STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1706

Safeco Insurance Company,
Appellant,

vs.

Holmgren Building Repair, Inc.,
Respondent.

Filed June 29, 2020
Affirmed
Jesson, Judge

Kandiyohi County District Court
File No. 34-CV-19-147

Daniel W. Berglund, Meghan M. Rodda, Grotefeld, Hoffman, Gordon, Ochoa & Evinger, LLP, Minneapolis, Minnesota (for appellant)

Brian W. Varland, Valerie Sims, Heley, Duncan & Melander, PLLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Jesson, Judge.

S Y L L A B U S

I. To extend the one-year deadline to file an action with the district court, a party must satisfy all five requirements contained in rule 5.04(a) of the Minnesota Rules of Civil Procedure.

II. A stipulation that does not contain explicit language extending the one-year filing deadline is inadequate under rule 5.04(a) of the Minnesota Rules of Civil Procedure.

O P I N I O N

JESSON, Judge

After paying over three-quarters of a million dollars to its insured as a result of damage caused by a fire, appellant Safeco Insurance Company (Safeco) sought to recover its damages from respondent Holmgren Building Repair, Inc. (Holmgren).[1] But Safeco did not file its action with the district court within one year of service of the lawsuit upon Holmgren. According to Safeco, in emails between counsel, the parties agreed to extend the one-year filing deadline. The district court dismissed the action with prejudice and denied Safeco relief under rule 60.02 of the Minnesota Rules of Civil Procedure. Because we conclude that the emails did not contain explicit language extending the filing deadline under rule 5.04(a) of the Minnesota Rules of Civil Procedure, and the district court did not abuse its discretion by denying Safeco rule 60.02 relief, we affirm.

FACTS

In October 2013, respondent Holmgren performed demolition and renovation work on a building formerly used as a state hospital.[2] While Holmgren employees were removing old steam pipes to prepare the building for additional renovations, a fire occurred, causing significant damage. Appellant Safeco insured the property. An investigator hired by Safeco concluded that a Holmgren employee used a chop saw to cut steam pipes. The saw "emitted hot metal embers that smoldered on the cellulose insulation," eventually

[1] The owner of Holmgren filed an affidavit stating that the Minnesota Secretary of State administratively dissolved the business in 2016.

[2] These facts are taken from the district court's order dismissing Safeco's action and denying its motion to vacate and from Safeco's complaint.

causing the wooden roof of the building to catch on fire. The cost to repair the damage, which Safeco paid to its insured, amounted to $771,726.42.

About four years after the fire, on October 26, 2017, Safeco served a summons and complaint on Holmgren through the Minnesota Secretary of State. In the complaint, Safeco alleged that Holmgren's employees acted negligently, causing the fire and Safeco's resulting damages. Holmgren did not answer, and several months passed.

In June 2018, Safeco's attorney emailed the summons and complaint to Holmgren's counsel.[3] Holmgren's counsel responded the same day, noting that adjusters for both insurers were attempting to negotiate a settlement. In the same email, counsel for Holmgren also asked "whether or not you'd like to continue to allow the adjusters time to negotiate or whether you'd like [to] move this firmly into the litigation realm." After noting that Holmgren's answer had been due at the end of November, Safeco's counsel stated:

> That being said, we have no objection to granting an indefinite extension to interpose an answer to our [c]omplaint, in order to allow the adjusters time to continue to negotiate. Our rules require that the matter be filed with the [c]ourt within one year after service of process is complete, however. That deadline would be October 26, 2018, in this case, if no settlement can be reached.

[3] The record does not contain evidence clearly describing the role of K.H., the woman Safeco's counsel emailed. While Safeco refers to K.H. as counsel for Holmgren's insurer, Holmgren refers to her in its brief as an "adjuster for Holmgren's insurance carrier." K.H.'s email signature block indicates that she is "senior counsel," and she follows her name with "JD," suggesting that she is in-house counsel for Holmgren's insurer. While we recognize the record lacks a clear explanation of K.H.'s precise role, we refer to her as "Holmgren's counsel" or "counsel for Holmgren" throughout this opinion.

Holmgren's counsel replied, "I'll relay . . . that [the adjuster] can continue to negotiate for the time being. If we hit the October deadline we'll go from there."

