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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1717**

Jeremy D. Mount,
Appellant,

vs.

Allana M. Mount,
Respondent.

**Filed June 22, 2020
Affirmed
Bryan, Judge**

McLeod County District Court
File Nos. 43-CV-19-142, 43-FA-16-525, 43-FA-12-559

Jeremy D. Mount, Sandstone, Minnesota (pro se appellant)

Benjamin G. Stabenow, Gavin, Janssen & Stabenow, Ltd., Glencoe, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Reyes, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

BRYAN, Judge

Appellant argues that the district court committed the following two errors: (1) the district court dismissed appellant’s intentional-infliction-of-emotional-distress claim and (2) the district court determined that appellant’s litigation conduct justified declaring him a “frivolous litigant.” We affirm the district court’s decisions because appellant fails to

cite any legal authority to support his arguments on appeal, because appellant fails to allege facts sufficient to state a claim for intentional infliction of emotional distress, and because the district court did not abuse its discretion in declaring appellant a frivolous litigant.

FACTS

Appellant Jeremy D. Mount and Respondent Allana M. Mount were married to each other and have two children. Their marriage ended in 2014 when the district court finalized a dissolution judgment and decree. Since that time, the parties have contested various modification motions in the family court file,¹ disputed a 2016 order for protection (OFP), and litigated appellant's 2019 civil suit against respondent. In June 2019, respondent filed a motion to dismiss the civil claims against her. Respondent also asked the district court to declare appellant a frivolous litigant. The district court granted both motions, and this appeal followed.

A. Appellant's Civil Claims²

Appellant sued respondent for contempt, invasion of privacy, intentional infliction of emotional distress, defamation, and libel.³ Appellant's claim for civil contempt related

¹ The district court later awarded respondent sole physical and legal custody and restricted appellant's parenting time after appellant was sentenced to 21 years in federal prison.

² Appellant did not properly initiate his first complaint and subsequently filed and served a "second" complaint in May 2019. We only consider the May 2019 complaint.

³ The final paragraph of the complaint is titled "Malicious Persecution and Vindictive Intentions" and includes part of a statement that respondent posted on social media in 2016. This paragraph does not constitute an independent claim. The district court construed the statement as part of the intentional-infliction-of-emotional-distress claim, but dismissed appellant's claim because the two-year statute of limitations bars claims based on statements from 2016. See Minn. Stat. § 541.07(1) (2018). Appellant does not challenge the district court's application of the statute of limitations. Therefore, we do not address the statement that respondent posted on social media.

to his belief that respondent violated a variety of terms in the parties' divorce decree. Appellant's claims of invasion of privacy and defamation concerned statements respondent made to the children's medical care providers. Appellant's claims for intentional infliction of emotional distress and libel concerned a letter written by respondent to the federal judge prior to appellant's sentencing hearing. Appellant alleged that respondent's letter included false claims of sexual abuse. Although appellant attached the letter to his complaint, he did not state any facts regarding how respondent's letter caused severe emotional distress.⁴ The district court dismissed each of appellant's claims. Appellant only challenges the decision to dismiss the intentional-infliction-of-emotional-distress claim.⁵

B. Appellant's Litigation Conduct

At various points in the parties' disputes, the district court admonished appellant for his litigation conduct. For example, in an order in the OFP matter dated November 14, 2017, the district court stated that appellant had engaged in "significant abuse of the process with his multiple motions and submissions of ex parte correspondence." The district court expressed "significant concern as to [appellant's] abuse of the Court process" and informed

⁴ Appellant alleges that the conduct underlying the claims for invasion of privacy and defamation caused distress, but we must analyze each claim separately.

⁵ Appellant also makes two additional assertions on appeal. First, appellant alleges that respondent committed "obstruction of justice in [appellant's] sentencing hearing by 'fruit of a poisonous tree.'" Any argument challenging appellant's federal sentence or attempting to raise criminal charges against respondent exceeds the scope of our review, and we do not consider this argument. Second, appellant asserts that the district court judge had a conflict of interest on this case. Appellant, however, did not request removal of the judicial officer in this case, and although appellant requested that the judicial officer remove herself in the family case in April 2018, appellant did not challenge the disposition of that request. Thus, appellant forfeited this issue. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

appellant that he “shall consider himself on notice that if this abuse of the process by him continues,” the district court would “consider issuing an Order declaring him to be a frivolous litigant.” In addition, in an order in the family court case dated April 25, 2018, the district court stated that appellant had “filed a number of motions and demands, some of which had no basis whatsoever in the law (such as a demand that the Court prosecute [respondent] for criminal charges).”

