This opinion is nonprecedential except as provided by Minn.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
A25-0255

A This Little Piggy Catering, Inc.,
Respondent,

vs

Historic John P. Furber Farm L.L.C., et al.,
Appellants,

Loupat Corp., d/b/a Tinucci's Restaurant, et al.,
Defendants.

Filed March 2, 2026
Affirmed in part, reversed in part, appeal dismissed in part, and remanded
Schmidt, Judge

Dakota County District Court
File No. 19HA-CV-22-195

Stephen A. Ling, Ariel K. Lierz, Haley A. Ekhaml, Spencer Fane LLP, Minneapolis, Minnesota (for respondent)

James Carson Whedbee Bock, JCWB ESQ., LLC, Minneapolis, Minnesota; and

Ryan L. Kaess, Kaess Law, LLC, St. Paul, Minnesota (for appellants)

Considered and decided by Schmidt, Presiding Judge; Bratvold, Judge; and Bentley, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Historic John P. Furber Farm, LLC (Furber Farm), and appellant Ryan Kaess—Furber Farm's attorney—challenge the district court's orders awarding attorney fees and costs to respondent A This Little Piggy Catering, Inc. (Little Piggy), due to discovery violations. Dwayne and Angela Butts, the individuals that own Furber Farm and GFY, LLC—the company that owns the real property on which Furber Farm operates—also attempt to appeal the district court's order piercing the corporate veil and holding the Buttses individually liable for an attorney-fees-and-costs award.

Because the Buttses are not proper appellants, we decline to consider their arguments. We also dismiss the appeal with respect to Furber Farm for a lack of standing. We reverse the district court's sanction award of $11,580.25 in attorney fees and costs against Kaess because he did not receive notice that the award may be entered against him personally. Finally, we affirm the district court's order awarding $63,093.15 in attorney fees and costs associated with Little Piggy's motion for contempt.

FACTS

Little Piggy, a catering company, entered into a 15-year contract to be the exclusive caterer for Furber Farm, a wedding-and-event venue company. Pursuant to a contract term that allowed for early termination by written agreement of both parties, Furber Farm attempted to terminate the contract three years into the 15-year term. Little Piggy refused.

The Buttses created a corporation—GFY—and Furber Farm then sold Furber Farm's real property to GFY. After discovering that Furber Farm had been using catering services other than Little Piggy, Little Piggy sued Furber Farm and GFY. Furber Farm denied liability and asserted counterclaims against Little Piggy.

Little Piggy served Furber Farm and GFY with interrogatories, requests for production of documents, and requests for admissions. Neither Furber Farm nor GFY responded. Three months after Little Piggy's original discovery requests, Little Piggy sent a letter to Kaess notifying him that if Furber Farm and GFY did not respond to the discovery requests, Little Piggy would move to compel discovery. Furber Farm served Little Piggy with answers to its interrogatories and requests for admissions. Little Piggy sent Kaess another letter, alleging that Furber Farm's answers were evasive, nonresponsive, and not in good faith. Little Piggy stated that if Furber Farm did not amend or supplement its answers by a given date, Little Piggy would move to compel discovery and include a request for attorney fees and costs. Furber Farm did not respond.

Thirteen months after the original discovery requests were served, Little Piggy sent a third letter to Kaess, which detailed Little Piggy's discovery efforts and requested that Furber Farm provide supplemental discovery responses. Little Piggy noted that it would move to compel discovery and request attorney fees and costs if Furber Farm did not respond or supplement its answers. Kaess wrote back:

> Thank you for your letter . . . , it was nice to hear from you, I assumed that your client had forgotten about this frivolous litigation.
>
> As to your question about discovery, now that I know your client is still pursuing this matter, I will of course update the initial discovery that was served on you.

After receiving no supplemental responses, Little Piggy moved to compel discovery from Furber Farm and GFY and sought fees and costs associated with bringing the motion. Furber Farm eventually provided amended answers to the first set of interrogatories and responses to the requests for the production of documents. In support of its motion, Little Piggy argued that Furber Farm's supplemental answers "remain[ed] universally evasive or incomplete" and that both Furber Farm and GFY "provide[d] no basis in law or in fact to justify the substantial delay in answering basic discovery questions." Furber Farm opposed the motion, arguing that "Little Piggy failed to prosecute this case and now after months of delay [is] demanding answers to questions that have already been asked and answered."

After a hearing, the district court found that Furber Farm's supplemental discovery responses were "inadequate." The district court granted Little Piggy's motion and ordered Furber Farm to provide supplemental answers by specific dates.[1] The district court also ordered Furber Farm and GFY to pay Little Piggy's reasonable attorney fees and costs associated with bringing the motion. Little Piggy filed an affidavit in support of the fees and costs it sought from Furber Farm and GFY. The affidavit also noted—for the first time—that Little Piggy also sought fees and costs from Kaess. Kaess was not served with the affidavit for the fees sought against him in his personal capacity.

