

*This opinion is nonprecedential except as provided by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
A25-1536**

Kelly Sheehy,
Appellant,

vs.

Mayo Clinic Hospital-Rochester, et al.,
Respondents.

**Filed July 13, 2026
Affirmed
Cochran, Judge**

Olmsted County District Court
File No. 55-CV-22-2493

Kenneth R. White, Law Office of Kenneth R. White, P.C., Mankato, Minnesota; and

Jay T. Jambeck (pro hac vice), Leigh Law Group, PC, San Francisco, California (for appellant)

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Matthew J. Hanzel, Mayo Clinic, Rochester, Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Frisch, Chief Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges the district court's dismissal of her medical-malpractice action for failure to prosecute. Appellant also challenges multiple earlier underlying orders from

the district court. Because we conclude that the district court did not abuse its discretion by dismissing appellant's complaint for failure to prosecute, we affirm.

FACTS

The following facts and procedural history derive from the record before the district court.

In March 2018, appellant Kelly Sheehy underwent a primary total hip arthroplasty on her left hip performed by orthopedic surgeon Dr. Michael Taunton, who was employed by respondent Mayo Clinic Hospital-Rochester. After the surgery, Sheehy experienced significant ongoing pain and discomfort. Because of that pain and discomfort, Sheehy had hip-revision surgery in late 2020 with a different orthopedic surgeon, Dr. L. During that surgery, "immediately upon entering her hip joint," Dr. L. found a "flat translucent piece of plastic film measuring approximately 1.5 cm [by] 1.5 cm" that he determined to be from her previous surgery. He removed the foreign object and continued with the revision surgery. Neither party disputes that the foreign object came from a medical device called an "Alexis O wound protector-retractor," designed to protect soft tissue during surgery. Following the second surgery, Sheehy experienced some improvement and then underwent a right hip replacement to address a leg-length differential. By late 2021, improvement seemed to stall, and Sheehy continued experiencing regular pain.

Sheehy filed her medical malpractice claim against respondents Mayo Clinic Hospital-Rochester, d/b/a Rochester Methodist Hospital, and Mayo Clinic, d/b/a Mayo Clinic Rochester (collectively Mayo) in March 2022. The complaint alleged that Sheehy underwent hip arthroplasty surgery at Mayo Clinic Hospital-Rochester and Dr. Taunton,

who was employed by Mayo Clinic Rochester, was the primary surgeon. The complaint further alleged that

in performing said surgery, [Mayo] negligently departed from the degrees of skill ordinarily possessed and exercised by physicians and hospitals under the same or similar circumstances in that a piece of plastic material not intended to be a part of the surgery . . . was left in [Sheehy's] hip capsule.

And “as a direct result of the presence of that foreign body, i.e., the piece of plastic, [Sheehy] was caused to suffer pain, discomfort, and disability.”

Sheehy served her expert disclosures on Mayo on May 1, 2023, consistent with the agreed upon deadline. Her expert disclosures included three medical expert witnesses: Dr. L., who performed the hip-revision surgery; and two treating physicians, Dr. B. and Dr. R.¹ Sheehy's disclosure relative to Dr. L. stated that:

Dr. [L.] will testify that it is a departure from the accepted standard of care for an orthopedic surgeon to leave in the patient a piece of plastic of the type and size that was left in [Sheehy's] operated hip posterior capsule. He will testify that it is highly probable that the retained piece of plastic was the source of irritation and pain to nerves which transverse the area of the hip capsule.

Sheehy's expert disclosure for Dr. B. explained that the doctor “will testify concerning [the doctor's] care and treatment of [Sheehy] including the pain she has experienced since her [2018] hip surgery . . . and the cause of the pain she has experienced in relation to that surgery.” Lastly, Dr. R.'s disclosure stated that she would “testify about [Sheehy's] general

¹ Sheehy also disclosed an expert related to damages.

health care with particular focus on her hip surgeries including her initial hip replacement surgery.”

Sheehy Retains New Counsel

In July 2023, Sheehy retained different counsel. In October, her new counsel moved to amend the scheduling order and extend the expert-disclosure deadline based on a claimed need to substitute new expert witnesses for Dr. B. and Dr. R. because of errors by previous counsel. At a hearing on the motion in November, Sheehy’s counsel explained that Dr. L. would remain the expert testifying about standard of care as well as about causation of pain following the initial hip surgery at Mayo until the hip revision surgery, but counsel was seeking to replace Dr. B. and Dr. R. as treating physicians to testify about Sheehy’s ongoing pain since the revision surgery and its causation. Further, Sheehy’s counsel asserted multiple times that they were “not changing the strategy of the case” and were “not changing [their] theory of the case,” acknowledging that to put forward a new theory would be “unfair” to Mayo. In an order filed February 14, 2024, the district court, applying the framework of excusable neglect, determined that Sheehy had “made a showing sufficient to justify a limited extension of the discovery deadlines” and providing Sheehy 30 days to make “one-to-one substitutions” of Drs. B. and R. for two other “treating physicians and non-retained experts.”

