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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1753**

Mark R. Krampf,
Appellant,

vs.

University of Minnesota, et al.,
Respondents.

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

Carlton County District Court
File No. 09-CV-18-272

Mark R. Krampf, Moose Lake, Minnesota (pro se appellant)

Douglas R. Peterson, General Counsel, Dan Herber, Senior Associate Counsel, University
of Minnesota, Minneapolis, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Mark Krampf appeals from the district court's summary judgment
dismissing his claims against respondent University of Minnesota (the University) under
the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01-.90 (2018)
(MGDPA). Appellant argues that the district court (1) abused its discretion in denying his

motion for default judgment, (2) abused its discretion in denying his motion for an in-camera review of materials not produced by the University in response to his MGDPA request, (3) abused its discretion in denying his motion to remove the district court judge for cause, (4) erred in granting summary judgment sua sponte in favor of the University, (5) erred in denying his own motion for summary judgment, and (6) abused its discretion in denying his rule 60.02 motion. We affirm.

FACTS

On May 5, 2017, appellant submitted an MGDPA request to the University for data in the University’s possession concerning Regenerative Medicine Minnesota (RMM).¹ The next day, the University acknowledged that it received appellant’s MGDPA request and provided appellant with a receipt and tracking number. On May 18, in response to a follow-up inquiry from appellant, the University explained to appellant that his request for data was “fairly broad and involve[d] quite a bit of information.” The University stated that it was “in the process of gathering all of the relevant materials” and that “[t]hose materials [would] then have to be reviewed for private data before making them available for [appellant] to view.” The University also asked appellant if he wanted to prioritize any of the data that he had requested.

¹ Regenerative Medicine Minnesota (RMM) began in 2014 and is a “collaborative partnership between the University of Minnesota and the Mayo Clinic for regenerative medicine, clinical translation, and commercialization.” H.F. 3172, 2014 Reg. Sess., art. 1, § 4 (3rd engrossment). A principal investigator—the person who will lead the research team—submits a grant proposal to RMM, and RMM chooses which proposals to fund.

On June 15, 2017, the University provided a partial MGDPA response to appellant. The University uploaded four files with a total of 191 pages onto the University Data Request Portal and provided appellant with a link to the documents. The University also informed appellant “that he would be notified to set up an appointment to view materials when the additional documents relevant to his request [were] ready.”

In September 2017, the University “notified Principal Investigators identified in the Year 1 awarded grant application proposals that the University had received a request under the MGDPA for copies of their proposals.” The University gave the principal investigators a date by which investigators needed “to notify the University if there was any information in his/her proposal that he/she believed would fall under the ‘trade secret’ provision of the MGDPA.”

On November 17, 2017, the University received documents from the RMM program administrator. On November 22, the University notified appellant that a second set of documents was available for his inspection. The University provided appellant “several dates and times” to inspect the documents. On November 29, appellant inspected “one banker’s box containing hard copy paper documents” at the University. The box included 925 pages of documents.

In December 2017, the University notified additional principal investigators of appellant’s MGDPA request. The University requested that the investigators notify the University by December 13 of any information concerning which trade-secret claim was made under the MGDPA.

On January 22, 2018, the University received additional hard-copy documents from the RMM program administrator. In early February 2018, the University again emailed each principal investigator and asked that the investigators identify by February 15 any information that they believed would qualify as a trade secret under the MGDPA. In total, the University notified approximately 300 principal investigators of appellant's data request. About 80 of those principal investigators notified the University that their documents contained trade-secret information as set forth in the MGDPA. The University then conducted its own review of the documents that the principal investigators flagged as containing trade-secret information. The University redacted any claimed trade-secret or private educational data and "identified the redactions with the statutory criteria."

On August 10, 2018, the University notified appellant that a third set of data was ready for his review and mailed him a USB flash drive containing the information, from which the University had redacted some private educational and trade-secret data.

On October 16, the University mailed appellant a USB flash drive containing a fourth and final batch of data in response to his MGDPA request. The University again noted its redaction of private educational and trade-secret data.

