STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1430

Donald J Brown,
Appellant,

vs.

John Thomas Almeida,
Respondent,

Erin Mari Almeida,
Respondent.

Filed June 2, 2025
Affirmed
Schmidt, Judge

St. Louis County District Court
File No. 69VI-CV-22-602

Donald J. Brown, Tower, Minnesota (pro se appellant)

John Thomas Almeida, Cook, Minnesota (pro se respondent)

Erin Mari Almeida, Cook, Minnesota (pro se respondent)

Considered and decided by Reyes, Presiding Judge; Cochran, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

On appeal from an order dismissing the litigation as a sanction, appellant Donald Brown argues that the district court erred by: (1) denying his motion for partial summary

judgment, (2) denying his motion to disqualify the judge, and (3) sanctioning him. Because we conclude the district court properly denied Brown's motion for partial summary judgment and did not abuse its discretion by denying his motion to disqualify the judge or by sanctioning him, we affirm.

FACTS

In April 2019, Brown and respondents John Almeida and Erin Almeida entered into a rental agreement for a cabin Brown owned. The Almeidas moved into the cabin that same month. Sometime in October 2019, Brown posted a "Notice to Quit" on the cabin door and acknowledged by email that the Almeidas had vacated the premises. The Almeidas left some items on the property and did not return the keys. Eventually, the Almeidas returned to retrieve their items and turn over the keys.

Brown brought an eviction action against the Almeidas, serving them by posting. Minn. Stat. § 504B.331(d) (2018). In December 2021, the Almeidas were evicted by default judgment. The eviction judgment was later expunged from the Almeidas' record.[1]

In November 2022, Brown sued the Almeidas alleging claims of breach of contract, fraud in the inducement, and conversion. The Almeidas answered and asserted various counterclaims. Both parties represented themselves, but Brown had been an attorney for 30 years—though he no longer kept an active license.

Brown moved for partial summary judgment, arguing res judicata entitled him to summary judgment because the eviction action involved identical issues and parties. The

[1] Our recitation of the facts is constrained by the expungement of the eviction case. We, therefore, limit the facts to those included in the parties' public filings on appeal.

district court framed Brown's motion as asserting collateral estoppel and denied the motion because "there has to be actual litigation of the contested issue," which had not occurred.

On the day the case was set for trial, the district court expressed concerns about the inconsistencies between the statements in Brown's complaint and the information provided to the eviction court. The district court asked Brown to explain the discrepancy between an email from Brown that acknowledged the Almeidas had vacated the property in October 2019 and Brown's complaint that alleged the Almeidas had not left the property until after the eviction judgment was entered in December 2021. Brown told the district court that he had not been in possession of the property because the Almeidas had kept the keys. The district court disagreed with Brown's assertion, noting that leaving personal property behind and continuing to possess the keys does not constitute possession. The district court also expressed concern about a joint statement of the case that Brown had submitted, which included stipulated facts that the Almeidas had never seen.

The district court issued an order that outlined its concerns and set a date for a hearing requiring Brown to show cause as to why he should not be sanctioned pursuant to Minnesota Statutes section 549.211 (2024). At the hearing, Brown made a motion to disqualify the judge for violating judicial canons related "to neutrality, respect and courtesy and competency[,]" which the district court denied. The district court allowed Brown to examine John Almeida on the witness stand and to introduce exhibits. One exhibit purported to be an email from John Almeida to Brown implying that the Almeidas had not vacated the property, but John Almeida testified that the email had been doctored.

Following the hearing, the district court issued an order dismissing Brown's complaint with prejudice. The court found John Almeida's testimony to be "credible and corroborated by other evidence." The district court then detailed nine instances in which Brown made false statements in filings to the court, determined that Brown's false representations violated section 549.211, and ruled that "[t]he only viable and appropriate sanction is the dismissal of Plaintiff's claims with prejudice."[2]

Brown appeals.