Sheehy Retains a Third Set of Counsel

Prior to the filing of the district court’s order, Sheehy’s second set of counsel withdrew. After being retained, Sheehy’s third set of counsel requested and received an extension of time to disclose substitutions as provided for in the February 14 order. On

March 15, counsel disclosed a new retained expert, Dr. C., who had not treated Sheehy. And, on March 29, counsel served “Supplemental Rule 26.01(A) Disclosures” on Mayo. The supplemental disclosures stated that Dr. L., Sheehy’s previously disclosed expert, would testify to a new standard of care about leg-length differentials in addition to the standard of care relating to the foreign object. The supplemental disclosures also identified over 20 treating providers. Mayo objected to the disclosures, including the disclosure of Dr. C., as being outside of that permitted by the district court’s February 14 order.

The parties then sought clarification from the district court on the scope of the February 14 order. At a status conference on the subject, Sheehy’s counsel explained that Dr. C.’s role, in substituting for Drs. B. and R., was to discuss two breaches of the standard of care—the foreign object and leg-length differential—and how these breaches were causing ongoing pain for Sheehy. Counsel also requested that the district court permit three newly disclosed treating physicians to testify as experts. In response to questions, counsel acknowledged that Sheehy was requesting to increase the number of experts from three initially disclosed experts (Drs. L., B., and R.) to five experts (Dr. L., Dr. C., and three new treating physicians). Counsel also recognized the prior statements made by Sheehy’s second counsel about not including any new standards of care or theories of causation but explained that those statements were “misrepresentations” and “inexplicable” given the “deficiencies in Dr. [L.’s] disclosures” and further explained why current counsel believed there was a need for five experts.

On May 15, the district court filed its order ruling that “[t]he addition of [Dr. C.] as a retained expert witness for [Sheehy] is not authorized by the court’s February 14[] order.”

The court explained that the February order did not permit Sheehy to procure and present a new retained expert witness. But the district court also ruled that Sheehy could file a motion addressing whether there was good cause to permit Sheehy to identify and call “new treating and even retained expert witnesses.”

At that point, the case was set for trial on July 7, 2024. However, the district court judge who was handling the case retired at the beginning of July. The case was then reassigned to a new judge and set for a trial in April 2025.

Before the reassignment, Mayo filed a motion to exclude as untimely the expert testimony from Dr. C. and the additional providers included in Sheehy’s supplemental disclosures. In contrast, Sheehy moved for leave to amend the scheduling order to allow Sheehy’s supplemental expert disclosures to be deemed timely and to set an amended expert discovery deadline of December 13, 2024. After a hearing on the motions, the newly assigned judge granted Mayo’s motion to exclude untimely expert disclosures and denied Sheehy’s motion to amend the scheduling order. The December 31, 2024 order concluded that Sheehy had not demonstrated excusable neglect or good cause, as required to amend the scheduling order.

In February, Sheehy identified two treating physicians who could substitute for Drs. B. and R. and requested permission from the court to make that substitution. Following receipt of the request, the court filed an order explaining that Sheehy retained the ability to call two treating physicians “as substitutions for Drs. [B. and R.],” but the new experts were “limited to the testimony disclosed” by their predecessors. Trial was delayed again when Sheehy’s counsel sought, and was granted, a continuance because the April 2025

trial date coincided with her maternity leave. The trial was then set for a date certain on July 21, 2025.

Sheehy's Self-Represented Motion for a Continuance

About 11 weeks before trial, Sheehy's third set of counsel withdrew from the case. Three weeks after the withdrawal, Sheehy, acting pro se, moved for a continuance. She requested a new trial date in 2026 and an extension of all associated pretrial deadlines so that she could obtain new counsel and prepare for trial. In support of her motion, Sheehy argued that the district court should grant a continuance because her previous counsel had inadequately represented her and because her disabilities rendered her unable to represent herself. In support of the latter assertion, Sheehy submitted letters from various medical professionals opining that she is incapable of representing herself in legal proceedings due to her medical condition.

