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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1304

Jerald Hammann,
Appellant,

vs.

Wells Fargo Bank NA,
Respondent.

Filed February 24, 2020
Affirmed in part and reversed in part
Bjorkman, Judge

Hennepin County District Court
File No. 27-CV-HC-16-719

Jerald Hammann, Minneapolis, Minnesota (pro se appellant)

Kristina Kaluza, Dykema Gossett PLLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Bjorkman, Judge; and Slieter, Judge.

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

BJORKMAN, Judge

Appellant challenges orders that effectively dismissed his action seeking to assert claims related to a closed housing court matter and imposed sanctions. Because appellant did not timely file his action, we affirm its dismissal. But we reverse, in part, because the law does not support the sanction awards.

FACTS

Appellant Jerald Hammann entered into a lease for residential property in Hennepin County in 2010. The property owners defaulted on their mortgage later that year, and respondent Wells Fargo initiated foreclosure proceedings. After several years of litigation, Wells Fargo recovered possession of the property in December 2015. In February 2016, Hammann commenced a lockout action against Wells Fargo, asserting claims for ouster, unlawful exclusion or removal, and breach of landlord covenants. The district court dismissed the lockout action with prejudice, and this court affirmed that decision.

On April 23, 2018, Hammann served what he describes as a supplemental complaint in the lockout action on Wells Fargo. The supplemental complaint relates to personal property Hammann lost when Wells Fargo repossessed the residential property in December 2015. Hammann alleges that he was unable to remove thousands of dollars' worth of personal property (property) before the lockout and was unable to recover it from Wells Fargo, despite his attempts to contact the bank.

On approximately June 1, 2019, Hammann attempted to electronically file the supplemental complaint in the closed lockout file. The electronic filing system twice rejected the supplemental complaint. The district court administrator indicated that the supplemental complaint was rejected first because it should have been filed as a civil case instead of a housing court case, and second because it was an "existing case." On June 13, Hammann moved the district court to compel the district court administrator to accept the supplemental complaint for filing pursuant to Minn. R. Civ. P. 5.04(c).

On June 19, the district court denied Hammann's motion as untimely and barred by res judicata. And the court deemed Hammann a frivolous litigant pursuant to Minn. R. Civ. P. 11.03(b), requiring him to pay $300 as a sanction before he could file any further motions or pleadings relating to the property. Hammann paid the sanction and requested permission to seek reconsideration of the June 19 order. The court denied the request in a July 23 order.[1] The district court determined that Hammann was essentially challenging the judgment in the lockout action and had not shown why res judicata did not bar his claims. The district court imposed an additional $500 in sanctions and stated that it may issue a show-cause order and restrict Hammann's access to district court services if he continued to make frivolous filings. Hammann appeals the two orders.[2]

D E C I S I O N

I. The district court orders are appealable.

As a preliminary matter, Wells Fargo argues that the challenged orders are not final and appealable under Minn. R. Civ. App. P. 103.03, so this court lacks jurisdiction over the appeal. The issue of appellate jurisdiction is a question of law that we review de novo. *Howard v. Svoboda*, 890 N.W.2d 111, 114 (Minn. 2017).

An appeal may be taken "from a final judgment." Minn. R. Civ. App. P. 103.03(a). "An order dismissing all claims constitutes a final judgment because it ends the litigation

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[1] A housing court referee recommended the June 19 and July 23 orders. Both orders were approved by a district court judge pursuant to Minn. Stat. § 484.013, subd. 5 (2018).

[2] In their respective appellate briefs, the parties indicate that Hammann seeks recovery of his property in a new action filed in district court on June 20, 2019.

on the merits and leaves nothing for the court to do but execute the judgment." *Woischke v. Stursberg & Fine, Inc.*, 920 N.W.2d 419, 422 (Minn. 2018). Here, the first district court order denied Hammann's motion to compel filing of his supplemental complaint and imposed a $300 sanction. The order ended the litigation on the merits because it dismissed all the claims in Hammann's supplemental complaint. Accordingly, the first order is final and appealable, and this court has jurisdiction over the appeal.

