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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0316**

In re the Matter of:
Olivia Jassah Cassell, petitioner,
Respondent,

vs.

Gabriel B. Cassell,
Appellant.

**Filed September 30, 2013
Affirmed
Smith, Judge**

Ramsey County District Court
File No. 62-FX-05-002034

Erbayne W. Jarvis, The Law Offices of Erbayne W. Jarvis, Brooklyn Park, Minnesota
(for respondent)

Gabriel B. Cassell, Pottstown, Pennsylvania (pro se appellant)

Considered and decided by Rodenberg, Presiding Judge; Worke, Judge; and
Smith, Judge.

UNPUBLISHED OPINION

SMITH, Judge

We affirm the district court's order designating appellant-father as a frivolous
litigant because (1) the district court properly imposed preconditions on father's future

motions, (2) the district court has subject-matter and personal jurisdiction in this matter, and (3) the district court properly denied father's motion for a temporary injunction.

FACTS

Appellant-father Gabriel Cassell and respondent-mother Olivia Jassah Cassell were married in 1993 and divorced in 2003. The parties have one child together, L.A.C., who was born in 1998. These parties have been involved in litigation since 2005, including multiple appeals to this court. *See Cassell v. Cassell*, A10-1085, 2011 WL 781225, at *1 (Minn. App. Mar. 8, 2011), *review denied* (Minn. Apr. 19, 2011); *Cassell v. Cassell*, No. A07-1655, 2008 WL 2651425, at *1 (Minn. App. July 8, 2008), *review denied* (Minn. Sept. 23, 2008).

In September 2012, mother moved the district court to designate father as a frivolous litigant pursuant to Minnesota Rule of General Practice 9. *See* Minn. R. Gen. Pract. 9.01-.07 (addressing frivolous litigation). In father's counter-motion, he requested, in relevant part, that the district court find that mother's rule 9 motion was barred by res judicata and that the district court issue a temporary injunction on further enforcement of all orders until mother provided evidence that she resided in Ramsey County at the time the case was filed in 2005. At the rule 9 hearing, the district court highlighted that, in one of father's past appeals to this court, we held that mother's rule 9 motion was not barred by doctrines such as res judicata and that the district court had on numerous occasions addressed the issue of mother's residency as of the 2005 case filing.

In its order dated December 19, 2012, the district court limited father's ability to bring future motions, ordering father to either secure an attorney to serve and file motions

or, if not represented by legal counsel, furnish a surety bond of \$10,000, or pay the court administrator \$10,000 to ensure that mother would be paid if the district court ordered father to pay her court costs. This appeal followed.

D E C I S I O N

Father challenges the district court's (1) determination that father is a frivolous litigant and imposition of preconditions on future motions, (2) the district court's subject-matter and personal jurisdiction, and (3) the district court's denial of father's motion for a temporary injunction.

I.

Father challenges the district court's determination that he is a frivolous litigant and its imposition of preconditions for filing new motions. The district court determined that for future motions, father must secure an attorney or furnish a bond. Father challenges these limits, arguing that the district court failed to satisfy Minnesota Rule of General Practice 9, which addresses frivolous litigation.

A. Frivolous Litigant

A "frivolous litigant" is defined as one who, after a claim has been finally determined against the person, repeatedly relitigates or attempts to relitigate finally determined matters or one who maintains claims not well-grounded in law. Minn. R. Gen. Pract. 9.06(b)(1), (3). The rule authorizes the district court to impose preconditions on a frivolous litigant's service or filing of new claims, motions, or requests. Minn. R. Gen. Pract. 9.01(b). A litigant is entitled to notice and a hearing before such an order may be entered. Minn. R. Gen. Pract. 9.01. When determining whether to require

security or impose sanctions, the district court shall consider factors outlined in rule 9.02(b). Minn. R. Gen. Pract. 9.02(b). We review a determination that a party is a frivolous litigant under an abuse-of-discretion standard. See e.g., *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 290, 295 (Minn. App. 2007).

