

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-781**

Neng Por Yang,
Appellant,

vs.

City of Shakopee, et al.,
Respondents,

A.M.H.,
acting in her individual capacity,
Respondent.

**Filed January 17, 2012
Affirmed
Hudson, Judge**

Scott County District Court
File No. 70-CV-10-28937

Neng Por Yang, Minneapolis, Minnesota (pro se appellant)

Jason M. Hiveley, Andrea B. Wing, Iverson Reuvers, Bloomington, Minnesota (for respondents)

William R. McGrann, Jr., McGrann Shea Anderson Carnival Straughn Lamb, Chartered, Minneapolis, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Connolly, Judge; and Harten, Judge.*

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

UNPUBLISHED OPINION

HUDSON, Judge

On appeal from a district court order granting respondents' motion to dismiss, appellant makes several arguments asserting that the district court erred or abused its discretion. Appellant argues that the district court erred in dismissing his complaint for failure to state a claim under state and federal law. In addition, appellant argues that his claims are not barred by res judicata or collateral estoppel. Appellant also argues that the district court abused its discretion when it dismissed appellant's motion to strike respondents' answer, dismissed appellant's motion for default judgment, imposed conditions on appellant as a frivolous litigant, and awarded costs to respondents. Finally, appellant argues that the district court violated his procedural due-process rights. Because the district court did not err or abuse its discretion, we affirm.

FACTS

In January 2007, Neng Por Yang (appellant) met A.M.H. when she was the court reporter at a deposition in an unrelated action. Appellant began stalking A.M.H. and, in November 2007, the first of two harassment restraining orders was issued against appellant. In December 2008, he was arrested by City of Shakopee police officers for violating this order and was detained in the Scott County jail for about three months. Appellant sued City of Shakopee, et al. (respondents) and A.M.H. on claims arising from his arrest and detention.

Appellant, who is pro se, frequently files lawsuits and appeals. These include: (1) a 2007 lawsuit in Hennepin County District Court against Esquire Deposition Service,

A.M.H.'s employer, for "breach, frauds, and malpractice" alleging that A.M.H. was a spy rather than a court reporter, which ended in summary judgment for Esquire; (2) a 2007 lawsuit in Hennepin County District Court against A.M.H., attacking her credentials as a court reporter, which was dismissed; (3) a 2007 lawsuit in Hennepin County District Court also alleging that A.M.H. was a spy and not a court reporter, in which the district court granted summary judgment; (4) a 2009 lawsuit in U.S. District Court, which was dismissed, alleging that A.M.H. defrauded appellant by conspiring with the real A.M.H. and that Scott County police officers and prosecutors also conspired against him.

The litigation at issue here began in November 2010 when appellant sued respondents and A.M.H. After respondents answered, appellant filed a motion to strike respondents' answer. He also moved for default judgment against A.M.H. Respondents then filed a motion to dismiss or, alternatively, for summary judgment and moved for an order barring appellant from filing frivolous lawsuits. On March 28, 2011, the district court denied appellant's motions as "baseless and moot," granted respondents' motion to dismiss, and granted respondents' motion for an order imposing conditions on future filings by appellant. The order stated that appellant was "restricted from filing any further legal actions, including motions or pleadings, in the First Judicial District unless he is represented by counsel or first obtains pre-authorization to file such action, motion or pleading from the Chief Judge of the First Judicial District."

This appeal follows.

DECISION

I

A district court may dismiss an action for failing to state a claim upon which relief can be granted. Minn. R. Civ. P. 12.02(e). When reviewing a district court's dismissal under rule 12.02(e), we consider "whether the complaint sets forth a legally sufficient claim for relief." *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). The grant of a motion to dismiss is reviewed de novo. *Id.*

Appellant asserts two arguments alleging that the district court improperly dismissed his complaint. First, he argues that the district court did not make the required inferences in favor of appellant as the non-moving party. Second, appellant argues that the court improperly construed respondents' motion to dismiss and should instead have treated the motion as one for summary judgment. But appellant makes no arguments on appeal regarding the substance of his claims, nor does he provide analysis to support his contention that the court should have construed the motion to dismiss as one for summary judgment. We decline to reach an issue in the absence of adequate briefing. *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997). Because appellant has waived any objection to the district court's dispositive determination that the complaint fails to state a claim, we do not reach his arguments that respondents are not entitled to immunity and that neither res judicata nor collateral estoppel apply.

