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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0975**

North Mill Equipment Finance, LLC,
Respondent,

vs.

Gruz Boga, LLC, Defendant and Third Party Plaintiff,
Petro Siruk, defendant and third party plaintiff,
Appellant,

vs.

Trust Capital, LLC, third party defendant,
Respondent.

**Filed May 26, 2020
Affirmed
Cochran, Judge**

Hennepin County District Court
File No. 27-CV-17-7453

George Edward Warner, Jr., Warner Law, LLC, Minneapolis, Minnesota (for respondent
North Mill Equipment Finance, LLC)

Petro Siruk, Becker, Minnesota (pro se appellant)

Daniel Austin Beckman, Abigail Anne Pettit, Gislason & Hunter, LLP, Minneapolis,
Minnesota (for respondent Trust Capital, LLC)

Considered and decided by Segal, Presiding Judge; Ross, Judge; and
Cochran, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

On appeal from final judgment, appellant-guarantor Petro Siruk challenges the district court's grant of summary judgment and various rulings made in related contempt proceedings. Appellant argues that the district court erred by (1) proceeding without "proving jurisdiction;" (2) granting the respondent-plaintiff's motion under Minn. Stat. § 565.23 (2018) for recovery of a truck; (3) holding appellant in contempt; (4) granting summary judgment when genuine issues of material fact remained; (5) denying appellant a jury trial; and (6) making clearly erroneous factual findings in its order dismissing his third-party claims under Minn. R. Civ. P. 41.02(b). We affirm.

FACTS

At the center of this dispute is a finance-lease transaction regarding a dump truck. Appellant Petro Siruk is the managing member of Gruz Boga, LLC. Gruz Boga is in the business of freight hauling and trucking. In 2016, Siruk made contact with a sales manager from Trust Capital, LLC who assisted Gruz Boga with obtaining financing to acquire a dump truck. With assistance from Trust Capital, Gruz Boga entered into a transaction with EFS Credit Trust to lease a dump truck. EFS Credit Trust purchased a dump truck from a vendor and then leased the dump truck to Gruz Boga. The lease disclaimed warranties and provided that "lessor is leasing the equipment to the lessee 'as-is.'" Siruk personally guaranteed the agreement. North Mill Equipment Finance LLC (North Mill) serviced the agreements with Gruz Boga and Siruk (collectively, the defendants).

In April 2017, North Mill sued the defendants. North Mill alleged that the defendants defaulted on their obligations by failing to make required payments under both the lease and guaranty. North Mill brought claims of breach of contract, unjust enrichment, estoppel, and breach of the duty of good faith and fair dealing.

Initially, both the defendants retained the same attorney. The defendants filed an answer that alleged that the dump truck was not in working condition. The defendants alleged that they entered into the transaction based on representations that EFS Credit Trust had inspected the dump truck and that it was in good working order. Because the dump truck was allegedly not in good working order, the defendants stopped making payments required under the lease and guaranty. The defendants asserted several affirmative defenses to North Mill's claims. They also asserted a counterclaim of civil conspiracy to commit fraud, alleging that Trust Capital's sales manager, acting as an agent of EFS Credit Trust, represented that EFS Credit Trust would inspect the dump truck and would only finance a truck that was in working condition. The defendants also brought a third-party complaint against Trust Capital, alleging that its sales manager falsely represented that EFS Credit Trust had inspected the dump truck, and asserting claims of fraud and negligent misrepresentation.

North Mill moved for an order for recovery of the dump truck prior to final judgment pursuant to Minn. Stat. sections 565.21 (2018) and 565.23. North Mill argued that, because it was likely to succeed on the merits of its underlying claims, the district court was required by law to order Siruk to return the dump truck. The district court granted the motion, ordering the defendants to disclose the location of the dump truck and authorizing the

sheriff to seize the dump truck and deliver it to North Mill. The order indicated that if the defendants did not disclose the location of the dump truck, the court would hold a show-cause hearing to determine whether the defendants should be held in contempt.