DECISION

I. The district court did not err in denying the partial summary judgment motion.

Brown argues the district court erred in denying his motion for partial summary judgment because the default judgment in the eviction action collaterally estopped the Almeidas from contesting his claims. In reviewing a summary judgment order, "we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). Whether collateral estoppel applies "is a mixed question of law and fact that we review de novo." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). "Once the reviewing court determines that collateral estoppel is available, the decision to apply collateral estoppel is left to the district court's discretion." *In re Est. of Perrin*, 796 N.W.2d 175, 179 (Minn. App. 2011) (quotation omitted).

[2] The district court later dismissed the counterclaims, which has not been appealed.

> Collateral estoppel bars the relitigation of an issue when:
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> (1) the issue is identical to one in a prior adjudication; (2) there was a final judgment on the merits in the prior proceeding; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Barth v. Stenwick, 761 N.W.2d 502, 508 (Minn. App. 2009). A court must also "be convinced that its application is fair." *All Finish Concrete, Inc. v. Erickson*, 899 N.W.2d 557, 567 (Minn. App. 2017). For collateral estoppel to apply, the issue must have been contested and determined in the earlier adjudication. *Hauschildt*, 686 N.W.2d at 837-38.

Brown argues that this court's decision in *Roberts v. Flanagan*, 410 N.W.2d 884 (Minn. App. 1987) authorized collateral estoppel to apply to default judgments. But *Roberts* involved defensive—not offensive—collateral estoppel. 410 N.W.2d at 885-86. We have treated offensive and defensive collateral estoppel differently, discouraging offensive collateral estoppel. *Erickson*, 899 N.W.2d at 570. Whether offensive collateral estoppel applies is a case-specific analysis that depends "on whether the defendant had a full and fair opportunity to litigate the issue in the prior action and whether estoppel of the defendant would be fair." *Id.* at 567.

Because the default order was expunged,[3] the district court properly ruled that the Almeidas did not have the opportunity to actually litigate the issue. Using offensive collateral estoppel in these circumstances would have been neither appropriate nor fair. Thus, the district court did not err in denying the motion for partial summary judgment.

[3] Brown also objects to the order expunging the judgment in the eviction action, but that order is not before this court on appeal.

II. The district court did not abuse its discretion by denying the motion for disqualification.

Brown argues the district court should have removed itself for cause due to judicial bias, impartiality, and lack of decorum. "No judge shall sit in any case if disqualified under the Code of Judicial Conduct." Minn. R. Civ. P. 63.02. "A motion to remove for cause is committed to the discretion of the [district] court and this court will reverse only for an abuse of that discretion." *Hooper v. State*, 838 N.W.2d 775, 790 (Minn. 2013) (quotation omitted). We presume the judge properly discharged her or his duties. *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008).

Brown argues the district court showed judicial bias by wrongfully stating that there was no evidence of a holdover tenancy. Brown argues that John Almeida admitted that the Almeidas did not leave until April 2020. But Brown's contention ignores the clarifying question that the court asked during the hearing:

> THE COURT: I'm just going to interject because I think there is some confusion in regards to the underlying question that Mr. Brown had asked. His first question was . . . when did you vacate the premises? And then did you vacate the premises April of 2020 or was that just to get personal belongings?
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> MR. ALMEIDA: That was to get my boats.
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> THE COURT: Okay. So, when did you vacate—because his—his original question was when you vacated the premises?
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> MR. ALMEIDA: Around October 7th of 2019.

The testimony, which the district court found credible, demonstrates that John Almeida stated he vacated the property in October 2019.

Brown also argues that the district court demonstrated bias by going beyond the purpose of the show-cause hearing, which Brown contends was limited "to determine whether there was any evidence to support [Brown's] claim of a holdover tenancy[.]" But that is also incorrect. The district court had articulated concerns in the show-cause order about Brown having committed fraud by making a series of inconsistent statements in his filings, violating Minnesota Statutes section 549.211. Thus, the hearing was broader in scope than what Brown now asserts on appeal. At the hearing, the district court allowed Brown to present evidence, but Brown failed to address the factual inconsistencies.

Brown also asserts that the judge violated the rule to remain impartial by forcing Brown to show cause for his failure to comply with the scheduling order "while excusing [the Almeidas] for [non]compliance with almost every provision in the scheduling order[.]" But the district court included the scheduling-order language in the show-cause order only because Brown had submitted a document with stipulated facts even though the Almeidas never "stipulated to any facts, or joined in the Joint Statement of Case."