Appellant Sues the University

On January 10, 2018, appellant served his summons and complaint on the University. In his complaint, appellant alleged that the University was in "willful violation" of the MGDPA and claimed damages "estimated to exceed \$50,000.00."

On February 7, 2018, appellant filed his summons and complaint with the Carlton County District Court. On February 22, the University filed its answer, dated January 20,

2018, the date on which it later claimed that it had attempted to serve appellant by United States Mail with the answer.

Appellant Moves for Default Judgment

On February 20, 2018, the same day that his complaint was docketed, appellant served a motion for default judgment on the University, arguing that the University had not served an answer.

On May 22, the University filed its response to appellant's motion for default judgment. The University asserted that it "timely served an Answer in this action on January 20, 2018." The University alleged that it had attempted to serve appellant at what turned out to be an incorrect address. The University again served its answer, which appellant acknowledged receiving.

The district court denied appellant's motion for default judgment, explaining that the University had initially used an incorrect address on the envelope containing its answer, but that the University "filed an affidavit of service indicating that their Answer on the [appellant] was served on January 30, 2018." The district court noted that appellant acknowledged in his filings that he received the University's answer on February 23, 2018. The district court found that appellant was not prejudiced by the short delay occasioned by the University's having first served its answer using an incorrect address for appellant.

Appellant Moves for In-Camera Review of Redacted Documents

On August 20, 2018, appellant informed the district court of his intent to move "for an in camera review of the government data in dispute." On October 10, appellant moved to compel compliance and for an in-camera review arguing "that many of the data

redactions applied to the RMM documents will not satisfy the rigorous definition of trade secret” in the MGDPA.

On November 13, the University filed its response to appellant’s motion for an in-camera review, arguing that appellant “fail[ed] to cite an adequate basis for the Court to invoke its right to permissive review of the University’s trade secret designations.”

At a December 20, 2018 hearing on appellant’s motion, appellant and the district court had a brief colloquy concerning appellant’s pleadings:

COURT: All right. Just before I turn to [the University], as I review this case yet again, [I wonder whether] an in camera review at this juncture [is] even appropriate[.] . . . [A]s I looked at the pleadings again, I don’t see that this is an action to compel compliance. I see this, in looking at the complaint, as an action for damages that was—so you filed an inspection request.

APPELLANT: Yes.

COURT: And then after several months of alleged noncompliance, you initiated a lawsuit for violations of the Data Practices Act.

APPELLANT: Yes.

COURT: And in your prayer for relief you’re seeking damages.

APPELLANT: Yes.

. . .

COURT: But just a second. I don’t—I don’t read yours as being an—as an action to compel compliance. You’re saying they didn’t—they’re in willful violation.

APPELLANT: Yep.

On February 20, 2019, the district court denied appellant’s motion for an in-camera review of the redacted documents. The district court found that appellant “failed to make a prima facie case that the [University] ha[d] incorrectly redacted trade secret data.”

Appellant Moves for Summary Judgment and the District Court Grants Summary Judgment for the University

On December 10, 2018, appellant filed a motion for summary judgment. On February 1, 2019, the University filed its response to appellant's motion for summary judgment. The University argued that appellant's motion should be denied and that "the Court should exercise its discretion under Minn. R. Civ. P. 56.06." On February 11, the district court heard arguments on appellant's summary judgment motion during which both parties argued at length. At the hearing, the University clarified for appellant and the district court that it did not file its own dispositive motion, but instead referenced the "the Court's ability to dismiss an action for the reasons set forth in [Minn. R. Civ. P.] 56.06."

On May 8, 2019, the district court denied appellant's motion for summary judgment and granted summary judgment in favor of the University. The district court denied appellant's motion for summary judgment because it found there to be two genuine issues of material fact precluding summary judgment in appellant's favor. The district court granted summary judgment in favor of the University, invoking its discretion to do so under Minn. R. Civ. P. 56.06. The district court concluded that appellant had "failed to show how the [MGDPA] violations caused him damage." It concluded that there remained "no issue of fact left to be decided" and that appellant was not entitled to recover damages. Judgment was entered dismissing appellant's complaint on May 9.

