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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1367**

In re the Marriage of: Kyle W. Zweifel, petitioner,
Respondent,

vs.

Julie Zweifel, n/k/a Julie A. Mead,
Appellant.

**Filed April 14, 2014
Affirmed
Connolly, Judge**

St. Louis County District Court
File No. 69DU-FA-09-953

Jill I. Frieders, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for respondent)

Julie A. Mead, Duluth, Minnesota (pro se appellant)

Considered and decided by Chutich, Presiding Judge; Connolly, Judge; and Smith,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

On appeal from the district court's order designating her as a frivolous litigant, pro se appellant argues that (1) the district court abused its discretion by determining that she

is a frivolous litigant, and (2) the district court erred by not satisfying the procedural requirements of Minnesota Rule of General Practice 9. We affirm.

FACTS

Appellant, Julie Zweifel n/k/a Julie Mead, and respondent, Kyle Zweifel, were married in 1997 and entered into a marital termination agreement in 2009. Since 2009, the parties have been involved in seemingly nonstop litigation regarding the dissolution of their marriage. *See Zweifel v. Zweifel*, No. A12-1212 (Minn. App. Apr. 29, 2013) (*Zweifel V*) (affirming the district court's order that Mead vacate the marital homestead after finding that she was not cooperating with court-ordered attempts to sell it), *review denied* (Minn. July 16, 2013); *Zweifel v. Zweifel*, Nos. A12-0650, A12-0665, A12-0666 (Minn. App. Mar. 4, 2013) (*Zweifel IV*) (affirming the district court's grant of authority to a receiver to sell the marital home and denial of certain maintenance to Mead), *review denied* (Minn. May 21, 2013); *Zweifel v. Zweifel*, No. A12-0513 (Minn. App. Dec. 17, 2012) (*Zweifel III*) (affirming denial of Mead's petition for a 50-year extension of an order for protection against Zweifel); *Zweifel v. Zweifel*, No. A11-2247 (Minn. App. Aug. 20, 2012) (*Zweifel II*) (affirming denial of Mead's motions, including a motion for recusal of the district court); *Zweifel v. Zweifel*, Nos. A11-0972, A11-1424 (Minn. App. Apr. 23, 2012) (*Zweifel I*) (affirming denial of a motion to set aside the marital termination agreement), *review denied* (Minn. July 17, 2012).

In October 2012, respondent moved the district court to find that appellant is a "frivolous litigant" under Minn. R. Gen. Pract. 9 and to impose preconditions of her future filings. On May 29, 2013, the district court issued an order granting respondent's

motion and limiting appellant's ability to bring future motions by requiring her to submit them to the district court before serving them on respondent.

DECISION

Appellant argues that the district court erred by ruling that she is a frivolous litigant because it did not follow the requirements of Minn. R. Gen. Pract. 9. We disagree.

A "frivolous litigant" is defined as one who, after a claim has been finally determined against the person, repeatedly relitigates or attempts to relitigate either finally determined matters or one who maintains claims not well-grounded in law. Minn. R. Gen. Pract. 9.06(b)(1), (3). A frivolous litigant is also defined as "[a] person who in any action or proceeding repeatedly serves or files frivolous motions, pleadings, letters, or other papers . . . or engages in oral or written tactics that are frivolous or intended to cause delay." Minn. R. Gen. Pract. 9.06(b)(2). This rule authorizes the district court to "impos[e] preconditions on a frivolous litigant's service or filing of any new claims, motions or requests." Minn. R. Gen. Pract. 9.01(b). When determining whether to impose sanctions on a frivolous litigant, the district court must consider the factors outlined in Minn. R. Gen. Pract. 9.02, including "the frequency and number of claims pursued by the frivolous litigant with an adverse result," and "injury incurred by other litigants prevailing against the frivolous litigant." This court reviews a determination that a party is a frivolous litigant under an abuse-of-discretion standard. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 290, 295 (Minn. App. 2007).

In determining that appellant is a frivolous litigant, the district court made the following findings:

2. [Respondent's] motion requesting that [appellant] provide security or other precondition for the service or filing of future claims, motions, or requests is granted pursuant to Minn. Gen. R. Prac[t]. 9.01. The court has held, at minimum, five separate hearings in which [appellant] has sought financial relief outside the terms of the parties' marital termination agreement and decree of dissolution, despite being informed by both this Court and the Minnesota Court of Appeals (and the denial of at least two Petitions for Review to the Minnesota Supreme Court) that such relief is not warranted. This does not include this Court's review of additional motions filed and decided solely on written submissions.

3. [Appellant] files voluminous, repetitive submissions that must be reviewed by [respondent's] attorney, resulting in significant attorney's fees even before any court appearances. [Appellant] is representing herself in this matter and has been granted *in forma pauperis* status. Because she does not incur attorney's fees and is not required to pay filing fees or other costs generally imposed by the Court, she has little to no incentive to refrain from repeating the same arguments several times each year.

The record supports these findings. Appellant filed approximately 22 motions in district court between January 2010 and April 2013. She has also filed numerous matters in this court, several of which have been dismissed by this court. *See Zweifel I; Zweifel II; Zweifel III; Zweifel IV; Zweifel V.*

But appellant cites to *Szarzynski*, 732 N.W.2d 285, to argue that the district court abused its discretion because it did not enter findings of fact and did not cite or follow Minn. R. Gen. Pract. 9.02-9.07. In *Szarzynski*, the district court ruled that the appellant was a "nuisance litigant" without citing any authority. *Szarzynski*, 732 N.W.2d at 295.

This court found that the district court abused its discretion because it did not refer to Minn. R. Gen. Pract. 9, did not address the definition of a frivolous litigant, and did not make an express determination that any less severe sanction would dissuade the appellant's behavior. *Id.* at 294-95.

Unlike *Szarzynski*, the district court in this case cited to rule 9 and made findings of fact as to why appellant is a frivolous litigant. But to the extent that appellant argues that the district court did not follow the procedural guidelines in rule 9, the district court did err. Under Minn. R. Gen. Pract. 9.02(c), “[a]n order imposing preconditions on serving or filing new claims, motions, or requests shall only be entered with an express determination that no less severe sanction will sufficiently protect the rights of other litigants, the public, or the courts.” The district court’s order does not contain such an express determination.

Nevertheless, we conclude that this error is harmless. *See* Minn. R. Civ. P. 61 (“The court . . . must disregard any error . . . [that] does not affect the substantial rights of the parties.”); *see also Warwick v. Warwick*, 438 N.W.2d 673, 677-78 (Minn. App. 1989) (affirming the district court’s maintenance award by finding that the district court made an implicit finding of bad faith based on the record even though it did not satisfy the procedural requirement of making an explicit bad-faith determination). The district court noted that appellant has been granted *in forma pauperis* status, and therefore, is not dissuaded from filing numerous and repetitive motions by normal filing fees or court costs. It also stated that appellant has sought relief outside of the parties’ marital termination agreement on at least five separate occasions even though the district court

and this court have informed her that she is entitled to no such relief. Finally, we must apply common sense when we determine that based on this record, no other course of action was left to the district court. Consequently, the district court did not abuse its discretion by determining that appellant is a frivolous litigant and imposing preconditions on her future filings. *See Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (refusing to remand in a child-custody case 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” and reach the same result).

Affirmed.