STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1315

Jay Nygard,
Appellant,

vs.

Dennis Walsh,
Respondent.

Filed April 29, 2019
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CV-12-8821

Zorislav R. Leyderman, The Law Office of Zorislav R. Leyderman, Minneapolis, Minnesota (for appellant)

William L. Davidson, Eric J. Steinhoff, Grant D. Goerke, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and Bjorkman, Judge.

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

CONNOLLY, Judge

Appellant challenges the district court's denial of his motion to vacate a judgment that was entered pursuant to Minn. Stat. §§ 554.02-.06 (2012) dismissing his tort claims against respondent, arguing that a recent decision that portions of the statute are unconstitutional entitled him to relief. Respondent argues that the district court lacked jurisdiction over a satisfied judgment. Both because we agree that the district court lacked jurisdiction and because there was no error in the denial of appellant's motion, we affirm.

FACTS

In 2011, respondent Dennis Walsh accused appellant Jay Nygard of domestic violence at a city council meeting. Appellant sued respondent for defamation, defamation per se, and negligence. Respondent moved to dismiss the action under the Minnesota anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute, Minn. Stat. §§ 554.02-.06. The district court granted respondent's motion to dismiss appellant's claims with prejudice and awarded respondent attorney fees and costs.

Appellant filed a notice of appeal, and the dismissal with prejudice was affirmed in *Nygard v. Walsh*, No. A13-1103, 2014 WL 349761 (Minn. App. Feb. 3, 2014), *review denied* (Minn. Sept. 24, 2014) (*Nygard I*). This court granted respondent's request for appellate costs and disbursements, granted in part his request for appellate attorney fees, and entered an appellate court judgment of $9,036.95.

In 2015, respondent filed an affidavit identifying appellant as a judgment debtor. The district court docketed a judgment of $9,573.73 for respondent against appellant, and

respondent obtained the first of four writs of execution. In 2017, just after two of his vehicles had been seized, appellant paid the judgment, and respondent filed a notice of satisfaction.

Five days later, the supreme court released *Leiendecker v. AWUM*, 895 N.W.2d 623, 635 (Minn. 2017), holding that Minn. Stat. § 554.02, subd. 2 (2) and (3) (2016) are unconstitutional as applied to tort claims because they require a pretrial finding that speech or conduct is not tortious, thus violating the right to a jury trial. Based on this case, appellant filed a notice of motion to vacate or modify the June 2013 judgment in July 2017. The district court denied the motion, and appellant challenges the denial, arguing that the district court abused its discretion in concluding that appellant is not entitled to have the judgment vacated under Minn. R. Civ. P. 60.02(f) and that he failed to satisfy the four-factor test set out in *Finden v. Klaas*, 128 N.W.2d 748, 750 (Minn. 1964), for relief from judgment. Respondent filed a notice of related appeal, arguing that the district court lacked subject-matter jurisdiction over appellant's motion.[1]

D E C I S I O N

1. Subject-Matter Jurisdiction

Whether subject-matter jurisdiction exists is a question of law this court reviews de novo. *Anderson v. Cty. of Lyon*, 784 N.W.2d 77, 80 (Minn. App. 2010).

[1] At the conclusion of his brief, appellant "moves this Court to vacate the attorney's fees judgment that was directly entered against him by this Court." But motions must be separately submitted to this Court, and no motion was submitted, so the issue is not properly before the panel. *See* Minn. R. Civ. App. P. 127.

"A judgment which is paid and satisfied of record ceases to have any existence, leaving nothing to vacate." *Dorso Trailer Sales, Inc. v. American Body and Trailer, Inc.*, 482 N.W.2d 771, 773 (Minn. 1992) (quotations omitted). That rule "is intended to prevent a party who voluntarily pays a judgment . . . from changing his mind and seeking the court's aid in recovering payment." *Hanson v. Woolston*, 701 N.W.2d 257, 263 (Minn. App. 2005). Appellant paid the judgment himself after the officers had executed a writ and seized his property, which was then returned to him: the seized property was not used to satisfy the judgment. Appellant nevertheless argues that his payment was involuntary: he was "forced" to pay because he did not want to part with the property that had been seized. But refusing to pay a judgment until a writ is executed does not give a judgment debtor the right to vacate the judgment because the payment was involuntary: timely payment of judgments is to be encouraged, not discouraged by rewarding those who wait until a writ is executed. Appellant does not dispute the legality of the writ's execution. Moreover, this court, by affirming the judgment, explicitly stated that appellant owed respondent the amount of the judgment, and the supreme court, by declining to review this court's opinion, implicitly made the same statement.

The district court's conclusion that it had jurisdiction over appellant's motion to vacate or modify a satisfied eight-year-old judgment was based on *McCallum v. W. Nat'l Mut. Ins. Co.*, 597 N.W.2d 307 (Minn. App. 1999), but *McCallum* is factually distinguishable and concerned a different issue. In *McCallum*, judgment was entered on December 29, 1998; a writ of execution that froze the judgment debtor's bank accounts so it could not transact business was served on or about January 19, 1999; the judgment was

satisfied on February 1, 1999; and the appeal from the judgment was filed on February 26, 1999. *McCallum*, 597 N.W.2d at 308. This court concluded that, because the debtor was faced with an emergency situation due to the freezing of its bank accounts, the payment of the judgment was involuntary and did not waive the right to appeal. *Id.* at 309. Here, the right to appeal is not at issue: judgment was entered in June 2013; this court affirmed it in February 2014, the supreme court denied review in September 2014; the first writ of execution was served in March 2015, and the satisfaction of judgment was filed in May 2017, more than three years after this court had affirmed the judgment. The issue in *McCallum* was whether the debtor was deprived of the right to appeal by the execution of the writ; here appellant's appeal was completed more than a year before the execution of the writ.[2]

The district court correctly concluded that it lacked jurisdiction over appellant's motion to vacate.

