

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0173**

Otter Tail County, Department of Land and Resource,
Plaintiff,

vs.

Mark DeRuyter, et al.,
Respondents,

James Edward Justin, et al.
Defendants,

Don C. Johnson, et al.,
Respondents,

FM Mortgage,
Defendant,

Rebecca Church,
Appellant.

**Filed October 31, 2022
Affirmed
Bjorkman, Judge**

Otter Tail County District Court
File No. 56-CV-08-3991

Robert L. Russell, Fergus Falls, Minnesota (for respondents Mark and Ruth DeRuyter)

Don C. Johnson and Diane H. Johnson, Vining, Minnesota (pro se respondents)

Gerald W. Von Korff, Rinke Noonan, Ltd., St. Cloud, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges the district court's denial of her motion to vacate a 2011 judgment that affects two easements that favored property to which she succeeded in ownership. Respondents, the owners of a lot burdened by one of the easements, argue that the district court abused its discretion by denying their motion for sanctions against appellant. We affirm.

FACTS

This case centers on easements over two parcels of land, Lots 1 and 25, within a property settlement between two lakes in Otter Tail County. Lot 1 is on the southern shore of East Battle Lake; its easterly portion is used for lake access. Lot 25 is immediately to the south of Lot 1 on the northern shore of Stuart Lake; it is unbuildable and used only for lake access. Both lots are subject to easements in favor of nearby Lots 5 and 6 and Lots 7 and 8, which otherwise lack lake access.

In the late 1990s and early 2000s, Lot 25 became the source of conflict between the fee owners and the easement holders. The conflict came to a head in 2008, and the Otter Tail County Department of Land and Resource (the county) became involved. The property rights at that time were as follows:

- Respondents Mark and Ruth DeRuyter, as trustees for the Mark and Ruth DeRuyter Trust, owned Lot 25.¹ They also owned parts of nearby Lots 2 and 3.
- Respondents Don and Diane Johnson owned the easterly portion of Lot 1.
- Bruce Krause owned Lots 5 and 6; as the owner of those lots, he held easements over Lots 1 and 25. The Johnsons were the prior owners of Lots 5 and 6, and Krause was in the process of selling the lots back to them.
- James Justin owned Lots 7 and 8; as the owner of those lots, he also held easements over Lots 1 and 25.

In late 2008, the county commenced an action against Justin, Krause, and the DeRuyters, alleging that the easements over Lots 1 and 25 created a “controlled access,” which was prohibited by county ordinance. The county sought an order enjoining use of the lots “as a controlled access” and declaring the easements “void as against public policy.” The district court joined the Johnsons as defendants. Krause and the Johnsons filed a joint answer denying the allegations and requesting that the action be dismissed. The DeRuyters and Justin did not interpose an answer.

In May 2009, the DeRuyters moved for a temporary restraining order (TRO) limiting Krause’s and the Johnsons’ use of the easement over Lot 25. Within a week, the DeRuyters, Krause, and the Johnsons filed a stipulation with the court agreeing to limits on the easements. Based on that stipulation, the district court granted a TRO, to remain in effect until “further written agreement of the parties” or court order.

¹ The trust owned Lot 25, but only the DeRuyters themselves are named as parties and the distinction between the trust and its trustees is not an issue in this litigation. Accordingly, all references in this opinion are to the DeRuyters.

In November 2010, the district court issued an order requiring Justin to appear at a hearing to “show cause, if any,” why the court should not enter judgment similarly limiting the easements over Lots 1 and 25 associated with Lots 7 and 8 and terminating the easements after ten years. Justin was served by mail and acknowledged receipt of the order, but he did not appear at the hearing or otherwise respond.

On July 20, 2011, the district court issued an order limiting and providing for the termination of Justin’s easements as set forth in the order to show cause. Judgment was entered that same day and recorded six days later. None of the parties appealed.

Justin died in 2018, and his successors conveyed Lots 7 and 8 to appellant Rebecca Church in September 2020.

In June 2021, Church moved the district court to substitute her for Justin as a party and to vacate the 2011 judgment as “void” under Minn. R. Civ. P. 60.02(d). The county stipulated to Church’s motions. The district court denied Church’s motion to substitute herself as a party. But because the county—a party—stipulated to Church’s motions, the court considered the motion to vacate, denying it on the merits and as untimely. The DeRuyters moved for sanctions against Church under Minn. R. Civ. P. 11.02, arguing that she lacked a valid basis for various factual and legal assertions. The district court denied the motion. Church and the DeRuyters appeal.

