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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1718**

Landmark Community Bank, N.A.,
Respondent,

vs.

James L. Lang,
Appellant.

**Filed July 6, 2020
Affirmed
Jesson, Judge**

Pope County District Court
File No. 61-CV-10-552

Jeffrey A. Scott, Donald R. McNeil, Brian W. Varland, Heley, Duncan & Melander, PLLP,
Minneapolis, Minnesota (for respondent)

Michael C. Mahoney, Mahoney Lefky LLC, Wayzata, Minnesota (for appellant)

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

UNPUBLISHED OPINION

JESSON, Judge

Over eight years after the district court entered a default judgment against him, appellant James L. Lang filed a motion seeking to vacate that judgment. Because the district court did not abuse its discretion by determining that Lang's motion to vacate was untimely, we affirm.

FACTS

Appellant James L. Lang signed a promissory note for \$1,300,000 in favor of respondent Landmark Community Bank, N.A. (Landmark).¹ Lang secured the note with a mortgage on three properties he owned in Crow Wing and Aitkin counties. A little over one year later, Landmark increased Lang's available credit by \$65,000 in exchange for a first mortgage on a 40-acre property he owned in Pope County with 500 feet of shoreline on Lake Gilcrest.

Lang defaulted on the promissory note. Landmark then commenced a foreclosure by advertisement on the mortgage encumbering the properties in Crow Wing and Aitkin counties. In October 2010, Lang's three properties in Crow Wing and Aitkin counties sold at a foreclosure sale for \$916,000. To recover the amount that Landmark alleged remained outstanding—\$134,976.59 plus interest—Landmark began a foreclosure by action. According to the affidavit of service, Lang was served with the summons and complaint in person at the address associated with the promissory note.

Lang did not answer the complaint. But, according to Landmark, a man named Juan Martinez called Landmark's counsel and expressed that he represented Lang. After filing a motion for a default judgment, Landmark allegedly served the motion and related documents on Martinez. In January 2011, the district court entered a default judgment against Lang in the amount of \$143,473.40 and authorized the sale of the Pope County

¹ Landmark has since been acquired by Flagship Bank Minnesota.

property. After the sale, the district court entered a deficiency judgment against Lang for the remaining \$75,114.91.

A few years later, in 2013, Landmark had not collected the judgment from Lang. A firm hired to assist with collection sent Lang a letter informing him of the amount he owed. Lang responded, disputing the amount due. According to the firm, it then sent Lang a copy of the judgment. But the firm did not collect any money from Lang.

Roughly three years later, Landmark filed a separate lawsuit against Lang and his girlfriend in a different county. According to Lang, in February 2017, he was served with documents as part of that case. This was when he first learned of the 2011 default judgment, Lang asserts.

Over two years later, Lang filed a motion to vacate the 2011 default judgment, alleging two bases for relief. First, he contended that the default judgment was void for lack of personal jurisdiction because he was never served with the summons and complaint. Lang provided an affidavit stating that on the date of alleged service, he was driving to Florida and would not have been at his home to accept service.² Alternatively, Lang argued that exceptional circumstances warranted vacating the default judgment, based on Lang's assertion that several fraudulent or inaccurate things occurred.³

² Lang also submitted other evidence of his location, including an affidavit from his girlfriend and her credit card statement showing charges in Florida on the days before and after the alleged service.

³ According to Lang, after increasing his line of credit, Landmark issued a cashier's check for \$65,000 to another individual without Lang's authorization. Further, Lang asserts that Landmark coerced him into authorizing the transaction after the fact by claiming it would call his entire loan amount due if he did not do so. But for the fraudulent \$65,000 check, Lang contends that his outstanding debt should have been satisfied or nearly satisfied by

The district court denied Lang’s motion to vacate the default judgment. In doing so, it concluded that Lang did not file his “motion within a reasonable time after entry of judgment.”⁴ Lang appeals.⁵

D E C I S I O N

Lang challenges the district court’s denial of his motion to vacate the 2011 default judgment. Under rule 60.02 of the Minnesota Rules of Civil Procedure, a district court may relieve a party from a final judgment for certain enumerated reasons. Two such grounds for relief are if “[t]he judgment is void” or “[a]ny other reason justifying relief from the operation of the judgment.” Minn. R. Civ. P. 60.02(d), (f). A district court has discretion to grant rule 60.02 relief “based on all the surrounding facts of each specific case.” *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016). We will not reverse a district court’s decision regarding a motion to vacate a default judgment absent an abuse of that discretion. *Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004).

Motions based on paragraphs (d) and (f) of rule 60.02—like Lang’s—must be made “within a reasonable time.” Minn. R. Civ. P. 60.02. The rule does not define what

the sale of his three properties in 2010. Further, Lang explained that he never hired Juan Martinez to represent him in the proceeding, and that the bank falsely represented that he and his attorney had been served because he never had an attorney. Finally, Lang maintained that a statement in Landmark’s complaint stating that there was no other action to collect his debt was fraudulent, pointing to the fact that Landmark already sold three of his properties at a foreclosure sale.

⁴ Alternatively, the district court found that Lang did not overcome the presumption of valid service and failed to demonstrate the “exceptional circumstances” necessary to warrant relief. Further, it determined that Lang failed to satisfy three of the four *Finden* factors, precluding relief.

⁵ In a special term order, this court accepted jurisdiction over this appeal.

constitutes “a reasonable time.” Indeed, the supreme court has explained that “a reasonable time” may vary from case to case. *Sommers v. Thomas*, 88 N.W.2d 191, 195-96 (Minn. 1958). Accordingly, “[w]hether a motion is made within a reasonable time depends upon all of the facts and circumstances involved.” *Buck Blacktop, Inc. v. Gary Contracting & Trucking Co., LLC*, 929 N.W.2d 12, 20 (Minn. App. 2019) (quotation omitted). Such facts and circumstances include whether the opposing party would be prejudiced if the motion was granted. *Simons v. Schiek’s, Inc.*, 145 N.W.2d 548, 552 (Minn. 1966).

Here, the district court concluded that Lang did not file his motion to vacate “within a reasonable time after entry of judgment,” making his motion untimely. The record supports this conclusion. Lang filed his motion to vacate over eight years after the entry of judgment and more than five years after he received a letter attempting to collect the judgment. Even crediting Lang’s assertion that he learned about the default judgment in early 2017, he still waited over two years to file his motion. Based on this record, concluding that Lang did not file his motion within a reasonable time does not amount to an abuse of discretion.

Still, Lang contends that the district court applied an incorrect legal standard when determining that his motion was untimely. By concluding that his motion was not filed “within a reasonable time *after entry of judgment*,” Lang argues that the district court based its timeliness decision on the date the judgment was entered, rather than the facts and circumstances of the case. Those facts and circumstances, according to Lang, include his assertion that he did not know about the default judgment until 2017.

Although the district court ultimately concluded that Lang’s motion was not filed “within a reasonable time after entry of judgment,” the record establishes that the district court *did* consider the facts and circumstances of this case. In its order, before concluding that the motion was untimely, the district court found that Lang failed to act diligently by waiting over two years after purportedly learning of the judgment to file his motion. And the district court determined that granting Lang’s motion would prejudice Landmark “because the matter involved a foreclosure of real property that cannot be reversed.” When construed as a whole, the district court’s order demonstrates that it considered the facts and circumstances of Lang’s case. Accordingly, contrary to Lang’s argument, we cannot say that the district court applied an incorrect legal standard.⁶

Affirmed.

⁶ Because we conclude that the district court did not abuse its discretion by concluding that Lang’s motion was untimely, we do not address his other arguments.