On June 16, a day before the scheduled pretrial hearing, Sheehy submitted a letter to the court discussing, among other things, "ADA accommodation concerns." In her letter, she stated that her treating physicians "have identified legal representation . . . as a medically necessary accommodation."

On June 17, the district court held the pretrial hearing and addressed Sheehy's motion for a continuance to obtain new counsel as well as Sheehy's requests for accommodations. Sheehy appeared without counsel. At the hearing, the district court told Sheehy that "there is no reasonable accommodation for the [c]ourt to appoint . . . counsel for you." The district court then discussed the possibility of reasonable accommodations that the court could provide and explained that it "would like more information" about

Sheehy's various needs. Addressing Sheehy's request for a continuance, the district court expressed concerns about the delays that had already taken place in the case and asked Sheehy about the steps she had taken to find another attorney. The district court explained that it might be willing to consider a continuance if she provided a greater level of specificity and certainty in her request, such as, "this is the attorney that I want to hire. They are willing to take my case if we get a continuance, who they are, etc." But Sheehy could not provide that level of detail, stating that attorneys would not speak to her unless she was granted a continuance. After considering Sheehy's responses, the district court issued an oral denial of Sheehy's motion for a continuance, stating that it did not "have any reasonable legal basis to grant it." The district court also reminded Sheehy that the trial was set for a date certain of July 21 and discussed the applicable pretrial deadlines, some of which the district court extended to give Sheehy more time.

A week later, Sheehy filed a letter seeking leave to file a motion for reconsideration. She also filed a document titled, "Notice of Inability to Comply with Pretrial Deadlines Due to Disability and Pending ADA Accommodation Request." That notice asserted that "a continuance remains the only medically supported accommodation that would allow [her] to participate in trial without undue risk to [her] health" and included another doctor's letter. Sheehy did not make the required pretrial disclosures. She did not explicitly request any accommodation other than a continuance.

Mayo's Motion to Dismiss

Mayo then moved to dismiss Sheehy's complaint under Minnesota Rule of Civil Procedure 41.02(a) for failure to prosecute or, in the alternative, to exclude evidence necessary to sustain her burden of proof. Sheehy filed a written objection, arguing the motion to dismiss should be denied because "she has not received accommodations and does not have legal training."

Both parties appeared before the district court on the set trial date with Mayo's motion pending. Sheehy again appeared without counsel and objected to the occurrence of any proceedings where she had to represent herself, stating that she was "medically unable" to do so. After some back and forth with the court, she explained that she had a short statement, a written proffer, and an oral motion for the district court to recuse, all of which she read into the record. When the court allowed Mayo to respond, Sheehy left the courtroom "under protest" because she was "medically unable to remain without accommodations," though the district court clearly established that it was not in recess and Sheehy had not been given permission to leave.

After Sheehy left the courtroom, Mayo argued in favor of its pending motion to dismiss for failure to prosecute and addressed Sheehy's oral motion for recusal. The district court then addressed the motions made by both parties. The district court denied Sheehy's oral motion for recusal. And then, having "reviewed all of the pleadings specific to and relevant to 41.02 involuntary dismissal" and "the various applicable case law," the district court granted Mayo's motion to dismiss with prejudice.

Sheehy appeals.

DECISION

Sheehy raises several arguments on appeal. She argues that the district court abused its discretion by dismissing her complaint with prejudice for failure to prosecute. Sheehy also argues that, before dismissing her complaint, the district court abused its discretion by ruling that her disclosure of Dr. C., a retained expert, was not authorized by the February 14 order. She further contends that the district court erred by denying her subsequent motion to amend the scheduling order, her motion for a continuance, and her accommodation requests. Because the issue of the dismissal for failure to prosecute is dispositive, we do not separately reach Sheehy's other arguments. *See Minn. Baptist Convention v. Pillsbury Acad.*, 74 N.W.2d 286, 296 (Minn. 1955) ("Under well-settled rules the court refrains from deciding, where it is unnecessary to do so, constitutional and other legal questions.").

Under Minn. R. Civ. P. 41.02(a), the district court may "dismiss an action or claim for failure to prosecute or to comply with these rules or any order of the court." This dismissal "operates as an adjudication upon the merits." Minn. R. Civ. P. 41.02(c). Consequently, motions for dismissal for failure to prosecute should "be granted only under exceptional circumstances." *Firoved v. Gen. Motors Corp.*, 152 N.W.2d 364, 368 (Minn. 1967) (stating that dismissal with prejudice "is the most punitive sanction which can be imposed" by a district court).

