STATE OF MINNESOTA
IN COURT OF APPEALS
A07-375

County of Freeborn,
Appellant,

Theresa Mae Book,
Plaintiff,

vs.

Joseph Lenell Walker,
Respondent.

Filed April 8, 2008
Affirmed
Hudson, Judge

Freeborn County District Court
File No. 24-F9-02-50529

Craig S. Nelson, Freeborn County Attorney, Karyn D. McBride, Assistant County Attorney, Freeborn County Courthouse, 411 South Broadway, Albert Lea, Minnesota 56007 (for appellant)

Joseph Lenell Walker, P.O. Box 331, Rochester, Minnesota 55901 (pro se respondent)

Considered and decided by Toussaint, Chief Judge; Hudson, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

In this parentage proceeding, the district court vacated paternity and child-support judgments against respondent Joseph Walker and ordered appellant Freeborn County to reimburse respondent for monies that appellant collected from respondent based on the vacated judgments and which appellant then disbursed to the indigent mother of the child who was the subject of the paternity proceeding. Appellant challenges the reimbursement requirement, argues that the district court erroneously considered certain documents submitted by respondent, and the district court should have granted appellant's motion for amended findings of fact. Because appellant failed to serve respondent in this proceeding, the district court lacked personal jurisdiction over respondent, the judgments rendered were void, and the district court properly vacated those judgments. Also, the district court's consideration of the documents submitted by respondent, ordering of appellant to reimburse respondent for the monies appellant collected based on the void judgments, and denial of appellant's motion for amended findings were not abuses of its discretion. Therefore, we affirm.

FACTS

In November 2003, appellant served a person identified by social security number as Joseph L. Walker of California (California Walker) with a summons and complaint in a proceeding to determine the paternity of the child of Theresa Mae Book (mother). The complaint requested that the district court (a) adjudicate California Walker the child's father; (b) require California Walker to pay past and ongoing child support; and (c) order

California Walker to reimburse the state for public assistance provided for the child. In January 2004, appellant unsuccessfully attempted to serve California Walker, at his California address, with a motion for genetic testing. Because appellant had attempted to serve California Walker at his last known address, the district court, in a February 2004 order, granted appellant's motion to compel a paternity test. The order stated that California Walker's failure to comply with the order would not prevent him from being adjudicated the child's father. Because California Walker could not be located, no tests occurred.

By July 2004, California Walker had not filed an answer in the parentage proceeding and appellant sent California Walker a notice at a different California address that a default hearing was scheduled for August 2004.

At the August 2004 hearing, California Walker was not present. Nor was he represented by counsel. The resulting October 2004 judgment found that California Walker had been properly served with the summons and complaint, had failed to answer or otherwise appear, and concluded that he was in default. The judgment then adjudicated California Walker to be the child's father and set his obligations for prospective support, past support, and reimbursement of past public assistance.

In February 2005, appellant intercepted the tax refunds of respondent Joseph Lenell Walker, of Chatfield, Minnesota. Shortly thereafter, respondent contacted appellant, asserting that he had never been served with any court documents in the parentage proceeding. By letter, appellant informed respondent "that the burden of proof is upon you to take the matter back into court to address the paternity issue" and that the

court order establishing paternity and the support obligations "will remain in place until a Judge determines that the Court Order is invalid." In August 2005, appellant received several phone calls from respondent regarding the case. In September 2005, and based on the 2004 paternity and support rulings, appellant began income withholding against respondent.

In May 2006, respondent filed a letter with the district court stating that he and California Walker were not the same person. Respondent explained that he had lived in Chatfield, Minnesota, from 2002 until May 2005, worked in Rochester from December 2002 to May 2003, and was in jail during part of 2003 and from January 2004 to April 2004. With his letter, respondent submitted several pay stubs and a 2003 Form W-2, as well as evidence indicating that California Walker did not match respondent's race or birth date, and documents confirming his incarceration for parts of 2003 and 2004. There is no indication in the record that respondent served his letter or the accompanying documents on appellant. In an unrelated matter, respondent also participated in a genetic test, the results of which excluded him from being the father of mother's child.

As a result of the genetic test demonstrating that respondent was not the biological father of mother's child, appellant moved the district court for, among other things, (a) vacation of the paternity and money judgments against respondent; (b) a determination that appellant would return to respondent any of respondent's funds held by appellant; and (c) determinations of whether appellant "is required to re-pay to [respondent] monies previously paid to the County" and that appellant is not required to reimburse respondent any monies previously collected from respondent and disbursed to

mother. At a September 2006 hearing at which respondent appeared in person, respondent alleged that he did not receive effective service of process. Also, the district court noted its concern that respondent was apparently a victim of identity theft. Appellant argued that the documentary information respondent provided to the district court should not be considered by the district court because of the default judgment against respondent.

In October 2006, respondent faxed the district court another letter and additional documents. The documents contained evidence that respondent reported California Walker's use of his social security number to the IRS and that respondent had reported the identity theft to the police. The record does not indicate that respondent served a copy of this letter or these documents on appellant.

