

*This opinion is nonprecedential except as provided by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
A22-0842**

Susanne Auleciems,
Appellant,

Karl Auleciems,
Appellant,

vs.

Edina Realty,
Respondent.

**Filed December 19, 2022
Affirmed
Johnson, Judge**

Washington County District Court
File No. 82-CV-21-3864

Susanne Auleciems and Karl Auleciems, Lake Elmo, Minnesota (*pro se* appellants)

Jeffrey R. Mulder, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Larson, Presiding Judge; Johnson, Judge; and Tracy M.
Smith, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

The district court dismissed this lawsuit because it is an attempt to relitigate a dispute that was resolved once in court-ordered mediation and resolved a second time by

the denial of a motion to vacate. Appellants do not present any valid argument for reversing the district court's dismissal. Therefore, we affirm.

FACTS

This appeal arises from the second lawsuit between Karl Auleciems and Edina Realty, Inc. In the prior lawsuit, which was commenced in 2016, Edina Realty sued Karl Auleciems, alleging that he had defamed Edina Realty by sending certain written communications to some of Edina Realty's customers. In February 2017, the parties attended court-ordered mediation and agreed, in writing, to the dismissal of the lawsuit and the entry of a permanent injunction that forbids Karl Auleciems from making statements about Edina Realty to others. In March 2017, the district court issued a permanent injunction that states: "Defendant Karl Auleciems and his agents, successors, assigns, spouses, heirs and transferees, both acting personally or on behalf of any corporate entity, is permanently enjoined from posting, mailing, or otherwise publishing statements, directly or indirectly, about Edina Realty, Inc. or its agents."

Shortly thereafter, Karl Auleciems moved to vacate the permanent injunction on the ground that it violates his constitutional right to free speech. In June 2017, the district court denied the motion, reasoning that Karl Auleciems knowingly waived any constitutional right to free speech when he entered into the settlement agreement and specifically agreed to the entry of a permanent injunction. Karl Auleciems filed a notice of appeal in February 2018, but this court dismissed the appeal as untimely with respect to the district court's March 2017 and June 2017 orders. *Edina Realty, Inc. v. Auleciems*, No. A18-0342 (Minn. App. Apr. 5, 2018) (order).

More than four years later, in August 2021, Karl Auleciems and his wife, Susanne Auleciems, commenced this action. The Auleciemses alleged three claims: a claim seeking vacatur of the June 2017 permanent injunction, a claim of intentional infliction of emotional distress, and a claim seeking a declaration that the statement that Edina Realty previously had alleged in 2016 to be defamatory is constitutionally protected speech.

In September 2021, Edina Realty filed a motion to dismiss the action and a motion for sanctions. Neither Karl Auleciems nor Susanne Auleciems responded to the motions. In April 2022, the district court filed an order granting both motions. The Auleciemses appeal.

DECISION

I. Motion to Dismiss

Appellants first argue that the district court erred by granting Edina Realty's motion with respect to the first count of their complaint, in which they seek to vacate the March 2017 permanent injunction, and the third count of their complaint, in which they seek declaratory relief. They contend that the permanent injunction violates their constitutional rights to free speech and, in addition, violates Susanne Auleciems's rights because she was not a party to the prior action in which the permanent injunction was filed.

A.

As an initial matter, we must determine whether we should treat Edina Realty's motion as a motion to dismiss or a motion for summary judgment. In general, on a motion to dismiss pursuant to rule 12.02(e), a district court may consider only the facts alleged in the complaint. *Hardin Cnty. Sav. Bank v. Housing & Redevelopment Auth. of City of*

Brainerd, 821 N.W.2d 184, 191 (Minn. 2012). In addition, a district court may consider documents that are attached to or referenced in the complaint. *Id.* at 192; *Northern States Power Co. v. Minnesota Metro. Council*, 684 N.W.2d 485, 490-91 (Minn. 2004); *Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 739 n.7 (Minn. 2000). But if “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.” Minn. R. Civ. P. 12.02.

In this case, Edina Realty submitted an affidavit with numerous exhibits, including exhibits relating to prior lawsuits involving Karl Auleciems and Edina Realty that were commenced in 2012 and 2013 as well as exhibits relating to the 2016 lawsuit in which the 2017 permanent injunction was filed. The exhibits relating to the 2012 and 2013 lawsuits are not attached to or referenced in the complaint. The exhibits relating to the 2016 lawsuit are not attached to the complaint but arguably are referenced in the complaint. The district court did not expressly exclude any of the exhibits submitted by Edina Realty. To the contrary, the district court plainly relied on the exhibits relating to the 2016 lawsuit. Accordingly, it is appropriate for this court to treat Edina Realty’s motion as a motion for summary judgment. *See* Minn. R. Civ. P. 12.02; *Northern States Power Co.*, 684 N.W.2d at 490-91 (construing grant of motion to dismiss as grant of summary judgment because district court considered affidavit not attached to complaint); *McAllister v. Independent Sch. Dist. No. 306*, 149 N.W.2d 81, 83 (Minn. 1967) (construing grant of motion for summary judgment as such because district court considered three affidavits).