We review the district court's dismissal under rule 41.02 for an abuse of discretion. *See Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 395 (Minn. 2003). A district court may dismiss an action for failure to prosecute if it is shown that: (1) the delay prejudiced the defendant and (2) the delay was unreasonable and inexcusable. *Id.* at 394. The record

must be reviewed in the light most favorable to the district court. *Zuleski v. Pipella*, 245 N.W.2d 586, 587 (Minn. 1976). We first address prejudice to Mayo before considering whether any delay was unreasonable and inexcusable. Based on our review of the two factors, we conclude the district court did not abuse its discretion by granting the motion to dismiss for failure to prosecute.

I. It was not an abuse of discretion for the district court to conclude that Sheehy’s failure to prosecute prejudiced Mayo.

Sheehy argues that the district court’s dismissal was an abuse of discretion because any prejudice to Mayo “was, at bottom, the ordinary cost and inconvenience of litigation and preparation.” We disagree. The record reflects that Mayo demonstrated prejudice from Sheehy’s failure to comply with the pretrial order and from her refusal to proceed to trial. As Mayo emphasized in the motion to dismiss, Sheehy’s failure to provide Mayo with a witness list and exhibit list as required by the pretrial order meant that Mayo would be subject to “trial by ambush” if the matter proceeded to trial on July 21, 2025, as scheduled. Mayo also demonstrated prejudice based on the impact to their expert witnesses and their patients resulting from Sheehy’s refusal to proceed with the trial. Mayo explained that their witnesses were “treating physicians” who, in preparation for attending trial, had “blocked several days on their calendars, which cannot be used to schedule procedures and treat patients who are in need of medical care.” Sheehy’s failure to prosecute resulted in those treating physicians being unavailable for their patients, and, if trial had been rescheduled, the witnesses would have had to make themselves available again. Such an

impact on the medical practice of the witnesses and, by extension, their patients, goes beyond “the ordinary cost and inconvenience of litigation” to Mayo.

Additionally, at the time Mayo filed its motion to dismiss, this case had been ongoing for around three years with numerous delays. The supreme court has recognized courts’ interests in “reasonable diligence in bringing litigation to a close” and in “not allow[ing] parties to delay suits for an unreasonable length of time.” *DeMars v. Robinson King Floors, Inc.*, 256 N.W.2d 501, 504 (Minn. 1977). “[E]xcessive and inexcusable delays in the disposition of a case” can impact the disposition of other cases and “disrupt the fair administration of justice.” *Firoved*, 152 N.W.2d at 369. Consequently, a plaintiff cannot delay disposition of a case indefinitely and claim that any resulting prejudice was only ordinary litigation inconvenience and expense. In sum, it was not an abuse of discretion for the district court to conclude that Sheehy’s refusal to proceed prejudiced Mayo. *See Modrow*, 656 N.W.2d at 395.

II. The district court did not abuse its discretion by determining that Sheehy’s delay was unreasonable and inexcusable.

Sheehy also seems to dispute that Mayo met its burden to demonstrate that Sheehy’s failure to prosecute was unreasonable and inexcusable. Again, we disagree. The record supports the district court’s determination that the delay caused by Sheehy’s failure to prosecute was unreasonable and inexcusable. *See id.* (stating that a district court may dismiss for failure to prosecute if the plaintiff’s delay was unreasonable and inexcusable). Here, Sheehy’s conduct went beyond failing to meet court-imposed pretrial deadlines for filing witness and exhibit lists. Sheehy specifically and explicitly refused to follow the

district court's pretrial order. Rather than attempting to comply with the pretrial order, Sheehy submitted a letter labeled "Notice of Inability to Comply with Pretrial Deadlines Due to Disability and Pending ADA Accommodation Request," in which she asserted that "a continuance remain[ed] the only medically supported accommodation" in her case. Then, at the scheduled start of trial, she appeared but refused to proceed. Instead, after confirming she had not filed a witness or exhibit list, she read a written proffer and made an oral motion for recusal. Sheehy then left the hearing "under protest" against the specific instructions of the district court. She did so even though the trial had not been postponed, and the district court told Sheehy that it was prepared to hear the pending motions. Minnesota caselaw establishes that similar conduct, failing to show up for trial, supports a dismissal for failure to prosecute. *See O'Neil v. Kelly*, 239 N.W.2d 231, 232 (Minn. 1976) (stating that "plaintiff's refusal to appear for trial as scheduled justified . . . dismissal").