II

A district court may strike from a pleading any matter it finds to be “redundant, immaterial, impertinent or scandalous.” Minn. R. Civ. P. 12.06. Material is stricken when it “neither states a cause of action nor assists other parts in so stating.” *Hayward Farms Co. v. Union Sav. Bank & Trust Co.*, 194 Minn. 473, 474, 260 N.W. 868, 869 (1935). We review the district court’s decision to grant or deny a motion to strike material from a pleading for an abuse of discretion. *Haug v. Haugan*, 51 Minn. 558, 561, 53 N.W. 874, 875 (1892).

Appellant argues that the district court abused its discretion by denying his motion to strike respondents’ answer because respondents’ affirmative defenses of improper service and the statute of limitations were “irrelevant.” Appellant also argues that respondents’ reference to previous orders limiting appellant’s ability to file pleadings and motions prejudiced appellant by placing him in a “derogatory light.”

The district court dismissed appellant’s motion to strike as “baseless and moot.” Appellant provides no explanation as to why respondents’ affirmative defenses of improper service and statute of limitations are immaterial and should therefore have been stricken. We decline to reach an issue in the absence of adequate briefing. *Wintz*, 558 N.W.2d at 480. Furthermore, improper service is an affirmative defense properly pleaded in an answer. Minn. R. Civ. P. 12.02(d) (“Every defense . . . shall be asserted in the responsive pleading.”). Additionally, appellant does not explain why he was prejudiced by respondents’ references to prior court orders limiting his ability to file motions and pleadings. See *Wintz*, 558 N.W.2d at 480 (declining to reach issues not briefed).

The district court did not abuse its discretion in refusing to strike respondents' answer.

III

A district court may award default judgment when a party against whom relief is sought fails to plead or otherwise defend within the required time. Minn. R. Civ. P. 56.01. We review the decision to grant or deny a motion for default judgment for an abuse of discretion. *Black v. Rimmer*, 700 N.W.2d 521, 525 (Minn. App. 2005), *review dismissed* (Sept. 28, 2005).

Appellant argues that the district court improperly dismissed his motion for default judgment because his motion was properly filed and A.M.H. was in default. The district court dismissed appellant's default motion as "baseless and moot" and determined that service on the parties was improper. If service is improper, the district court lacks jurisdiction and cannot enter default judgment. *See Lewis v. Contracting Nw., Inc.*, 413 N.W.2d 154, 157 (Minn. App. 1987). Personal service must be delivered to the person individually at the person's place of abode. Minn. R. Civ. P. 4.03(a). Here, appellant personally served A.M.H.'s attorney. But service on an attorney who has not been empowered to accept service is not effective. *Allstate Ins. Co. v. Allen*, 590 N.W.2d 820, 822–23 (Minn. App. 1999). There is no indication in the record that the attorney served by appellant was assigned the power to accept service for A.M.H. The court of appeals does not presume error. *Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949) (stating that appellate courts cannot assume district court error). Therefore, we infer that the district court determined service was ineffective because A.M.H.'s attorney was not

assigned the power to accept service. The district court did not abuse its discretion in denying appellant's motion for default judgment.

IV

District courts may impose preconditions on a frivolous litigant's filing of claims and motions. Minn. R. Gen. Pract. 9.01(b). Rule 9 requires that the district court consider multiple factors when imposing conditions on a frivolous litigant, such as the frequency of the claims pursued by the frivolous litigant, whether the motion at issue was made for the purpose of harassment, and whether less severe sanctions would suffice. Minn. Gen. R. Pract. 9.02(b). We review the determination that a party is a frivolous litigant for an abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

The district court order granted respondents' motion for an order barring appellant from filing any further motions or pleadings in the First Judicial District unless he is represented by counsel or obtains pre-authorization. Appellant raises multiple arguments regarding the district court's order. Appellant argues that the order (1) violated his due-process rights, (2) lacked conclusions of law, and (3) prejudiced appellant because it relied on similar orders from other district courts.

