STATE OF MINNESOTA
IN COURT OF APPEALS
A03-1482

Midland Credit Management, Inc.,
Appellant,

vs.

John Resler,
Respondent.

Filed May 25, 2004
Affirmed
Randall, Judge

Washington County District Court
File Nos. C6-02-640

Derrick N. Weber, Jeffrey J. Cohen, Messerli & Kramer, P.A., 3033 Campus Drive, Suite 250, Plymouth, MN 55441 (for appellant)

Thomas J. Lyons Sr., Thomas J. Lyons & Associates, 342 East County Road D, Little Canada, MN 55117; and

Thomas J. Lyons Jr., John H. Goolsby, Consumer Justice Center, P.A., 342 East County Road D, Little Canada, MN 55117 (for respondent)

Considered and decided by Randall, Presiding Judge, Klaphake, Judge, and Forsberg, Judge.*

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

RANDALL, Judge

On appeal from an order granting a motion to vacate a default judgment, appellant argues that: (1) the district court erred in ruling that a letter respondent sent constituted an "answer;" (2) respondent's motion to vacate, brought more than a year after default judgment

was entered, was not timely; and (3) the court abused its discretion in vacating the default judgment where respondent had not provided a meritorious defense. We affirm.

FACTS

On December 28, 2001, appellant Midland Credit Management, Inc., served respondent John Resler with a summons and complaint in Washington County. The complaint alleged that respondent owed appellant a total of $4,048.90 including $1,793.65 as the principal amount, and $2,255.25 in accrued interest. In a letter from respondent to appellant dated January 13, 2002, respondent stated:

> This is my response to your summons that I received on 12/28/01. I had previously been paying Messerli and Kramer $115.00 per month for the debt I owe to Midland Credit Management, Inc. I am a part-time student paying my tuition with no financial assistance. I also have a monthly car payment and other expenses. Considering the pitifully low income that I receive from my current employer, I was unable to afford this amount. However, I have every intention of clearing myself of this debt and building my credit again.
>
> At this present date, I can agree to pay $30.00 a month until the principal sum of $1,793.65 is paid, then $60.00 a month, with the continued interest dropped entirely. Keep in mind, I always have the option of filing bankruptcy. Therefore, you would get nothing. My question to you is do you want something or nothing?

On January 23, 2002, appellant executed and filed an Affidavit of No Answer, Identification, Non-Military Status, Amount Due and Costs and Disbursements, which stated that respondent had not answered or otherwise defended the action. On February 8, 2002, the district court entered a default judgment against respondent in the amount of $4,492.27. This amount constituted $4,126.77 in principal and prejudgment interest plus $365.50 in costs and disbursements. That same day, a copy of the judgment was mailed to each party at their last known residence.

In July 2002, respondent, now represented by counsel, commenced a lawsuit against appellant's attorneys' law firm Messerli & Kramer, P.A., and attorneys Derrick N. Weber,

Jeffrey J. Cohen, and Jefferson C. Pappas, in federal district court for alleged violations of the Fair Debt Collection Practices Act. The defendants brought a motion to dismiss. The federal court denied in part, and granted in part, the defendants' motion to dismiss. The federal court agreed to entertain respondent's claims based on the alleged defective garnishment notice. But the federal court stated that in order to challenge the alleged deceitful procedure by which the judgment was obtained, respondent must file a motion to vacate the judgment in state court.

On April 17, 2003, respondent filed a motion in Washington County District Court to have the February 8, 2002 judgment vacated. On May 7, 2003, respondent filed an amended motion to vacate the judgment. Respondent argued that appellant failed to fully and accurately inform the court that respondent had responded to appellant's pleadings. Respondent also asserted that appellant failed to accurately report the principal balance respondent owed to appellant. Respondent argued that he paid $448.41 toward the principal, but that it was, unknown to him, allocated toward attorney fees. Respondent also argued that appellant inaccurately told the district court that the case involved "reasonable attorney's fees of $.00."

