STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1639

Patrick Dinneen,
Appellant,

vs.

Timothy Melby, et al.,
Respondents,

Add-Ventures, Inc.,
Respondent.

Filed May 30, 2023
Affirmed
Slieter, Judge

Lake County District Court
File No. 38-CV-21-529

Patrick Dinneen, Silver Bay, Minnesota (attorney *pro se*)

Brandon M. Schwartz, Michael D. Schwartz, Schwartz Law Firm, Oakdale, Minnesota (for respondents Timothy Melby and Laurel Watkins-Melby)

Add-Ventures, Inc., Crystal, Minnesota (respondent)

Considered and decided by Slieter, Presiding Judge; Connolly, Judge; and Florey, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges two district court orders. First, appellant challenges the district court's dismissal of his complaint against respondent individuals and corporation for failing to state a claim upon which relief can be granted. Appellant's complaint alleges several common-law claims arising out of a 2006 legal-services agreement. Second, appellant challenges the district court's refusal to enter default judgment against respondents. Because appellant's complaint fails to allege facts that the individual respondents ratified the legal-services agreement, his complaint against the now-dissolved corporation is untimely, and we find no error in the district court's refusal to enter default judgment against respondents, we affirm.

FACTS

Appellant Patrick Dinneen sued respondent-individuals Timothy Melby and Laurel Watkins-Melby and respondent-corporation Add-Ventures Inc. alleging several common-law claims, including breach of contract, arising out of a 2006 legal-services agreement.

Dinneen's complaint alleges that in 2006, Dinneen contracted with Dale Melby, Timothy Melby's father, and Add-Ventures to provide legal services relating to several commercial properties in Elysian, Minnesota. Pursuant to this agreement, Dale Melby or Add-Ventures would be paid for out-of-pocket litigation expenses and "the surplus of sale proceeds would be used to pay for legal time and expenses, and that once those calculations and disbursements were complete that the parties would equally divide any surplus funds

that remained from the sale proceeds of the three commercial lots." Dinneen's complaint alleges that Add-Ventures gave Dinneen a quitclaim deed for a property in Ely to secure payment for his services in the Elysian matter. Dinneen claims that, after Dale Melby's death in 2015, Dinneen refrained from pursuing a claim against Dale Melby's estate based on reassurances from Timothy Melby that he would be paid pursuant to the 2006 legal-services agreement.

Timothy Melby and Laurel Watkins-Melby moved to dismiss the amended complaint for failing to state a claim upon which relief can be granted, which the district court granted. The district court also dismissed Dinneen's complaint against Add-Ventures as untimely. In an earlier order, the district court denied Dinneen's motion for default judgment against all respondents. Dinneen appeals.

DECISION

When reviewing a case dismissed pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim on which relief can be granted, appellate courts ask whether the complaint sets forth a legally sufficient claim for relief. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008) (citation omitted). We review this question *de novo*. *Id.* Appellate courts "consider only the facts alleged in the complaint, accepting those facts as true." *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013) (quotation omitted). Dinneen appeals only the dismissal of the breach-of-contract count in his complaint.

I. The district court properly dismissed Dinneen's amended complaint.

Individual Respondents

Within the amended complaint, Dinneen alleges that Timothy Melby and Laurel Watkins-Melby "were obligated to pay the amounts agreed to" in the legal-services agreement, and that "[n]umerous discussions, emails, and text messages . . . memorialize[] the parties' agreement." However, Dinneen alleges no facts and provides no argument as to why these two individuals, who were not parties to the legal-services agreement, are legally responsible for the agreement in their *personal* capacity.

An assignment of error in a brief "based on mere assertion and not supported by any argument or authorities . . . is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). Our mere inspection leads us to conclude that no prejudicial error occurred.

The law related to contract ratification, if Dinneen had so argued and pleaded it, does not reveal that Dinneen was prejudiced by the dismissal of his complaint. *See, e.g.*, *Steffens v. Nelson*, 102 N.W. 871, 873 (Minn. 1905) (noting that a person ratifies an agreement by giving "sanction and validity to something done without authority" (quotation omitted)); *Anderson v. First Nat. Bank of Pine City*, 228 N.W.2d 257, 259 (Minn. 1975) ("Ratification occurs when one, having full knowledge of all the material facts, confirms, approves, or sanctions, by affirmative act or acquiescence, the originally unauthorized act of another . . . ."). Dinneen's complaint includes no facts alleging a legally sufficient claim for relief based upon contract ratification. Nor does Dinneen's

brief contain a legal argument of a contract ratification claim. *See Schoepke*, 187 N.W.2d at 135. Thus, the district court did not err in dismissing the complaint against respondent-individuals.

Corporation Respondent

The district court found that Dinneen's complaint against the dissolved Add-Ventures was statutorily time barred and dismissed his complaint. We agree.

Add-Ventures filed its notice of intent to dissolve with the Minnesota Secretary of State on December 14, 2019. Add-Ventures was formally dissolved on December 31, 2019. According to the articles of dissolution, Add-Ventures dissolved without providing formal notice to creditors pursuant to Minn. Stat. § 302A.7291 (2022). According to section 302A.7291, subdivision 3(b), claimants and creditors must "file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve." Claimants and creditors that fail to file a claim or seek another remedy within two years are "barred from suing on that claim or otherwise realizing upon or enforcing it." *Id.* The district court found that Dinneen did not file this action until December 21, 2021, more than two years after Add-Ventures filed its notice of intent to dissolve and is, therefore, time barred. The record supports this finding. The district court properly dismissed Dinneen's complaint as untimely.

II. The district court acted within its discretion by denying Dinneen's motion for default judgment.

We review a district court's ruling on a request for default judgment for abuse of discretion. *Laymon v. Minn. Premier Props., LLC*, 903 N.W.2d 6, 17 (Minn. App. 2017), *aff'd*, 913 N.W.2d 449 (Minn. 2018).

Default judgment is proper "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or *otherwise defend* within the time allowed." Minn. R. Civ. P. 55.01 (emphasis added). A rule 12 motion to dismiss, which respondents Timothy Melby and Laurel Watkins-Melby filed after being served with Dinneen's amended complaint, falls within the meaning of "otherwise defend." *Black v. Rimmer*, 700 N.W.2d 521, 524 (Minn. App. 2005), ("To successfully defend against a default judgment, a party who has failed to plead and contends that he or she has otherwise defended . . . must, at minimum, have made a rule 12 or other defensive motion." (quotation and citation omitted)), *rev. denied* (Minn. Sept. 28, 2005). Default judgment against either Timothy Melby or Laurel Watkins-Melby is therefore inappropriate because the respondent-individuals "otherwise defended" against Dinneen's claims by filing a rule 12 motion to dismiss. *See id.* (quotation omitted).

As to Dinneen's argument that the district court erred by denying his default judgment motion against the corporation, Add-Ventures dissolved in 2019. "[D]issolution of a corporation is akin to the death of an individual and abates all litigation against that

corporation." *Camacho v. Todd and Leiser Homes*, 706 N.W.2d 49, 55 (Minn. 2005). The district court acted within its discretion in denying Dinneen's motion for default judgment.

Affirmed.