The district court entered judgment for Little Piggy's attorney fees and costs and ordered that Furber Farm, GFY, and Kaess be jointly and severally liable for the total amount if it was not paid within 90 days. After the 90-day deadline had expired, Kaess

[1] Furber Farm never provided the supplemental answers as ordered by the district court.

moved to "[d]ismiss and strike" the award of attorney fees and costs. But before the district court ruled on Kaess' motion, Little Piggy informed the district court that it had received notice that Furber Farm and GFY declared Chapter 11 bankruptcy. The bankruptcy proceedings resulted in an automatic stay that applied to Furber Farm and GFY. The district court denied Kaess' motion and—given Furber Farm and GFY's insolvency and Kaess' joint-and-several liability—entered judgment against Kaess for $11,580.25.

Based on Furber Farm and GFY's continued failure to provide discovery, Little Piggy moved to hold Furber Farm, GFY, and Kaess in contempt. In its motion, Little Piggy asked the district court to dismiss Furber Farm and GFY's counterclaims with prejudice, enter judgment on Little Piggy's claims, pierce the corporate veil such that the Buttses could be held personally liable for Furber Farm and GFY's actions, and order sanctions against Furber Farm, GFY, and Kaess in the form of attorney fees and costs.

At the contempt hearing, Furber Farm and GFY agreed to a default judgment but opposed the request to pierce the corporate veil and the request for attorney fees and costs. Pursuant to the parties' stipulation, the district court dismissed Furber Farm and GFY's counterclaims against Little Piggy with prejudice and entered default judgment in favor of Little Piggy. The district court also granted Little Piggy's motion to pierce the corporate veil and awarded attorney fees and costs as a sanction. In assessing attorney fees, the district court ordered Kaess and the Buttses to pay Little Piggy $63,093.15 and found them jointly and severally liable for the entire award.

Furber Farm and Kaess now appeal.

DECISION

I. The Buttses are not proper appellants as they failed to file a notice of appeal.

The brief submitted by Kaess and Furber Farm includes arguments on behalf of the Buttses as individuals. The Buttses did not, however, file a separate notice of appeal. Although "notices of appeal are to be liberally construed in favor of their sufficiency," *Kelly v. Kelly*, 371 N.W.2d 193, 195 (Minn. 1985), we will not construe a notice of appeal so liberally as to include additional appellants not identified in it. *See, e.g.*, *Nash v. Allen*, 392 N.W.2d 244, 247 (Minn. App. 1986), *rev. denied* (Minn. Oct. 22, 1986). The notice of appeal filed by Furber Farm does not name or reference the Buttses. In addition, although the Buttses are owners of GFY, which owns Furber Farm, the Buttses' interests as individuals—separate and apart from the legal entities—are not represented by Furber Farm. Because the Buttses did not file a notice of appeal, they are not proper appellants. We, therefore, do not consider their arguments. *See id.*

II. Furber Farm lacks standing because it is not an aggrieved party.

We next address whether Furber Farm has standing to challenge the awards of attorney fees and costs on appeal, which is an issue that we review de novo. *Richards v. Reiter*, 796 N.W.2d 509, 512 (Minn. 2011). "To have standing to appeal, a party must be aggrieved by the decision of a court from which the party appeals." *Webster v. Hennepin County*, 910 N.W.2d 420, 434 (Minn. 2018). A party is "aggrieved" when its interests have been "injuriously affected by the underlying adjudication." *Glaze v. State*, 909 N.W.2d 322, 325-26 (Minn. 2018) (quotations omitted).

The district court never entered judgment against Furber Farm because the federal bankruptcy court proceedings automatically stayed the state court proceedings. 11 U.S.C. § 362(a) (2018) (providing that the filing of a bankruptcy petition automatically stays all other proceedings against the debtor). As such, Furber Farm appropriately concedes that it is not an aggrieved party. We agree. Because Furber Farm is not aggrieved, it lacks standing to appeal. *Webster*, 910 N.W.2d at 434. Accordingly, we dismiss the appeal with respect to Furber Farm.

III. The district court abused its discretion when it entered the $11,580.25 judgment against Kaess for attorney fees and costs.

Kaess argues that the district court abused its discretion by ordering him to pay Little Piggy $11,580.25 in attorney fees and costs associated with Little Piggy's motion to compel discovery. Kaess first asserts that the district court abused its discretion because it did not expressly find that he advised Furber Farm not to cooperate with discovery before imposing sanctions. Kaess also asserts that the district court abused its discretion because he received no notice that Little Piggy intended to seek fees and costs from him personally.