An order denying a request to bring a motion for reconsideration is not appealable. *Buhl v. State*, 922 N.W.2d 435, 442 (Minn. 2019). But the July 23 order imposed a $500 sanction on Hammann and conditioned his ability to seek further relief in court. Orders imposing sanctions are final and appealable. Minn. R. Gen. Prac. 9.05. Hammann's appeal is properly before this court.

II. Hammann's action is deemed dismissed with prejudice by operation of law.

Minn. R. Civ. P. 3.01(a) provides that a civil action is commenced "when the summons is served upon [the] defendant." But "[a]ny action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period." Minn. R. Civ. P. 5.04(a). Neither the defendant nor the court needs to take any action to effectuate rule 5.04(a); an action is deemed dismissed with prejudice by operation of law once the one-year deadline passes. *Gams v. Houghton*, 884 N.W.2d 611, 617 (Minn. 2016).

The record reveals that Hammann served his supplemental complaint on Wells Fargo on April 23, 2018. Hammann identified April 23, 2018, as the service date in the civil cover sheet he attempted to file along with the supplemental complaint.[3] Wells Fargo agrees that the complaint was served on that date. Hammann did not attempt to file the complaint with the district court until well after one year had passed. There is no evidence in the record that the parties stipulated to extend the filing period.

Because Hammann did not timely file his supplemental complaint, his action was automatically dismissed with prejudice. The district court did not err in denying his motion to compel filing.[4]

III. The district court abused its discretion by sanctioning Hammann.

By filing a pleading or written motion with a court, a self-represented litigant certifies that the pleading or motion is not being presented for an improper purpose, that the claims are warranted by existing law, and that the allegations and other factual contentions have evidentiary support. Minn. R. Civ. P. 11.02(a)-(c). A district court may sanction a litigant for violating rule 11.02. Minn. R. Civ. P. 11.03. We review a sanction award for abuse of discretion. *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011), *review denied* (Minn. Mar. 15, 2011). A district court abuses its discretion when its decision is arbitrary, based on an erroneous view of the law, or against the facts in the record. *Kalenburg v. Klein*, 847 N.W.2d 34, 41 (Minn. App. 2014).

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[3] For the first time on appeal, Hammann denies that he served the supplemental complaint on that date and points out that he did not submit an affidavit of service. We are not persuaded by Hammann's effort to create an "issue" as to the service date based on his own failure to file an affidavit of service.

[4] Because rule 5.04 compels dismissal of Hammann's action, we need not address the district court's other ground for denying his motion to compel filing.

Hammann contends that the district court violated rule 11 by imposing sanctions without providing him notice and an opportunity to be heard. We agree. Rule 11.03 provides, "If, *after notice and a reasonable opportunity to respond*, the court determines that Rule 11.02 of these rules has been violated, the court may . . . impose an appropriate sanction upon the . . . parties that have violated Rule 11.02 or are responsible for the violation." (Emphasis added.) Similarly, rule 9.01 of the General Rules of Practice for the District Courts, which addresses frivolous litigation, provides that a district court may, "on its own initiative and *after notice and hearing*," impose preconditions on a frivolous litigant's filing of new claims or motions. (Emphasis added.) Here, the district court twice imposed monetary sanctions and restrictions on Hammann's litigation rights without providing Hammann notice that it was considering doing so or the opportunity to be heard. The district court's failure to follow these required procedures constitutes abuse of discretion. *Cf. In re Rollins*, 738 N.W.2d 798, 804 (Minn. App. 2007) (citing rule 11.03 and reversing sanctions imposed under statute containing identical language when district court failed to follow the show-cause procedure). Accordingly, we reverse the portions of the challenged orders that impose monetary sanctions and limit Hammann's future ability to seek relief in district court.

Affirmed in part and reversed in part.