Father challenges the rule 9 determination in three ways. He argues that (1) res judicata precluded the district court from deeming him a frivolous litigant, (2) procedural flaws void the district court's order, and (3) the district court failed to consider the factors required for a rule 9 determination.

1. *Res Judicata*

Father, without citing authority, asserts that res judicata bars the district court from considering whether he is a frivolous litigant because the district court previously determined that father was not a frivolous litigant. Father's arguments are waived because "[a] party who inadequately briefs an argument waives that argument." See *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007). Therefore, we do not address father's res judicata argument further.

2. *21-Day Provision*

Next, father argues that the rule 9 requirements were not satisfied because, when mother made the rule 9 motion, there were no other pending motions before the district court.

Father is correct that rule 9.01 requires that motions to designate a party as a frivolous litigant may not be filed unless, within 21 days after the motion is served, the allegedly offending claim, motion, or request is not withdrawn or properly corrected. Cf.

Minn. R. Civ. P. 11.03(a)(1) (reciting similar rule). Mother concedes that the rule 9 motion was the sole motion before the district court, but correctly asserts that father's filing of a counter-motion cured the alleged procedural deficiency. Father did not correct his counter-motion within 21 days after the district court stated that the district court and court of appeals had already addressed the claims it contained. Notably, father did not raise the purported procedural deficiency to the district court at the rule 9 hearing, and the district court never addressed the alleged deficiency. Generally, we do not consider matters not presented to and considered by the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Accordingly, father's procedural argument fails.

3. *Merits of Rule 9 Order*

Father makes a number of challenges to the district court's conclusion that the rule 9 factors do not apply to his actions. He claims that the district court examined the factors "in a cursory manner" and failed to consider all the factors. But these statements are without merit. The rule 9 order demonstrates that the district court carefully considered each factor listed in rule 9.02(b) and fully analyzed each of those factors. The district court also identified and discussed those factors on the record. Father presents no valid argument that the district court's decision constituted an abuse of discretion, and therefore, his claim fails.

B. *Imposition of Conditions*

Rule 9.01 provides that a district court may impose preconditions on a party's ability to file new motions so long as the requirements in rules 9.01-9.07 are met. A review of the record establishes that the district court took painstaking efforts to address

each of father's concerns. Father fails to understand the principle that once an issue has been decided by the district court and the appeal process has been exhausted, that issue cannot be relitigated. Attempts to relitigate identical issues, even if the unsuccessful party believes these issues were incorrectly decided, is costly and abusive. *See* Minn. R. Gen. Pract. 9.06(b)(1). Thus, the classification of Father as a frivolous litigant, and the limitations imposed on his ability to litigate, was not an abuse of the district court's discretion on this record.

Rule 9 procedures are designed to curtail such costly and abusive practices wherein a litigant continues to search for something that is not present. It is much like the Confucius adage that "[t]he hardest thing of all is to find a black cat in a dark room, especially if there is no cat." There is a time to move beyond the past. Rule 9 is employed to ensure that a case continues toward resolution, in spite of a litigant's actions to prevent such an event.

II.

Father challenges the district court's jurisdiction, and, although it is unclear, appears to challenge both its subject-matter jurisdiction and personal jurisdiction over him. We addressed the issue of whether the district court has subject-matter jurisdiction in a previous appeal. In Father's 2008 appeal, he challenged whether Ramsey County had subject-matter jurisdiction over the Pennsylvania divorce decree. *Cassell*, 2008 WL 2651425 at *5. We "conclude[d] that the district court had jurisdiction to address the parties' parentage, custody, and child-support issues." *Id.* at *6. Under the appellate rules, "[n]o petition for rehearing shall be allowed in the Court of Appeals." Minn. R.

Civ. App. P. 140.01. Therefore, we cannot readdress our prior determination that the district court had jurisdiction to address the parties' parentage, custody, and child support issues. It follows that the district court, having jurisdiction over the underlying dispute, would also be able to deem father a frivolous litigant for his involvement in that dispute. Consequently, the district court has subject-matter jurisdiction over the present case and we will not further examine the issue.

