

*This opinion is nonprecedential except as provided by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
A22-1678**

John Robinson, et al.,
Appellants,

vs.

USAA,
Respondent.

**Filed July 17, 2023
Affirmed
Bjorkman, Judge**

Olmsted County District Court
File No. 55-CV-17-3046

William L. French, French Law Office, Rochester, Minnesota (for appellants)

Timothy Masterson, Alexandra L. Zabinski, McCollum Crowley P.A., Bloomington,
Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

In this second appeal related to an appraisal award, appellant-insureds argue that the district court lacked jurisdiction to grant respondent-insurer's motion to deposit the judgment amount into court during the pendency of the first appeal. We affirm.

FACTS

Appellants John and Marguerite Robinson's house was damaged by hail in 2014 and their garage sustained fire damage in 2015. At the time of the losses, the structures were insured under a homeowners' policy issued by respondent USAA. The policy provides for a binding appraisal process when the parties dispute the amount of loss. That is what happened here. Pursuant to this process, the appraisers inspected the damaged property and issued a unanimous report awarding the Robinsons \$82,142.41. After reducing the award to reflect the Robinsons' deductible and amounts USAA had previously paid, USAA moved to confirm the remaining \$55,594.94 appraisal award. In a May 2022 order, the district court granted the motion and directed entry of judgment. The Robinsons appealed, arguing that the district court erred by (1) treating the appraisal award as an arbitration award, (2) ignoring the scheduling order, and (3) ignoring factual assertions made in a pro se "declaration." We affirmed. *See generally Robinson v. USAA*, No. A22-1033, 2023 WL 2467898 (Minn. App. Mar. 13, 2023).

In September 2022, while the first appeal was pending, USAA moved the district court for leave to deposit the \$55,594.94 under Minn. R. Civ. P. 67.01 in order to stop interest from accruing. USAA's motion noted that the Robinsons "have refused to accept USAA's tender of payment" but that correspondence from their attorney indicated they "do not object to USAA's paying the funds into the Court."

Despite this apparent agreement that USAA could deposit the awarded funds, the Robinsons opposed USAA's motion, arguing that their appeal divested the district court of jurisdiction to consider the motion. The Robinsons did not reference Minn. R. Civ. App.

P. 108.01 or address the merits of the motion. At the hearing, the Robinsons’ attorney stated, “I have nothing to add other than I think it’s pretty clear the Court doesn’t have jurisdiction to grant this motion.” When he later expressed confusion as to when USAA wanted interest to stop accruing, the district court noted that the Robinsons did not brief the issue and that USAA had provided persuasive authority in support of its request.

The district court granted USAA’s motion, and the Robinsons appeal.

DECISION

The Robinsons’ sole argument on appeal is that the district court lacked jurisdiction to consider and decide USAA’s motion to deposit the funds into court. They do not challenge the merits of the district court’s decision. USAA contends that this court lacks jurisdiction because the challenged order is not appealable.¹ Both issues require us to interpret procedural rules, which present questions of law that we review de novo. *Crowley v. Meyer*, 897 N.W.2d 288, 292 (Minn. 2017). We address each argument, beginning with the question whether we have jurisdiction over this appeal.

I. The district court’s order is appealable.

USAA argues that this appeal must be dismissed because the district court’s post-judgment order is not appealable under Minn. R. Civ. App. P. 103.03 and the Robinsons did not timely seek discretionary review. *See generally* Minn. R. Civ. App. P. 105. The Robinsons assert that the order is appealable under rule 103.03(e), which provides that an appeal may be taken “from an order which, in effect, determines the action and prevents a

¹ USAA did not move to dismiss the appeal under Minn. R. Civ. App. P. 127.

judgment from which an appeal might be taken.” Minn. R. Civ. App. P. 103.03(e). They contend the order falls within this provision because it “limited the amount recoverable in the underlying action by repudiating [their] claim for post-judgment interest.” Neither party’s argument persuades us.

Rule 103.03(g) provides that an appeal may be taken “from a final order, decision or judgment affecting a substantial right made in an administrative or other special proceeding.” Minn. R. Civ. App. P. 103.03(g). The rule does not define “special proceeding,” but courts have interpreted it in light of its remedial nature. *See In re GlaxoSmithKline PLC*, 699 N.W.2d 749, 756 (Minn. 2005) (“We have preferred an interpretation that preserves the parties’ right to appeal when appropriate.”). A special proceeding is a “generic term for any civil remedy in a court of justice which is not of itself an ordinary action.” *Chapman v. Dorsey*, 41 N.W.2d 438, 440 (Minn. 1950). A special proceeding “may be commenced independently of a pending action by petition or motion, upon notice, in order to obtain special relief.” *County of Stearns v. Schaaf*, 472 N.W.2d 191, 192 (Minn. App. 1991) (quoting *Chapman*, 41 N.W.2d at 440).

