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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0530**

Christensen Law Office, PLLC,
Respondent,

vs.

Carl Green,
Appellant,

Carl E. Christensen, et al.,
Defendants.

**Filed January 13, 2020
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CV-16-7605

Carl E. Christensen, Christopher J. Wilcox, Christensen Law Office, PLLC, Minneapolis,
Minnesota (for respondent)

Carl Green, Minnetonka, Minnesota (pro se appellant)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and
Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant, a former client of respondent law firm, challenges the grant of summary judgment to the law firm on appellant's malpractice and fraud counterclaims. Appellant argues that the district court administrator erred when it rejected appellant's notice to remove the assigned district court judge based on appellant's failure to pay the filing fee. Appellant also argues that the district court erred in considering the law firm's summary judgment motion and supporting documents because they were filed after the 28-day deadline provided in Minn. R. Gen. Prac. 115.03(a). We affirm.

FACTS

In August 2015, appellant Carl Green entered into an attorney fee agreement with respondent Christensen Law Office. The agreement provided that Green would pay the attorneys an hourly rate with a retainer of \$8,500. Christensen Law represented Green in three matters. When the retainer fee was depleted, Green refused to pay the balance he owed, and Christensen Law withdrew its representation.

When Christensen Law continued to seek payment from Green, Green sued the law firm in conciliation court for fraud, malpractice, and breach of covenant of good faith and fair dealing. Christensen Law filed an affidavit stating that it had a claim against Green that arose from the same circumstances that would exceed the conciliation court's monetary jurisdiction. Accordingly, the case was removed to district court.

In May 2016, Christensen Law sued Green for breach of contract, monies for services rendered, account stated, and unjust enrichment. The next day, the district court

filed a notice of judicial assignment for the case. Green filed a notice to remove the assigned judge within the 10 days required by Minn. R. Gen. Prac. 63.03. However, Green's notice was rejected by the court administrator because he failed to pay the first-paper filing fee.

In January 2017, Green moved to dismiss Christensen Law's claims against him for lack of subject matter jurisdiction, arguing that, because Christensen Law's claims did not exceed the conciliation court's monetary limit, the matter should have been resolved in conciliation court. At a motion hearing held the next month, the district court denied Green's motion to dismiss, holding that the district court had subject matter jurisdiction.

In June 2017, the district court consolidated Green's conciliation court action with Christensen Law's breach of contract, monies for services rendered, account stated, and unjust enrichment action because the actions arose from the same circumstances. The next month, Christensen Law moved for summary judgment. After a motion hearing, the district court granted summary judgment in favor of Christensen Law on its breach of contract claim and on Green's malpractice and breach of covenant of good faith and fair dealing claim. The only remaining matter was Green's fraud claim.

On November 21, 2018, Christensen Law served a second motion for summary judgment on Green. In its motion, Christensen Law moved for summary judgment on Green's fraud claim and all claims that could have been brought in the consolidated cases. Christensen Law attempted to file its documents with the court the same day, but the filing was rejected for non-payment of the filing fee. The motion and related documents were refiled and accepted on November 23, 2018. Following a motion hearing, the district court

granted Christensen Law's summary judgment motion and dismissed Green's remaining claim with prejudice.

This appeal follows.

DECISION

I. The district court administrator did not err in rejecting Green's notice of removal.

Green argues that the district court administrator erred by rejecting his notice to remove the district court judge for failure to pay the filing fee.

Generally, this court will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Green did not raise this issue in district court. Although Green questioned the district court's authority to preside over the consolidated actions, at no time did he challenge the requirement that he pay the filing fee for his notice to remove the district court judge to be considered by the district court. Accordingly, he forfeits this assertion of error. *See id.*

Even if Green had raised the issue below, the court administrator properly rejected his notice to remove the district court judge. "Whether a removal notice complies with Minn. R. Civ. P. 63.03 is a question of law." *Citizens State Bank of Clara City v. Wallace*, 477 N.W.2d 741, 742 (Minn. App. 1991). Rule 63.03 provides that a party may file a notice to remove within ten days after receiving notice of the assigned judge. Minn. R. Civ. P. 63.03. When a removal notice is filed in compliance with rule 63.03, the case must be reassigned and any further action by the originally assigned judge is unauthorized. *McLelland v. Pierce*, 376 N.W.2d 217, 218 (Minn. 1985).

