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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A20-0066

A20-0639

Joel S. Rabbe, et al.,
Appellants,

vs.

Farmers State Bank of Trimont, et al.,
Respondents,

First Financial Bank in Winnebago, et al.,
Respondents.

Filed March 1, 2021

Affirmed

Gaïtas, Judge

Martin County District Court
File No. 46-CV-18-424

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Considered and decided by Gaïtas, Presiding Judge; Connolly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

In the first of these consolidated appeals (A20-0066), appellants challenge the district court's order granting a motion to discharge certain notices of lis pendens and enjoining appellants from recording additional notices of lis pendens (the lis pendens order). In the second appeal (A20-0639), the same appellants challenge a contempt order by the district court, which was premised on failure to comply with the lis pendens order. Because the district court properly enjoined appellants from recording additional notices of lis pendens, and because the contempt order is well supported by the record, we affirm.

FACTS

These consolidated appeals are the latest in the lengthy litigation arising from a farmer-lender relationship. The facts underlying this dispute appear in several opinions of this court, most recently in *Rabbe v. Farmers State Bank of Trimont*, No. A19-1353, 2020 WL 2312931 (Minn. App. May 11, 2020), *review denied* (Minn. July 23, 2020). *See also Farmers State Bank of Trimont v. Rabbe*, No. A19-0707, 2019 WL 7287075 (Minn. App. Dec. 30, 2019); *Rabbe v. Farmers State Bank of Trimont*, No. A18-1845, 2019 WL 2416036 (Minn. App. June 10, 2019), *review denied* (Minn. Aug. 20, 2019). We provide an abbreviated factual and procedural history here to frame the issues on appeal.

Background

The appellants in this case include individual Rabbe family members Joel Rabbe, Kirsten Rabbe, Jon Rabbe, Debra Rabbe, and Joyce Rabbe in her personal capacity and as a trustee (Rabbe individuals), along with two farming companies owned by certain Rabbe

family members—Rabbe Farms LLP and Rabbe Ag Enterprises (together, the “Rabbe Entities,” and collectively with the Rabbe individuals, “the Rabbes”). For many years, the Rabbes had a farmer-lender relationship with respondent Farmers State Bank of Trimont (FSB).¹

In 2013 and 2014, FSB loaned Rabbe Farms over \$17 million. The loans were personally guaranteed by Rabbe individuals and secured in part by mortgages on grain elevators (the Elevator Properties) and five parcels of farmland covering 503 acres (the Rabbe Farms Farmland). In May 2014, FSB declared default on the loans. The parties then negotiated and entered into a forbearance agreement. Pursuant to the forbearance agreement, the Rabbes executed a new mortgage in the amount of \$15 million on about 1,200 acres of additional land owned by Rabbe individuals (the Rabbe Individual Farmland) to secure the loans. The Rabbes also agreed to release and forever discharge all claims against FSB if the circumstances giving rise to such claims occurred prior to the date of the agreement.

Subsequently, the Rabbes defaulted on the forbearance agreement. The parties executed an amended forbearance agreement, but the Rabbes later defaulted on that agreement as well. The parties participated in farmer-lender mediation, which yielded no

¹ We refer primarily to FSB as “respondent” for the purpose of this opinion, as FSB holds title to the property for which appellants filed the notices of lis pendens. The other respondents in this matter are individuals associated with FSB (Michael Mulder, president, and Robert Connors, vice president) and First Financial Bank in Winnebago (William Erickson, president), which was a bank that bought a participation in loans extended to Rabbe Farms by FSB. *Rabbe*, 2020 WL 2312931 at *1.

resolution. In September 2015, the Rabbe Entities filed for Chapter 11 bankruptcy protection.

While the Rabbe Entities' bankruptcy proceedings were pending, FSB initiated foreclosure litigation regarding the Rabbe Individual Farmland. In May 2016, the district court entered summary judgment in favor of FSB on all claims and issued a foreclosure decree as to the Rabbe Individual Farmland. The Rabbes appealed.