Appellant Moves to Remove the District Court Judge

On April 1, 2019—after the dispositive-motion hearing, but before the district court issued its order—appellant moved to remove the district court judge for cause. Appellant

argued that the district court judge's impartiality was "suspect to possible suspicion, bias, and prejudice" because her spouse was a "faculty member of the University of Minnesota." On May 3, the district court denied appellant's motion to remove for cause.

On May 16, 2019, the Chief Judge for the Sixth District affirmed the denial of appellant's motion to remove the district court judge for cause.

Appellant Moves for a New Trial and for Relief from Judgment

On May 13, 2019, appellant moved for a new trial under Minn. R. Civ. P. 59.01 and for relief from judgment under Minn. R. Civ. P. 60.02. Appellant asserted that he was eligible for relief under rule 60.02 because of surprise, fraud, and other reasons justifying relief.

On June 17, the University responded to appellant's motion for a new trial and for relief from judgment. It argued that rule 59 does not apply because there was no trial and appellant did not meet his burden with respect to any of the potential bases for his rule 60.02 motion.

The district court denied appellant's motion, concluding that there was no basis for a new trial because there was no trial. Concerning the rule 60.02 motion, the district court determined that appellant was not surprised by the district court's grant of summary judgment in favor of the University because appellant had sufficient notice of the possibility and that no fraud, misrepresentation, or other misconduct had occurred. The district court also found appellant's other arguments for relief were "essentially a rehash of his previous arguments and filings."

This appeal followed.

DECISION

I. The district court did not abuse its discretion in denying appellant's motion for default judgment.

Appellant argues that the district court abused its discretion by denying his motion for default judgment because “(1) inexcusable neglect caused the [University’s] failure to answer the summons and complaint within the 20-day timeline (M.R.C.P. 12.01); (2) [the University] never serve[d] an Answer within [the] timeframes required and; (3) [the University] fail[ed] 4/4 criteria under the *Finden*-test.”

“When a party against whom a judgment for affirmative relief is sought has failed to plea or otherwise defend within the time allowed therefor by these rules or by statute, . . . judgment by default shall be entered against that party.” Minn. R. Civ. P. 55.01. A district court’s decision to permit service or filing of a pleading after expiration of the applicable time limit is reviewed for abuse of discretion. *Coller v. Guardian Angels Roman Catholic Church of Chaska*, 294 N.W.2d 712, 715 (Minn. 1980). A district court can deny a motion for default judgment if the “defendant has a reasonable defense on the merits; defendant has a reasonable excuse for his failure to answer; defendant acted with due diligence after notice of the entry of judgment; and no substantial prejudice will result to other parties.” *Id.* This standard is essentially that enunciated in *Finden v. Klaas*, 128 N.W.2d 748, 750 (Minn. 1964), concerning the circumstances in which a judgment may properly be vacated. “All four of the *Finden* factors must be satisfied in order to justify relief under the rule.” *Nguyen v. State Farm Mut. Auto. Ins. Co.*, 558 N.W.2d 487, 490 (Minn. 1997).

The district court here determined that the “record demonstrates that [appellant] was not properly served with the [University’s] Answer until February 23, 2018, which is approximately 21 days after the answer was due.” The district court found that the University met each factor of the *Finden* test:

A review of the [University’s] Answer shows that it possesses a reasonable defense. Additionally, the [University] here did provide a reasonable excuse for their failure to file a timely complaint, namely that they served the [appellant] at his address. It was not until the date of the hearing on May 31, 2018 that the [University] first learned that the [appellant] was claiming the envelope sent was incorrectly addressed. While the [appellant] was served approximately 21 days after the Answer was due, there is no showing that this 21 day delay substantially prejudiced the [appellant] in any way.