USAA brought its post-judgment motion under Minn. R. Civ. P. 67.01, which affords a district court discretion to permit a party, upon notice, to deposit money or other personal property into court. Rule 67.01 is found in section VII of the Minnesota Rules of Civil Procedure, entitled: “Provisional and Final Remedies and Special Proceedings.” Accordingly, we conclude that USAA’s post-judgment motion to deposit the appraisal award was a special proceeding. As such the district court’s order granting the motion is appealable under rule 103.03(g).

II. The district court had jurisdiction to consider USAA's motion while the first appeal was pending.

Minn. R. Civ. App. P. 108.01, subd. 2, provides that “the filing of a timely and proper appeal suspends the trial court’s authority to make any order that affects the order or judgment appealed from.” But commencement of an appeal does not fully divest the district court of jurisdiction. The district court “retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from.” Minn. R. Civ. App. P. 108.01, subd. 2.

Resolution of the jurisdiction issue turns on whether USAA’s motion to deposit the funds into court was an independent, supplemental, or collateral matter. As explained above, USAA’s rule 67.01 motion did not disturb the \$55,594.94 judgment in favor of the Robinsons, and did not address any of the issues pending in the first appeal. On its face, USAA’s motion falls within the district court’s retained jurisdiction as a matter collateral to the appealed-from judgment.

To convince us otherwise, the Robinsons assert that the motion affected the judgment because the order reveals the district court: (1) considered the merits of the then-pending appeal (by implicitly assuming the judgment would be affirmed), (2) did not consider the “legal mess” the order would create if the Robinsons’ appeal was successful, (3) did not face “changed circumstances” requiring the district court to act, and (4) did not consider that suspension of post-judgment interest changed the amount of the judgment. All of these arguments seem more focused on how the district court decided USAA’s

motion rather than its authority to do so. And none of them otherwise persuades us to reverse.

The Robinsons do not explain their first contention, and the district court expressly rejected it, stating that permitting USAA to deposit the appraisal amount would not impact the pending appeal even if this court reversed and the case was re-litigated. Nor do they articulate how the cases they cite, *Perry v. Perry*, 749 N.W.2d 399 (Minn. App. 2008), and *In re Thulin*, 660 N.W.2d 140 (Minn. App. 2003), support their assertion that permitting USAA to deposit the funds would create a “legal mess.” To the contrary, the two cases support USAA’s argument that its motion involved a “new set of facts”—pertaining only to its tender of the judgment and interest accrual—and did not require consideration of the merits of any issue on appeal. *See Perry*, 749 N.W.2d at 402-03 (citing *Thulin*, 660 N.W.2d at 143) (stating that “an order does not necessarily affect the order on appeal if it involves a new set of facts and does not require the district court to consider the merits of the issue on appeal”).

Similarly, the Robinsons do not explain how *State v. J.C. (In re Welfare of C. Child.)* requires “changed circumstances” before a district court may consider a collateral matter while an appeal is pending. 348 N.W.2d 94 (Minn. App. 1984). We see no such broad holding in that case; it stands for the unremarkable proposition that a district court retains the authority to consider child-welfare issues that are ancillary to an appeal. *Id.* at 99. And save for the citation to Minn. Stat. § 549.09, subd. 2 (2022), which sets out how post-judgment interest is calculated and applied, the Robinsons provide no authority for their argument that stopping the accrual of post-judgment interest “changed” the judgment itself.

We do not assume error on appeal; the appellant has the burden to show error. *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944). The Robinsons have not met this burden.

In sum, the district court retained jurisdiction over USAA's post-judgment motion under Minn. R. Civ. App. P. 108.01, subd. 2, as a collateral matter not affecting the merits of the pending appeal.²

Affirmed.

² We note that our conclusion is consistent with other rules that vest decision-making as to matters related to enforcement of a judgment and security with the district court. *See* Minn. R. Civ. App. P. 108.02 (parties seeking to stay enforcement of a judgment must move first in the district court); Minn. R. Civ. P. 62.02 (district courts may “suspend, modify, restore, or grant an injunction during the pendency of an appeal”).