Following the foreclosure decree, FSB purchased the entirety of the Rabbe Individual Farmland at two sheriff's sales. The district court confirmed the validity of the sheriff's sales in a July 2016 order. The sheriffs executed and delivered certificates of sale to FSB shortly thereafter, confirming FSB's ownership of the property subject only to the Rabbe individuals' statutory right of redemption and right of first refusal under Minnesota Statutes section 500.245 (2020). *See* Minn. Stat. § 580.12 (2020). The Rabbe individuals did not redeem from any of the foreclosure sales.²

Meanwhile, in the Rabbe Entities' bankruptcy proceedings, the parties reached a settlement that was eventually enforced by the bankruptcy court. Under the settlement, Rabbe Farms agreed to deed over the Rabbe Farms Farmland and Elevator Properties to FSB, and the Rabbes agreed to dismiss their appeal of the district court's summary judgment in the foreclosure litigation. Rabbe Farms executed and delivered quit claim deeds conveying Rabbe Farms Farmland and Elevator Properties to FSB in May 2017.

² The Rabbes did initiate litigation regarding their right of first refusal, resulting in an appeal and the unpublished opinion of this court in *Rabbe*, 2019 WL 2416036, that affirmed the district court's dismissal of several claims brought by the Rabbes.

This court dismissed the appeal in the foreclosure litigation with prejudice upon the stipulation of the parties. *Farmers State Bank of Trimont vs. Rabbe*, No. A16-0609, A16-0891 (Minn. App. July 3, 2017) (order).

The present litigation

In November 2017, the Rabbes commenced this litigation by serving a summons and complaint for lender liability on respondents. The next month, the Rabbes served respondents with an amended complaint, which asserts ten counts arising out of FSB's origination, administration, and collection of the loans owed by the Rabbes, and out of the sale process for real property acquired by FSB.³ The first amended complaint requests monetary damages, a civil penalty, treble damages, and an injunction.

Respondents moved to dismiss the first amended complaint. In September 2018, the district court granted the motion to dismiss except as to an antitrust claim. The Rabbes filed a second amended complaint in response, containing only allegations relating to the antitrust claim. They later requested leave to file a third amended complaint, but the district court denied their request because the proposed amendments essentially reasserted causes of action already dismissed.

FSB moved for summary judgment as to the remaining antitrust claim, the district court granted the motion—dismissing the Rabbes' complaint in its entirety—and entered judgment in favor of FSB. The Rabbes appealed, challenging, among other things, the

³ The first amended complaint asserts, for example, that FSB negotiated in bad faith and committed numerous incidents of misconduct in regards to the defaults and forbearance agreements. It also alleges that FSB violated Minnesota's antitrust law, Minnesota Statutes section 325D.53 (2020).

district court's October 2018 order dismissing all of their claims, except the antitrust claim, and the order denying their motion for a third amended complaint (the summary-judgment appeal). We affirmed the district court's order on May 11, 2020. *Rabbe*, 2020 WL 2312931, *review denied* (Minn. July 21, 2020).

Lis pendens order

While the summary-judgment appeal was still pending, and before this court had issued its decision, other events transpired that led to the present consolidated appeals.

Around the same time that the Rabbes commenced the lawsuit underlying this case (in other words, the lawsuit that led to the summary-judgment appeal), they commenced another lawsuit against FSB in Martin County District Court (the right-of-first-refusal litigation). In that lawsuit, the Rabbes alleged that FSB violated their statutory right of first refusal under Minnesota Statutes section 500.245 in regards to marketing and selling the Rabbe Farms Farmland, Rabbe Individual Farmland, and Elevator Properties after acquiring them as a result of the bankruptcy and foreclosure proceedings. *See Rabbe*, 2019 WL 2416036 at *2. The Rabbes recorded notices of lis pendens in connection with the right-of-first-refusal litigation against all of the real estate subject to the purchase agreements entered into between FSB and third parties, thereby clouding title and hindering FSB's ability to sell the property. The district court dismissed the Rabbes' right-of-first-refusal claims in May 2018 and entered partial final judgment. The Rabbes appealed, this court affirmed, and the supreme court denied further review. *See Rabbe*, 2019 WL 2416036 at *1, *review denied* (Minn. Aug. 20, 2019).

Three days after the supreme court denied review in the right-of-first-refusal litigation, the Rabbes recorded notices of lis pendens in this lawsuit on all of the Rabbe Farms Farmland, Rabbe Individual Farmland, and Elevator Properties.⁴ The notices of lis pendens state that the “object of the action is . . . Claims for declaratory relief and judgment and cancellation of deeds and mortgages as a result of the execution of such documents pursuant to contracts which were fraudulently induced without consideration and not performed by the Defendants.” Again, at the point when the Rabbes filed these notices, the district court had dismissed the Rabbes’ claims in this case and the Rabbes had appealed. *See Rabbe*, 2020 WL 2312931. FSB promptly moved the district court for an order discharging the notices of lis pendens.

