

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1541**

Ronald Jeffrey Smith, petitioner,
Appellant,

vs.

Brian Robert Kessen, et al.,
Respondents.

**Filed June 23, 2025
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-FA-24-1902

Karim El-Ghazzawy, El-Ghazzawy Law Offices, LLC, Minneapolis, Minnesota; and
Scott M. Flaherty, Taft Stettinius & Hollister, LLP, Minneapolis, Minnesota (for appellant)
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Considered and decided by Bond, Presiding Judge; Reyes, Judge; and Jesson,
Judge.*

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that the district court abused its discretion when it (1) determined that he is a frivolous litigant and (2) imposed sanctions and filing preconditions. We affirm.

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

FACTS

This case involves over five years of nearly constant litigation between appellant Ronald Jeffrey Smith and respondents Brian Robert Kessen and Katherine Anne Kessen (the Kessens).¹ Smith is the maternal grandfather to B.R.K. (born 2011) and L.M.K. (born 2014) (the children), the biological children of Brian and his deceased wife, Lauren Kessen, Smith's daughter. Lauren died after giving birth to L.M.K. Brian relied heavily on Smith after Lauren's death, and the children spent significant time with him. Around 2018, when Brian and Katherine married, Smith's time with the children began to decrease.

Following mediation, the parties entered into two settlement agreements in 2019. However, the district court never reviewed or signed either of them.

On March 3, 2020, Smith filed his first petition for grandparent visitation. On August 17, 2020, the district court denied Smith's petition because, while it found that he satisfied the first prong for grandparent visitation under Minn. Stat. § 257C.08 (2024), that visitation is in the best interests of the children, it found that he failed to satisfy the second prong, that visitation would not interfere with the parent-child relationship.

On September 15, 2020, Smith filed a motion for amended findings requesting that the district court amend nearly 30 of its 42 findings. In a February 23, 2021 order, the district court denied Smith's motion except for one nonsubstantive change. The district court stated that Smith was "using the motion for amended findings as an opportunity to re-argue the merits of the case before the [district] [c]ourt" and attempting to "relitigate[e]

¹ Because several people share the same last name, we use their first name when referring to them individually.

[] issues of fact,” including his argument that granting him visitation would not interfere with the parent-child relationship.

Smith filed a motion for grandparent visitation on June 16, 2021. The district court denied the motion on September 30, 2021, once again finding that granting him visitation would interfere with the parent-child relationship. In its order, the district court noted that it was “taken aback by [Smith]’s aggressive tactics and desire to seek litigation to get his way. Such behavior can only be seen as strident efforts to interfere with the decision making and choices of the other party.” Smith then appealed to this court on November 12, 2021, and we affirmed the district court’s order in its entirety, including the district court’s findings that Smith failed to prove that visitation would not interfere with the parent-child relationship. *See Smith v. Kessen*, No. A21-1521, 2022 WL 2659293, at *3-4 (Minn. App. July 11, 2022), *rev. denied* (Minn. Sept. 20, 2022) (*Smith I*). We also concluded that Smith forfeited his argument that the Kessens could not argue that he had interfered with the parent-child relationship based on the 2019 mediation agreements because he did not raise it before the district court. *Id.* at *2, n.1. The supreme court denied Smith’s petition for review (PFR) on September 20, 2022. *Id.*

On October 14, 2022, less than a month after the supreme court denied his PFR, Smith filed another motion for grandparent visitation arguing changed circumstances, based primarily on noninterference, which he averred in an accompanying affidavit. The affidavit alleged the following changed circumstances: (1) nearly three years had passed since Smith had seen the children and it “ha[d] been over a year since [his] last request” to the district court; (2) the Kessens have had “uninterrupted” bonding time; (3) Smith had

healed and gained perspective; (4) the Kessens refused “to voluntarily allow actual grandparent visitation” since March 2020; (5) Smith would be able to satisfy his burden of proving noninterference; (6) Smith had stopped providing Brian with financial support; (7) the real reason the Kessens were denying Smith visitation was because he disapproved of Brian’s physical discipline of the children; and (8) the end of the COVID-19 pandemic “should better allow for compromise.”