In this case, the district court filed a notice of judicial assignment on May 19, 2016. Green filed his notice to remove on May 26, 2016, within the ten days required by rule 63.03. But, Green did not pay the filing fee within the ten days required by rule 63.03. The court administrator returned Green's request in a deficiency notice stating that his notice to remove was returned because it was his first filing and therefore required a fee. Nevertheless, Green did not pay the fee for the notice to remove or file a second notice to remove.

Green argues that he should not have been required to pay a filing fee because Minnesota statutes do not require a first-paper filing fee for a notice of removal.

Minn. Stat. § 357.021, subd. 2(1) (2018) provides:

In every civil action or proceeding in said court . . . the plaintiff, petitioner, or other moving party shall pay, when the first paper is filed for that party in said action, a fee of \$285

. . . .

The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay, when the first paper is filed for that party in said action, a fee of \$285

The district court administrator may reject a filing if it is “tendered without a required filing fee.” Minn. R. Civ. P. 5.04(c)(1).

In this action, the “first paper” filed by Green was the notice to remove. The record shows that Christensen Law filed the summons and complaint on May 18, 2016, and the case was assigned to a judge the next day. On May 26, 2016, Green filed his notice to remove and did not file anything else in the matter until he filed his motion to dismiss for

lack of subject matter jurisdiction in January 2017. The court administrator properly rejected the filing because Green did not pay the filing fee required for the “first paper.” See Minn. Stat. § 357.021, subd. 2(1).

Green seems to argue that only filings similar to an answer require the first-paper fee. However, the language of the statute does not provide for an exception to the first-paper fee, except for applications for discharge of judgment. *Id.* Accordingly, Green was required to pay the first-paper fee when he filed the notice to remove, and the district court administrator did not err by rejecting his filing.

II. The district court did not err in considering Christensen Law’s summary judgment motion even though it was filed after the 28-day deadline provided in Minn. R. Gen. Prac. 115.03(a).

Green challenges the district court’s denial of his motion for untimely filing because Christensen Law’s second summary judgment motion was not filed at least 28 days prior to the hearing.

This court reviews a district court’s application of the law de novo. *Harlow v. State, Dep’t of Human Servs.*, 883 N.W.2d 561, 568 (Minn. 2016). Minn. R. Gen. Prac. 115.03(a) provides:

No motion shall be heard until the moving party pays any required motion filing fee, serves the following documents on all opposing counsel and self-represented litigants, and files the documents with the court administrator at least 28 days prior to the hearing:

- (1) Notice of motion and motion;
- (2) Proposed order;
- (3) Any affidavits and exhibits to be submitted in conjunction with the motion; and
- (4) Memorandum of law.

A district court may modify the time limits in the rules. Minn. R. Gen. Prac. 115.01(b). However, “in no event shall the motion be served less than 14 days before the time fixed for the hearing.” Minn. R. Civ. P. 56.02; *see* Minn. R. Gen. Prac. 115.01(b) (“The time limits in this rule are to provide the court adequate opportunity to prepare for and promptly rule on matters, and the court may modify the time limits . . .”). “Where a court in its discretion relaxes the timeliness rules, there is no jurisdictional defect if there is no prejudice to the parties.” *Brault v. Acceptance Indem. Ins. Co.*, 538 N.W.2d 144, 149 (Minn. App. 1995), *review denied* (Minn. Nov. 21, 1995).

The district court addressed Green’s argument that the district court should disregard Christensen Law’s motion for summary judgment because it failed to follow the 28-day requirement set out in rule 115.03(a). The district court found that Green was timely served with the summary judgment motion on November 21, 2018—28 days before the hearing. But Christensen Law’s motion was rejected for failing to pay the filing fee and the motion was refiled two days later, which fell outside the 28-day requirement. Despite this, the district court relaxed its timeliness rules because it found that Green suffered no prejudice from the shortened time period, especially because Green did not challenge the summary judgment motion on its merits.

Green does not explain to us how he was prejudiced by the district court’s decision to relax the 28-day rule. He also fails to provide any support for his assertion that he was prejudiced by the district court’s decision on Christensen Law’s summary judgment motion. Appellate courts decline to reach issues that are inadequately briefed, *State, Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997), and

this court gives “[n]o extra benefits” to pro se litigants, *State v. Seifert*, 423 N.W.2d 368, 372 (Minn. 1988), *superseded on other grounds by rule*, Minn. R. Crim. P. 28.02, subds. 5(17)–5(19). Because the district court was within its authority to relax the 28-day requirement in rule 115.03(a), and Green was not harmed by this relaxation because he failed to challenge the summary judgment motion on its merits and failed to explain how he was prejudiced, the district court did not err when it considered Christensen Law’s summary judgment motion.

Affirmed.