The district court identified and examined each factor relevant to appellant’s case and to his motion for default judgment. It properly identified the applicable factors and applied them to the facts of the case before concluding that default judgment was not warranted. We agree with the district court that appellant was not prejudiced in any way by the minimal and inadvertent delay by the University in answering appellant’s complaint. Respondent clearly has a reasonable defense on the merits and acted with due diligence once its error of using the wrong address was discovered. The district court acted well within its discretion by denying appellant’s motion for default judgment.

II. The district court did not abuse its discretion in denying appellant’s motion for an in-camera review of the redacted documents.

Appellant argues that the district court improperly denied his motion for an in-camera review of the unredacted documents in order to ascertain whether the University provided him with all data to which he was entitled under his MGDPA request. Appellant

disputes that the University properly redacted the documents to protect trade-secret data. Appellant contends that the district court's ruling is incorrect because (1) "the [district court] shifted the burden of establishing a trade secret claim from the [University] to the Appellant," (2) the district court erroneously cited Minn. Stat. § 13.32 instead of Minn. Stat. § 13.37 when it denied his motion for in-camera review, and (3) the district court incorrectly concluded that appellant "made an insufficient showing that [the University] [was] incorrect in [its] redactions," that appellant "cited no case law or authority which would call into question the redactions," and that appellant's "comments do not rise to a *prima facie* showing that the [University's] determination of what material constitutes a trade secret is improper." Appellant argues that the district court judge "mis-underst[ood] the requirements of a trade-secret claim" and therefore the district court "err[ed] in the application and interpretation of the law."

Appellate courts review the denial of a motion for an in-camera review for an abuse of discretion. *State v. Evans*, 756 N.W.2d 854, 873 (Minn. 2008). "The [district] court has considerable discretion in granting or denying discovery requests." *Erickson v. MacArthur*, 414 N.W.2d 406, 407 (Minn. 1987). "Absent a clear abuse of discretion, a [district] court's decision regarding discovery will not be disturbed." *Id.* "A district court abuses its discretion when it bases its conclusions on an erroneous interpretation of the applicable law." *Fannie Mae v. Heather Apartments Ltd. P'ship*, 811 N.W.2d 596, 599 (Minn. 2012).

We see no abuse of the district court's discretion when it denied appellant's motion for an in-camera review of the unredacted documents in the University's possession. The

district court denied appellant's motion because appellant's "comments do not rise to a prima facie showing that the [University's] determination of what material constitutes a trade secret is improper." The district court explained that, in response to appellant's claims, the University detailed the process it used to decide what materials were entitled to trade-secret protection and "provided a sample of the documents that were redacted to the Court." The district court found the University's redactions to be "minimal" and noted that, "of the materials that are redacted, a substantial portion of the application remains readable and understandable." The district court explained that "approximately 32% of the applications contain[ed] redactions, or about 144 of the 456 pages of applications" provided as a sample to the district court.

In denying appellant's motion, the district court explained the relevant law:

Minnesota law provides that governmental data is presumed to be public unless there is some data classification that would classify the data as non-public. Minn. Stat. §§ 13.01 and 13.03. Information that is classified as a trade secret is considered non-public and private data, and as such, is not subject to disclosure. Minn. Stat. § 13.37, Subd. 2.

The district court then gave the definition of a trade secret as defined in Minn. Stat. § 13.37, subd. 1(c):

"Trade secret information" means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

Next, the district court correctly noted the University's duty to redact. "When a document contains both public and nonpublic information, it is appropriate to redact the protected information and release the public information." *Prairie Island Indian Cmty. v. Minn. Dept. of Pub. Safety*, 658 N.W.2d 876, 888 (Minn. App. 2003). The district court also correctly noted that the "MGDPA requires that when the government opposes the discovery of data, the court shall first decide if the data is discoverable or releasable pursuant to the rules of evidence and civil procedure." Minn. Stat. § 13.03, subd. 6. The district court concluded that "the data that the [University] seeks to protect is not discoverable as it is protected trade-secret data. The MGDPA does give the Court the option to conduct such an in-camera review, however such a review is not required." Minn. Stat. § 13.08, subd. 4.

