STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0510

Steven Fischer,
Appellant,

vs.

Fischer-Kinnunen Partnership, LLP, et al.,
Respondents.

Filed November 23, 2020
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CV-19-20425

John A. Sullivan, Best & Flanagan LLP, Minneapolis, Minnesota (for appellant)

K. Jon Breyer, Leland P. Abide, Kutak Rock LLP, Minneapolis, Minnesota (for respondents)

Considered and decided by Smith Tracy M., Presiding Judge; Worke, Judge; and Connolly, Judge.

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

WORKE, Judge

Appellant challenges the district court's dismissal of this case, arguing that it abused its discretion by denying his motion for relief under the requirements of *Finden v. Klaas*, 128 N.W.2d 748 (Minn. 1964). We affirm.

FACTS

Appellant Steven Fischer and respondent Lisa Peterson-Kinnunen are partners in respondent Fischer-Kinnunen Partnership LLP. When the business relationship began to deteriorate, Fischer initiated litigation by serving respondents' attorney with a summons and complaint on September 14, 2018. Respondents served an answer, and Fischer served them with discovery. The parties agreed to suspend discovery in hopes of resolving the matter. They worked with a mediator but were unable to settle the case.

Fischer did not file the summons and complaint until December 12, 2019. In doing so, he missed the one-year filing deadline in Minn. R. Civ. P. 5.04. The district court issued an order to show cause why the matter should not be dismissed. Fischer answered with a rule 60.02 motion, asking the district court not to dismiss the case because he satisfied the *Finden* factors. The district court dismissed the case under rule 5.04 after concluding that Fischer failed to satisfy the four *Finden* factors. This appeal followed.

D E C I S I O N

Fischer challenges the dismissal of this matter. "Any action that is not filed with the court within one year of commencement against any party is deemed dismissed . . . ." Minn. R. Civ. P. 5.04(a). But a district court may relieve a party from dismissal in the case of "[m]istake, inadvertence, surprise, or excusable neglect." Minn. R. Civ. P. 60.02(a). The supreme court articulated a four-factor test in *Finden* to determine when relief should be granted under the rule. The factors include: "(1) a reasonable defense on the merits or . . . a debatably meritorious claim; (2) a reasonable excuse for [the] failure or neglect to act; (3) [the exercise of] due diligence after learning of the error or omission; and (4) that

no substantial prejudice will result to the other party." *Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016).

"The decision whether to grant Rule 60.02 relief is based on all the surrounding facts of each specific case, and is committed to the sound discretion of the district court." *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016). Appellate courts will not reverse a district court's decision unless there is a clear abuse of discretion. *Id.* "[A] district court abuses its discretion when a movant has met the burden of clearly demonstrating the existence of the four elements of the *Finden* analysis, and the court nevertheless denies relief." *Id.* (quotation omitted).

Fischer argues that the district court abused its discretion by conflating the second and third *Finden* factors, misstating the third, and finding the fourth neutral after concluding that respondents were not prejudiced. Because Fischer was required to satisfy all four factors, we need only address his failure to satisfy one. *See Gams*, 884 N.W.2d at 619 (stating party must satisfy all factors in order to be granted relief). The district court determined that the third factor—whether Fischer acted with due diligence after learning of the error or omission—weighed "heavily" against Fischer. We agree.

Fischer first argues that the district court used the incorrect standard and that the correct standard is what the supreme court originally articulated in *Finden*—acting "with due diligence after notice of the entry of judgment." *See* 128 N.W.2d at 750. Minnesota courts applied this standard for half a decade; however, the supreme court modified the standard in 2016 with the simultaneous release of *Cole* and *Gams*. *Cole* also reiterates that "'due diligence' is assessed from the time that the movant learns of his or her error or

omission." 884 N.W.2d at 639. Fischer relies on an unpublished decision of this court to support his argument that the original *Finden* standard applies. Not only is this case unpublished, but it was released before *Cole* and *Gams*. Its analysis is outdated and not instructive. The district court properly applied the current caselaw.

Fischer also argues that, even if due diligence is measured from the time that he learned of the error, he satisfied the factor because "this [c]ourt has routinely concluded that a movant like Fischer acted diligently in bringing a motion to vacate within three to four months of the entry of judgment." The *Finden* test is a fact-specific analysis within the discretion of the district court. *See Gams*, 884 N.W.2d at 620. Fischer's attorney served the complaint that he needed to file over a year before learning of his error. His attorney informed him of the error four days after the filing deadline. But Fischer filed the complaint 85 days after learning about the error. His case was deemed dismissed under a long-standing rule. Fischer has not met his burden to show that the district court abused its discretion in weighing the due-diligence factor against him.

The district court did not abuse its discretion by denying Fischer's motion for relief and appropriately dismissed the matter.

Affirmed.