A district court must grant a motion for summary judgment “if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). We apply a *de novo* standard of review to the district court’s legal conclusions on summary judgment and view the evidence in the light most favorable to the party against whom the motion was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

B.

Appellants argue that the 2017 permanent injunction should be vacated, and a declaratory judgment entered, to vindicate their constitutional rights to free speech. *See* U.S. Const. amend. I; Minn. Const. art. I, § 3.

The district court granted Edina Realty’s motion with respect to these claims for two reasons. First, the district court concluded that there is no violation of the constitutional right to free speech because Karl Auleciems agreed to the entry of the permanent injunction and, thus, waived his constitutional right to free speech. Second, the district court also concluded that the claims are barred by the doctrines of *res judicata* and collateral estoppel because the district court already ruled, in its June 2017 order denying Karl’s Auleciems’s motion to vacate, that he had waived his free-speech rights. The district court reasoned that the doctrines of *res judicata* and collateral estoppel also preclude Susanne Auleciems’s claims on the ground that she was in privity with her husband.

On appeal, appellants challenge only the first of the district court's two conclusions—that Karl Auleciems waived his and Susanne's constitutional rights to free speech. They do not in any way mention—let alone challenge—the district court's conclusion that their claims are precluded by the doctrines of *res judicata* and collateral estoppel. Each of the district court's two conclusions is an independent and sufficient basis for granting Edina Realty's motion. Because the district court's second conclusion is unchallenged on appeal, it is a sufficient basis for affirming the district court's dismissal of the first and third counts of the complaint with respect to both Karl Auleciems and Susanne Auleciems. *See Hunter v. Anchor Bank, N.A.*, 842 N.W.2d 10, 17 (Minn. App. 2013) (concluding that unchallenged reason for grant of summary-judgment motion was independent and sufficient reason for affirmance), *rev. denied* (Minn. Mar. 18, 2014).

Thus, the district court did not err by granting Edina Realty's motion and dismissing appellants' complaint.

II. Motion for Sanctions

Karl Auleciems also argues that the district court erred by granting Edina Realty's motion for sanctions against him.

Every pleading, motion, or other document that is filed with a district court shall be signed by an attorney or self-represented party. Minn. R. Civ. P. 11.01. A person who signs such a document impliedly certifies, among other things, that the document “is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;” that “the claims . . . and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the

extension, modification, or reversal of existing law or the establishment of new law;” and that “the allegations and other factual contentions have evidentiary support or . . . are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.” Minn. R. Civ. P. 11.02(a)-(c). If a person violates rule 11.02, a district court “may . . . impose an appropriate sanction.” Minn. R. Civ. P. 11.03. An appropriate sanction may include “an order directing payment . . . of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.” Minn. R. Civ. P. 11.03(b). Similar obligations and consequences are prescribed by statute. *See* Minn. Stat. § 549.211 (2022). This court applies an abuse-of-discretion standard of review to a district court’s order for sanctions. *Hornberger v. Wendel*, 764 N.W.2d 371, 377 (Minn. App. 2009).

In this case, the district court noted that Karl Auleciems’s claims concerned a five-year-old injunction to which he had agreed and, furthermore, that he previously had tried but failed to vacate the permanent junction on a motion to vacate. The district court determined that Karl Auleciems’s claims did not have either a legal basis or a factual basis and that he was on notice of the deficiencies in his claims. In essence, the district court determined that he violated paragraphs (b) and (c) of rule 11.02. As a consequence, the district court imposed a monetary sanction equal to the attorney fees and costs incurred by Edina Realty in responding to the complaint.

The district court did not abuse its discretion by determining that the complaint asserted non-meritorious claims without a legal or factual basis. Karl Auleciems’s free-speech arguments already had been rejected, and he did not have valid arguments for

overcoming the doctrines of *res judicata* and collateral estoppel. In addition, the district court did not abuse its discretion in determining the amount of the monetary sanction (\$6,634.50) because that amount is limited to the attorney fees and costs actually incurred by Edina Realty.

Thus, the district court did not err by granting Edina Realty's motion for sanctions.

Affirmed.