On August 1, 2003, the district court granted respondent's motion and ordered the judgment vacated. The court found that respondent answered appellant's pleadings and that the default judgment was "partially based" on the representation that respondent failed to answer. The district court also disregarded appellant's argument that respondent's motion to vacate was untimely because it was filed more than one year after the default judgment was entered. The court stated:

> Furthermore, Plaintiff's claim of one year and three months past judgment issuance does not hold up in this Court. Defendant, John Resler, first brought his claim to Federal District Court on July 31, 2002. A mere four months following the entry of judgment. Federal Court found the proper venue was in State Court where the judgment was entered.

The district court's judgment was entered on August 8, 2003. This appeal follows.

DECISION

Respondent's arguments on the merits, and the gravity of allegations against a law firm, our not our issue on appeal. Our review is confined to whether, on these facts, the district court abused its discretion in vacating the default judgment. The trial is a long way off.

Under Minn. R. Civ. P. 60.02 a court may relieve a party of a final judgment on the basis of mistake, inadvertence, surprise, excusable neglect, or "any other reason justifying relief from the operation of the judgment." Onreview, this court views the record in the light most favorable to the district court's decision. *Bentonize, Inc. v. Green*, 431 N.W.2d 579, 582 (Minn. App. 1988). Absent a clear abuse of discretion, this court upholds the district court's decision. *Lund v. Pan Am. Machine Sales*, 405 N.W.2d 550, 552 (Minn. App. 1987).

> A party seeking relief under rule 60.02 must demonstrate:
>
> > (1) a reasonable case on the merits, (2) a reasonable excuse for the failure to act, (3) that it acted with due diligence after notice of the entry of judgment, and (4) that there would be no substantial prejudice to the opposing party if the motion to vacate is granted.

Imperial Premium Fin., Inc. v. G.K. Cab. Co., Inc., 603 N.W.2d 853, 857 (Minn. App. 2000) (citing *Finden v. Klaas,* 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964)). All four of the *Finden* factors must be satisfied in order to justify relief under the rule. *Charson v. Temple Israel,* 419 N.W.2d 488, 491 (Minn. 1988); *Nelson v. Siebert,* 428 N.W.2d 394, 395 (Minn.1988). A strong showing on three of the four factors can outweigh a weak showing on one. *Armstrong v. Heckman*, 409 N.W.2d 27, 29 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987). Courts *favor a liberal application of* these factors to further the policy of resolving cases on their merits. *Kemmerer v. State Farm Ins. Cos.,* 513 N.W.2d 838, 841 (Minn. App.1994), *review denied* (Minn. Jun. 2, 1994) (emphasis added).

1. Respondent's Letter

Appellant first argues that the district court erred in ruling that respondent's letter constituted an answer. Specifically, appellant argues that the letter contained no defenses to the allegations, and did not admit or deny any of the allegations. We disagree.

Respondent (a layman) submitted a letter to appellant's attorneys in response to appellant's summons and complaint. The letter stated:

> This is my response to your summons that I received on 12/28/01. I had previously been paying Messerli and Kramer $115.00 per month for the debt I owe to Midland Credit Management, Inc. I am a part-time student paying my tuition with no financial assistance. I also have a monthly car payment and other expenses. Considering the pitifully low income that I receive from my current employer, I was unable to afford this amount. However, I have every intention of clearing myself of this debt and building my credit again.
>
> At this present date, I can agree to pay $30.00 a month until the principal sum of $1,793.65 is paid, then $60.00 a month, with the continued interest dropped entirely. Keep in mind, I always have the option of filing bankruptcy. Therefore, you would get nothing. My question to you is do you want something or nothing?

The district court determined that respondent, for a layman, had adequately answered the allegations in appellant's complaint. Respondent argues further that even if the letter does not constitute an answer he "otherwise defended" within the time allowed under Minn. R. Civ. P. 55.01 (2002).[1]

Under Minn. Civ. P. 55.01,

> When a party against whom a judgment for affirmative relief is sought has failed to plead *or otherwise defend* within the time allowed therefor by these rules or by statute, and that fact is made to appear by affidavit, judgment by default shall be entered against that party as follows . . .

(emphasis added). It was within the district court's discretion to find that respondent's letter answered "or otherwise defended" against appellant's compliant. We agree that respondent's letter, from a reasonable layman's standpoint, can easily be construed as a defense to the initial complaint.

