

*This opinion is nonprecedential except as provided by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
A26-0232**

Merle Hiltner,
Appellant,

vs.

Minnesota Astronomical Society, et al.,
Respondents.

**Filed October 5, 2026
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CV-25-12599

Nicholas D. Henry, Dudley and Smith, P.A., Mendota Heights, Minnesota (for appellant)

V. John Ella, Anna M. Swiecichowski, Hannah J. Schacherl Jansen, Fafinski, Mark & Johnson, P.A., Eden Prairie, Minnesota (for respondents)

Considered and decided by Johnson, Presiding Judge; Bentley, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In this civil action, the district court granted the defendants' joint motion to dismiss for failure to state a claim upon which relief can be granted and for judgment on the pleadings. The district court dismissed the complaint with prejudice. On appeal, the plaintiff argues that the district court should have dismissed the complaint without

prejudice instead of with prejudice. We conclude that the district court did not abuse its discretion by dismissing the complaint with prejudice. Therefore, we affirm.

FACTS

This appeal arises from a motion filed pursuant to rules 12.02(e) and 12.03 of the rules of civil procedure. Accordingly, in stating the relevant facts, we recite the allegations in the complaint, which we assume to be true for purposes of this appeal.

The Minnesota Astronomical Society is a non-profit organization. Merle Hiltner joined the society in 2005 and was an active member of the organization. At various times, he served on the board of directors, chaired a committee, designed and oversaw various construction projects, trained new members, prepared written materials, represented the society in media interviews, and designed and maintained part of the society's website.

In 2023, a disagreement arose between Hiltner and a board member concerning the process for selecting committee members. In July and August of 2023, the board initially suspended Hiltner's membership of a committee that he chaired and later removed him from the committee. In November 2024, Hiltner was nominated for the position of vice president of the society, but the board declared that he was disqualified from seeking that office and later expelled him from the society and forbade him from attending society events.

In March 2025, Hiltner commenced this action against the society and three of its board members. Hiltner's complaint asserts causes of action for defamation, negligent or intentional infliction of emotional distress, and a violation of Minnesota Statutes section 317A.411 (2024), which protects certain rights of members of non-profit corporations.

In August 2025, the defendants jointly moved to dismiss for failure to state a claim upon which relief can be granted, pursuant to rule 12.02(e), and for judgment on the pleadings, pursuant to rule 12.03. The defendants requested that the district court dismiss Hiltner's complaint with prejudice. Hiltner served and filed a memorandum of law in opposition to the motion. He did not seek leave to amend his complaint. The district court conducted a motion hearing in October 2025. In December 2025, the district court filed an order in which it granted the defendants' motion and dismissed the complaint with prejudice. Hiltner appeals.

DECISION

On appeal, Hiltner makes a single, narrow argument: that the district court erred by dismissing his complaint with prejudice rather than without prejudice. He expressly states that he "is not asking this court to review the sufficiency of his pleadings" but, rather, "is asking this court to review the court's decision to dismiss his complaint with prejudice."

A.

We begin by identifying the applicable standard of review. If a district court has granted a motion filed pursuant to rule 12.02(e) or rule 12.03, the decision to characterize the dismissal as with prejudice or without prejudice is subject to an abuse-of-discretion standard of review. This is so because, in *Wessin v. Archives Corp.*, 592 N.W.2d 460 (Minn. 1999), the supreme court concluded that the district court, which granted a motion for judgment on the pleadings pursuant to rule 12.03, "did not abuse its discretion" by dismissing the case without prejudice. *Id.* at 467. Accordingly, we apply an abuse-of-

discretion standard of review to the district court's decision in this case to dismiss Hiltner's complaint with prejudice instead of without prejudice.

B.

In *Wessin*, the plaintiffs were minority shareholders in a closely held corporation who alleged that the corporation's majority shareholder had misappropriated and wasted corporate assets. 592 N.W.2d at 461-62. On the defendants' motion filed pursuant to rule 12.03, the district court determined that the plaintiffs' claims were derivative in nature and that the plaintiffs had failed to follow the derivative-pleading requirements in rule 23.06 of the rules of civil procedure. *Id.* at 463. The district court dismissed the plaintiffs' claims without prejudice. *Id.* The supreme court affirmed the district court's decision that the plaintiffs' claims should be dismissed. *Id.* at 464-67. The supreme court then considered the defendants' argument that the dismissal should have been with prejudice instead of without prejudice. *Id.* at 467. The supreme court reasoned that "the law favors cases being decided on their true merits." *Id.* (quotation omitted). The supreme court concluded that the district court did not abuse its discretion by dismissing without prejudice because the case "had not proceeded to a point where a determination on the merits of the underlying causes of action was appropriate." *Id.*

The supreme court also considered the with-or-without-prejudice issue in *Martens v. Minnesota Mining & Manufacturing Co.*, 616 N.W.2d 732 (Minn. 2000), but not by reviewing a district court's decision on the issue. Rather, the supreme court decided the issue in the first instance based on its resolution of the plaintiffs' claims on appeal. *Id.* at 748. The plaintiffs asserted numerous claims against a company, three of which were

reviewed on appeal. *Id.* at 737 n.4, 740-48. On the defendant’s motion filed pursuant to rule 12.02(e), the district court granted the motion with respect to two claims but denied the motion with respect to the remaining claim. *Id.* at 738-39. On appeal, the supreme court concluded that none of the plaintiffs’ claims stated a claim upon which relief could be granted and, therefore, affirmed in part and reversed in part the district court’s decision. *Id.* at 748. In the last part of its opinion, the supreme court “consider[ed] the appropriate disposition, given our rulings on respondents’ claims.” *Id.* The supreme court reviewed its reasons for determining that the plaintiffs’ claims should be dismissed and stated, “We therefore hold that the respondents’ complaint should be dismissed *with prejudice* and on the merits pursuant to appellant’s Rule 12.02(e) motion for failure to state a claim upon which relief can be granted.” *Id.* (emphasis added).