In a November 2019 order, the district court granted FSB’s motion and discharged the notices of lis pendens. The district court reasoned that none of the versions of the complaint filed by the Rabbes in this litigation would support the filing of a notice of lis pendens, as the allegations do not raise a question about the validity of FSB’s title to real property. The district court found that the Rabbes’ decision to file the lis pendens “after the resolution of numerous counts in multiple court actions was for the purpose of delay and to increase FSB’s costs,” and that the filing was not reasonable under the circumstances. The district court accordingly sanctioned the Rabbes with attorney fees and expenses and enjoined them from filing additional notices of lis pendens on the real property owned by FSB.

⁴ The Rabbes’ attorney conceded at oral arguments on FSB’s motion to discharge the lis pendens that the timing of the filing of new lis pendens was no coincidence.

Contempt order

About a month later, in December 2019, the Rabbes filed yet another complaint against FSB in Martin County District Court. In connection with the new complaint, the Rabbes' attorney filed new notices of lis pendens on the real property owned by FSB. According to Joel Rabbe, the Rabbes' attorney advised him that the lis pendens could be filed despite the district court's November 13 injunction, and Joel Rabbe agreed and authorized the filing.

FSB's attorney sent the Rabbes' attorney a letter demanding that the new notices of lis pendens be discharged, and received no response. FSB moved to hold the Rabbes and their attorney in contempt of court. After a hearing on the motion, the district court issued an order in February 2020 that found Joel Rabbe and the Rabbes' attorney in contempt of court for violating the injunction against recording new lis pendens on real property owned by FSB. The order imposed a 180-day jail sentence, but stayed the sentence on the condition that the notices of lis pendens be discharged within 14 days. The district court also issued sanctions against the Rabbes for FSB's expenses in connection with the contempt motion. The Rabbes later discharged the notices of lis pendens, which purged the contempt.

The Rabbes appealed both the lis pendens order (A20-0066) and the contempt order (A20-0639). We consolidated the cases for review here.

DECISION

In their first appeal, the Rabbes challenge the district court's lis pendens order on two bases. They argue that the district court erred by granting FSB's motion to discharge

the notices of lis pendens that the Rabbes recorded for this matter. They also contend that that the district court erred by enjoining them from filing future notices of lis pendens on real property owned by FSB. In their second appeal, the Rabbes challenge the contempt order on the ground that the lis pendens injunction they violated is void—an argument that essentially echoes their challenge to the injunction in the first appeal. We address each issue in turn.

I. The issue of whether the district erred by discharging the lis pendens in this matter is moot.

An issue is “moot” when “a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.” *Marque Plumbing, Inc. v. Barris*, 384 N.W.2d 246, 248 (Minn. App. 1986). The doctrine of mootness provides that the “requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).” *Dean v. City of Winona*, 868 N.W.2d 1, 4-5 (Minn. 2015) (quotations omitted).

The Rabbes ask us to reverse the district court’s order discharging the notices of lis pendens filed in connection with this case. Notices of lis pendens may be filed in connection with a lawsuit “at the time of filing of the complaint, or at any time thereafter *during the pendency of such action*,” provided that the action is one “in which the title to, or any interest in or lien upon, real property is involved or affected.” Minn. Stat. § 557.02 (2020) (emphasis added).

When the Rabbes initiated the present appeal from the lis pendens order, their summary-judgment appeal was still pending and had not yet been decided by this court.

See Rabbe, 2020 WL 2312931 at *1. Since then, the appeal has been resolved and the district court's orders are final; we affirmed the district court's orders dismissing the Rabbes' claims and denying leave to again amend the complaint, and the supreme court denied further review. *Id.* at *4-6. Accordingly, because the underlying case has been resolved on the merits, there is no property in dispute in this action that would permit the notices of lis pendens to be re-filed. *See* Minn. Stat. § 557.02. And the Rabbes do not request any other relief in connection with the discharge. Thus, even if we were to reverse the district court's order discharging the lis pendens filed in connection with this case, doing so would have no practical effect. *See Marque Plumbing, Inc.*, 384 N.W.2d at 248-49 (dismissing appeal of discharge of lis pendens as moot after supreme court denied review of summary-judgment dismissal of plaintiff's underlying lien and claims.) We accordingly decline to consider the moot issue.

