

*This opinion is nonprecedential except as provided by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
A24-0392**

Paul Hansmeier,
Appellant,

vs.

Tobies Enterprises, Inc.,
Respondent.

**Filed September 16, 2024
Affirmed
Larson, Judge**

Pine County District Court
File No. 58-CV-23-535

Paul Hansmeier, Sandstone, Minnesota (self-represented appellant)

Erik T. Salveson, Brandie Morgenroth, Kelly P. Magnus, Nilan Johnson Lewis PA,
Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Larson, Judge; and John Smith,
Judge.*

NONPRECEDENTIAL OPINION

LARSON, Judge

Self-represented appellant Paul Hansmeier challenges the district court's decisions
to dismiss his lawsuit against respondent Tobies Enterprises, Inc. (Tobies) and to grant

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

sanctions against Hansmeier. Because we conclude the district court correctly determined that Hansmeier failed to state a claim upon which relief could be granted and did not abuse its discretion when it imposed sanctions, we affirm.

FACTS

In March 2022, Hansmeier initiated a civil action alleging violations of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213 (2018 & Supp. IV 2022), and the Minnesota Human Rights Act, Minn. Stat. §§ 363A.01-.50 (2022 & Supp. 2023) against Tobies and U.S. Attorney General Merrick Garland (the ADA action). Tobies removed the ADA action to the United States District Court for the District of Minnesota. Less than a week later, the federal district court issued an order dismissing the case as frivolous. The order described the ADA action as “typical” of Hansmeier’s “vexatious” pattern of litigation. In addition to dismissing the ADA action, the federal district court “certified that any appeal from the dismissal of this action would not be taken in good faith,” and imposed filing restrictions on Hansmeier.

Fourteen months later, Hansmeier moved to vacate the federal district court’s order dismissing the ADA action as frivolous. In response, Tobies filed a letter with the chief judge for the federal district court. The letter asked the chief judge to summarily deny Hansmeier’s motion because it was untimely and raised the same arguments the federal district court rejected when it dismissed the ADA action. In the letter, Tobies stated that “Hansmeier is seeking to perpetrate the same illegal conduct that caused him to be convicted and sentenced to serve time in federal prison.” The federal district court summarily denied Hansmeier’s motion to vacate.

In September 2023, Hansmeier initiated this lawsuit when he served Tobies with a complaint. In the complaint, Hansmeier alleged that Tobies defamed him in its letter to the chief judge. Hansmeier also sought a declaration that his assertion of the claims in the ADA action did “not come within the scope of the offenses defined by the Minnesota Criminal Code” or, alternatively, “that the Minnesota Criminal Code,” as applied to Hansmeier, violates article I, section 8, of the Minnesota Constitution. Finally, Hansmeier sought “an injunction prohibiting Tobies from enforcing the Minnesota Criminal Code’s civil or criminal remedies against Hansmeier.”

In October 2023, Tobies filed this case in the Washington County District Court and moved to dismiss the complaint under Minn. R. Civ. P. 12.02(e). Tobies argued the district court should dismiss the defamation claim because, as relevant here, Tobies was entitled to absolute privilege for the allegedly defamatory statement made by its attorney during a judicial proceeding. With respect to the declaratory-judgment claim, Tobies argued Hansmeier failed to state a claim upon which relief could be granted because Hansmeier failed to allege a bona fide legal interest, failed to allege a genuine conflict of tangible interests, and requested relief that was not capable of specific resolution through declaratory judgment.

On October 25, 2023, Tobies served Hansmeier with a letter, informing Hansmeier that it intended to file motions for sanctions against Hansmeier under Minn. R. Gen. Prac. 9 and Minn. R. Civ. P. 11 if he did not withdraw his complaint within 21 days. The letter stated that Hansmeier’s claims were “without basis in law,” and enclosed copies of Tobies’s draft motions.

In November 2023, the Washington County District Court transferred venue to Pine County District Court. Hansmeier served Tobies with an amended complaint. On November 20, 2023, Tobies moved to dismiss the amended complaint, asserting that Hansmeier was not free to amend the complaint without leave of the court or Tobies's written consent. In addition, Tobies asserted that its briefing for its original motion to dismiss continued to justify dismissal. The same day, Tobies filed two motions to sanction Hansmeier under rule 9 and rule 11.

The district court held a hearing on the motions. Hansmeier did not order a transcript of the motion hearing. At the conclusion of argument, the district court orally granted Tobies's motion to dismiss and took the motions for sanctions under advisement. The district court filed its written order granting Tobies's motion to dismiss and dismissing Hansmeier's amended complaint with prejudice the same day. The district court subsequently issued its order granting Tobies's motions for sanctions.

Hansmeier appeals from the resulting judgments.

DECISION

Hansmeier challenges both the order dismissing his amended complaint with prejudice and the order granting Tobies's motions for sanctions. We first address the district court's decision to dismiss Hansmeier's amended complaint and then address the district court's decision to grant Tobies's motions for sanctions.

I.