The defendants did not disclose the location of the dump truck. Consequently, the district court held a show-cause hearing. At the hearing, Siruk repeatedly refused to disclose the location of the dump truck. The district court determined that Siruk was in direct and constructive civil contempt for failing to comply with its order. The court ordered that Siruk be confined for 180 days or until he disclosed the location of the dump truck. There were several hearings in the contempt proceedings. During the course of the contempt proceedings, Siruk fired his attorney, who also represented Gruz Boga. Siruk decided to proceed pro se. Eventually, the dump truck was located and North Mill took possession of it pursuant to the district court's order.

All parties moved for summary judgment. To support its motion, North Mill submitted, among other documents, the contracts at issue and an affidavit indicating that the defendants had failed to make payments required by the contract. Trust Capital submitted an affidavit asserting that its sales manager never made a representation about the condition of the dump truck or that it would inspect to determine the condition of the truck.¹ To support his motion for summary judgment, Siruk filed a memorandum with a lengthy narrative of his dealings with Trust Capital and its sales manager. Siruk alleged

¹ The sales manager's affidavit did, however, indicate that he discussed a limited "site inspection" that would occur solely to determine "that the truck matched the information provided by the invoice." The sales manager claimed that he advised Siruk that he should find someone to "check the truck out."

that the sales manager assured him that Trust Capital would conduct a thorough inspection of the dump truck to ensure that it was in good condition. Siruk later submitted a declaration to further support his allegations that Trust Capital's sales manager had represented that the dump truck would be in good condition or inspected. Siruk claimed to be representing both himself and Gruz Boga, despite the district court's previous explanation that Gruz Boga, as a corporation, could not appear pro se.

The district court granted North Mill's motion for summary judgment on its breach-of-contract claims, dismissed the defendants' counterclaims against North Mill, and denied Trust Capital's summary judgment motion. The district court granted summary judgment on North Mill's breach-of-contract claim because there was no genuine issue of material fact that the lease and guaranty were enforceable contracts and that the defendants were in breach of their obligations. The district court dismissed the defendants' counterclaims alleging conspiracy to commit fraud because the lease specifically provided that the dump truck was being leased "as is." Moreover, the defendants provided no evidence that any employee at North Mill or EFS Credit Trust made a fraudulent representation about the condition of the dump truck—Siruk alleged only that Trust Capital employees made false representations. But the district court denied Trust Capital's motion for summary judgment because it determined that there was conflicting evidence regarding whether Trust Capital's sales manager fraudulently or negligently represented that the dump truck would be inspected and in good condition.

The defendants' third-party claims against Trust Capital proceeded to trial. Gruz Boga remained unrepresented and therefore did not appear. The only evidence that Siruk

produced at trial was Trust Capital's sales manager's testimony. But the sales manager provided no testimony that he told Siruk that the dump truck would be inspected for its condition or that it was in working order. Trust Capital moved for a directed verdict. The district court granted Trust Capital's motion and later issued a written order dismissing the defendants' claims under Minn. R. Civ. P. 41.02(b). The district court expressly found that Trust Capital did not make any representations about the condition of the dump truck.

After trial, Siruk filed a jury trial demand. He also filed a document that the district court construed as a motion to reconsider its summary judgment order relating to North Mills' claims and its post-trial order dismissing the defendants' claims. Both North Mill and Trust Capital applied for attorney's fees, costs, and disbursements.

The district court denied Siruk's posttrial motions. It entered final judgment awarding certain damages, attorney fees, and costs and disbursements to North Mill and Trust Capital.

Siruk appeals.

D E C I S I O N

Siruk's appellate brief is particularly difficult to follow. Self-represented litigants "are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001); *see also Francis v. State*, 781 N.W.2d 892, 896 (Minn. 2010) (a pro se litigant "is held to the standard of an attorney in presenting his appeal"). And while a self-represented litigant "is usually accorded some leeway in attempting to comply with court rules, he is still not relieved of the burden of, at least, adequately communicating to the court what it is he

wants accomplished and by whom.” *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987). With these standards in mind, we address the arguments that we are able to discern from Siruk’s brief. To the extent that we do not address arguments that Siruk has attempted to raise, we conclude that Siruk has failed to meet his burden of adequately communicating those arguments to this court.

