IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALVIN J. GRIFFIN, III, AN INDIVIDUAL,
Appellant,
vs.
ADA REPAIR, INC., A NEVADA CORPORATION,
Respondent.

No. 82128-COA

ALVIN J. GRIFFIN, III, AN INDIVIDUAL,
Appellant,
vs.
ADA REPAIR, INC., A NEVADA CORPORATION,
Respondent.

No. 82241-COA ✓

ORDER REVERSING (DOCKET NO. 82128-COA), VACATING (DOCKET NO. 82241-COA), AND REMANDING

Alvin J. Griffin, III, appeals from a district court order granting a petition to declare him a vexatious litigant and a post-judgment order awarding attorney fees and costs. These appeals are not consolidated. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Respondent ADA Repair, Inc., initiated the underlying action by filing a petition requesting that the district court declare Griffin a vexatious litigant.[1] In relevant part, ADA argued that Griffin had

[1]ADA purported to bring its petition pursuant to SCR 9.5, which provides that the administrative office of the courts shall maintain a list of

unreasonably and vexatiously multiplied the proceedings in prior cases stemming from ADA's termination of Griffin's employment. Following a hearing, the district court entered a written order granting the petition, declaring Griffin a vexatious litigant, and requiring that, "[p]rior to Griffin filing any action, brief or appeal in any state or federal court/administrative agency, he is required to seek prior permission and approval pursuant to SCR 9.5, or face sanctions." Griffin appealed from that order in Docket No. 82128.

ADA subsequently filed a motion for attorney fees and costs it incurred in litigating some of the prior cases and the instant petition. After Griffin failed to oppose that motion, the district court entered a written order granting it as unopposed under EDCR 2.20(e), but also concluding that an award of fees and costs was warranted under EDCR 7.60, NRS 18.010(2)(b), and NRCP 11. Considering all of the factors for determining a reasonable amount of fees set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), the district court awarded ADA $21,435.00 in attorney fees, as well as $1,567.65 in costs, for a total

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litigants that have been declared vexatious by any Nevada court, but the rule does not provide for the filing of a standalone petition in district court seeking such a declaration. Regardless, Griffin does not challenge the procedural propriety of ADA's petition, *see Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived), and although we therefore take no position on the issue, we note that district courts do have inherent authority to enter vexatious litigant orders, *see Jones v. Eighth Judicial Dist. Court*, 130 Nev. 493, 498, 330 P.3d 475, 479 (2014); *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 58-59, 110 P.3d 30, 41-42 (2005), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008).

award of $23,002.65. Griffin likewise appealed from that order in Docket No. 82241, and the supreme court transferred both appeals to this court. Resolving them together, we reverse the order declaring Griffin a vexatious litigant, vacate the award of attorney fees and costs, and remand this matter for further proceedings consistent with this order.[2]

This court reviews restrictive orders limiting vexatious litigants' access to the courts for an abuse of discretion. *Jordan*, 121 Nev. at 62, 110 P.3d at 44. We likewise review an award of attorney fees and costs for an abuse of discretion. *Frazier v. Drake*, 131 Nev. 632, 637, 357 P.3d 365, 369 (Ct. App. 2015).

With respect to the vexatious-litigant declaration, we note that Griffin—who is proceeding in pro se—devotes the majority of his informal brief in Docket No. 82128-COA to making conclusory allegations of fraud, misconduct, and violation of his rights against ADA's counsel, an employee of ADA who had obtained protection orders against him in justice court for harassment, and the district court judge who presided over his appeals from those orders. Although these assertions are unsupported by the record, Griffin also argues generally that the district court's order impermissibly restricts his access to the courts. Because our review of the district court's order reveals multiple errors warranting reversal and remand for further proceedings, we agree with Griffin that the order, as currently written, constitutes an impermissible restriction of his rights.

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[2]Although this court generally will not grant a pro se appellant relief without first providing the respondent an opportunity to file an answering brief, *see* NRAP 46A(c), based on the record before us, the filing of an answering brief would not aid this court's resolution of these issues, and thus, no such brief has been ordered.

In *Jordan*, our supreme court set forth the following four-factor analysis district courts must utilize when determining whether to enter an order restricting a vexatious litigant's access to the courts: (1) the litigant must be afforded reasonable notice and an opportunity to oppose such an order; (2) the district court must create an adequate record for review by setting forth a list of all the cases and documents, or an explanation of the reasons, that warrant entering a restrictive order to curb repetitive or abusive litigation; (3) the district court must make substantive findings regarding the frivolous or harassing nature of the litigant's actions; and (4) the order must be narrowly tailored to address the specific problem at hand. 121 Nev. at 60-62, 110 P.3d at 42-44.

Here, the district court's application of the second, third, and fourth prongs of the *Jordan* analysis is problematic in a number of ways. With respect to the second prong, the *Jordan* court warned that, because "filings that have not been deemed frivolous or vexatious or otherwise resolved remain pending on the merits before the court to which they are assigned," a district court "must use caution in reviewing filings in other cases, so as not to interfere with other judges' pending assignments." *Id.* at 61, 110 P.3d at 43. Thus, "[t]he judge issuing the restrictive order should rely only on observations obtained from cases to which he or she is assigned, and on actual rulings in other cases." *Id.*

In this matter, the district court based its ruling in part on a lawsuit Griffin filed that, based on the record, remained pending in a different department of the Eighth Judicial District Court at the time of the proceedings below. Despite the fact that ADA only provided the district court the complaint from that matter and not any actual ruling from the judge presiding over the case, the district court proceeded to conclude that

the pending action was duplicative of a prior matter and violated the doctrines of claim and issue preclusion. This was an impermissible interference with another judge's pending assignment under *Jordan*. *See id.* at 65, 110 P.3d at 45-46 (concluding that, with respect to findings the district court made related to other cases, because the record indicated that those cases remained pending before other judges and did not include findings of frivolity or abuse from those judges, the district court could not use those cases to support the restrictive order).