A few months later—and a few weeks before the deadline to file the action with the district court—Holmgren's counsel emailed Safeco's attorney to confirm the "indefinite extension of time in which to answer given that our mutual claims representatives were going to continue to work toward settlement." Counsel for Holmgren observed that the filing deadline was approaching. And she pointed out that Holmgren had been waiting for a response from Safeco's claims department regarding a settlement offer—$245,000—for nearly two years. Safeco's counsel indicated that the claims handler was waiting on settlement authority and that a response was expected in the coming weeks.

This is the last communication in the record before the one-year filing deadline.

Safeco did not file the action with the district court before the one-year deadline elapsed. In November and December 2018, Holmgren's counsel emailed Safeco's counsel seeking a response to the settlement offer. In December 2018, Safeco's counsel replied that she would reach out to the claims department. Roughly two months later, in February 2019, Safeco's counsel emailed indicating that she hoped to have an answer on the settlement offer by the end of the week. Holmgren's counsel replied: "I understand we continue to operate under an extension of time for the present suit, correct?" Safeco's counsel responded affirmatively.

A few days later, Safeco's counsel sent an "Offer of Settlement" to counsel for Holmgren. Holmgren's counsel expressed frustration at the offer, noting that she confirmed just a few days earlier that there was "an unrestricted extension of time in which

to file an [a]nswer to the current suit." She noted that based on Safeco's counsel's assurances that negotiators would continue to have time to attempt to resolve the matter, she "had not retained counsel on behalf of our insured." The next day, Holmgren's counsel informed Safeco's counsel that outside counsel had been assigned to the case.

After a few weeks, outside counsel for Holmgren emailed Safeco's counsel expressing Holmgren's position that the action was "deemed dismissed" because it was not filed with the district court within one year of service of the complaint. Safeco filed the summons and complaint with the district court on March 12, 2019. At the same time, Safeco filed a motion arguing that the action should not be dismissed because the parties stipulated to an extension of the one-year deadline. Alternatively, Safeco requested relief under rule 60.02 of the Minnesota Rules of Civil Procedure vacating any dismissal of the action.

After a hearing, the district court dismissed the action as untimely because it was filed outside the one-year deadline. In doing so, the district court concluded that the parties did not sign a stipulation to extend the filing deadline. Pointing to the lack of clear language expressing a willingness to extend the filing period, the district court found that the emails between counsel did not establish a clear intent to extend the deadline. Rather, the district court reasoned that the emails demonstrated a knowledge of the filing deadline.

The district court also denied Safeco's motion to vacate the dismissal. Although the district court found that Safeco satisfied three of four required factors to warrant relief, it concluded that Safeco did not have a reasonable excuse for failing to timely file the complaint. The district court found that the untimely filing was partially attributable to

Safeco—not its attorney—because of its failure to respond to settlement offers. And it determined that Safeco's counsel's "apparent reliance on a claimed stipulation to extend the filing deadline" did not excuse Safeco's failure to respond to the settlement offers. Accordingly, the district court dismissed the action with prejudice and denied Safeco relief under rule 60.02. Safeco appeals.

ISSUES

I. Did the emails between counsel constitute a stipulation to extend the one-year filing deadline?

II. Did the district court abuse its discretion by denying Safeco's motion to vacate the dismissal of its action?

ANALYSIS

I. The emails between counsel did not constitute a stipulation to extend the one-year filing deadline.

Safeco first argues that the district court erroneously dismissed the action under rule 5.04(a) of the Minnesota Rules of Civil Procedure. A civil action commences when the summons is served on a defendant. Minn. R. Civ. P. 3.01(a). And rule 5.04(a) of the Minnesota Rules of Civil Procedure provides that any action not filed with the court within one year of commencing the lawsuit "is deemed dismissed with prejudice," unless the parties stipulate otherwise. According to Safeco, the parties did just that: they stipulated to an extension of the one-year filing deadline. Resolution of this question regarding the effectiveness of that purported stipulation requires us to interpret a rule of civil procedure, which is a question of law that we consider de novo. *Gams v. Houghton*, 884 N.W.2d 611, 616 (Minn. 2016).