After appellant brought the civil suit, respondent requested that the district court declare appellant a frivolous litigant pursuant to rule 9 of the Minnesota General Rules of Practice. The district court conducted a hearing on the motion and granted the request. In its order, the district court referenced the other case files and found that appellant’s litigation conduct in the cases met each of the three definitions of a frivolous litigant listed in the rule. *See* Minn. R. Gen. Prac. 9.06(b). In addition, the district court found that each of the seven factors listed in the rule weighed in favor of granting respondent’s motion. *See* Minn. R. Gen. Prac. 9.02(b). Specifically, the district court found that appellant had attempted to relitigate matters, such as the issuance of an OFP. Appellant filed 41 written pleadings during the two years that the OFP was in effect, including a request for a new trial four days before the OFP expired. Similarly, in the family case the district court found that appellant filed 33 pleadings, letters, and other documents over a two-year period. The district court determined that the vast majority of these requests were unsuccessful, not based in fact, and not warranted by law, such as requests to impose criminal penalties against respondent, to prosecute respondent’s lawyer, and to terminate the employment of a local agency’s domestic violence victim advocate. The district court also found that the

dismissed civil suit was a continuation of this conduct, and that the purpose of appellant's litigation conduct was to harass respondent, causing her to accrue attorney's fees and miss work to attend hearings. Moreover, the district court considered how prior sanctions did not deter appellant's conduct. For instance, in 2016 appellant was ordered to pay respondent \$937.50 in attorney's fees, yet he continued to make meritless filings. The district court also noted that appellant will be incarcerated for the next 16 years, and therefore will not be able to pay any security under rule 9. Therefore, the district court declared appellant a frivolous litigant and restricted his ability to file pleadings in the ongoing family and civil cases.⁶ Specifically, the district court required appellant to consult with an attorney or obtain permission from the district court before filing pleadings.

D E C I S I O N

I. Forfeiture

As a threshold issue, appellant cites no legal authority to support any of his arguments. Generally, we need not consider such arguments and deem them forfeited. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997); *see also, e.g., Dep't. of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address issue not adequately briefed). Although we need not address the merits of the appeal, we nevertheless proceed given the nature of the issues.

⁶ The OFP matter was closed upon expiration of the OFP in 2018.

II. Dismissal of Intentional-Infliction-of-Emotional-Distress Claim

Appellant argues that the district court erred in dismissing his intentional-infliction-of-emotional-distress claim. We conclude that the complaint did not allege sufficient facts to state a claim for intentional infliction of emotional distress.

We review de novo the district court's decision to grant a motion to dismiss, accepting the factual allegations in the complaint as true. *Sipe v. STS Mfg, Inc.*, 834 N.W.2d 683, 686 (Minn. 2013) (citation omitted). To make a viable claim for intentional infliction of emotional distress, a plaintiff must allege the following four elements: (1) that the conduct complained of was extreme and outrageous, (2) that the conduct was intentional or reckless, (3) that the conduct caused emotional distress, (4) and that the distress suffered was severe. *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 663 (Minn. 1999). To satisfy the third element, a plaintiff must allege "a causal connection between the conduct and the emotional distress," especially where the distress could have come from multiple sources. *Langeslag v. KYMN Inc.*, 664 N.W.2d 860, 869 (Minn. 2003) (determining that inconclusive medical records could not support the alleged cause of a party's emotional distress where there was medical issues from multiple sources). To satisfy the fourth element, a plaintiff must allege that he suffered distress "so severe that no reasonable person could be expected to endure it." *Wenigar v. Johnson*, 712 N.W.2d 190, 208 (Minn. App. 2006) (quoting *Cafferty v. Garcia's of Scottsdale, Inc.*, 375 N.W.2d 850, 853 (Minn. App. 1985)) (noting that courts "may look to the intensity and duration of the distress," and observing that the distress must exceed "the type that people commonly encounter and endure in their lives").