Moreover, the district court's order references multiple actions that do not appear to have had anything to do with ADA or anyone affiliated with it, but the order does not specify—nor does the record reveal—what these actions were based on or what their outcomes were.[3] Accordingly, it is not clear to this court how these other actions support the district court's broad restrictive order, and we caution the district court on remand to sufficiently explain its reliance on these other actions or else omit them from the order resolving this matter if they do not inform the court's analysis. *See id.* at 63, 110 P.3d at 44 (concluding that the district court's order did

[3]For example, the district court's order references four separate actions Griffin filed in justice court that apparently had no connection to Griffin's disputes with ADA and its affiliates. But in its petition below, ADA admitted that it did not know the status of these actions, and it does not appear that it ever submitted anything to the district court concerning them outside of references to them in its petition. Additionally, although the district court's order identifies three different social security disability actions supposedly filed by Griffin as matters "related to ADA," Griffin contends on appeal that they were not so related, and ADA did not submit anything to the district court indicating that they were. Moreover, although ADA stated in its petition that these matters were closed, there is nothing in the record to demonstrate why they were closed or that Griffin acted vexatiously in pursuing them.

not sufficiently show that the litigant "had previously instituted other suits that were determined meritless or otherwise resulted in an adverse resolution").

Relatedly, and turning to the third prong, the *Jordan* court made clear that "[a] restrictive order cannot issue merely upon a showing of litigiousness." *Id.* at 61, 110 P.3d at 43 (internal quotation marks omitted). Accordingly, to the extent the district court relies on the existence of particular actions or filings in resolving this matter on remand, we remind the court of its obligation to "make substantive findings as to the frivolous or harassing nature of the litigant's actions," *id.* (internal quotation marks omitted), not just their frequency.

Finally, with respect to the fourth prong—and most importantly—the district court failed to narrowly tailor the restrictive order to address the circumstances of this case. The *Jordan* court noted that "when a litigant's misuse of the legal system is pervasive, a restrictive order that broadly restricts a litigant from filing any new actions without permission from the court might nonetheless be narrowly drawn." *Id.* at 61-62, 110 P.3d at 43. But the court proceeded to note that "[s]ince restrictive orders necessarily implicate future filings, which may involve criminal cases or fundamental rights, even broad restrictive orders should set an appropriate standard against which any future filings will be measured." *Id.* at 62, 110 P.3d at 44. For example, such orders may prevent a litigant from filing any new actions against specific defendants or involving specific claims, or they may prevent a litigant from filing new actions unless the court first determines that they are non-frivolous and/or implicate a fundamental right. *Id.*

Here, the restriction that the district court set forth in its order—that Griffin cannot file any action, brief, or appeal in any state or federal court or administrative agency without seeking permission and approval pursuant to SCR 9.5—is impermissibly broad in multiple ways. For one, it exceeds the district court's authority in entering such orders, which is based on its "inherent powers involving the exercise of its jurisdiction." *Id.* at 66, 110 P.3d at 46 (internal quotation marks omitted). In light of this limited authority, the *Jordan* court held that "[a] district court may not implicate other courts' powers by attempting to prevent [a litigant] from filing any new litigation in the courts of this state without permission," and it noted that the district court in that matter should therefore modify its order to "apply only to the Eighth Judicial District Court." *Id.* (internal quotation marks omitted). Likewise, in resolving this matter on remand, the district court must limit the reach of its order solely to the Eighth Judicial District Court.

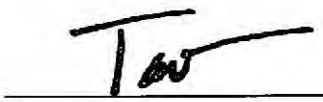
Moreover, the district court's requirement that Griffin "seek prior permission and approval pursuant to SCR 9.5" does not set an appropriate standard for evaluating future filings. SCR 9.5 pertains only to the list of vexatious litigants that the administrative office of the courts must maintain; it does not set forth any standard by which a court may evaluate a litigant's filings. Accordingly, on remand, the district court should consider the specific circumstances at issue here and develop an appropriate standard—in accordance with *Jordan*—by which any potential future filings by Griffin in the Eighth Judicial District Court may be measured. *See id.* at 62, 110 P.3d at 44.

Based on the foregoing, the district court abused its discretion in applying the *Jordan* factors and declaring Griffin a vexatious litigant,

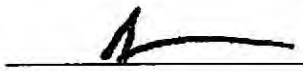
and we therefore reverse and remand for further proceedings consistent with *Jordan* and this order. Necessarily, we vacate the post-judgment award of attorney fees and costs, and we take no position on the merits of that award. *See W. Techs., Inc. v. All-Am. Golf Ctr., Inc.*, 122 Nev. 869, 876, 139 P.3d 858, 862 (2006).

It is so ORDERED.[4]

_____, C.J.
Gibbons



_____, J.
Tao



_____, J.
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cc: Hon. Timothy C. Williams, District Judge
Alvin J. Griffin, III
Law Office of Neal Hyman
Eighth District Court Clerk

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[4]Insofar as Griffin raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal. Further, we deny Griffin's motion for stay pending in Docket No. 82128-COA as moot.