We review a district court's discovery rulings, including sanctions orders, for an abuse of discretion. *Frontier Ins. Co. v. Frontline Processing Corp.*, 788 N.W.2d 917, 922 (Minn. App. 2010), *rev. denied* (Minn. Dec. 14, 2010). Kaess raises challenges to the district court's construction of a court rule, which is a legal question that we review de novo. *See In re Rollins*, 738 N.W.2d 798, 803 (Minn. App. 2007). An error of law by a district court constitutes an abuse of discretion. *Id.*

A. Minnesota Rule of Civil Procedure 37.01(d)(1) does not require an express finding that an attorney advised the conduct that led to a motion to compel disclosure or discovery.

Kaess argues that the district court abused its discretion by sanctioning him without making an express finding that Kaess advised Furber Farm not to cooperate with discovery. Rule 37 authorizes a court to issue orders compelling discovery and to impose sanctions. When a party moves to compel discovery and the district court grants the motion,

> the court shall, *after affording an opportunity to be heard*, require the party or deponent whose conduct necessitated the motion or the party *or attorney advising such conduct* or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney fees[.]

Minn. R. Civ. P. 37.01(d)(1) (emphasis added).

We reject Kaess' reading of the rule that the district court must—before imposing sanctions against an attorney—make an express finding that the attorney advised the conduct which necessitated the filing of a motion to compel. The plain language of the rule requires no such finding, and Kaess cites no caselaw that imposes such a requirement.

We also note that there is ample support in the record that Kaess advised Furber Farm about the conduct that led to Little Piggy's motion to compel. Kaess represented Furber Farm throughout these proceedings. Little Piggy served Furber Farm, through Kaess, with interrogatories, requests for production of documents, and requests for admissions. Furber Farm did not respond. Little Piggy sent Kaess three letters requesting that Furber Farm provide good-faith responses to Little Piggy's discovery requests. Even though Kaess responded to Little Piggy's third letter, Furber Farm failed to supplement its discovery responses, which forced Little Piggy to seek redress from the district court.

Thus, the record fully supports the district court's decision to sanction Kaess as the "attorney advising [the] conduct" that necessitated Little Piggy filing a motion to compel against Furber Farm. Minn. R. Civ. P. 37.01(d)(1).

B. Because Kaess did not receive notice that Little Piggy sought attorney fees from him personally, we reverse the district court's order and remand with instructions to vacate the $11,580.25 judgment.

Kaess also argues that the district court abused its discretion when it held him liable for the $11,580.25 award because he did not receive notice that Little Piggy sought sanctions against him personally.

Little Piggy's notice of motion and motion to compel sought fees and costs against Furber Farm and GFY. Those pleadings did not mention Kaess. In granting Little Piggy's motion to compel, the district court ordered that Furber Farm and GFY "shall be responsible to pay [Little Piggy's] reasonable attorney fees and costs associated with the bringing of its present motion to comply." The order did not mention Kaess. Little Piggy then filed an affidavit detailing the amounts and, for the first time, noted its intent to seek fees from Kaess. Kaess did not receive service of the affidavit seeking awards against him. The district court later entered judgment for Little Piggy and ordered that Furber Farm, GFY, *and Kaess* be jointly and severally liable for the total amount.

But before a district court can render sanctions under rule 37, the rule requires the person from whom sanctions are sought to be afforded "an opportunity to be heard." Minn. R. Civ. P. 37.01(d)(1). Kaess was never provided with notice—through, for example, Little Piggy's notice of motion or motion—or given an opportunity to be heard about Little Piggy's intent to seek sanctions against Kaess.

Little Piggy argues that rule 37, itself, provided sufficient notice to Kaess because the rule expressly authorizes sanctions against attorneys who advise parties to engage in conduct prompting the filing of a motion to compel discovery. But the rule's language authorizing sanctions against attorneys does not alleviate Little Piggy of its duty to provide notice to everyone from whom Little Piggy sought sanctions, so that they may have "an opportunity to be heard." Minn. R. Civ. P. 37.01(d)(1).

We conclude that Kaess was not provided an opportunity to be heard on whether he should personally be sanctioned under rule 37.01(d)(1). Accordingly, we reverse and remand with instructions to vacate the $11,580.25 judgment against him.

IV. The district court did not abuse its discretion when it entered the $63,093.15 judgment against Kaess for attorney fees and costs.

Kaess contends that the district court abused its discretion when it ordered him to pay $63,093.15 in attorney fees and costs associated with Little Piggy's motion for contempt,[2] which—unlike the motion to compel—specifically named Kaess and, therefore, put him on notice. We review sanctions orders for an abuse of discretion and the underlying interpretation of a court rule de novo. *Rollins*, 738 N.W.2d at 803.