The district court analyzed the relevant documents, caselaw, and statutes and determined that the University complied with its duty to redact nonpublic information by redacting a small amount of information considered to be trade secrets. The district court acted within its discretion when it carefully analyzed the redaction process used by the University under the applicable law and declined to conduct a further in-camera review.

III. The district court did not err in denying appellant's motion for summary judgment.

Appellant argues that the district court erred in denying his motion for summary judgment.

In denying appellant's motion, the district court explained that summary judgment was improper based on appellant's argument that the University continued to withhold documents:

[Appellant] appears to argue that [the University] continue[s] to withhold documents that he requested. However, his Motion fails to identify documents he believes are missing, other than those containing redactions. Because this Court has previously ruled that the redactions were proper, it appears [appellant] has received all responsive documents to his request made on May 5, 2017. Nevertheless, there is a factual dispute and summary judgment is not proper on this point.

The district court also explained that summary judgment was improper based on appellant's argument that the University "willfully withheld data by not promptly producing the requested documents." The district court explained that "there is a genuine issue of fact in regards to the withholding of documents."

"Appeal of a denial of a motion for summary judgment is properly taken from a subsequent judgment." *Reinhardt v. Milwaukee Mut. Ins. Co.*, 524 N.W.2d 531, 533 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995). It is questionable whether the district court's denial of appellant's summary-judgment motion is within our scope of review. *See Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 918-19 (Minn. 2009) (holding that, after a case has been tried to a jury, the earlier denial of a motion for summary judgment is not properly within the scope of review on appeal from the judgment); *Schmitz v. Rinke, Noonan, Smoley, Deter, Colombo, Wiant, Von Korff and Hobbs, Ltd.*, 783 N.W.2d 733, 744 (Minn. App. 2010), *review denied* (Minn. Sept. 21, 2010) (holding that denial of a motion for summary judgment is within the scope of review on appeal when the issue on

appeal is one of law concerning the sufficiency of expert affidavits in a legal-malpractice). We review the denial of appellant's motion for summary judgment in this instance because final judgment has been entered dismissing appellant's complaint with prejudice, and the district court's denial of appellant's motion for summary judgment rested on its conclusion that triable issues of fact remained for resolution.

The district court correctly identified two genuine issues of material fact when it denied appellant's motion for summary judgment.

Concerning the withholding of documents, the University provided appellant with over 16,500 pages of documents in four installments. Appellant received documents responsive to his request in June 2017, November 2017, August 2018, and October 2018. The University contends that it provided appellant with all of the requested data appropriate for release in response to appellant's May 2017 data request and that any data not provided is private. Appellant argues that the University did not provide all of the requested documents.

Concerning the promptness of the University's document production, appellant made his data request on May 5, 2017, and on June 15, 2017, the University uploaded its first batch of documents for appellant's inspection. The University contacted grant applicants whose data was requested and asked them to screen their materials for private information. The University conducted its own independent screening of the claims of applicants that the requested documents contained private information, made redactions where necessary, and then produced the data in installments. The University contends that

it worked as quickly as was practical. Appellant conversely argues that the University took an unreasonably long time to produce the data to him.

The district court correctly found that genuine issues of material fact exist concerning whether the University complied with the requirements of the MGDPA. It therefore did not err in denying appellant's motion for summary judgment.

Whether the University timely and fully responded to appellant's MGDPA request remains in genuine dispute. But although the district court determined that a genuine issue of material fact existed concerning whether the University complied with the MGDPA, the district court granted summary judgment in favor of the University, as discussed below, because appellant failed to produce evidence sufficient to prove that he suffered damages—the relief appellant sought under the MGDPA.

IV. The district court did not err in granting summary judgment in favor of the University.

Appellant argues that the district court improperly granted summary judgment in favor of the University. Appellant contends that he “suffered actual damages, has been injured . . . , and is aggrieved as a result of being improperly denied inspection of access to all . . . public government data requested.”

In its order, the district court explained that, as pleaded, appellant's action is for damages resulting from the claimed MGDPA violations. The district court explained that, “[e]ven if [appellant]'s allegations that [the University] violated the MGDPA are taken as true, he has failed to show how the violations caused him damage. Therefore, [appellant] cannot recover damages and there is no issue of fact left to be decided.”