From the beginning, respondent disputed the amount owed to appellant. In his letter, respondent disputed the amount of interest respondent owed appellant. The complaint against respondent alleged him owing $4,048.90, 60% consisting of accrued interest on the principal in the amount of $2,255.25, and 40% of that amount consisting of real debt in the amount of $1,793.65. In his letter to appellant's attorneys, respondent agreed to pay the principal amount, and then make monthly $60 payments "with the *continued interest dropped entirely*." That is a dispute by respondent over the issue of the debt and interest accruing on the debt. Appellant now contends that respondent owes approximately $6,000 the *majority of which* constitutes accrued interest. We find as the district court did, respondent's letter answered or otherwise defended the allegations against him.

2. Timeliness

Appellant argues that respondent's motion to vacate was untimely. We disagree. Minnesota Rule of Civil Procedure 60.02 provides in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final judgment (other than a marriage dissolution decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect;

. . .

> (c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> . . .
>
> (f) Any other reason justifying relief from the operation of the judgment.

A motion for relief under 60.02(a) and (c) must be brought within one year from entry of judgment. Minn. R. Civ. P. 60.02. Under 60.02(f), the time for bringing a motion to vacate is within a "reasonable time." *See generally* Minn. R. Civ. P. 60.02. If a party's reason for vacating a judgment falls under a specified ground, he or she may not avoid the one-year time limit by asserting that 60.02(f) is applicable. *Chapman v. Special School District No. 1*, 454 N.W.2d 921, 924 (Minn. 1990) ("Clause (f) has been designated a residual clause, designed only to afford relief in those circumstances exclusive of the specific areas addressed by clauses (a) through (e)."). Relief under clause (f) is available only in exceptional circumstances and where grounds for granting it do not fall under one of the first three clauses. *Id.*

What constitutes a reasonable time is determined in each case by considering the facts and circumstances before the court. *Bode v. Minnesota Dept. of Natural Resources*, 612 N.W.2d 862, 870 (Minn. 2000). Exceptional circumstances warranting relief under clause (f) have been found where the severity of the injury was impossible to determine within the one-year time limit, and where there is insufficient evidence to prove damages. *See, e.g., Simons v. Schiek's, Inc.*, 275 Minn. 132, 138, 145 N.W.2d 548, 552 (1966); *Wiethoff v. Williams*, 413 N.W.2d 533, 537 (Minn. App. 1987); *Qualy v. MacDonald*, 395 N.W.2d 423, 425-26 (Minn. App. 1986), *review denied* (Minn. Dec. 23, 1986). In contrast, relief under clause (f) was found inappropriate for attorney neglect or misconduct. *See, e.g., Chapman*, 454 N.W.2d at 923-24 (client did not learn that action was dismissed until attorney was suspended, 3 1/2 years after

dismissal); *Gould v. Johnson*, 379 N.W.2d 643, 649 (Minn. App. 1986) (attorney careless in mistakenly allowing client to sign stipulation), *review denied* (Minn. Mar. 14, 1986).

Here, respondent filed its amended motion to vacate over one year after the default judgment was entered. Respondent brought his motion under rule 60.02(a) and (f). The district court found that respondent was timely because he brought a claim in federal court within four months after the judgment was entered. Appellant argues that respondent's motion fell under 60.02(c), and therefore, respondent was effectively barred from relief because of the one-year time limit under that section of the statute. Although technically respondent did not go into federal court to move to vacate the judgment, we conclude "there was no such motion to make in federal court!" As the federal court pointed out, respondent's motion to vacate had to be made in state court. Respondent was doing the best that he could. It was not clearly erroneous for the district court to find that the respondent's lawsuit filed in federal court within four months after the judgment complied with the one-year statute in spirit. *See* Minn. R. Civ. P. 52.01 (stating that we review a district court's findings of fact to determine if they were clearly erroneous).

Appellant also argues that the circumstances of this case do not constitute exceptional circumstances qualifying respondent for relief under 60.02(f). Contrary to appellant's assertion that respondent's motion could only be brought under 60.02 (a) or (c), we conclude that it could come in under 60.02 (f), which has no one-year time bar. Clause (f) is a residual clause for reasons justifying relief other than the reasons specified. The other circumstances justifying relief is the above-described posture, the lawsuit filed in federal court within four months of the judgment being entered, the federal court sending respondent back to state court, and then the motion to vacate. The district court did not err by concluding that respondent's motion was timely.