Finally, Brown contends that the district court lacked patience, dignity, and courtesy when the court (1) "ridicul[ed]" Brown for not consulting a landlord attorney, (2) told Brown that a litigant needs a better reason to order a transcript than to remember what happened, and (3) got "so worked up . . . that it had to take a break" in order "to calm down a little bit." In our review of the record, none of the alleged instances rise to the level of bias or prejudice requiring removal for cause. Minn. Code Jud. Conduct Rule 2.11(A)(1).

The district court did not abuse its discretion by denying the motion to disqualify the judge or remove for cause.

III. The district court did not abuse its discretion by sanctioning Brown.

Brown argues the district court should not have sanctioned him by dismissing his complaint because he presented evidence that the Almeidas were holdover tenants, and therefore, his statements were not false. We review a district court's imposition of sanctions under section 549.211 for an abuse of discretion. *In re Est. of Flatgard*, 14 N.W.3d 305, 313 (Minn. App. 2024), *rev. denied* (Minn. Mar. 18, 2025).

When an unrepresented party presents a document to the court, they are

> certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
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> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
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> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
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> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
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> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Minn. Stat. § 549.211, subd. 2. If the district court determines there is a violation of the statute, it may sanction the violating party. *Id.*, subd. 3.

In his complaint, Brown alleged that the Almeidas "failed and refused to Quit the premises" when their tenancy was terminated by notices to quit in October and November

2019. Brown alleged that possession of the property was not returned to him until "about January 7, 2022." Brown made similar representations in his motion for partial summary judgment. Brown signed both filings and acknowledged his obligations under Minnesota Statutes section 549.211, subdivision 2.

The evidence, however, shows that Brown emailed John Almeida on October 22, 2019, writing: "Thanks for vacating the cabin on or before October 15." The email continues with Brown requesting that the Almeidas remove their property, repair damage, and return the keys. The district court determined the Almeidas vacated the property in October 2019. The court noted that the Almeidas did not need to return the keys or remove their personal property for Brown to regain possession.[4] *See Stern v. Thayer*, 57 N.W. 329, 329 (Minn. 1894) ("Any acts which are equivalent to an agreement on the part of a tenant to abandon and on the part of a landlord to resume possession of demised premises amount to a surrender of a term by operation of law."); *Gruman v. Invs. Diversified Servs., Inc.*, 78 N.W.2d 377, 381 (Minn. 1956) (acknowledging that when landlord "by some act or statement has indicated his acceptance of a lessee's abandonment of leased premises[,]" the landlord has effectively terminated the lease). The district court also properly noted that if the Almeidas came back after October 2019, they would be trespassers, not holdover

[4] Brown argues that the district court misconstrued the state statute and equated occupancy with possession. *See* Minn. Stat. §§ 504B.281, .301 (2024). But Brown does not provide an argument for what definition of "possession" the district court should have applied. "An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971).

tenants. *Johnson v. Paynesville Farmers Union Coop. Oil Co.*, 817 N.W.2d 693, 701 (Minn. 2012) ("[A] trespass is committed where a plaintiff has the right of possession to the land at issue and there is a wrongful and unlawful entry upon such possession by defendant." (quotations omitted)).

At the show-cause hearing, Brown entered exhibits and questioned John Almeida. One exhibit purported to be an email sent from John Almeida to Brown—with an unknown date, but allegedly sent in response to an October 22, 2019 email—that states: "We will still be using the property in accordance with the agreement." John Almeida testified, however, that the email had been doctored. Brown argued the Almeidas had not surrendered possession of the cabin in October 2019 because they had not returned the keys, but he did not dispute that they had physically vacated the property.

Following the hearing, the district court found John Almeida's testimony to be "credible and corroborated by other evidence." Based on that testimony, the court found the Almeidas vacated the property around October 2019, and John Almeida returned only when permitted by Brown to retrieve their belongings. We will not second-guess a district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) ("Deference must be given to the opportunity of the [district] court to assess the credibility of the witnesses."). The district court's findings are not clearly erroneous and have support in the record. Therefore, the district court did not abuse its discretion in sanctioning Brown.

Affirmed.