The first step in interpreting court rules requires looking "to the plain language of the rule." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 601 (Minn. 2014). In doing so, we construe "the words of a court rule in the sense in which they were understood and intended at the time the rule was promulgated." *Gams*, 884 N.W.2d at 616 (quotation omitted). When a rule's language is plain and unambiguous, we apply the plain language. *Walsh*, 851 N.W.2d at 601. "A rule is ambiguous only if the language of the rule is subject to more than one reasonable interpretation." *Gams*, 884 N.W.2d at 616.

With this framework in mind, we first examine the text of rule 5.04(a). The rule states:

> Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties *unless the parties within that year sign a stipulation to extend the filing period.*

Minn. R. Civ. P. 5.04(a) (emphasis added). The plain language of the rule first establishes that any action not filed with the court within one year of commencing the lawsuit "is deemed dismissed with prejudice." *Id.* But it also provides an exception if "the parties within that year sign a stipulation to extend the filing period." *Id.* To properly invoke this exception, the plain language of the rule requires five elements: (1) the parties (2) within that year (3) sign (4) a stipulation (5) to extend the filing period. Stated differently, the plain language of the rule explains *who* must act (the parties), *what* they must do (sign a stipulation to extend the filing period), and *when* they must do it (within that year). A party must satisfy all five elements to extend the one-year filing deadline. Failure to comply with even one requirement precludes application of the exception to the one-year deadline.

Here, the emails between counsel—which are the only evidence of a "stipulation" to extend the filing period—do not satisfy all five requirements of the rule. Most evident is the lack of clear language stipulating to "extend the filing period." Minn. R. Civ. P. 5.04(a). In an email dated June 14, 2018, Safeco's counsel wrote "we have no objection *to granting an indefinite extension to interpose an answer to our [c]omplaint*, in order to allow the adjusters time to continue to negotiate." (Emphasis added.) Then, the email stated "[o]ur rules require [that] the matter be filed with the [c]ourt within one year after service of process is complete, however. That deadline would be October 26, 2018, in this case, if no settlement can be reached." And Holmgren's counsel responded: "I'll relay . . . that she can continue to negotiate for the time being. If we hit the October deadline we'll go from there." Additionally, in October 2018, Holmgren's counsel emailed Safeco's attorney to confirm "the indefinite *extension of time in which to answer* given that our mutual claims representatives were going to continue to work toward settlement." (Emphasis added.)

These emails do not express a clear intent to extend the one-year filing deadline. *See Geiger v. Geiger*, 470 N.W.2d 704, 707 (Minn. App. 1991) (noting, in the family law context, that "stipulated language on its face must express the parties' clear intent"), *review denied* (Minn. Aug. 1, 1991). Indeed, there is *no* language expressing that both parties agree to extend the one-year deadline to file the action. Rather, the emails contain a clear intent to extend the time frame for Holmgren to answer the complaint. A stipulation that does not contain explicit language stating the intent of both parties to extend the one-year

filing deadline is inadequate under the plain meaning of rule 5.04(a). As a result, the emails between counsel did not extend the one-year deadline to file the action.[4]

Still, Safeco argues that emails exchanged *after* the one-year deadline elapsed demonstrate the intent to extend the filing deadline. We observe that the extent to which a court should consider communications after the one-year time window as evidence of the intent of the parties at the time of the alleged stipulation is unclear. But we need not decide this question. Even if we evaluated emails between counsel after the time frame elapsed, the intent to extend the one-year filing deadline remains murky. In an email from February 2019, Holmgren's counsel inquired if the parties would "continue to operate under an extension of time for the present suit." But this language does not explicitly contain an agreement to extend the one-year filing deadline. Nor does it contain a reference more specific than the vague "extension of time." As a result, communications after the deadline expired do not remedy the absence of specific language extending the one-year filing deadline in the earlier emails.[5]

[4] Holmgren argues that the emails constituting the purported stipulation do not satisfy the other requirements of rule 5.04(a). For instance, Holmgren notes that the emails were exchanged between Safeco's counsel and senior counsel for Holmgren's *insurer*. And Holmgren contends that the "stipulation" was not signed. But because we conclude that the emails did not contain explicit language extending the filing deadline, we need not address the other requirements contained in the rule. Minn. R. Civ. P. 5.04(a).

[5] Safeco also makes policy arguments related to rule 5.04(a). Specifically, it contends that procedural rules are to "be construed and administered to secure the just, speedy, and inexpensive determination of every action." Minn. R. Civ. P. 1. But because the language of rule 5.04(a) is plain and unambiguous, we apply the plain language of the rule. *Walsh*, 851 N.W.2d at 601.