Hansmeier challenges the district court's decision to dismiss his amended complaint, arguing that he stated claims upon which relief could be granted for defamation

and declaratory judgment. When reviewing a district court's decision to dismiss a complaint under rule 12.02(e), "we review the legal sufficiency of the claim de novo to determine whether the complaint sets forth a legally sufficient claim for relief." *Graphic Commc'ns Loc. 1B Health & Welfare Fund "A" v. CVS Caremark Corp.*, 850 N.W.2d 682, 692 (Minn. 2014). "We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014).

A. Defamation

Hansmeier challenges the district court's decision to dismiss his defamation claim, arguing that the amended complaint did not establish that Tobies was entitled to absolute privilege for the alleged conduct. Because Hansmeier's amended complaint hinges its defamation claim on statements Tobies's attorney made that are subject to absolute privilege, we are not persuaded.

"[A] statement[], even if defamatory, may be protected by absolute privilege in a defamation lawsuit if the statement is (1) made by . . . [an] attorney . . . ; (2) made at a judicial or quasi-judicial proceeding; and (3) the statement at issue is relevant to the subject matter of the litigation." *Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 306 (Minn. 2007). "When absolute privilege applies, the speaker is completely shielded from liability" *Id.*

Here, the allegedly defamatory statements described in the complaint are subject to absolute privilege. First, the amended complaint alleged that Tobies defamed Hansmeier when Tobies's attorney "communicated a defamatory statement." Second, the amended

complaint asserted that the statement was communicated “to the Chief District Court Judge of the U.S. District Court for the District of Minnesota” and the statement was made “[i]n relation to Hansmeier’s petitioning activity against Tobies.” Last, the amended complaint contended that the alleged defamatory statement—that Hansmeier was “seeking to perpetrate the same illegal conduct that caused him to be convicted and sentenced to serve time in federal prison”—was made in response to his motion to vacate the judgment in the ADA action. Thus, taking the allegations in the amended complaint as true, Tobies is entitled to absolute privilege because the amended complaint asserted that the allegedly defamatory statement was (1) made by Tobies’s attorney; (2) in connection with Hansmeier’s motion to vacate in the ADA action; and (3) related to the subject matter of the motion to vacate.

Hansmeier disagrees, arguing the amended complaint affirmatively alleged that Tobies’s statement was irrelevant to the subject matter of the litigation. Under the third element of absolute privilege, a statement is relevant if it has “reference and relation to the subject matter of the action and [it is] connected therewith[.]” *Newgard*, 729 N.W.2d at 306 (second alteration in original) (quoting *Matthis v. Kennedy*, 67 N.W.2d 413, 418 (Minn. 1954)). “The relevance of a statement to litigation is a question of law, and any doubts as to relevance of a statement ‘must be resolved in favor of finding the statements pertinent.’” *Id.* at 306-07 (quoting *Jensen v. Olson*, 141 N.W.2d 488, 490 (Minn. 1966)).

We acknowledge that Hansmeier’s complaint stated the legal conclusion that Tobies’s attorney’s statement had “nothing to do with the facts of his petitioning activity.” But we do not defer to legal conclusions stated in a complaint. *See Halva v. Minn. State*

Colls. & Univs., 953 N.W.2d 496, 501-02 (Minn. 2021). And, as described above, the facts alleged in the complaint lead to only one conclusion: Tobies’s attorney made this statement in connection with Hansmeier’s motion to vacate the judgment in the ADA action.

Hansmeier also argues that Tobies’s attorney did not make the statement in a judicial proceeding because he made the statement to the chief judge rather than the judge assigned to the ADA action. First, we observe that absolute privilege extends not only to judicial proceedings, but also “quasi-judicial proceeding[s],” and, in some cases, even “statements published prior to the judicial proceeding.” *Newgard*, 729 N.W.2d at 306. Second, Hansmeier has not developed his argument beyond mere assertion or cited any authority to support his argument that a letter to the chief judge in this context would not satisfy the second element of absolute immunity.¹ *See State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.” (quoting *State v. Yang*, 774 N.W.2d 539, 552 (Minn. 2009))).

¹ To the extent Hansmeier argues for a change to the law, he has failed to preserve that issue for appeal because he never ordered the transcript of the motion hearing. *See State v. Carlson*, 161 N.W.2d 38, 40 (Minn. 1968) (“It is elementary that a party seeking review has a duty to see that the appellate court is presented with a record which is sufficient to show the alleged errors and all matters necessary to consider the questions presented.”); Minn. R. Civ. App. P. 110.02, subd. 1(a) (requiring appellants to order transcripts “of those parts of the proceedings not already part of the record which are deemed necessary for inclusion in the record”). Because we cannot review the transcript to determine whether this argument was addressed and resolved by the district court, we decline to address this argument. *See Rochon Corp. v. City of St. Paul*, 831 N.W.2d 651, 654 (Minn. App. 2013) (“Generally, an appellate court will not address matters not presented to, and considered by, the district court.”), *rev. denied* (Minn. June 18, 2013).

For these reasons, we conclude the district court correctly dismissed Hansmeier's defamation claim on the ground that the alleged defamatory statement is subject to absolute immunity.