DECISION

I. The DeRuyters have not demonstrated that vacation of the judgment is moot.

As a preliminary matter, the DeRuyters argue that Church’s request to vacate the 2011 judgment is moot. The district court declined to address this issue. But because

mootness presents a question of law that bears on this court’s jurisdiction, we may address it in the first instance. *Farm Bureau Mut. Ins. Co. v. Schwan*, 687 N.W.2d 388, 391 (Minn. App. 2004). A court may dismiss a case as moot if an event occurs that resolves the issue or renders it impossible for the court to grant effective relief. *Isaacs v. Am. Iron & Steel Co.*, 690 N.W.2d 373, 376 (Minn. App. 2004), *rev. denied* (Minn. Apr. 4, 2005).

The DeRuyters argue that relief in the form of vacation of the judgment is not available because the undisputed record shows that the easement across Lot 25 was extinguished through nonuse under the terms of an ordinance. But the judgment also impacts the easement over Lot 1, and the record contains no evidence as to its usage.² Thus, even assuming that nonuse of the easements would render vacation of the judgment moot, the record before us is not susceptible of a conclusion that both easements were extinguished. Accordingly, Church’s effort to vacate the 2011 judgment is not moot.

II. The district court did not abuse its discretion by denying Church’s motion to vacate the 2011 judgment.

Upon a motion “made within a reasonable time,” a district court may vacate a judgment as “void.” Minn. R. Civ. P. 60.02(d). We review a district court’s decision whether to vacate a judgment for an abuse of discretion. *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016). But a judgment is void if the issuing court lacked subject-matter

² At the hearing on Church’s vacation motion, the Johnsons argued that Justin also abandoned use of the easement over Lot 1. The district court characterized the Johnsons’ “representations on the record” as “similar” to the evidence of nonuse the DeRuyters submitted with respect to Lot 25.

jurisdiction, and we review questions of jurisdiction de novo. *Bode v. Minn. Dep’t of Nat. Res.*, 612 N.W.2d 862, 866 (Minn. 2000).

Subject-matter jurisdiction refers to a court’s authority to hear and determine a type of action. *McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 585 (Minn. 2016). Minnesota district courts have broad subject-matter jurisdiction to decide civil actions. Minn. Stat. § 484.01, subd. 1(1) (2020); *Anderson v. County of Lyon*, 784 N.W.2d 77, 80 (Minn. App. 2010). This includes jurisdiction over the type of enforcement action that the county pursued to enjoin use of the easements over Lots 1 and 25. Minn. Stat. § 394.37, subd. 3 (2020).

Church moved to vacate the 2011 judgment as void, arguing that it effected an unconstitutional taking and the district court “had no subject matter jurisdiction or authority to make an unconstitutional Order.” But as the district court observed in rejecting this argument, subject-matter jurisdiction “comprehends the power to decide a particular case wrongly as well as rightly.” *Robinette v. Price*, 8 N.W.2d 800, 805 (Minn. 1943); *see also Park Elm Homeowner’s Ass’n v. Mooney*, 398 N.W.2d 643, 646 (Minn. App. 1987) (“A judgment is not void . . . simply because it was erroneous or based on an invalid claim.”). While Church contests the denial of her vacation motion, she identifies no flaw in the district court’s reasoning. Indeed, she does not address rule 60.02(d) at all or present any argument that the 2011 judgment is void.³ Failure to brief an issue generally is considered

³ Church argues for the first time on appeal that (1) the district court should have granted relief under Minn. R. Civ. P. 60.02(e), which permits vacation of a judgment if “it is no longer equitable that the judgment should have prospective application”; and (2) that the 2011 judgment was not a final judgment as to all parties and therefore was subject to

waiver of the issue. *Honke v. Honke*, 960 N.W.2d 261, 266 (Minn. 2021). And an inadequately briefed issue is not grounds for reversal unless error is “obvious on mere inspection.” *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *rev. denied* (Minn. Apr. 26, 2017). Our review of the district court’s decision reveals no obvious error.