2. Rule 60.02(f)

Appellant argues that he is entitled to relief from judgment under Minn. R. Civ. P. 60.02 (f) (providing that a court may relieve a party from a final judgment for "[a]ny other reason justifying relief from the operation of the judgment"). This clause is residual,

[2] Appellant also relies on *Reardon Office Equip. v. Nelson*, 409 N.W.2d 222, 224-25 (Minn. App. 1987) (holding that, when a default judgment was satisfied by garnishing the debtors' bank account before the debtors had an opportunity to challenge the judgment, "[s]atisfaction of the judgment in full did not remove the trial court's jurisdiction to consider a motion to vacate the default judgment"). But *Reardon* preceded *Dorso*, which implicitly overrules it. *See Dorso*, 482 N.W.2d at 771 (holding that a district court lacks jurisdiction to vacate a satisfied judgment).

"designed to afford relief only under exceptional circumstances not addressed by clauses (a) through (e)."[3] *City of Barnum v. Sabri*, 657 N.W.2d 201, 207 (Minn. App. 2003). Under this rule, the burden of proof is on the party seeking relief. *Id*. at 205. "Relief under this rule requires a showing of extraordinary circumstances, on the basis of a judicial balancing of the need for finality and the need to do justice in the individual case." *Regents of Univ. of Minn. v. Medical Inc.*, 405 N.W.2d 474, 481 (Minn. App. 1987) (quotation omitted). Appellate courts review the denial of a motion to vacate under Minn. R. Civ. P. 60.02(f) for an abuse of discretion. *See Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 923-24 (Minn. 1990). Discretion is abused only if "no reasonable person would agree" with the district court. *Patton v. Newmar Corp.*, 538 N.W.2d 116, 119 (Minn. 1995).

To argue that the judgment dismissing his claims should be vacated, appellant relies on *In re Terrorist Attacks on Sept. 11, 2001*, 741 F.3d 353, 354 (2nd Cir. 2013) (vacating judgment dismissing on sovereign-immunity grounds the claims of 9/11 victims that were filed before the Second Circuit established a "terrorism exception" to the sovereign-immunity bar). Claims filed after the "terrorism exception" became law were not dismissed, and the "inconsistent results between two sets of plaintiffs suing for damages based on the same incident" superseded the general rule that "a mere change in decisional law does not constitute an 'extraordinary circumstance' for the purposes of rule 60(b)(6)

[3] Appellant concedes that he is not entitled to relief under Minn. R. Civ. P. 60.02(a)-(c) because his motion was filed more than one year after the entry of judgment, under (d) because the judgment is not void, or under (e) because it is not a judgment with prospective application.

[the federal equivalent for Minn. R. Civ. P. 60.02 (f)]." *Terrorist Attacks*, 741 F.3d at 357 (quotation omitted). Appellant argues that the reasoning of *Terrorist Attacks* should apply to his case because he and the Leiendeckers were in the same situation and comparable to the two groups of 9/11 plaintiffs: therefore, *Leiendecker*, released in 2017, should apply retroactively to vacate the 2013 judgment dismissing appellant's claims under the anti-SLAPP statute because *Leiendecker* holds that portions of the anti-SLAPP statute violate the constitutional right to a jury trial.

But an analogous argument, i.e., that a change in the statute of limitations is an extraordinary circumstance justifying relief under Minn. R. Civ. P. 60.02(f), was rejected in *Simington v. Minn. Veterans Home*, 464 N.W.2d 529, 531 (Minn. App. 1990) ("Appellant cites no cases where a change in the law was the basis for vacating an unappealed judgment under Minn. R. Civ. P. 60.02(f) or Fed. R. Civ. P. 60(b)(6)."), *review denied* (Minn. Mar. 15, 1991). In *Simington*, the case was dismissed on statute-of-limitations grounds in 1988, the dismissal was not appealed, and a new statute of limitations that would not have barred the case was adopted in 1989. 464 N.W.2d at 530. The district court's refusal to grant relief under Minn. R. Civ. P. 60.02(f) was not an abuse of discretion. *Id.* at 531.

Here, the judgment was not only appealed; it was affirmed, and review of the affirmance was denied three years before the change in the law. The district court's refusal to grant relief under Minn. R. Civ. P. 60.02(f) was not an abuse of discretion.[4]

Affirmed.

[4] Appellant also argues that he was entitled to vacation of judgment because he satisfied the four *Finden/Klaas* factors; respondent contends that appellant failed to satisfy two of the factors. But this argument is moot: the *Finden/Klaas* factors pertain to Minn. R. Civ. P. 60.02(a) ("[m]istake, inadvertence, surprise, or excusable neglect"). Appellant agrees that he is not entitled to relief under Minn. R. Civ. P. 60.02(a). Thus, the *Finden/Klaas* factors are not relevant here.