We also note that Siruk relies heavily on a “CD” that is outside the record to support assertions throughout his brief. An appellate court “cannot base its decision on matters outside the record on appeal and any matters not part of the record.” *Mitterhauser v. Mitterhauser*, 399 N.W.2d 664, 667 (Minn. App. 1987). Consequently, we do not consider Siruk’s factual assertions based solely on the information that is not within the record.

Siruk appears to raise six issues: (1) whether the district court lacked personal or subject-matter jurisdiction (or failed to “prove” jurisdiction); (2) whether the district court erroneously granted North Mill’s motion for recovery of the dump truck; (3) whether the district court erred by holding Siruk in civil contempt; (4) whether the district court erred in granting summary judgment to North Mill because a genuine issue of material fact existed regarding whether North Mill represented or conspired to represent that it would inspect the truck’s condition; (5) whether the district court denied Siruk his right to a jury trial; and (6) whether the district court’s factual findings in its order dismissing Siruk’s third-party claims against Trust Capital under rule 41.02 were clearly erroneous. We address each issue in turn.

I. Jurisdiction

Siruk challenges the district court’s jurisdiction over this matter, asserting that the district court failed to “prove” jurisdiction. But Siruk does not articulate any substantive basis to support his challenge. In our review of the record, we detect no basis to question either personal jurisdiction or subject-matter jurisdiction over this matter. North Mill served its summons and complaint on Siruk and Gruz Boga, a Minnesota resident and a Minnesota corporation. *See Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008) (indicating that effective service of process establishes personal jurisdiction).² There is no doubt that the district court had subject-matter jurisdiction over this breach-of-contract dispute. *See* Minn. Stat. § 484.01, subd. 1(1) (2018) (“The district courts shall have original jurisdiction in . . . all civil actions within their respective districts.”). We find no basis to reverse the district court on the grounds that it lacked jurisdiction.

II. Order for Recovery of the Dump Truck and the Related Contempt Proceedings

Siruk raises issues relating to the order for recovery of the dump truck and the contempt proceedings. We address these issues together and conclude that the issues are moot.

² We also observe that Siruk waived any challenge to personal jurisdiction by failing to promptly raise the issue after bringing both counterclaims and a third-party complaint. *See Federal-Hoffman, Inc. v. Fackler*, 549 N.W.2d 93, 95 (Minn. App. 1996), *review denied* (Minn. Aug. 20, 1996) (“[T]o preserve a personal jurisdiction argument after asserting a counterclaim in its answer, a responding party is required to act promptly in order that the jurisdictional issue be timely decided.”).

The district court ordered the defendants to return the dump truck to North Mill under Minn. Stat. § 565.23. That statute allows a claimant to recover possession of wrongfully held property before final judgment if the claimant demonstrates, among other things, a “probability of success on the merits.” See Minn. Stat. § 565.23, subd. 3. The district court issued the order for recovery of the dump truck based on its determination that North Mill was likely to succeed on the merits of its claims. After the district court issued its order, Siruk refused to return the dump truck to North Mill or to disclose its location. Consequently, the district court held Siruk in contempt. Ultimately, North Mill came into possession of the dump truck and succeeded on the merits of its claims against Siruk.

On appeal, Siruk argues that the district court erred in concluding that North Mill was likely to succeed on the merits of its underlying claims and therefore erred in ordering recovery of the dump truck under Minn. Stat. § 565.23. He also raises a number of arguments in support of his position that the district court erred when it held him in contempt.