Smith also included with this motion a discovery plan, requests for documents, interrogatories, and subpoenas for depositions of multiple out-of-state witnesses, which totaled over 60 pages. The Kessens moved to dismiss the motion and quash the subpoenas. Smith filed several additional motions, including a motion to strike the Kessens’ motion to dismiss and recover attorney fees, a motion opposing the Kessens’ motion to quash and for protective orders, and a “cross-merits” motion. Smith’s cross-merits motion once again argued that granting him visitation would not interfere with the parent-child relationship. On January 23, 2023, the district court denied Smith’s motion for grandparent visitation, finding there had “been a final judgment in this matter.” Four days later, on January 27, 2023, Smith appealed to this court, and we affirmed the district court’s order in a precedential opinion on October 9, 2023. *See Smith v. Kessen*, 996 N.W.2d 581 (Minn. App. 2023), *rev. denied* (Minn. Jan. 31, 2024) (*Smith II*). We stated in our opinion that “perpetual visitation-related litigation is likely contrary to the best interests of the children.” *Id.* at 590. The supreme court denied Smith’s PFR on January 31, 2024. *Id.*

On March 25, 2024, less than two months after the supreme court denied his PFR, Smith filed a new petition for grandparent visitation based, once again, on changed

circumstances. The Kessens filed a rule 9 motion against Smith, seeking a determination from the district court that he is a frivolous litigant and requesting that it impose filing preconditions on Smith and require him to furnish a \$250,000 security. *See* Minn. R. Gen. Prac. 9. On September 3, 2024, the district court (1) granted the Kessens’ rule 9 motion and determined Smith to be a frivolous litigant and (2) granted their requests for prefilings conditions and a \$250,000 security. In its order, the district court stated that “Smith’s current petition is virtually identical to his prior petitions and restates his prior arguments.” It also noted that Smith’s petition “undermined” his arguments under both prongs of the visitation statute, namely, that visitation would be in the best interests of the children and that visitation would not interfere with the parent-child relationship, based on him “constantly litigating the issues.” This appeal follows.

DECISION

I. The district court did not abuse its discretion when it determined that Smith is a frivolous litigant.

Smith argues that the district court abused its discretion when it determined that he is a frivolous litigant, contending that: he has not repeatedly relitigated a finally determined claim because he has never had a merits determination on his changed-circumstances argument, he has not repeatedly filed frivolous motions or served unnecessary discovery, and his most recent petition for grandparent visitation was “substantively grounded in fact and law and not for the purpose of harassment.” We are not persuaded.

Appellate courts review a district court’s frivolous-litigant determination for an abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

“A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on the record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotations omitted).

There are three definitions of “frivolous litigant” under Minn. R. Gen. Prac. 9.06(b):

- (1) A person who, *after a claim has been finally determined* against the person, *repeatedly relitigates* or attempts to relitigate either
 - i. The validity of the determination against the same party or parties as to whom the claim was finally determined, or
 - ii. The cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same party or parties as to whom the claim was finally determined; or
- (2) A person who in any action or proceeding *repeatedly serves or files frivolous motions, pleadings, letters, or other documents, conducts unnecessary discovery*, or engages in oral or written tactics that are frivolous or intended to cause delay; or
- (3) A person who institutes and maintains *a claim that is not well grounded in fact* and not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law or that is interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigating the claim.

(Emphases added).

The district court considered each of these definitions and found that Smith satisfied them all. First, under Minn. R. Gen. Prac. 9.06(b)(1), the district court found that “Smith has repeatedly litigated the issues of grandparent visitation despite numerous prior final

determinations on the same issue and claim.” The district court cited its denial of his visitation requests “on four prior occasions over the last four years,” which were all affirmed on appeal. Second, under Minn. R. Gen. Prac. 9.06(b)(2), the district court found that “Smith has both filed frivolous motions and conducted unnecessary discovery” by filing “three subsequent motions into the case in an attempt to procure visitation” despite the district court’s determination that he “failed to meet his statutory burden of proof” and dismissing the matter. Third, under Minn. R. Gen. Prac. 9.06(b)(3), the district court found that “Smith moved the [district] [c]ourt twice for grandparent visitation after his 2020 petition was denied. He used a third motion, his Motion for Amended Findings, to relitigate the merits of his 2020 petition” and his “current petition is a regurgitation of all arguments made over the last four years, none of which have been successful.” The district court further found that Smith “is needlessly increasing the cost of litigating his claims” and that the litigation is taking a “financial toll” on the Kessens.