In sum, the district court correctly determined that the parties did not stipulate to an extension of the one-year filing deadline and appropriately dismissed Safeco's action under rule 5.04(a).

II. The district court did not abuse its discretion by denying Safeco's motion to vacate.

Alternatively, Safeco contends that the district court abused its discretion by denying the motion to vacate dismissal of the action. A party may seek to vacate a dismissal based on rule 5.04(a) under Minnesota Rule of Civil Procedure 60.02. *Gams*, 884 N.W.2d at 617-18. That rule permits the district court to relieve a party from a final judgment or order for "[m]istake, inadvertence, surprise, or excusable neglect." Minn. R. Civ. P. 60.02(a). The district court has discretion to grant relief under rule 60.02, and the decision is "based on all the surrounding facts of each specific case." *Gams*, 884 N.W.2d at 620. We review a district court's decision under rule 60.02 for an abuse of discretion. *Id.*

A moving party must establish four factors—known as the *Finden* factors—before relief is available under rule 60.02. *See Finden v. Klaas*, 128 N.W.2d 748, 750 (Minn. 1964). Those four factors "are: (1) a debatably meritorious claim; (2) a reasonable excuse for the movant's failure or neglect to act; (3) the movant acted with due diligence after learning of the error or omission; and (4) no substantial prejudice will result to the other party if relief is granted." *Gams*, 884 N.W.2d at 620 (quotations omitted). To warrant relief, the movant must establish *all* four factors. *Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016).

Here, the district court concluded that Safeco satisfied three of the four factors. But it determined that Safeco did not meet the second factor. To satisfy this factor, a movant must establish "a reasonable excuse for the movant's failure or neglect to act." *Gams*, 884 N.W.2d at 620 (quotation omitted). Mistakes of law or fact may provide a reasonable excuse warranting relief. *Cole*, 884 N.W.2d at 638. Minnesota caselaw "generally reflects a strong policy favoring the granting of relief when judgment is entered through no fault of the client." *Id.* (quotation omitted). For example, even in cases where a district court concluded that counsel's neglect was inexcusable, "if such neglect has been purely that of counsel, ordinarily courts are loath to 'punish' the innocent client for the counsel's neglect." *Charson v. Temple Israel*, 419 N.W.2d 488, 491 (Minn. 1988).

But not all mistakes warrant relief. *Cole*, 884 N.W.2d at 638. The district court bears the responsibility of determining "whether the excuse offered by the movant is true and reasonable under the circumstances." *Id.* at 639. And such inquiry is "fact intensive." *Id.*

Here, the district court concluded that Safeco did not have a reasonable excuse for its failure to file the complaint before the one-year deadline expired. First, it determined that Safeco—not its attorney—bore some responsibility for the late filing of the action. The district court observed that Safeco failed to respond to settlement offers for two years. This "unexplained breakdown in communication," according to the district court, "clearly played a role in the delay in formal filing of the summons and complaint." And in connecting Safeco's failure to respond to settlement negotiations with the untimely filing

of the complaint, the district court noted that Safeco's attorney acknowledged in her email that "she was required to file by the [one-year] deadline 'if no settlement can be reached.'"

Second, the district court found that Safeco's attorney's "apparent reliance on a claimed stipulation to extend the filing deadline does not excuse [Safeco's] unreasonable failure to respond to settlement offers." The district court characterized the alleged stipulation as "at best, an agreement to extend indefinitely [Holmgren's] time to file an answer." Considering each of these facts, the district court concluded that Safeco did not satisfy the reasonable-excuse factor.

The district court acted within its wide discretion in reaching this conclusion. The record indicates that Safeco did not respond to a settlement offer from Holmgren's insurer for roughly two years. And the emails between counsel make apparent that the ongoing settlement negotiations at least partially contributed to the delay in filing the action. Accordingly, the district court's conclusion that Safeco's conduct—separate from its attorney's—partially contributed to the untimely filing of the action is well within its discretion.

