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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1371**

Siwek Lumber & Millwork, Inc.,
Respondent,

vs.

Lawrence Dean Veltkamp, a/k/a Loren Veltkamp,
Appellant,

Paula Veltkamp, et al.,
Defendants.

**Filed August 31, 2010
Affirmed
Muehlberg, Judge***

Carver County District Court
File No. 10-CV-07-154

John G. Gisselquist, New Brighton, Minnesota (for respondent)

Lawrence D. Veltkamp, Chanhassen, Minnesota (pro se appellant)

Considered and decided by Stauber, Presiding Judge; Lansing, Judge; and
Muehlberg, Judge.

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

UNPUBLISHED OPINION

MUEHLBERG, Judge

In this construction dispute, pro se appellant homeowner argues that (1) he was not accorded an adequate accommodation under the Americans with Disability Act; (2) service was defective; (3) he was not offered alternative dispute resolution; (4) the district court was biased against him and refused to accommodate his pro se status; (5) the district court erroneously refused a continuance, excluded certain evidence, and gave too much weight to respondent's witnesses; and (6) the record does not support the judgment against appellant. We affirm.

FACTS

In the 1990s, appellant Lawrence Dean Veltkamp bought lumber and other building materials from respondent Siwek Lumber & Millwork, Inc. Apparently, respondent had agreed to beat the lowest competitor's price by ten percent. In 2006, appellant again bought lumber and other building materials from respondent. Between May 1, 2006, and August 28, 2006, appellant made six purchases from respondent. Invoices for those purchases were dated May 10, 18, August 2, 3, 23, and September 8, 2006.

On July 20, 2006, appellant talked to David Siwek about concerns with the pricing on the two invoices received to date. They also discussed additional materials needed by appellant. Although appellant thought that he told Siwek to wait on the delivery, Siwek understood that appellant wanted the additional materials delivered, and respondent delivered them. On July 21, 2006, appellant bought substantially similar materials from

another store. Sometime later, appellant called respondent and asked to return the materials from the July 20 order, but respondent refused because the request was made outside of respondent's return period and because the materials had weathered.

After July 20, appellant made three more purchases from respondent. The total amount billed in the six invoices was \$9,757.34. Appellant made three payments totaling \$1,425.50, leaving a balance due of \$8,331.84.

Respondent brought this mechanic's-lien foreclosure action against appellant, and the case was tried to the court. The district court granted judgment for respondent in the amount of \$8,331.84 plus prejudgment interest, costs and disbursements, and attorney fees. The district court denied appellant's posttrial motions. Seven months after trial, appellant brought a motion to set aside the judgment based on fraud. The district court denied the motion by order filed May 29, 2009. Judgment was entered on June 2, 2009. This appeal followed.

D E C I S I O N

I.

Appellant argues that he is entitled to protection under the Americans with Disabilities Act (ADA) because he suffers from mental-health problems. Because this issue is raised for the first time on appeal, we will not address it. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that generally this court will address only those issues that were presented to and considered by district court); *see also Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001) (stating that pro se litigants are generally held to same standards as attorneys).

We note that appellant relies on his 2002 divorce case to support his claims that his mental-health problems interfered with his ability to participate in this legal proceeding. Because there is no evidence in the record in this case to support appellant's claim that his health conditions currently affect his ability to participate in this legal proceeding, if we were to address appellant's claim that he is entitled to protection under the ADA, it would fail on the merits. Appellant also cites no evidence substantiating his claim that a medical emergency that affected his ability to proceed occurred during trial.

II.

Although the notice of appeal identifies only the district court's order denying appellant's motion to set aside the judgment, the statement of the case raises claims of errors that occurred at trial. We, therefore, construe the notice as an appeal from the judgment. *See Kelly v. Kelly*, 371 N.W.2d 193, 195 (Minn 1985) (stating that "notices of appeal are to be liberally construed in favor of their sufficiency"). On appeal from a judgment, this court's scope of review extends to "review [of] any order involving the merits or affecting the judgment." Minn. R. Civ. App. P. 103.04. "Because a motion to vacate by its nature asks the trial court to reassess its final judgment, an order denying the motion will, thus, involve the merits or affect the judgment entered." *Bush Terrace Homeowners, Assoc., Inc. v. Ridgeway*, 437 N.W.2d 765, 770 (Minn. App. 1989), *review denied* (Minn. June 9, 1989).

"Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald*, 629 N.W.2d at 119.

Appellant claims that he received confusing service of the summons and complaint when he was driving on a highway at night and that the confusing service almost led to a default judgment against him. Because the district court declined to allow a default judgment, appellant was not prejudiced by any confusion regarding the service.

Appellant notes his failure to fill out a required informational statement and argues that he was prejudiced because parties are required to discuss the use of alternative-dispute-resolution (ADR) processes in their informational statements and he was not informed about ADR. He also argues that he did not receive the warning that pro se litigants are held to the same procedural requirements as an attorney. Appellant concedes that this information was available at a self-help kiosk in the courthouse and on a self-help website but that he did not research it until this appeal was pending.

Appellant generally argues that the court system should do more to accommodate pro se litigants. He also argues that the district court judge was biased against him. In the order denying appellant's posttrial motions, the district court stated:

Nothing in the record indicates that [appellant was] deprived of a fair trial in this matter. In addition, a review of the file indicates that prior to trial [appellant was] given extensive leeway in that [he] repeatedly disregarded Court rules and timelines for filing pleadings and answering discovery, yet [was] not sanctioned and [was] permitted to proceed with [his] defense.

The record does not support either appellant's claim that the district court made insufficient accommodation for his pro se status or that the district court was biased against him.

III.

Appellant argues that the district court erred by not accepting key evidence. In part, appellant challenges the district court's assessment of evidence and witness credibility. The district court is in the best position to assess the credibility of testimony because it is able to evaluate directly the content of the testimony, the manner in which it is delivered, and the demeanor and sincerity of the witnesses through whom it is given. *See In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995) (noting that the district court stands in a superior position to appellate courts in assessing credibility of witnesses); *Burman v. Burman*, 230 Minn. 75, 80, 40 N.W.2d 902, 905 (1950) (stating that when testimony conflicts, district court must resolve conflict and determine weight and credit to give testimony). Thus, the court of appeals is required to give deference and due regard to the district court's credibility determinations. *Novack v. Nw. Airlines, Inc.*, 525 N.W.2d 592, 598 (Minn. App. 1995). For these reasons, we decline to reweigh the evidence or to reassess witness credibility.

Appellant also challenges the district court's exclusion of evidence on relevancy and hearsay grounds. The authority cited by appellant does not show that the district court erred in its evidentiary rulings. A party seeking reversal must show both error and prejudice resulting from that error. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975). Appellant has not made this showing.

Finally, appellant argues that the district court erred by ignoring an argument that he made in support of his motion to vacate the judgment based on fraud. The district court found that appellant's motion was simply an attempt to relitigate the case. We

agree. The district court also properly denied appellant's motion based on his failure to state with particularity the grounds for the motion as required by Minn. R. Civ. P. 9.02.

Affirmed.