary change of custody of all three children still under Maria's custody. The district court granted Maria's motion in part, denied Jason's motion, and ordered Jason to return the three younger children to Maria. Jason then filed another motion for emergency temporary change of custody as to the daughter who was refusing to return to Maria. The district court denied the motion and reiterated its order that Jason must return the three children.

Jason did not return the daughter, and Maria moved the court to hold him in contempt. Jason opposed the contempt motion and filed two of his own, alleging that Maria had improperly claimed two of the parties' children on her tax returns, failed to allow him parenting time, failed to pick up the children, spoke negatively about him to the children, entered his home without invitation, sent him obscene text messages, and failed to give him access to medical and dental records. The district court granted Maria's contempt motion in part, denied Jason's contempt motions on the grounds that they were not properly

filed and the issues raised had already been addressed, and ordered the parties to refrain from filing additional motions without the district court's prior approval.

Jason appeals.

D E C I S I O N

Jason requests that we reverse three of the district court's decisions. He argues first, and Maria agrees, that the district court improperly imposed preconditions on the ability to file motions. He also urges us to reverse the two related contempt decisions, which granted in part Maria's motion to hold him in contempt and denied his motion to hold Maria in contempt. Only Jason's filing-restriction argument supports reversal.

I

Jason argues that the district court misapplied the controlling procedural rules by imposing preconditions on his ability to file motions. We review de novo whether the district court properly applied the rules. *Smigla v. Schnell*, 547 N.W.2d 102, 104 (Minn. App. 1996). The district court may not declare a party a frivolous litigant and restrict his ability to file motions unless it first allows him to be heard on the issue, makes express findings about the offending litigation behavior, and explains why no less severe sanction is appropriate. Minn. R. Gen. Prac. 9.01, 9.02(c). A district court's failure to meet these prerequisites before restricting a party's ability to file motions requires reversal. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007). The record reveals that the district court did not allow Jason the opportunity to be heard and did not make the required findings. We therefore reverse the district court's order restricting his ability to file motions.

Maria supports Jason's appellate argument on this issue because the district court's filing restriction applies to both of them. But as the respondent on appeal, Maria can obtain relief from the district court's order restricting her ability to file motions only by filing a notice of related appeal. *See* Minn. R. Civ. App. P. 106. She has not done so. The propriety of the district court's restrictive order as applied to Maria is therefore not before us and not the subject of our reversal.

II

Jason argues that the district court erred by granting Maria's motion to hold him in contempt and by denying his motion to hold Maria in contempt. We review a district court's contempt order for an abuse of discretion. *See Erickson v. Erickson*, 385 N.W.2d 301, 304 (Minn. 1986). We will reverse factual findings underlying a contempt order only if they are clearly erroneous. *Mower Co. Human Servs. ex rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996). As we previously held in our order from December 2018, only the district court's denial of Jason's contempt motion is currently appealable.

Jason argues that the district court "ignored" the evidence he submitted bearing on his contempt motions against Maria. The district court found that Jason failed to properly file his contempt motions and that the issues Jason raised in those motions had already been decided. Family court litigants must file a certificate of settlement efforts within seven days of filing a motion. Minn. R. Gen. P. 303.03(c). Jason does not argue that he complied with this rule, and he does not dispute that the district court had already decided the issues he was raising. He argues instead that Maria *also* failed to comply with the rules when she filed her contempt motion. This argument might support the position that the district court

should not have considered Maria's motion—a position that Jason has not forwarded on appeal—but it does not serve his contention that the district court improperly denied his contempt motion. Because Jason does not argue that he complied with the procedural rules, we will not consider whether or not he did. We therefore leave undisturbed the district court's finding that Jason's motions had procedural defects.

Affirmed in part and reversed in part.