3. Abuse of Discretion

Appellant argues that respondent failed to meet the *Finden* factors, and that the district

court erred by failing to make factual findings regarding the four factors. Respondent argues that he made a strong showing on each of the four factors.

Default judgments are to be "liberally" reopened to promote resolution of cases on the merits. *Galatovich v. Watson*, 412 N.W.2d 758, 760 (Minn. App. 1987). A party moving for relief from a judgment must (1) have a reasonable defense on the merits; (2) have a reasonable excuse for its failure to act; (3) have acted with due diligence; and (4) show that no substantial prejudice will result to the other party if the default judgment is vacated. *Conley v. Downing*, 321 N.W.2d 36, 40 (Minn. 1982) (citing *Finden*, 268 Minn. at 271, 128 N.W.2d at 750. But when the district court fails to address the *Finden* factors, our standard of review is de novo. *Carter v. Anderson*, 554 N.W.2d 110, 115 (Minn. App. 1996), *review denied* (Minn. Dec. 23, 1996). In its order, the district court did not specifically label how respondent satisfied the factors. That would have been helpful, but the record is adequate to determine if respondent satisfied the factors.

With respect to the first factor, the record demonstrates that respondent has a reasonable claim on the merits. Appellant argues that respondent failed to present a meritorious defense to the merits because respondent conceded that he owed the debt and did not assert any defense to the action in his letter. In his letter, respondent stated that he did not have any money and that he would not pay any further accrued interest on the principal. The assertions in respondent's letter arguably constitute a meritorious defense, at least to the amount of accrued interest owed, and accrued interest is a significant part of the debt. *See Charson v. Temple Israel*, 419 N.W.2d 488, 491-92 (Minn. 1988) (stating that a claim need only be "debatably" meritorious to satisfy this factor).

Regarding the second factor, the district court found that respondent's lawsuit filed in federal court within four months of judgment excused respondent's failure to act. Although appellant disputes this finding, we agree with the district court's resolution of this factual issue.

With respect to the third factor, the record demonstrates that respondent acted with due

diligence after notice of entry of judgment by filing his lawsuit in federal court within four months of the default judgment. The district court determined that appellant brought his claim within four months of the judgment. *Roe v. Widme*, 191 Minn. 251, 253, 254 N.W. 274, 275 (1934) (stating that the district court determines the factual question of whether a party acted with due diligence in moving to vacate a default judgment). We agree with the district court that respondent acted (in the spirit of the law) within the time required when he filed his lawsuit in federal court. *Simons*, 275 Minn. at 138, 145 N.W.2d at 552 (stating that due diligence depends on all the facts and circumstances involved in the individual case).

Finally, no evidence in the record indicates prejudice other than the normal expense of delay of litigation. "[T]he delay and expense of additional litigation, without more, do not create sufficient prejudice to defeat a motion to vacate." *Imperial Premium Fin.*, 603 N.W.2d at 858.

Respondent satisfied the requirements for vacating a judgment. *See Kemmerer,* 513 N.W.2d at 841 (stating that courts favor a liberal application of these factors to further the policy of resolving the case on the merits). Applications for relief are addressed to the discretion of the district court, and appellate courts interfere only when that discretion has clearly been abused. *Kosloski v. Jones*, 295 Minn. 177, 180, 203 N.W.2d 401, 403 (1973). *Cf. Hearne v. Waddell*, 341 N.W.2d 876, 877 (Minn. 1984) (abuse of discretion found when district court reopened default as to individual defendant but refused to reopen as to corporate defendant with similar defense and excuse).

We conclude, viewing the record in the light most favorable to the district court decision, the district court did not abuse its discretion in granting respondent's motion to vacate the default judgment.

Affirmed.

---

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn.

Const. Art. VI, § 10.

[1] The date of service for appellant's summons and complaint was December 28, 2001. Respondent's letter was dated January 13, 2002, but respondent's affidavit stated that "on or about January 14, 2002, [he] answered [appellant's] complaint." Respondent sent his letter within the 20-day deadline.