Father also challenges personal jurisdiction. Whether personal jurisdiction exists presents a question of law, which we review de novo. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). It is well-established that a party may consent to personal jurisdiction and that a party "does so when he takes or consents to any step in the cause which assumes that jurisdiction exists or continues." *Comm'r of Natural Res. v. Nicollet Cnty. Pub. Water/Wetlands Hearings Unit*, 633 N.W.2d 25, 31-32 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. Nov. 13, 2001). Father, who has actively participated in Ramsey County proceedings in this case since 2005, may not now successfully assert that the district court lacks personal jurisdiction over him so as to render the frivolous-litigant order void. *See Mississippi Valley Dev. Corp. v. Colonial Enters., Inc.*, 300 Minn. 66, 73, 217 N.W.2d 760, 764 (1974) (holding that defendant who subjected himself to district court's jurisdiction and delayed approximately 16 months after allegedly defective service of process before raising jurisdictional defense waived any right to assert lack-of-jurisdiction defense); *Federal-Hoffman, Inc. v. Fackler*, 549 N.W.2d 93, 95-96 (Minn. App. 1996) (finding the defense of lack of personal jurisdiction can be waived when a party waits for more than three

months between his answer and the filing of his motion to dismiss), *review denied* (Minn. Aug. 20, 1996); *Wachsmuth v. Johnson*, 352 N.W.2d 132, 133 (Minn. App. 1984) (holding that by making motion to reduce child-support obligation, appellant assumed personal jurisdiction existed, thereby subjecting himself to the district court’s jurisdiction). Therefore, father’s challenge to the district court’s personal jurisdiction over him is meritless.

III.

Finally, father challenges the district court’s denial of his motion for a temporary injunction. A temporary injunction is an extraordinary equitable remedy that preserves the status quo until an adjudication of the case on its merits. *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). A prerequisite for injunctive relief is a clear showing that any legal remedy the party may have is inadequate. *See, e.g., Borom v. City of St. Paul*, 289 Minn. 371, 376, 184 N.W.2d 595, 598 (1971). The party seeking the injunction must also show that it is needed to prevent “great and irreparable injury.” *Cherne Indus., Inc. v. Grounds & Assocs.*, 278 N.W.2d 81, 92 (Minn. 1979). On appeal from the denial of a motion for a temporary injunction, we apply an abuse-of-discretion standard of review. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993).

Father asserts that the district court “failed to properly consider” his motion for a temporary injunction because the motion was never addressed. This assertion is erroneous. At the rule 9 hearing, the district court noted that father had moved the district court to “issue a temporary injunction on further enforcement of all orders of the [district court] until [mother] provides verifiable evidence for claims of residence in Ramsey

County when the proceedings were filed [in 2005].” But the district court denied father’s motion because, after considering it, the district court determined that “it is identical to the issues I addressed in the previous order.” Father agreed that the issue had previously been resolved but said, “I don’t understand why it’s so difficult for the [district court] to require [mother] to produce evidence as to liv[ing] in this county. There is no evidence, and without any evidence, Your Honor, I have no choice but to fight against all those who have brought action against me in this county.” The district court’s rule 9 order included that “[father]’s motions are DENIED.” Accordingly, father’s claim that the district court did not address his temporary-injunction motion is baseless.

Father next contends that the district court committed “glaring error” by not applying the *Dahlberg* factors when evaluating his motion for a temporary injunction. See *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965).

Father is correct that the district court did not address the *Dahlberg* factors on the record or in its order. However, father mistakes the well-established purpose of a temporary injunction, which is to preserve the status quo until the case is adjudicated on its merits. See *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). Father’s temporary-injunction motion was not an attempt to maintain the status quo. Rather, it was an attempt to reverse past decisions and reopen already-litigated matters. Therefore, consideration of the *Dahlberg* factors was not required and the district court did not err. Father’s claim fails.

Affirmed.