In November 2006, the district court vacated the paternity judgment and resulting obligations, and ordered restitution. The order states that respondent

> has proven by clear and convincing evidence that the process of service was defective and improper. He never received any legal or court documents in connection with the paternity action.
>
> . . . .
>
> Due to defective and improper service, [respondent] was unable to make a timely answer to the paternity complaint or contest the paternity order before significant child support pay check and tax withholdings occurred. Therefore, it would result in an inequity if [respondent] was not fully reimbursed for all monies he paid as a result of the child support judgment.

The district court ordered appellant to reimburse respondent (a) $443.10 of funds appellant obtained from respondent that were then "on hold" with the county; (b) $1,526.55 for amounts appellant obtained from respondent for past public assistance paid on behalf of the child; and (c) $3,223.38 for amounts that appellant obtained from respondent that appellant then disbursed to mother. Appellant moved for amended findings challenging the requirement that it reimburse respondent for amounts it obtained from respondent and disbursed to mother. After a hearing, the district court denied the motion. This appeal follows.[1]

D E C I S I O N

I

The district court found that respondent proved by clear and convincing evidence that "the process of service was defective and improper." Appellant argues that this finding is based on the district court's improper consideration of the documents that respondent filed with the district court but did not serve on appellant. Respondent asks that this court strike those documents from the record. We decline to do so for four reasons.

First, the district court has discretion to accept documents that are not properly served. Minn. R. Gen. Pract. 303.03(b); *see Benassi v. Back & Neck Pain Clinic, Inc.*, 629 N.W.2d 475, 483 (Minn. App. 2001) (holding that, "based on the discretion afforded the district court [under Minn. Gen. R. Pract. 303.03(b)], we will not reverse here because

[1] Because respondent did not file a brief on appeal, we determine this appeal on its merits. Minn. R. Civ. App. P. 142.03.

of noncompliance with the rules even though another result is defensible"), *review denied* (Minn. Sept. 11, 2001). Second, the record shows that appellant knew that respondent provided documents to the district court, but appellant did not move the district court to strike those documents. Therefore, the question is not properly before this court. *See Estate of Hartz v. Nelson*, 437 N.W.2d 749, 752 (Minn. App. 1989) (stating that admissibility of evidence may not be questioned for first time on appeal), *review denied* (Minn. July 12, 1989); *see also Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only question presented to and considered by the district court). Third, appellant does not dispute the accuracy of the documents. *Cf. Marquette Bank Nat'l Ass'n v. County of Hennepin*, 589 N.W.2d 301, 307 (Minn. 1999) (holding that even if evidence is admitted in error, the admission must result in material prejudice to warrant reversal). Finally, this court lacks authority to strike documents that are part of a district-court record. *Pac. Equip. & Irrigation, Inc. v. Toro Co.*, 519 N.W.2d 911, 918 (Minn. App. 1994), *review denied* (Minn. Sept. 16, 1994).

II

Appellant's major contention in this appeal is that it was improper for the district court to require appellant to reimburse respondent for monies appellant collected from respondent on behalf of mother and then disbursed to mother. Appellant does not challenge the vacation of the judgments and actually moved the district court for their vacation. Further, appellant does not challenge the requirement that it reimburse respondent the funds that were "on hold" with appellant or the monies appellant obtained from respondent to pay for past public assistance rendered on behalf of the child. We

appreciate appellant's candor in making these concessions and the focus it lends to our analysis of this case. We note, however, that the undisputed lack of proper service of respondent deprived the district court of personal jurisdiction over him, rendered the resulting judgments void and, as a result, required the district court to vacate those judgments. *See In re Commitment of Beaulieu*, 737 N.W.2d 231, 235 (Minn. App. 2007) (stating that "[i]f a judgment is void for want of personal jurisdiction, it must be vacated under Minn. R. Civ. P. 60.02(d)"); *Comm'r of Natural Res. v. Nicollet County Pub. Water/Wetlands Hearings Unit*, 633 N.W.2d 25, 30 (Minn. App. 2001) (holding that "a motion brought under Minn. R. Civ. P. 60.02(d) to vacate a judgment on grounds that it is void for lack of personal jurisdiction does not involve the exercise of discretion"), *review denied* (Minn. Nov. 13, 2001).[2]

Regarding the requirement that appellant reimburse respondent for monies appellant collected from respondent and then disbursed to mother, we note that restitution is equitable in nature. *See Hendrickson v. Minn. Power & Light Co.*, 258 Minn. 368, 370,

[2] The defenses of insufficient service of process and a resulting lack of personal jurisdiction over a party can be waived by the party's failure to seasonably assert the defenses or by the party's conduct. *See* Minn. R. Civ. P. 12.07, .08(a) (addressing assertion of defenses by motion); *Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 868 (Minn. 2000) (addressing waiver of defenses by conduct). Here, the record shows that in respondent's multiple contacts with appellant and the district court, he tried to inform them that he had not been served in this proceeding and that he wanted genetic testing regarding the child for whom appellant was collecting funds. The record also shows that the rulings currently before this court were generated as the result of appellant's motion invoking the district court's jurisdiction. Thus, while this case did not proceed in a fashion typically associated with the defenses that respondent was trying to assert, on this record, we cannot say that respondent waived his ability to assert those defenses. *Cf. Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001) (acknowledging that while pro se parties are generally held to the same standards as attorneys, "some accommodations may be made for pro se litigants").