II. The district court properly enjoined the Rabbes from recording additional notices of lis pendens.

The Rabbes next argue that the district court erred by enjoining them from filing new notices of lis pendens.⁵ They argue that because the district court was without

⁵ In its response brief for the appeal from the lis pendens order, FSB argues that the Rabbes waived their challenge to the injunction by not raising it in the district court, and that this court should accordingly decline to reach the issue. We generally will not consider arguments not presented to the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Although FSB is correct that the Rabbes did not provide a specific argument challenging the injunction at the time FSB requested it, the Rabbes did later argue during the contempt proceedings that the district court lacked jurisdiction to issue the injunction and therefore the injunction was void. The district court addressed and rejected this argument in its contempt order. Thus, although the Rabbes' method of raising the challenge was flawed, the Rabbes at least preserved this argument by presenting it to the

jurisdiction to issue the injunction, the injunction is void. Before analyzing the injunction, it is necessary to review the general law on lis pendens.

Legal standards and standard of review

A lis pendens is, in essence, a “warning that title to property is in litigation.” *Bly v. Gensmer*, 386 N.W.2d 767, 769 (Minn. App. 1986). “[T]he sole function of [a] lis pendens is to give constructive notice to all the world of the pendency of [an] action, which is, alone, notice to all persons of the rights and equities of the party filing the lis pendens in the land therein described.” *Trask v. Bodson*, 169 N.W. 489, 490 (Minn. 1918); *see also Bly*, 386 N.W.2d at 769 (explaining that a lis pendens “impedes a property owner’s right to free alienability of real estate”). A party to an action “in which the title to, or any interest in or lien upon, real property is involved or affected, or is brought in question by either party” may permissibly “file for record with the county recorder of each county in which any part of the premises lies a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property.” Minn. Stat. § 557.02. As the statute suggests, “[i]n order to be valid, a lis pendens must be based on a claim involving title to, interest in, or lien upon, real property.” *GBJ, Inc., II v. First Ave. Inv. Corp.*, 520 N.W.2d 508, 512 (Minn. App. 1994) (citing Minn. Stat. § 557.02), *review denied* (Minn. Oct. 27, 1994).

Filing a notice of lis pendens with malice “may constitute slander of title, which could subject the person filing to civil or criminal penalties.” *First Constr. Credit, Inc. v.*

district court and therefore they may raise it again on appeal. We accordingly consider the issue here.

Simonson Lumber of Waite Park, Inc., 663 N.W.2d 14, 19 (Minn. App. 2003). And the failure to promptly discharge an improperly filed notice of lis pendens, upon receiving notice that the filing was improper, can be construed as bad faith that warrants payment of costs and attorney fees. *Id.* at 19-20.

A party claiming title to property affected by a lis pendens notice can move the district court for an order discharging the notice. Minn. Stat. § 557.02. The district court may discharge the lis pendens notice when the referenced lawsuit does not contain a claim that is “within the class of actions sufficient to support a notice of lis pendens.” *Estate of Mansur v. Eden Prairie Real Estate Inv. Corp.*, 384 N.W.2d 236, 238 (Minn. App. 1986) (quotation omitted). An action to recover only a monetary judgment is not within the class of actions supporting a notice of lis pendens. *Melin v. Mott*, 4 N.W.2d 600, 601 (Minn. 1942). And a notice of lis pendens may be discharged when the underlying complaint does not state a valid claim or the undisputed evidence shows a claim cannot succeed. *See Estate of Mansur*, 384 N.W.2d. at 239. “[T]he Minnesota Supreme Court has consistently affirmed the district court’s power to cancel an invalid lis pendens.” *Constr. Gen., Inc. v. Richard Schwarz/Neil Weber, Inc.*, 354 N.W.2d 877, 880 (Minn. App. 1984), *review denied* (Minn. Feb. 19, 1985).

Here, the district court determined that no version of the Rabbes’ complaints in this matter supported a notice of lis pendens, as none of the claims called into question FSB’s title to real property. It also found that the Rabbes filed the lis pendens unreasonably and for the purposes of delay and increased costs for FSB. It enjoined the Rabbes from “recording any additional notices of lis pendens on the real estate owned by FSB.”