“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 the law.’” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quoting *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005)). “The evidence is viewed in the light most favorable to the non-moving party.” *Lishinski v. City of Duluth*, 634 N.W.2d 456, 458 (Minn. App. 2001), *review denied* (Minn. Jan. 15, 2002). “This de novo review includes our interpretation of the MGDPA.” *Scheffler v. City of Anoka*, 890 N.W.2d 437, 443 (Minn. App. 2017), *review denied* (Minn. Apr. 26, 2017).

In the factual-allegations portion of his complaint, appellant alleged that “willful failure by [the University] to respond to the [MGDPA] request now results in this matter being brought forward . . . with hope for a speedy resolution and action to compel compliance.” But under the heading in the complaint styled as “legal claims,” appellant asserted only that the University willfully violated the MGDPA and that he is seeking damages for the University’s violations of the MGDPA under Minn. Stat. § 13.08. The complaint identified no specific injury suffered by appellant. It alleged only that the University violated the MGDPA and that appellant seeks damages as a consequence.

Under the MGDPA,

a responsible authority or government entity which violates any provisions of [chapter 13] is liable to a person . . . who suffers any damage as a result of the violation, and the person damaged . . . may bring an action against the responsible authority or government entity to cover any damages sustained, plus costs and reasonable attorney fees. In the case of a willful violation, the government entity shall, in addition, be liable to

exemplary damages of not less than \$1,000, nor more than \$15,000 for each violation.

Minn. Stat. § 13.08, subd. 1. In order to recover money damages under the MGDPA, appellant must allege and prove that he suffered damage “as a result of the violation.”

Appellant’s complaint contains no mention of the specific injury suffered by him or any other item of recoverable damages. And the summary-judgment record reveals no evidence of any damages suffered by appellant. Appellant fails to explain how he was injured or damaged, instead asserting only that he seeks “[d]amages estimated to exceed \$50,000.00 USD.”

At the hearing on his summary judgment motion, appellant explained his claimed entitlement to money damages as follows: “the [U]niversity . . . took a position to assassinate my character throughout this process. Hundreds of emails . . . are out there trying to assassinate me and my character.” Appellant asked that the district court

follow the Rules of Civil Procedure, of General Practice, to provide summary judgment to this case, to award damages, and to award the damages that are required under the Data Practices Act, and to order the University to comply with the Data Practices Act and turn over all the data requested.

Appellant further stated, “There is a damage. In violating the Data Practices Act, the University has violated my, and every other citizen’s, constitutional rights that are guaranteed under Chapter 13. And that is a damage.”

In his brief on appeal, appellant argues that he “suffered emotional distress [and] harm and suffered a loss of reputation” and that he “no longer trusts his Government and has lost faith in the judiciary.” Appellant argues that the University “engaged in

defamatory communications not only internally but also externally with outside grant reviewers and other associated individuals including [a]ppellant's colleagues." Appellant also claims on appeal:

In addition to defamatory damages, [the University] through the University of Minnesota Police Department . . . , violated Appellant's rights by improperly and illegally accessing the State of Minnesota Permit Tracking System to inquire if Appellant had a permit to carry. Appellant is injured by [the University's] actions (who are using [the University of Minnesota Police Department] as their own investigative and Gestapo-like services) and [the University of Minnesota Police Department].

It is clear from the statute that exemplary damages are only available to individuals who have suffered damages. Appellant has produced no evidence of injury or damage, and appellant points to no authority for the notion that a loss of confidence in government is compensable by money damages. Moreover, and despite appellant's multiple references to the district court and in his briefing on appeal to having been "defamed," appellant did not sue the University for defamation. The only claim referenced in appellant's complaint is a claim under the MGDPA. And, as the district court properly concluded, material fact issues remain concerning whether the University timely complied with the MGDPA, but appellant has failed to create any genuine issue of material fact concerning any injury or compensable damages suffered by him as a result of any violation that the University may have committed, despite his explicit agreement that his was an action for damages.