Additionally, the district court rejected Safeco's counsel's assertion that she did not file the complaint because she believed the parties stipulated to an extension of the filing deadline. It is the district court's responsibility to determine "whether the excuse offered by the movant is true and reasonable under the circumstances." *Id.* The relevant circumstances of this case include Safeco's delay in responding to settlement offers and emails that do not explicitly extend the filing deadline. Considering these circumstances,

the district court did not abuse its discretion by concluding that Safeco failed to demonstrate a reasonable excuse for its failure to timely file the action.

Still, Safeco contends that the district court incorrectly attributed fault for the untimely filing to Safeco, rather than its attorney. According to Safeco, the settlement efforts were in no way related to its attorney's failure to file the complaint. As a result, Safeco seeks to invoke tenets of Minnesota law generally protecting innocent clients from mistakes solely attributable to their attorney.[6] *See Nguyen v. State Farm Mut. Auto. Ins. Co.*, 558 N.W.2d 487, 491 (Minn. 1997) (noting that "case law reflects a strong policy favoring the granting of relief when judgment is entered through no fault of the client"); *see also Coller v. Guardian Angels Roman Catholic Church of Chaska*, 294 N.W.2d 712, 715 (Minn. 1980) (finding the reasonable excuse prong satisfied where "the individual defendants were not at all responsible for their failure to answer; the failure was occasioned solely by the inadvertence of their attorney").

We are not persuaded. We agree with Safeco's characterization of Minnesota law as favoring relief for innocent clients affected by their attorney's mistake. But, according to the district court, that is not the case here. Safeco bears at least some responsibility for the untimely filing of the complaint, the district court found. Even if Safeco is not entirely at fault for the untimely filing of the complaint, the company's less-than-prompt behavior

[6] Safeco contends that it did not know the date of the one-year filing deadline. Indeed, it notes that the claim file indicates that its attorney "did not communicate the filing deadline." But it also acknowledges that these exchanges are not part of the record.

during ongoing settlement negotiations supports the district court's conclusion that some fault is attributable to Safeco.

Second, Safeco argues that counsel did not file the complaint because she believed the parties stipulated to an extension of the one-year filing deadline. Safeco contends that its counsel's interpretation of the parties' agreement—even if mistaken—constitutes a reasonable excuse for the untimely filing of the complaint.[7] But here, the district court, at least implicitly, concluded that it was unreasonable for Safeco's attorney to believe the parties agreed to extend the filing deadline, observing that the emails were "devoid of a clear expression of any intention to extend the filing period." It is within the district court's purview to conduct a fact-intensive inquiry to determine if a stated excuse for the failure to file is reasonable. *Cole*, 884 N.W.2d at 639. Here, the district court did just that. In doing so, it did not abuse its discretion by concluding that this email exchange did not suffice as a reasonable excuse for the failure to timely file the action.

D E C I S I O N

Rule 5.04(a) of the Minnesota Rules of Civil Procedure establishes two things: that an action must be filed with the district court within one year of commencement and the

[7] In support of this argument, Safeco cites *Sand v. Sch. Serv. Emps. Union, Local 284*, 402 N.W.2d 183 (Minn. App. 1987), *review denied* (Minn. Apr. 29, 1987). In *Sand*, an attorney did not file a required document with the district court to avoid dismissal because he mistakenly believed that an order compelling arbitration automatically stayed the proceeding. 402 N.W.2d at 185. This court concluded that it was reasonable for the attorney to believe—albeit mistakenly—that the order for arbitration would stay the proceeding. *Id.* at 186. Because there was a reasonable excuse for the failure to file the document, relief under rule 60.02 was warranted. *Id.* But here, the district court determined that, based on the content of the emails, it was *not* reasonable for Safeco to delay filing the action beyond the one-year deadline.

requirements for a party seeking to extend that time frame. To extend the one-year deadline to file an action with the district court, a party must satisfy all five requirements contained in rule 5.04(a) of the Minnesota Rules of Civil Procedure. A stipulation that does not contain explicit language extending the one-year filing deadline is inadequate under rule 5.04(a) of the Minnesota Rules of Civil Procedure.

Here, the email exchange did not contain explicit language extending the one-year filing deadline. Accordingly, the district court appropriately dismissed Safeco's action as untimely under rule 5.04(a). And because the district court acted within its discretion by determining that Safeco lacked a reasonable excuse for its failure to timely file the action, it appropriately denied Safeco's motion to vacate.

Affirmed.