Kaess argues that the sanction order must be reversed based upon the five factors for determining whether a court has abused its discretion in imposing discovery sanctions:

> (1) [whether] the court set a date certain by which compliance was required, (2) [whether] the court gave a warning of potential sanctions for non-compliance, (3) [whether] the failure to cooperate with discovery was an isolated event or part of a pattern, (4) [whether] the failure to comply was willful

[2] Kaess also argues that the district court needed to find that he advised Furber Farm's sanctionable conduct before imposing these sanctions. We rejected this argument above.

> or without justification, and (5) [whether] the moving party has demonstrated prejudice.

Frontier, 788 N.W.2d at 923. Our analysis of each factor leads us to the conclusion that the district court did not abuse its discretion by sanctioning Kaess.

Factor 1: the district court set a date certain by which compliance was required.

Kaess argues that the first factor weighs against sanctions because the court did not order Furber Farm to comply with discovery by any particular date. Kaess' argument has no merit because the district court gave Furber Farm 30 days to supplement certain answers to interrogatories and requests for admission and 45 days to produce certain documents.[3]

Factor 2: the district court warned Kaess of potential sanctions for noncompliance.

Kaess argues that the second factor weighs against sanctions because the district court gave no explicit warning. But we have afforded weight to implicit warnings. *See, e.g.*, *id.* at 923-25 (concluding "the lack of a prior explicit warning [was] not dispositive" because the sanctioned party "had previously been given clear notice that its discovery responses were insufficient and of the importance of completing adequate supplementation in compliance with the discovery rules by [given] deadline[s]"). The district court did not provide Kaess with explicit warnings of potential sanctions. But, as an officer of the court, Kaess knew of the implicit consequences of being held in contempt for failing to comply with the court's ruling requiring compliance with discovery by certain dates.

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[3] Kaess argues that we should disregard these deadlines because Furber Farm notified Little Piggy that it intended to agree to a default judgment. But Furber Farm stipulated to default judgment 29 days after the court's deadline expired. Furber Farm's intent to agree to default judgment at a later date did not relieve it of its obligation to comply with the order.

Factor 3: the failure to cooperate with discovery was part of a pattern.

Kaess contends that the district court "made no findings that there was any pattern regarding a failure to provide discovery . . . [or] why Kaess is responsible for not providing adequate discovery." But the record shows that Furber Farm and GFY's failure to participate in discovery was the rule, not the exception.

The district court also made several findings that reflect a pattern of Furber Farm and GFY—through Kaess—failing to participate in discovery. The court found that Kaess "largely ignored" communications from Little Piggy to Kaess requesting that his clients provide complete discovery responses. The district court further found that "Furber Farm and GFY made modest attempts to respond to [Little Piggy's] discovery requests" only after being threatened with a motion to compel, but the court noted that those attempts were "by-and-large inadequate." The court also noted that Little Piggy's discovery requests "were generally material to the case, proportional, and *not* overly burdensome." The district court further found that Furber Farm and GFY:

- offered discovery responses that demonstrated an attempt "to shield themselves from reasonable discovery";
- provided discovery responses that were "*not* responsive";
- "claimed not to understand questions not difficult to understand";
- "claimed to lack knowledge of facts which any reasonable [d]efendant in their position would have been aware";
- "answered questions of their own making rather than the question put to them";
- failed to provide "[s]atisfactory explanations for" their noncompliance;

- failed to provide the bases for denials to requests for admissions; and
- "deficient[ly]" produced documents because "[n]ot a single e-mail between Furber Farm and any other admitted vendor was provided."

These findings support the district court's implicit determination that the pattern of failing to cooperate with discovery occurred through Kaess.

Factor 4: the failure to comply was without justification.

Kaess argues that the district court made no finding as to why he, as opposed to Furber Farm, is responsible for not providing adequate discovery. But this factor asks whether the failures to comply were in good or bad faith, not who is most responsible. *See, e.g.*, *Breza v. Schmitz*, 248 N.W.2d 921, 922 (Minn. 1976). The district court's finding that the noncompliance was without justification is supported by the record.

Factor 5: Little Piggy demonstrated prejudice.

Kaess argues that Little Piggy was not prejudiced by the failure to respond to discovery requests. Kaess asserts that Little Piggy "started a lawsuit to win a case" and it "won the case," which is the "exact opposite of prejudice." But Furber Farm and GFY's uncooperativeness was not harmless. Little Piggy incurred significant expenses due to Furber Farm and GFY's failure to meaningfully participate in discovery.

In sum, all of the *Frontier* factors support the district court's decision to hold Kaess in contempt. The court did not abuse its discretion in awarding $63,093.15 in fees and costs associated with the motion for contempt and in entering judgment against Kaess.

Affirmed in part, reversed in part, appeal dismissed in part, and remanded.