Appellant makes two additional arguments on appeal, one concerning the timeliness of the University's opposition to appellant's summary judgment motion and another concerning notice.

First, and concerning the timeliness of the University’s response, the district court correctly determined that the University’s response was timely. A response to a dispositive motion must be served and filed at least nine days prior to the hearing. Minn. R. Gen. Prac. 115.03(b) (2015).²

The district court set a hearing on this matter for February 11, 2019. The University filed its response to appellant’s motion on February 1, 2019, ten days before the hearing.

Second, and concerning whether appellant had adequate notice of the University’s response to his motion for summary judgment—which included the University’s invitation to the district court to consider a summary dismissal of appellant’s claims on a sua sponte basis—the district court explained that appellant “received notice of this issue when [the University] filed [its] Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment” and that appellant “had the opportunity to respond in writing and during the hearing on February 11, 2019.”

“After giving notice and a reasonable time to respond, the [district] court may . . . grant summary judgment for a nonmovant.” Minn. R. Civ. P. 56.06(a). “Unless an objecting party can show prejudice from lack of notice or other procedural irregularities, or was not afforded a meaningful opportunity to oppose summary judgment, the court’s judicious exercise of its inherent power to grant summary judgment in appropriate cases

² This rule has since been amended. *Order Promulgating Amendments to the General Rules of Practice for the District Courts*, No. ADM09-8009 (Minn. June 20, 2019). As of January 1, 2020, a party shall file their response to a motion at least 14 days before the hearing. Minn. R. Gen. Prac. 115.03(b) (2020). The prior version of the rule is cited because that was the version in effect at the time that the University’s responsive memorandum was filed.

should not be disturbed.” *Fed. Land Bank of St. Paul v. Obermoller*, 429 N.W.2d 251, 255 (Minn. App. 1988), *review denied* (Minn. Oct. 26, 1988). In summarily dismissing appellant’s complaint, the district court referenced this authority under rule 56.06(a), and specifically discussed the prospect of its doing so at the hearing on appellant’s dispositive motion.

At an earlier hearing on December 20, 2018, the district court and the parties had discussed at length the framing of appellant’s complaint and whether appellant must plead and prove damages in order to recover money damages under the MGDPA. The University, in opposing appellant’s motion for summary judgment, further outlined its argument concerning the need for proof of damages in an action as appellant framed the issues in his complaint, and it implored the district court to exercise its discretion to dismiss appellant’s complaint under Minn. R. Civ. P. 56.06. On February 11, 2019, the district court held a motion hearing on appellant’s summary judgment motion. At the hearing, appellant argued his motion and asked clarifying questions about the University’s motion. The University clarified, at appellant’s direction, that it filed only a response to appellant’s motion for summary judgment. The University explained that its response referenced the district court’s ability to use its discretion under Minn. R. Civ. P. 56.06 to summarily dismiss appellant’s complaint based on the record as constituted. The University also reiterated its argument concerning the insufficiency of appellant’s claim for damages.

Appellant had a meaningful opportunity to oppose the University’s arguments based both on the University’s written response and its arguments at the summary judgment motion hearing. He did so in his presentation to the district court in response to the

University's request that the district court exercise its discretion under Minn. R. Civ. P. 56.06. The question of whether appellant had pleaded and produced evidence of damages was raised in the University's response to appellant's dispositive motion and was further clarified and discussed at length at the motion hearing. Appellant was not prejudiced by the district court's summary judgment ruling.³

V. The district court did not abuse its discretion in denying appellant's motion to remove the district court judge for cause.

Appellant also argues on appeal that the district court erred by denying his motion to remove the district court judge for cause and that the Chief Judge of the Sixth Judicial District further erred by affirming the denial of his motion to remove.