Appellant mistakenly argues that the district court imposed an injunction when, instead, the district court issued an order conditionally limiting appellant's ability to litigate. Because appellant's arguments and analysis rely on injunction caselaw, this issue is arguably waived. See *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address allegations unsupported by legal analysis or

citations). To the extent appellant did not waive the argument, we conclude that the district court did not abuse its discretion. First, “[e]nforcement of local rules is left to the discretion of the district court.” *Hopkins by LaFontaine v. Empire Fire & Marine Ins. Co.*, 474 N.W.2d 209, 212 (Minn. App. 1991). Second, although the district court could have been more thorough in its order imposing conditions on appellant, the order was sufficient. The district court noted that appellant’s claims were “baseless and moot,” which speaks to the factors a district court must consider under rule 9 and makes implicit the court’s consideration of other sanctions. It is noteworthy, as well, that appellant has abused other courts, including state and federal district court, leading to similar filing constraints on appellant.¹

V

The prevailing party in a district court action is allowed reasonable costs. Minn. Stat. § 549.04, subd. 1 (2010). We review the award of reasonable costs for an abuse of discretion. *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 482 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006).

Appellant argues that the district court abused its discretion by awarding attorney fees to respondents and denying appellant the right to object to such fees. But the district court did not award attorney fees. It awarded only \$696.40 in “reasonable costs and disbursements” to respondents. Appellant asserts that the district court did not apply

¹ See, e.g., *Yang v. City of Shakopee*, No. 09-3216, 2009 WL 5217017, at *2 (D. Minn. Dec. 30, 2009) (ordering plaintiff not be allowed to file action unless represented or pre-authorization obtained because appellant “abused the litigation process by filing no fewer than six baseless lawsuits in this Court”).

guidelines used to award sanctions when “awarding attorney fees and sanctions against [a]ppellant.” *See Spicer, Watson & Carp v. Minn. Lawyers Mut. Ins. Co.*, 502 N.W.2d 400, 405 (Minn. App. 1993) (concluding that sanctions were improperly imposed when guidelines were not followed), *review denied* (Minn. Sept. 30, 1993). But the minimal award is not a sanction and, instead, merely reimburses respondents their reasonable costs as the prevailing parties. *See* Minn. Stat. § 549.04, subd. 1. The award of costs is not an abuse of discretion.

VI

The United States and Minnesota Constitutions guarantee the right to due process. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. “[P]rocedural due process guarantees reasonable notice and a meaningful opportunity to be heard.” *In re Khan*, 804 N.W.2d 132, 137 (Minn. App. 2011). Whether procedural due-process rights have been violated is a question of law that we review de novo. *Plocher v. Comm’r of Pub. Safety*, 681 N.W.2d 698, 702 (Minn. App. 2004).

Appellant’s due-process arguments are unclear. He appears to be arguing that by rejecting his pleadings and motions without an opportunity to argue before the district court, he was deprived of a meaningful opportunity to be heard. But the due-process requirement of a meaningful opportunity to be heard does not require oral argument. *See R.R. & Warehouse Comm’n v. Chi. & Nw. Ry. Co.*, 256 Minn. 227, 235, 98 N.W.2d 60, 66 (1959) (holding opportunity to be heard can be by written or oral argument). Appellant submitted his complaint and multiple motions to the district court, which satisfied the constitutional opportunity to be heard through written argument. That the

district court concluded his complaint and motions were baseless does not constitute a lack of due process.

Equally unclear is appellant's argument that, by referencing appellant's previous civil commitment, the district court deprived him of due process. Although appellant criticizes the district court for continuing to believe A.M.H.'s "manipulation and lies on records, even when the evidences states the contrary," he provides no analysis regarding why reference to his civil commitment deprived him of the opportunity to be heard. The appellant's due-process rights were not violated by the district court.

Affirmed.