104 N.W.2d 843, 846 (1960) (noting that "[t]he principles of restitution are derived from the old common-law actions of general assumpsit and those which we now call quasi-contract and from the equitable principles of unjust enrichment"), *overruled in part on other grounds by Tolbert v. Gerber Indus., Inc.*, 255 N.W.2d 362 (Minn. 1977). Generally, a district court's award of equitable relief will not be altered on appeal absent an abuse of the district court's discretion. *Nadeau v. County of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979). This discretion is accorded to a decision regarding restitution to a payor of child support paid under a subsequently-vacated paternity judgment. *See Mathison v. Clearwater County Welfare Dept.*, 412 N.W.2d 812, 814 (Minn. App. 1987) (ruling that "[t]he trial court did not abuse its discretion in deciding that under these facts respondent was entitled to restitution of the amount of money which he paid pursuant to the [paternity] judgment, which was subsequently vacated"). In reviewing that district court's exercise of its discretion, *Mathison* quoted Restatement of Restitution § 74 (1937) for the proposition that "[a] person who has conferred a benefit upon another in compliance with a judgment . . . is entitled to restitution if the judgment is reversed or set aside, unless restitution would be inequitable or the parties contract that payment is to be final . . . ." *Id.* at 813. Here, there is no contract that respondent's payments were final and for three reasons, restitution is not inequitable.

First, we reject any argument by appellant that respondent should seek to recover from mother the funds that appellant withheld from respondent and disbursed to mother. In *Mathison*, the man who was adjudicated the father of the child in question was initially "ordered to reimburse the county for expenses it incurred on behalf of [mother] for child

support[,]" but once it was determined that he was not the child's father, he was, on that record, awarded "restitution of the amount of money which he paid pursuant to the judgment[.]" *Id.* 812–13, 814. Thus, that appellant no longer has the funds in question does not necessarily absolve appellant of having to reimburse respondent if the facts warrant repayment.

Second, it is undisputed that, in IV-D[3] matters like this one, appellant is not mother's agent and does not serve as her legal counsel. Minn. Stat. § 518A.47, subd. 1(a) (2006). Here, however, it was a series of mistakes by appellant that resulted in void judgments being entered against respondent and the use of those void judgments by appellant to collect funds from respondent. Without commenting on the adequacy of the protocols used by appellant in this case, we note that this record (a) shows that respondent and California Walker are not of the same race and are of different ages; (b) shows that, during the time in question, respondent was in Minnesota or incarcerated, but not in California; and (c) does not show that appellant attempted to independently investigate any of these anomalies when respondent brought them to its attention. Additionally, appellant does not acknowledge or address the policy questions raised by its assertion that an innocent and incorrectly adjudicated child-support payor should sue an (apparently) innocent mother on public assistance in an attempt to recover funds incorrectly procured from the payor as a result of void judgments. If the suit that

[3] A "IV-D" case is any proceeding where a party has either (1) "assigned to the state rights to child support because of the receipt of public assistance as defined in [Minn. Stat. §] 256.741," or (2) "applied for child-support services under title IV-D of the Social Security Act, [42 U.S.C. § 654(4)]." Minn. Stat. § 518A.26, subd. 10 (2006).

appellant encourages occurred and respondent obtained a judgment against mother, whether he would be able to recover from a mother on public assistance is unclear. If he did recover, it is likely that any recovery would increase mother's need for public assistance. And it is certain that any substantial recovery would not be in the best interests of the child for whom the child-support system was created.

Third, the authority appellant cites in support of its argument is an unpublished opinion of this court. Unpublished opinions are of limited value in deciding an appeal. *See* Minn. Stat. § 480A.08, subd. 3(c) (2006) (stating "[u]npublished opinions of the Court of Appeals are not precedential"); *Vlahos v. R & I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 676 n.3 (Minn. 2004) (stating that it was improper, "both as a matter of law and as a matter of practice" for the district court to rely on an unpublished opinion, stressing "that unpublished opinions of the court of appeals are not precedential" and noting both that "[t]he danger of miscitation [of unpublished opinions] is great because unpublished decisions rarely contain a full recitation of the facts" and that "[u]npublished opinions should not be cited by the district court as binding precedent"). Further, the case appellant cites is distinguishable because there, service was effective and, while the paternity portion of the judgment was vacated, the support payor's failure to act promptly was the basis for a judgment against the payor for public-assistance reimbursement.

III

Appellant's challenge to the denial of its motion for amended findings of fact is based on its assertion that the district court improperly considered the documents

submitted by respondent. Because we reject that assertion above, we do not separately address appellant's challenge to the denial of its motion for amended findings of fact.

Affirmed.

Dated: _____

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Judge Natalie E. Hudson