The record supports the district court’s findings that Smith is a frivolous litigant. For example, Smith’s petitions for grandparent visitation and subsequent filings attempt to relitigate issues courts have already decided, repeat previously unsuccessful arguments, and repeatedly fail to satisfy the statutory burden for grandparent visitation.² We therefore

² Smith argues that the district court abused its discretion when it sanctioned him for conduct that he could not withdraw or correct within the 21-day safe-harbor period under rule 9. *See* Minn. R. Gen. Pract. 9.01. However, as is the purpose of the safe-harbor period, Smith was put on notice before the Kessens filed their rule 9 motion in district court that his filing was deficient, and he did nothing to remedy it. Smith’s argument fails.

conclude that the district court did not abuse its discretion when it determined that Smith is a frivolous litigant.

Smith further argues that he has never had a merits determination on his changed-circumstances argument. “The burden of showing a change of circumstances is on the moving party. No matter what the measuring date, as part of his burden, the moving party must provide sufficient proof of his *present* circumstances before *any* comparison can be made.” *Johnson v. Fritz*, 406 N.W.2d 614, 616 (Minn. App. 1987). The district court *did* address the merits of Smith’s changed circumstances petition, albeit during its discussion of the rule 9.02(b) factors regarding sanctions and preconditions.³ Specifically, the district court found that:

Smith alleges in his 2024 Petition that he should be awarded grandparent visitation because circumstances have changed, and *he would no longer interfere with the parent-child relationships* between the Kessens and their children. Smith also maintains that visitation with the children is in their best interests. *Both of these claims* – which constitute Smith’s evidentiary burden – *are undermined by Smith’s Petition itself*. [The district court] cautioned Smith in [its] September 30, 2021 Order that *Smith’s aggressive litigation tactics constituted interference with the Kessens’ parental decision-making authority*. In the three years since that Order, *Smith has been constantly litigating the issues and is now asking a new Judge, in a new court file number, to find that he would no longer interfere with parent-child relationships*. Additionally, *Smith’s basis* for claiming that he would no longer interfere with the Kessens’ parent-child relationships is *nebulous at best*. Smith points out that he hasn’t interfered with the Kessen family in the last four years. This, of course, is because Smith has been unsuccessful in gaining visitation rights. The Court

³ We encourage district courts, when presented with an issue like this, to conduct a separate analysis of the merits of a party’s frivolous-litigant argument and then analyze the factors for sanctions.

finds that Smith's current petition is virtually identical to his prior petitions and restates his prior arguments. Due to the fact that Smith provides no substantively new information to reconsider his petition, and his continued aggressive tactics and disregard for how his actions affect his grandchildren's family, the Court cannot find that there is a reasonable probability that Petitioner will now prevail on his claim.

(Emphases added).

Notably, Smith's March 2024 petition did not identify the changed circumstances that serve as the bases for his petition. Instead, he argued that his October 14, 2022, affidavit is "uncontroverted" and "determinative," but his petition does not detail *what* the changed circumstances actually are, nor does he elaborate on what his 2022 affidavit provided. Smith also referred to Dr. Coleman's "qualified and uncontroverted November 21, 2022" affidavit regarding changed circumstances, which he contends focuses on the time that has elapsed since Smith and the children have spent time together. It does not appear from the record that either Smith's or Dr. Coleman's affidavits detailing changed circumstances were submitted with his petition and no additional details are given in Smith's brief regarding changed circumstances other than elapsed time. While the affidavits are seemingly part of the record in a previous, closed file between the same parties regarding grandparent visitation, *see Smith II*, N.W.2d at 590-91, Smith's current petition is a new filing that opened a new district court file. Smith's previous affidavits and filings did not automatically carry over to this new file and are not a part of this record. The only reason that Smith's affidavit is in our record on appeal is because the Kessens submitted it as one of the exhibits accompanying their rule 9 motion to deem Smith a frivolous litigant. Notably, Dr. Coleman's affidavit is not part of our record on appeal.