We will not review a contempt order if the contemnor purges himself of the contempt and the issue is moot. See *Clement v. Clement*, 204 N.W.2d 819, 819 (Minn. 1973). Siruk was released from confinement, the dump truck was located, and the district court granted summary judgment to North Mill, allowing it to take possession of the dump truck and sell it pursuant to the terms of the lease. The contempt issue is moot because Siruk was purged of the contempt and our affirmance or reversal on the contempt issue would have no impact on the merits of the controversy. See *Obermoller v. Federal*

Land Bank, 409 N.W.2d 229, 230-31 (Minn. App. 1987) (“An issue is moot . . . [w]hen the affirmance or reversal of an order made in the course of the proceeding would make no difference in respect of the controversy on the merits.” (quotation omitted)). For the same reason, Siruk’s argument that the district court made an erroneous finding in its order for recovery of the dump truck—that North Mill was likely to succeed on the merits of its claims—is also moot. North Mill was successful on the merits when it obtained summary judgment. Again, our affirmance or reversal of the order for recovery under Minn. Stat. § 525.23 would have no impact on the merits of the controversy. *See id.* We therefore do not reach the merits of these arguments.

III. Summary Judgment

Siruk challenges the district court’s order granting North Mill summary judgment. His specific arguments are unclear. But after reviewing the record, we conclude that the district court did not err in granting summary judgment.

A district court must grant summary judgment if the “movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. “We review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of law.” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). To preclude summary judgment, a genuine issue of material fact must be established by substantial evidence. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). We view the evidence in the “light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre &*

Benson, L.L.P., 644 N.W.2d 72, 76-77 (Minn. 2002). “All doubts and factual inferences must be resolved against the moving party.” *Montemayor*, 898 N.W.2d at 628 (quotation omitted). Summary judgment is “inappropriate when reasonable persons might draw different conclusions from the evidence presented.” *Id.* (quotation omitted).

The district court granted summary judgment to North Mill on its breach-of-contract claims because it determined that there was no dispute that (1) the lease and guaranty were valid, and (2) the defendants were in default of the lease and guaranty. The district court dismissed the defendants’ counterclaim against North Mill because (1) Siruk did not submit any evidence to prove that North Mill represented that the dump truck was in good condition, (2) Siruk did not submit any evidence to prove that Trust Capital was acting as an agent of North Mill when its sales manager purportedly made fraudulent representations regarding inspection and condition of the truck, and (3) the contract at issue specifically indicated that the truck was to be leased “as is,” contradicting any claim by Siruk that North Mill or EFS Credit Trust represented that the truck would be in good condition. Siruk does not identify any evidence in the summary-judgment record to undermine the district court’s determination that no genuine issues of material fact exist in connection to either North Mill’s claims against Siruk or Siruk’s counterclaims against North Mill.

Siruk raises arguments regarding conversations he had with “Krista of North Mill” and “Pam of North Mill.” “Pam” is referenced in Siruk’s summary judgment documents, but it appears that the conversations that Siruk had with “Pam” occurred after EFS Trust Capital leased the dump truck to Gruz Boga, and therefore do not support Siruk’s allegation that North Mill, which serviced the agreements with the defendants, made representations

about the truck's condition. In documents filed *after* the district court granted summary judgment, Siruk referenced a conversation he had with "Krista," alleging that "Krista" told him that North Mill does a "careful thorough inspection on the equipment before they proceed to finance." But because Siruk failed to provide evidence of his conversation with "Krista" before summary judgment, and because Siruk's discussion of his conversation with Krista is merely an assertion in a legal memorandum, we conclude that the district court correctly determined that there was no genuine issue of material fact regarding the purported representations by North Mill at the time the district court granted summary judgment. *See DLH, Inc.*, 566 N.W.2d at 71 ("[A] party resisting summary judgment must do more than rest on mere averments.").³

Siruk also makes arguments that suggest that the lease and guaranty were falsified documents. But Siruk admitted in his answer that the lease submitted by North Mill was a "true and correct copy" of the lease agreement. "Once a matter is deemed admitted, it is established for purposes for the proceeding. Any effort to submit adverse evidence on the matter or to attempt to contradict an admitted fact would be irrelevant because the issue is no longer in dispute." *In re Welfare of J.W.*, 391 N.W.2d 791, 796 (Minn. 1986). Consequently, this argument has no merit.