Moreover, Church advances no challenge to the district court’s determination that her vacation motion was untimely. Even a challenge to a judgment as void for lack of subject-matter jurisdiction must be brought within a reasonable time. *Bode*, 612 N.W.2d at 870. Whether a party moved to vacate within a reasonable time depends on “all attendant circumstances such as: intervening rights, loss of proof by or prejudice to the adverse party, the commanding equities of the case, the general desirability that judgments be final and other relevant factors.” *Id.* (quotation omitted). The district court found that Church’s motion was untimely because granting it is likely to prejudice the Johnsons and the DeRuyters, nearly ten years had passed since entry of the judgment, and at least one of the easements had not been used for several years and therefore is no longer a permitted

modification at any time under Minn. R. Civ. P. 54.02. It is well established that a party may not raise an issue or argument for the first time on appeal, or even advance a different theory in support of an issue presented to the district court. *Leppink v. Water Gremlin Co.*, 944 N.W.2d 493, 501 (Minn. App. 2020) (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)); *see Carter v. Anderson*, 554 N.W.2d 110, 113 (Minn. App. 1996) (concluding that party who relied on rule 60.02(a), (f) in the district court could not present rule 60.02(c) argument for first time on appeal), *rev. denied* (Minn. Dec. 23, 1996). Because Church articulates no reason for us to deviate from this principle, we decline to consider her new arguments.

nonconformity. Church does not dispute these findings or the district court's determination that they make her motion untimely.

In sum, Church has not identified, and we do not discern, any abuse of discretion in the district court's denial of the motion to vacate the judgment as void under Minn. R. Civ. P. 60.02(d) both on the merits and as untimely.

III. The district court did not abuse its discretion by denying the motion for sanctions.

When filing a document with the district court, a person certifies, in relevant part, that (1) their legal contentions are “warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law”; and (2) their factual contentions have or are likely to have “evidentiary support.” Minn. R. Civ. P. 11.02(b), (c). A court may impose monetary or other “appropriate” sanctions on a party that violates this rule. Minn. R. Civ. P. 11.03. The purpose of sanctions is to deter misconduct, not to punish or shift costs. *Wolf v. Oestreich*, 956 N.W.2d 248, 256 (Minn. App. 2021), *rev. denied* (Minn. May 18, 2021). It is preferable to let some “sanctionable conduct . . . escape discipline” than to “deter[] legitimate or arguably legitimate claims.” *Pratt Inv. Co. v. Kennedy*, 636 N.W.2d 844, 851 (Minn. App. 2001). We review a district court's refusal to impose sanctions for an abuse of discretion. *Wolf*, 956 N.W.2d at 256.

The DeRuyters sought sanctions against Church on the ground that seven of her contentions lacked a valid basis: (1) the factual contention that Justin conveyed the property to her, (2) the factual contention that Justin never appeared in the case, (3) the legal

contention that she is entitled to substitution as a party, (4) the legal contention that she has standing, (5) the legal contention that the court lacked subject-matter jurisdiction to issue the 2011 judgment, (6) the legal contention that the judgment can be set aside because it is unconstitutional, and (7) the legal contention that vacating the judgment is not moot. The district court agreed with the DeRuyters that Church misstated or oversimplified some facts and legal principles but reasoned that the errors are not significant enough to warrant sanctions.

With respect to the factual contentions, the record supports the court's assessment that Church's statements were reasonably accurate or merely simplified the truth. First, Church did make an erroneous statement of fact when she indicated that she purchased Lots 7 and 8 from Justin. But the deeds she provided in support of that assertion clearly showed that this was simply a shorthand for the fact that she acquired the property from Justin's successors. Second, Church's statement that Justin did not appear in the case is substantially accurate: He apparently attended an early scheduling hearing but did not appear thereafter, including after acknowledging service of the order to show cause.

The district court's reasoning with respect to Church's legal contentions is similarly sound. The court considered each challenged contention in turn, concluding that they all lacked sufficient merit to prevail but none were so obviously erroneous as to warrant sanctions. The court noted that "the record was genuinely confusing," that some of Church's arguments were not supported or refuted by controlling authority, and that it is the nature of litigation that some arguments fail. The court concluded that "[i]t was not unreasonable for Church's attorney to believe that Church could bring a motion [to vacate],

in good faith, and have some chance of succeeding” and that none of Church’s arguments were “extraordinarily or remarkably wrong” or “so egregious that it justifies a departure from th[e] rule” that “litigants must pay their own legal bills.”

In sum, the district court carefully considered the DeRuyters’ arguments. And the unique procedural history and circumstances of this case persuade us that the court acted within its discretion in declining to sanction Church.

Affirmed.