To the extent that Sheehy argues that she had no other option but to stop prosecuting her case and walk out, we conclude that such a framing of events is inaccurate. In her brief, Sheehy suggests that the district court's prior rulings limiting her expert witnesses, in conjunction with mistakes by her previous counsel, essentially "foreclosed" her medical-malpractice action. The record contradicts this assertion. Consistent with the district court's orders and instructions, Sheehy had identified three different expert witnesses (Dr. L. and two treating physicians disclosed to replace Drs. B. and R.), who were seemingly prepared and able to testify about standard of care and the theory of causation related to the foreign object left in Sheehy's hip as well as Sheehy's ongoing pain. Sheehy could have presented a case at trial with those experts.

Sheehy also asserts that her medical limitations and disability forced her into a position where she had no choice but to walk out and not prosecute because the district court had denied her motion for a continuance and she could not proceed self-represented. Again, we are not persuaded that the surrounding circumstances made Sheehy's failure to prosecute reasonable and excusable. Though we recognize Sheehy's medical conditions may have caused her difficulty in representing herself at trial, the record shows that she had 11 weeks after her third counsel withdrew and before trial began to obtain new counsel. The record also shows that the district court attempted to work with her by explaining that it might consider a continuance if Sheehy could give more definitive information about an attorney willing to take the case. Sheehy did not.

Additionally, the district court determined, as it was permitted to do under *Chahla v. City of St. Paul*, that Sheehy was not medically incapacitated in a manner preventing her from proceeding, even if self-represented. 507 N.W.2d 29, 32 (Minn. App. 1993) ("While it is true that the only expert testimony indicated appellant was unable to proceed with trial, the court was not precluded from making its own observations."), *rev. denied* (Minn. Dec. 14, 1993). The district court stated at the July 2025 hearing that it "has observed [Sheehy] in court on two separate occasions and that ultimately she has filed numerous documents here and with the [s]tate so it is hard for the [c]ourt to make a determination that somehow the process itself would be outside of her ability." It then noted that, regardless, a continuance is not an "ADA . . . related request." The record supports the district court's observations, showing that, while representing herself, Sheehy was able to file motions, gather affidavits and letters from witnesses, including doctors,

and appear before the court on multiple occasions. Indeed, on the day that trial was scheduled to start, Sheehy was able to appear, present her arguments to the court, and offer an oral motion for recusal. It was only once she presented her points and it was time for Mayo to argue its motion for dismissal based on failure to prosecute that Sheehy left. The district court attempted to accommodate Sheehy and her medical conditions on that day, repeatedly offering breaks so that she would not leave. But rather than remaining and using breaks as offered, Sheehy left the courtroom after the district court explicitly asked her not to. Considering these circumstances in their entirety, the district court's determination that Sheehy's delay in prosecuting was unreasonable and inexcusable is not an abuse of discretion.

We are not persuaded otherwise by Sheehy's argument that the district court abused its discretion because it failed to consider less severe alternative sanctions than dismissal. Sheehy cites no legal authority to support her contention that the district court was obligated to consider or implement less severe options. Consequently, the argument is forfeited. *See State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) ("Arguments are forfeited if they are presented in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred.").

Lastly, Sheehy asserts that the district court's dismissal of her case should be reversed because the district court's order granting Mayo's motion to dismiss for failure to prosecute did not include written findings on the relevant factors. We acknowledge that order does not include detailed findings and the better practice is for the district court to include detailed written findings. But, when the district court's reasons for dismissal are

clear, we may affirm in the absence of such findings. *See Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (refusing to remand for missing findings of fact when “from reading the files, the record, and the court’s findings, on remand the [district] court would undoubtedly make findings that comport with the statutory language”); *see also Butler v. Moore*, No. A23-1582, 2024 WL 3099039, at *4 n.3 (Minn. App. June 24, 2024) (declining to remand an involuntary dismissal when it was clear the district court would find the necessary prejudice).² Here, viewing the record in the light most favorable to the district court, as we must, *Zuleski*, 245 N.W.2d at 587, we conclude that the district court accepted and adopted Mayo’s prejudice arguments, and found that Sheehy’s conduct, especially leaving in the middle of the trial date, amounted to unreasonable and inexcusable delay. The resulting decision to dismiss Sheehy’s action with prejudice was not an abuse of discretion.

Affirmed.

² This case is nonprecedential and, therefore, not binding. This court may cite nonprecedential opinions as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).