³ Siruk also appears to make a number of arguments relating to summary judgment in Trust Capital's favor. But the district court denied Trust Capital's motion for summary judgment.

IV. Denial of Demand for Jury Trial

Siruk contends that the district court denied him the right to a jury trial. He asserts that he demanded a jury trial during the contempt hearings. But Siruk's assertion is not supported by the record. At one of the contempt hearings, Siruk indicated that he was "more than welcome to trial by jury, if that's possible." When the district court told Siruk that, "if [the case] doesn't settle, it would go to a jury trial or a court trial," Siruk responded, "That would be great now. Any day." The district court ultimately held a court trial without objection from Siruk. Even if we construed Siruk's equivocal comments at the contempt hearing as a demand for a jury trial, Siruk waived a jury trial by willingly proceeding to a court trial without objection or comment. *See Schweich v. Ziegler, Inc.*, 463 N.W.2d 722, 728 (Minn. 1990) (indicating that failure to demand a jury trial constitutes a waiver of jury trial); *301 Clifton Place LLC v. 301 Clifton Place Condo. Ass'n*, 783 N.W.2d 551, 562 (Minn. App. 2010) (concluding that an agreement to proceed with a bench trial effectively waives the right to a jury trial).

V. Posttrial Rule 41.02 Order

Finally, Siruk makes several assertions and arguments suggesting that Trust Capital's sales manager lied at trial and is guilty of perjury. We construe these arguments as a challenge to the district court's determination, in its posttrial rule 41.02 order, that the sales manager was credible.

Rule 41.02 governs involuntary dismissal of an action or claim for failure to prosecute:

After the plaintiff has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law, the plaintiff has shown no right to relief. In an action tried by the court without a jury, the court as trier of the fact may then determine the facts and render judgment against the plaintiff If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52.01.

Minn. R. Civ. P. 41.02(b). We review the district court's dismissal of a claim with prejudice for an abuse of discretion. *See Minn. Humane Soc. v. Minn. Federated Humane Socs.*, 611 N.W.2d 587, 590 (Minn. App. 2000). Written findings in an order dismissing a claim under Rule 41.02(b) will not be set aside unless they are clearly erroneous. *Poured Concrete Founds. Inc., v. Andron, Inc.*, 507 N.W.2d 888, 891 (Minn. App. 1993), *review denied* (Minn. Jan. 27, 1994).

Siruk's arguments on this point are only directed at the district court's determination that the sales manager's trial testimony was credible. But we defer to the district court's credibility determinations. *See In re Welfare of Children of S.R.K.*, 911 N.W.2d 821, 831 (Minn. 2018). Moreover, in an attempt to demonstrate that the sales manager was dishonest at trial, Siruk relies on evidence on the "CD" that is outside the record. We do not consider evidence outside the record. *Thiele v. Stitch*, 425 N.W.2d 580, 582-83 (Minn. 1988) ("An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below."). For these reasons,

we conclude that Siruk's arguments regarding the district court's credibility determination have no merit.

The district court's findings in its rule 41.02 order are not clearly erroneous. Siruk presented no evidence at trial that Trust Capital's sales manager made any representation about the condition of the dump truck. Consequently, we determine that the district court did not abuse its discretion by dismissing Siruk's claims under rule 41.02.

In sum, we find no merit to appellant's arguments regarding the district court's exercise of jurisdiction, grant of summary judgment, alleged denial of the right to a jury trial, or rule 41.02 order findings. We conclude that Siruk's challenge to the district court's order for the return of the dump truck, and its decision to hold Siruk in contempt, are moot and we therefore do not reach the merits of those arguments. Finding no grounds to reverse the district court, we affirm.

Affirmed.