“The granting of an injunction generally rests within the sound discretion of the trial court, and its actions will not be disturbed on appeal unless, based upon the whole record, it appears that there has been an abuse of such discretion.” *St. Jude Med., Inc. v. Carter*, 913 N.W.2d 678, 684 (Minn. 2018) (quotation omitted). This court’s review of the district court’s decision to grant an injunction “is deferential.” *Id.* Jurisdiction, though, is a question of law that we review de novo. *Underdahl v. Comm’r of Pub. Safety (In re Comm’r of Pub. Safety)*, 735 N.W.2d 706, 710 (Minn. 2007).

Analysis

The Rabbes frame their challenge to the injunction as one of “jurisdiction.” Their argument appears to be twofold. First, they argue that the district court lacked jurisdiction to both discharge the lis pendens and, correspondingly, issue an injunction against future notices of lis pendens because doing so was “premature” when the lawsuit was still pending. Second, they argue that the district court exceeded its jurisdiction as it relates to that of other courts.

Before turning to the Rabbes’ specific arguments, we note that they use the term “jurisdiction” imprecisely. Recent precedent cautions against the inaccurate use of the term “jurisdiction” when the issue does not regard subject-matter or personal jurisdiction and instead regards “nonjurisdictional claim-processing rules or nonjurisdictional limits on a court’s authority to address a question.” *Johnson v. Princeton Pub. Utils. Comm’n*, 899 N.W.2d 860, 868 n.3 (Minn. App. 2017); *see, e.g., Arbaugh v. Y&H Corp.*, 546 U.S. 500, 510, 126 S. Ct. 1235, 1242 (2006) (observing that “jurisdiction . . . is a word of many, too many, meanings” (quotation omitted)); *Kontrick v. Ryan*, 540 U.S. 443, 455, 124 S. Ct.

906, 915 (2004) (noting that it would increase precision if courts used “jurisdictional” only when referring to issues of subject-matter or personal jurisdiction).

The Rabbes’ challenge does not implicate the court’s subject-matter jurisdiction, which “refers to a court’s authority to hear and determine a particular class of actions and the particular questions presented to the court for its decision.” *Giersdorf v. A & M Constr., Inc.*, 820 N.W.2d 16, 20 (Minn. 2012) (quotation omitted). Minnesota district courts are courts of general jurisdiction and have the authority to hear “all civil and criminal cases.” Minn. Const. art. VI, § 3; *see also* Minn. Stat. § 484.01, subd. 1(1) (2020) (“The district courts shall have original jurisdiction in . . . all civil actions within their respective districts.”). Nothing suggests that civil cases involving notices of lis pendens fall outside this broad scope.⁶

Likewise, the district court here did not lack personal jurisdiction over the parties. A court has personal jurisdiction over those who “voluntarily invoke[] the power of the court in [their] own behalf.” *Fed.-Hoffman, Inc. v. Fackler*, 549 N.W.2d 93, 95 (Minn. App. 1996) (quoting *Morehart v. Furley*, 182 N.W. 723, 724 (Minn. 1921)), *review denied*

⁶ The Rabbes’ reliance on *State ex rel. Evans v. Dist. Court*, 136 N.W. 746 (Minn. 1912), does not support a lack of subject-matter jurisdiction. *Evans* involved an injunction issued by the juvenile court of the City of Minneapolis—a court of limited jurisdiction over children adjudged to be “incorrigible and neglected.” *Evans*, 136 N.W. at 746-47. The disputed injunction was issued before the court had made that incorrigibility determination, and the supreme court accordingly determined on appeal that the injunction went beyond the juvenile court’s limited statutory authority. *Id.* at 747. It went on to determine that the injunction was void and the juvenile could not be held in contempt for violating it. *Id.* This case is unlike *Evans*, as the district court is one of general—not limited—jurisdiction. *Evans* is thus inapposite to our decision.

(Minn. Aug. 20, 1996). The Rabbes initiated this action and thereby submitted to the district court's personal jurisdiction.

In sum, the Rabbes' challenge is a nonjurisdictional challenge to whether the district court exceeded its authority by prematurely discharging the notices of lis pendens or prohibiting future lis pendens notices through an injunction. With that clarified, we turn to the Rabbes' specific arguments regarding the district court's authority.