This court has issued two nonprecedential opinions reviewing district court decisions concerning whether a complaint should be dismissed with prejudice or without prejudice upon the grant of a motion filed pursuant to rule 12. *See* Minn. R. Civ. App. P. 136.01(c) (providing that nonprecedential opinions are not binding but may be cited as persuasive authority). In *Brandt v. Brandt*, No. A23-1902, 2024 WL 4432627 (Minn. App. Oct. 7, 2024), *rev. denied* (Minn. Jan. 21, 2025), the district court granted the defendant’s motion for judgment on the pleadings pursuant to rule 12.03. *Id.* at *1. The merits of the plaintiff’s claims were not at issue on appeal, but the plaintiff argued that the district court erred by dismissing her claims with prejudice instead of without prejudice. *Id.* at *3. We concluded that the district court did not abuse its discretion by ordering a with-prejudice dismissal. *Id.* Similarly, in *Lonergan v. Dakota County Social Services*, No. A23-1536,

2024 WL 2722164 (Minn. App. May 28, 2024), the district court granted the defendant's motion for judgment on the pleadings pursuant to rule 12.03. *Id.* at *1. On appeal, the plaintiffs challenged, among other things, the with-prejudice nature of the dismissal. *Id.* at *2. We stated that the plaintiffs had failed to allege facts that, if true, would entitle them to relief. *Id.* We concluded that the district court did not abuse its discretion by ordering a with-prejudice dismissal. *Id.*

C.

In this case, the society filed a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to rule 12.02(e) and for judgment on the pleadings pursuant to rule 12.03. In its order granting the motion, the district court recited the allegations in Hiltner's complaint, assumed the allegations to be true, drew all reasonable inferences in his favor, and considered the merits of his claims. The district court concluded that Hiltner failed to state a claim of defamation upon which relief can be granted, that the society is entitled to judgment on the pleadings with respect to Hiltner's claim of negligent or intentional infliction of emotional distress, and that the society is entitled to judgment on the pleadings with respect to Hiltner's claim of a violation of section 317A.411. The district court concluded its order by expressly stating, "Plaintiff's complaint is hereby dismissed with prejudice."

As stated above, Hiltner does not challenge the district court's conclusion that he failed to state a claim upon which relief can be granted with respect to his defamation claim and that respondents are entitled to judgment on the pleadings with respect to his other claims. He does not dispute that the district court dismissed his claims on the merits. He

did not file a motion for leave to amend his complaint. This case is similar to *Martens*, in which the supreme court ordered a dismissal “with prejudice and on the merits.” 616 N.W.2d at 748; *see also Brandt*, 2024 WL 4432627, at *3; *Loneragan*, 2024 WL 2722164, at *2. Given the circumstances of this case, an order dismissing the complaint with prejudice was well within the district court’s discretion.

D.

Hiltner contends that dismissal with prejudice is appropriate only as a sanction for noncompliance with procedural rules or court orders, a failure to prosecute, or misconduct by an attorney. In support of this contention, he cites *Dennie v. Metropolitan Medical Center*, 387 N.W.2d 401 (Minn. 1986), and *Firoved v. General Motors Corp.*, 152 N.W.2d 364 (Minn. 1967). Those opinions are inapplicable here.

In *Dennie*, the district court suppressed the plaintiff’s expert testimony on the morning of trial and, at the same time, “dismissed his cause of action with prejudice for failure to present a prima facie case.” 387 N.W.2d at 404. The supreme court concluded that the district court abused its discretion by suppressing the plaintiff’s expert testimony and by ordering dismissal, which made it unnecessary to consider whether the dismissal should have been with or without prejudice. *Id.* at 407. Consequently, *Dennie* does not discuss the issue raised in Hiltner.

In *Firoved*, the plaintiff moved for a voluntary dismissal without prejudice on the eve of trial due to inadequate preparation and absent witnesses. 152 N.W.2d at 367. After the district court denied the motion and required the plaintiff to proceed to trial, the plaintiff abandoned the action, and the district court dismissed it with prejudice. *Id.* at 368. The

supreme court concluded that the district court abused its discretion by dismissing the case with prejudice and reversed for entry of dismissal without prejudice. *Id.* at 370; *see also* Minn. R. Civ. P. 41.01, 1993 comm. cmt. (describing amendment intended to limit right to dismiss without prejudice).

The *Firoved* opinion does not apply in this case because the dismissal in that case was not based on a motion to dismiss for failure to state a claim upon which relief can be granted or a motion for judgment on the pleadings. *See Firoved*, 152 N.W.2d at 366-70. Rather, the dismissal was ordered after the parties filed motions pursuant to rule 41 of the rules of civil procedure. *Id.* at 367-68. That rule provides for a voluntary dismissal, either by stipulation or by order of the court, Minn. R. Civ. P. 41.01, or an involuntary dismissal “for failure to prosecute or to comply with these rules or any order of the court” or if “the plaintiff has shown no right to relief” after completing the presentation of evidence, Minn. R. Civ. P. 41.02(a), (b). In this case, there were no proceedings under rule 41.01 or rule 41.02(a) or (b). Consequently, *Firoved* does not support Hiltner’s argument for reversal.

In sum, the district court did not abuse its discretion by dismissing Hiltner’s complaint with prejudice.

Affirmed.