However, even if Smith’s 2022 affidavit was attached to the March 2024 petition, it does not speak to “present circumstances.” *Johnson*, 406 N.W.2d at 616.

For the first time on appeal, Smith notes that the “alleged changed circumstances” are identified in the “Second Petition . . . namely, that six years have passed during which the Children have had [an] opportunity to adapt to viewing the Kessens as their primary caretakers and sole parental authority.” But, as stated above, Smith’s failure to attach either his or Dr. Coleman’s affidavits upon which he relies to show changed circumstances, in addition to the fact that they are outdated, also results in an argument that is no more than a “mere assertion,” which is unavailing. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971).

Smith also argues that he has never had a merits determination on his argument that the Kessens, by participating in settlement negotiations in 2019, waived any subsequent interference argument. As we noted in our 2022 opinion, and as Smith acknowledges in his brief, Smith forfeited this argument because he did not raise it before the district court. *See Smith I*, 2022 WL 2659293, at *2, n.1.

II. The district court did not abuse its discretion when it imposed sanctions and preconditions on Smith.

Smith argues that the district court abused its discretion when it imposed sanctions and preconditions on him. We disagree.

Once a district court determines that a person is a frivolous litigant, it may require that person to furnish security or impose preconditions that must be satisfied before filing a new claim, motion, or request with the court. Minn. R. Gen. Prac. 9.01. The district

court must consider the following seven factors when determining whether to require security or impose sanctions:

- (1) the frequency and number of claims pursued by the frivolous litigant with an adverse result;
- (2) whether there is a reasonable probability that the frivolous litigant will prevail on the claim, motion, or request;
- (3) whether the claim, motion, or request was made for purposes of harassment, delay, or vexatiousness, or otherwise in bad faith;
- (4) injury incurred by other litigants prevailing against the frivolous litigant and to the efficient administration of justice as a result of the claim, motion, or request in question;
- (5) effectiveness of prior sanctions in deterring the frivolous litigant from pursuing frivolous claims;
- (6) the likelihood that requiring security or imposing sanctions will ensure adequate safeguards and provide means to compensate the adverse party;
- (7) whether less severe sanctions will sufficiently protect the rights of other litigants, the public, or the courts.

Minn. R. Gen. Prac. 9.02(b)(1)-(7). The district court may also consider any other relevant factors. Minn. R. Gen. Prac. 9.02(b).

The district court considered all seven factors, found that six weighed in favor of requiring security or imposing sanctions, one was neutral, and made appropriate findings supported by the record. The district court noted: (1) all of Smith’s claims before the district court, this court, and the supreme court “have had an adverse result”; (2) the district court’s repeated findings that granting Smith grandparent visitation would interfere with the Kessens’ relationship with their children and that his “current petition is *virtually identical to his prior petitions and restates his prior arguments*” (emphases added);

(3) Smith is a tireless, persistent litigant, and the Kessens “feel bullied and harassed” by his constant litigation; (4) Smith’s constant litigation puts “financial, social and emotional stress on the Kessens”; (5) Smith has not heeded prior cautions by the district court or this court about his aggressive litigation; (6) security will provide a way to compensate the Kessens and set a tone for the proceedings while still allowing Smith to be heard in court; and (7) less-severe sanctions will not sufficiently protect the Kessens or the courts.

As with Smith’s “frivolous litigant” argument, the record supports the district court’s findings with respect to the factors under Minn. R. Gen. Prac. 9.02(b). We conclude that the district court did not abuse its discretion by imposing preconditions on Smith.⁴

Affirmed.

⁴ The district court’s determination that Smith is a frivolous litigant and its accompanying sanctions does not preclude Smith from filing a proper, meritorious, and fact-based legal claim going forward. While Smith’s current petition failed to establish changed circumstances, he is not foreclosed from making this argument in the future, provided that his claim has a legal and factual basis.