The Rabbes' first argument regarding prematurity is based on their assertion that a district court "cannot discharge a notice of lis pendens prior to the completion [of] the litigation." They argue that "[i]f the discharge of the notice of lis pendens is premature[, then] an order restraining filing of a notice of lis pendens is premature."

The Rabbes' argument is without merit. As explained above, a party whose title to real property is clouded by a notice of lis pendens has a statutory right to move the district court for an order discharging the notice. *See* Minn. Stat. § 557.02. The district court can discharge a notice of lis pendens if it is invalid, for instance, when the lawsuit referenced in the notice does not contain a claim that is "within the class of actions sufficient to support a notice of lis pendens." *Estate of Mansur*, 384 N.W.2d at 238 (quotation omitted). Nothing in the statute obligates the district court to wait for a case to move through the appellate process before discharging an invalid notice of lis pendens. The Rabbes' argument that the district court exceeded its authority by acting prematurely in discharging the lis pendens, and, correspondingly, by issuing the injunctions, fails.

The Rabbes' next argument is that the district court exceeded its authority by barring additional lis pendens notices in matters pending before other courts. They argue that

“even though the district courts of this state have concurrent jurisdiction, they are independent tribunals and this [district court] does not have the authority or jurisdiction to impose its orders on other district courts.”

The Rabbes’ argument is unpersuasive, as the district court enjoined action by the Rabbes—who invoked the district court’s jurisdiction in this matter—and did not enjoin the actions of other courts. And the district court enjoined action regarding the specific real property owned by FSB that the Rabbes put at issue in this litigation, and that has been the subject of extensive court proceedings.

The Rabbes’ reference to “concurrent jurisdiction,” which as FSB argues, seems to refer to the first-to-file rule, does not advance their position. The first-to-file rule provides that “where two courts have concurrent jurisdiction, the first to acquire jurisdiction has priority to decide the case.” *Levine v. Bayview Loan Servicing, LLC*, 926 N.W.2d 49, 56 (Minn. App. 2019). This rule “is not a rigid rule, but a principle to be applied flexibly as a blend of courtesy and expediency.” *Id.* (quotation omitted).

Here, this action—initiated in 2017—was the only lawsuit regarding these facts pending when the district court issued the lis pendens order in November 2019. It was not until a month later, in December 2019, that the Rabbes filed their new complaint and recorded the new notices of lis pendens. Moreover, the new lawsuit, while assigned to a different judge, was also filed in the Martin County District Court. Accordingly, the Rabbes have not shown how another court was deprived of, or could be deprived of, “concurrent jurisdiction.”

Ultimately, the Rabbes have not shown that the district court erred by issuing the injunction. The district court had subject-matter and personal jurisdiction over the matter and parties, and it made a finding well supported by the record that the Rabbes filed notices of lis pendens unreasonably and for the purpose of causing delay. We discern no abuse of the district court's broad discretion to grant this equitable relief to FSB. *See St. Jude Med., Inc.*, 913 N.W.2d at 678.

III. The district court did not err in holding Joel Rabbe⁷ in contempt.

"The district court has broad discretion to hold an individual in contempt." *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). Appellate courts review a district court's decision to invoke its contempt power for an abuse of discretion. *Mower Cty. Human Servs. ex rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996). Thus, we consider whether the order "was arbitrary and unreasonable or whether it finds support in the record." *Gustafson v. Gustafson*, 414 N.W.2d 235, 237 (Minn. App. 1987) (quotation omitted).

An individual may be held in contempt if the individual has "acted contumaciously, in bad faith, and out of disrespect for the judicial process." *Newstrand v. Arend*, 869

⁷ The Rabbes' brief asserts throughout that the district court erred by finding both Joel Rabbe and his attorney, Richard Bosse, in contempt of court. But Bosse is not a party to this appeal. This court's order consolidating these appeals specifically notes that Bosse did not appeal and that "Joel S. Rabbe, et. al., the plaintiffs in the underlying action, are the only appellants." That order, which issued before the deadline to appeal the contempt order had expired, put Bosse on notice that he would need to file his own appeal to be included here. Because he has not done so, the judgment is accordingly final as to him. *See Poured Concrete Founds., Inc. v. Andron, Inc.*, 507 N.W.2d 888, 892 (Minn. App. 1993) ("Generally, a party who fails to appeal is bound by the lower court's decision."), *review denied* (Minn. Jan. 27, 1994).