In this case, the complaint does not allege facts that can establish either the third or the fourth elements. Appellant failed to make allegations tying any distress to respondent's letter. To the extent that appellant now argues that the lengthy prison sentence caused him distress, this argument is unavailing. As noted above, where multiple sources could cause distress, a plaintiff must allege a causal connection between the emotional distress and the defendant's conduct. Although appellant attached respondent's sentencing letter to the complaint, he did not assert any facts addressing whether or how this letter influenced the federal court. In addition, appellant does not allege that as a result of respondent's letter, he suffered distress "so severe that no reasonable person could be expected to endure it." *Wenigar*, 712 N.W.2d at 208 (quotation omitted). Without more, the complaint fails to state a claim because it does not allege a causal connection between respondent's conduct and appellant's distress and because it does not allege that appellant suffered severe emotional distress.

III. Declaration of Appellant as a Frivolous Litigant

Appellant argues that the district court abused its discretion when it declared him a frivolous litigant. Because we conclude that the record supports the district court's decision to declare appellant a frivolous litigant, we affirm the district court.

On a party's motion or on its own initiative, a district court may impose restrictions on a frivolous litigant's ability to file new claims, motions, or requests. Minn. R. Gen. Prac. 9.01. A "frivolous litigant" is a person who "repeatedly relitigates or attempts to relitigate" the validity of an issue already decided, who "repeatedly serves or files frivolous motions, pleadings, [or] letters," who uses tactics that are frivolous or intended to cause

delay, or who institutes and maintains a claim that is not well grounded in fact and warranted by existing law. Minn. R. Gen. Prac. 9.06(b)(1)-(3).⁷ In determining whether to declare someone a frivolous litigant and impose sanctions, the district court must consider seven factors. Minn. R. Gen. Prac. 9.02(b).⁸ The district court may also consider other relevant factors when determining whether sanctions are appropriate. *Id.* This court reviews a district court's ultimate determination that a party is a frivolous litigant for abuse of discretion. *See Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

In this case, the record supports the district court's decision to declare appellant a frivolous litigant. During a two-year timeframe, appellant filed 41 pleadings in the OFP matter and 33 in the family court case. Many pleadings sought to relitigate the district court's previous decisions and were without any basis in fact or law, such as requests to impose criminal penalties against respondent, to prosecute respondent's lawyer, to terminate the employment of a local agency's domestic violence victim advocate, and for

⁷ In this case, the district court considered the substance of appellant's requests in three different case types, each with their own court file number. Given the definitions in rule 9.06, the district court was not precluded from considering the family case and the OFP case, even though respondent's motion was only filed in the civil matter.

⁸ Courts must consider the following seven factors: (1) the frequency and number of claims pursued by the frivolous litigant with an adverse result; (2) whether there is a reasonable probability that the frivolous litigant will prevail on the claim, motion, or request; (3) whether the claim, motion, or request was made for purposes of harassment, delay, or vexatiousness, or otherwise in bad faith; (4) injury incurred by other litigants prevailing against the frivolous litigant and to the efficient administration of justice as a result of the claim, motion, or request in question; (5) effectiveness of prior sanctions in deterring the frivolous litigant from pursuing frivolous claims; (6) the likelihood that requiring security or imposing sanctions will ensure adequate safeguards and provide means to compensate the adverse party; and (7) whether less severe sanctions will sufficiently protect the rights of other litigants, the public, or the courts. Minn. R. Gen. Prac. 9.02(b).

a new trial in the OFP matter four days before that OFP expired. In addition, the district court did not abuse its discretion in weighing the seven factors that it considered when restricting appellant's ability to file pleadings in the future. The record indicates that appellant made a high number of unsuccessful requests, resulting in adverse rulings relating to modification of custody, parenting time, the OFP, and the 2019 civil suit. Further, the district court had previously admonished appellant for filing meritless requests and abusing court process. As a result of appellant's conduct, respondent incurred costs and legal fees, and the district court's previous sanctions did not deter appellant's conduct. For these reasons and because of appellant's inability to pay any security under rule 9, the district court did not abuse its discretion when it restricted appellant's ability to file pleadings in the family case and to initiate new civil suits. Specifically, the district court required appellant to consult with an attorney or obtain permission from the district court before filing pleadings. These restrictions still permit appellant to access the court system, but also protect the rights of respondent, the public, and the courts.

Affirmed.