B. Declaratory Judgment

Hansmeier also argues the district court erred when it dismissed his declaratory-judgment claim.² A claim for declaratory judgment will only present a justiciable controversy if the claim: “(1) involves definite and concrete assertions of right that emanate from a legal source, (2) involves a genuine conflict in tangible interests between parties with adverse interests, and (3) is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion.” *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 617-18 (Minn. 2007).

In his amended complaint, Hansmeier alleged:

53. Hansmeier would like to reassert the claims in the [ADA action] against Tobies in Minnesota state court, but he is chilled from doing so by Tobies'[s] accusations of criminal activity. As someone who is imprisoned for his litigation conduct, Hansmeier is, for the reasons stated in the complaint [in the ADA action], uniquely vulnerable to accusations that he is violating the law via his petitioning activity. Hansmeier must either refrain from asserting his claims against Tobies or assert his claims against Tobies under the threat of civil and criminal penalties under the Minnesota Criminal Code.

54. Hansmeier seeks a declaration from the Court that his assertion of the claims [in the ADA action] do[] not come

² Tobies correctly observes that Hansmeier's claim for injunctive relief stemmed entirely from his claim for declaratory judgment. Thus, we disagree with Hansmeier's argument that we should reverse the district court on the ground that he stated a claim upon which relief could be granted when he requested an injunction as the remedy for his declaratory-judgment claim.

within the scope of the offenses defined by the Minnesota Criminal Code or, in the alternative, that the Minnesota Criminal Code violates [article I, section 8] of the Minnesota Constitution as applied to Hansmeier. Hansmeier further seeks an injunction prohibiting Tobies from enforcing the Minnesota Criminal Code's civil or criminal remedies against Hansmeier.

Hansmeier claims his complaint met all three requirements to allege a declaratory-judgment claim. We are not persuaded.

First, Hansmeier's claim is not based on a definite and concrete assertion of right. Instead, the claim is based on a hypothetical future occurrence. Hansmeier does not allege that he would face criminal consequences if he filed the ADA action in state court. Yet, he seeks a declaration that filing the ADA action would not violate "the Minnesota Criminal Code" in general, or if it would, that the "Minnesota Criminal Code" is unconstitutional as applied to him. It is well established that "[i]ssues which have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable." *Lee v. Delmont*, 36 N.W.2d 530, 537 (Minn. 1949).

Second, Hansmeier's declaratory-judgment claim does not involve a genuine conflict between the parties because Tobies, a private entity, has no authority to bring a criminal proceeding against Hansmeier. And, in the hypothetical situation where a government entity did bring a criminal proceeding against Hansmeier, Tobies would not be a party to that proceeding. Thus, Hansmeier has failed to state a claim that "involves a genuine conflict in tangible interests between parties with adverse interests." *Onvoy*, 736 N.W.2d at 617-18.

For these reasons, we conclude the district court correctly dismissed Hansmeier's declaratory-judgment claim on the ground that he failed "to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e).

II.

Hansmeier also argues the district court abused its discretion when it granted Tobies's motions for sanctions. We review a district court's decision to grant a sanctions motion for an abuse of discretion. *See Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011) (rule 11), *rev. denied* (Minn. Mar. 15, 2011); *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 290, 294 (Minn. App. 2007) (rule 9).

Hansmeier argues that the district court abused its discretion when it granted Tobies's motions for sanctions because the district court failed to follow procedural safeguards set forth in rule 9 and rule 11. Specifically, Hansmeier claims that Tobies did not provide him with the 21-day safe harbor required by both rules. *See* Minn. R. Gen. Prac. 9.01; Minn. R. Civ. P. 11.03(a).

We note that our review is hampered by Hansmeier's failure to order a transcript of the motion hearing. "An appellant has the burden to provide an adequate record." *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995). This burden applies to pro se appellants. *Noltimier v. Noltimier*, 157 N.W.2d 530, 531 (Minn. 1968) (*per curiam*). When the appellant fails to provide a transcript, our review is limited to whether the findings of fact support the conclusions of law. *Mesenbourg*, 528 N.W.2d at 494.

Here, in the absence of a transcript, we are unable to determine whether (1) Hansmeier challenged Tobies's motions on the ground that he was deprived of the 21-

day safe harbor; and, if so (2) whether the district court made the required determinations or reviewed the relevant factors before imposing sanctions. Hansmeier bore the burden of providing this court with a sufficient record to enable appellate review, *id.*, and, in the absence of that record, we are unable to determine whether the district court was presented with or decided the issue Hansmeier now raises, *see Watson v. United Servs. Auto. Ass’n*, 566 N.W.2d 683, 687 (Minn. 1997) (stating “the general rule . . . that appellate courts will not consider questions which were not presented to or decided by the district court”).

Therefore, based on the record before us, we cannot conclude that the district court abused its discretion when it imposed sanctions. *See Collins*, 793 N.W.2d at 146 (affirming district court’s imposition of sanctions in part because appellant did not provide transcripts and therefore did not provide this court with a sufficient record to conclude the district court abused its discretion); *see also Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (“[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it.”).

Affirmed.