N.W.2d 681, 692 (Minn. App. 2015) (quotations omitted), *review denied* (Minn. Dec. 15, 2015). Under Minnesota law, there are two kinds of contempt of court: direct and constructive. Minn. Stat. § 588.01, subds. 1-3 (2020). Direct contempt occurs in the presence of the court, *id.*, subd. 2, while constructive contempt is committed outside the presence of the court and arises from any of the 11 “acts or omissions” specified in section 588.01, subdivision 3. The third of the specified acts or omissions is “disobedience of any lawful judgment, order, or process of the court.” *Id.*, subd. 3(3).

A district court may enforce its prior order by issuing a civil contempt order, which “impos[es] a sanction that will be removed upon compliance with a court order that has been defied.” *State v. Tatum*, 556 N.W.2d 541, 544 (Minn. 1996). Before the district court may do so, it must ensure that the following requirements are satisfied:

(1) subject matter jurisdiction, (2) a clear definition of the acts to be performed, (3) notice of the acts to be performed and time to comply, (4) application by the party seeking to enforce the acts, giving specific grounds for complaint, (5) a hearing after due notice at which nonperforming parties can show compliance or reason for failure, (6) formal determination by the court of a failure to comply and a determination of whether conditional confinement will aid compliance, (7) an opportunity for the nonperforming party to show inability to perform a good-faith effort, and (8) an ability to gain release through compliance or a good-faith effort to comply.

Walz v. Walz, 409 N.W.2d 39, 40 (Minn. App. 1987) (citing *Hopp v. Hopp*, 156 N.W.2d 212, 216-17 (Minn. 1968)).

Here, the district court addressed the required elements in its contempt order. It determined that it had subject-matter jurisdiction over the dispute, and that the *lis pendens* order clearly defined the prohibited action: “FSB’s motion to enjoin Plaintiffs, or anyone

acting on their behalf, from recording any additional notices of lis pendens on the real estate owned by FSB is **GRANTED.**” The court went on to find in the contempt order that the Rabbes and their attorney “took volitional steps to violate the injunction,” and that they had a reasonable time to comply with the injunction both before and after FSB filed its contempt motion. The Rabbes were also afforded a hearing to show compliance or reasons for noncompliance. The district determined that their “reason for non-compliance with the order was that they simply disagreed with the [o]rder.” It went on to determine that conditional confinement would aid compliance, and imposed 180 days of jail time for Joel Rabbe and his attorney, stayed on the condition that they discharge the offending notices of lis pendens within 14 days.

The Rabbes do not challenge any of the district court’s above determinations, which are supported by the record, except to reassert that the district court lacked subject-matter jurisdiction to issue the lis pendens injunction. They argue that the order is void because the district court lacked the authority to enjoin them from filing future notices of lis pendens, and because the order is void, the Rabbes maintain they cannot be held in contempt for violating the injunction.

As explained, the district court acted within its jurisdiction and authority by issuing the lis pendens injunction. The order is not void, and therefore the Rabbes’ argument that they are not bound by the injunction fails.

At its essence, and despite their repeated attempts to construe the issue here as one of subject-matter jurisdiction, the Rabbes’ challenge to the lis pendens order is that the

order itself is incorrect.⁸ But even if the order was incorrect, the Rabbes were not at liberty to disobey it. *See Reid v. Indep. Union of All Workers*, 275 N.W. 300, 301 (Minn. 1937) (explaining that the “jurisdiction to decide is the power to decide erroneously as well as correctly,” and holding that a challenge to an injunction should be made to the order itself and not raised as a defense to contempt). The United States Supreme Court has explained that there is “impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings.” *United States v. United Mine Workers of Am.*, 330 U.S. 258, 293, 67 S. Ct. 677, 695-96 (1947) (concluding that “[t]he defendants, in making their private determination of the law, acted at their peril” and could be held in criminal contempt). Instead of waiting for a decision in their appeal or otherwise pursuing relief through lawful proceedings, Joel Rabbe and his attorney filed the new notices of lis pendens because they disagreed with the injunction. The district court did not err by holding Joel Rabbe in contempt.

Affirmed.

⁸ They argue repeatedly that the district court erred because, contrary to its conclusion, the lis pendens notices that they filed were for an action within the class sufficient to support notices of lis pendens. *Estate of Mansur*, 384 N.W.2d at 238 (quotation omitted).