"A motion to remove for cause is committed to the discretion of the [district] court and this court will reverse only for an abuse of that discretion." *Hooper v. State*, 680 N.W.2d 89, 93 (Minn. 2004). "While removal is warranted when the judge's impartiality

³ Our conclusion is limited to the facts of this particular case, wherein the parties sparred and parried at multiple hearings concerning whether damages are recoverable for every MGDPA violation or whether a claimant must plead and prove damages in order to recover money damages under Minn. Stat. § 13.08, subd. 1. We think district courts should be—and ordinarily are—hesitant to summarily dismiss a complaint under rule 56 in the absence of a motion seeking that relief. *See Obermoller*, 429 N.W.2d at 255 (stating that the exercise of a court's inherent power to grant summary judgment should be "judicious"). And we think that a party seeking summary adjudication should ordinarily note a motion to that effect in compliance with the Minnesota General Rules of Practice. *See Del Hayes & Sons, Inc. v. Mitchell*, 230 N.W.2d 588, 591-92 (Minn. 1975) (explaining that the district court is not expressly authorized to enter summary judgment sua sponte, but that its inherent power allows it to do so in certain cases). Nevertheless, this case is, as the factual recitation above suggests, unique. The only specific and legally recognized damage claims argued by appellant to the district court are in the nature of damages for defamation, a cause of action which appellant did not plead at the district court. And the summary-judgment record reveals no other injury or compensable item of damages suffered by appellant that could lead to a recovery of money under the MGDPA.

might reasonably be questioned, a petitioner’s subjective belief that the judge is biased does not necessarily warrant removal.” *Id.*

Appellant moved for removal of the district court judge on April 27, 2019—just after the district court judge denied his motion for an in-camera review. The district judge determined that it was appropriate to deny appellant’s request because the Rules of Judicial Conduct did not require her to recuse herself and because no prejudice had occurred.

From the record, it seems that the district judge’s spouse formerly worked for the University at its Duluth campus. The spouse is retired. In the order of the Chief Judge of the Sixth Judicial District affirming the denial of appellant’s motion, the Chief Judge found that “[n]othing in the record indicates bias or prejudice towards either party on the part of [the district court judge].” The Chief Judge further explained that “[t]he mere fact that a party does not like the way a court rules does not demonstrate bias.”

There is no indication in the record that the district judge was disqualified in this circumstance because of bias or prejudice. Both the district court and the Chief Judge acted within their discretion in denying appellant’s motion to remove the district court judge.

VI. The district court did not abuse its discretion by denying appellant’s motion for relief from judgment.

Appellant argues that the district court erred in denying appellant’s motion for relief under Minn. R. Civ. P. 60.02.

In denying appellant’s motion under rule 60.02(a), and as discussed at length above, the district court explained that appellant was not surprised by the summary adjudication of his claims because he had notice of the district court’s discretion to act on its own in

granting summary judgment for a nonmoving party and had a “chance to reply before and during the hearing on February 11, 2019.”

In denying appellant’s motion under rule 60.02(c), the district court found that appellant failed to demonstrate how the University’s statement that it had provided appellant with all of the requested data “prevented him from presenting his case.” The district court also addressed appellant’s claim for relief under rule 60.02(f), which ruling appellant does not seem to challenge on appeal. The district court found appellant’s claim under 60.02(f) to be “essentially a rehash[ing] of his previous arguments and filings.”

“We review a district court’s denial of a rule 60.02 motion for an abuse of discretion.” *In re Commitment of Hand*, 878 N.W.2d 503, 507 (Minn. App. 2016), *review denied* (Minn. June 21, 2016). Rule 60.02 allows for relief from judgment for one of the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
...;
- (c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
...; or
- (f) Any other reason justifying relief from the operation of the judgment.

“Rule 60.02 can be utilized only if one of the grounds specified in the rule exists.” *Carter v. Anderson*, 554 N.W.2d 110, 113 (Minn. App. 1996), *review denied* (Minn. Dec. 23, 1996).

The district court’s findings and conclusions concerning appellant’s motion for relief from judgment are supported by the record. Appellant fails to demonstrate on appeal

that he was entitled to relief from judgment based on surprise, fraud, or any other basis recognized by the rule. The district court did not abuse its discretion in denying appellant's motion.

Affirmed.