This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1582

In re the Marriage of:
Brenda Anne Kiberu-Kalema, n/k/a/ Brenda Anne Kiberu, petitioner,
Respondent,

vs.

Kizito David Kalema,
Appellant.

Filed October 25, 2021
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-FA-19-8342

Leopold B. Épée, Épée Law Firm, LLC, Minneapolis, Minnesota (for respondent)

Allan J. Lanners, William K. Davies, Lanners & Olson, P.A., Plymouth, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Jesson, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from an order denying appellant's motion to vacate a default dissolution decree, appellant argues the district court abused its discretion. Because the record supports the district court's determination that appellant had no reasonable defense

on the merits nor a reasonable excuse for failing to respond to respondent's petition, we affirm.

FACTS

In July 1990, respondent Brenda Anne Kiberu (wife) and appellant Kizito David Kalema (husband) married. On December 3, 2019, wife served husband with a summons and petition for dissolution through a process server at the parties' home in Bloomington. It is undisputed wife served husband with the summons and petition and he failed to respond. On December 18, 2019, wife filed the summons and petition in district court. The petition stated wife did not know husband's address.

The district court scheduled an initial case-management conference for January 8, 2020, and issued a notice of that conference. The notice indicated a copy was provided to "Kizito David Kalema **NO Known Address On File.**" Husband did not attend the case-management conference.

On January 31, 2020, wife moved for default judgment and submitted a proposed judgment and decree. On February 4, 2020, the referee recommended approval of wife's proposed judgment and decree, which the district court signed and entered on the same day.

Two days later, husband filed a notice-of-change-of-address form. Husband's attorney filed a certificate of representation on February 28, and, shortly after, obtained a June hearing date for a motion. On June 5, husband moved to vacate the judgment and decree and sought leave to file an answer and counterpetition, among other relief.

The parties submitted briefs and affidavits to the referee, who conducted a telephone hearing on June 30. Husband's affidavit, in relevant part, attested he did not receive notice of the case-management conference, and when he visited the Hennepin County Family Justice Center "to obtain documentation, forms and assistance" from the self-help desk, he learned wife "had already obtained a default divorce judgment against [him] without [his] knowledge!" Husband argued in his memorandum that wife "engaged in fraud, misrepresentation and other misconduct which prevented [husband] from fully and fairly representing himself in the proceeding[s,]" and he had a reasonable excuse for neglecting to answer because he received no notice of the case conference. Wife argued husband "cannot establish excusable neglect for not answering the Petition because of his own inaction," and he "failed to meet his burden of proving fraud."

On September 28, 2020, the district court adopted the referee's findings of fact and order denying husband's motion. The district court first found wife served husband with the summons and complaint and husband did not file or serve any pleadings and did not contact the court. The district court next rejected husband's fraud claim, determining he failed to show that wife "committed fraud during the pendency of these proceedings." Turning to husband's claim that the judgment should be vacated for excusable neglect, the district court determined husband "acted with due diligence after notice of entry of judgment" and wife would not be substantially prejudiced if husband was relieved of the default judgment. But the district court also determined husband did not have a reasonable defense on the merits, nor a reasonable excuse for failing to respond to wife's petition and summons. Thus, the district court denied husband's motion.

Husband appealed, and this court stayed the appeal for mediation. When none of the issues were resolved through mediation, this court dissolved the stay.

DECISION

Husband argues the district court abused its discretion by denying his motion to vacate the judgment. Husband also argues this court "must reaffirm the longstanding principle that cases should be heard on the merits, and not decided on a procedural technicality, especially during a pandemic."[1] Wife argues applicable law and the record support the district court's decision to deny husband's motion.

Minnesota caselaw states, "[r]eopening of default judgments is to be liberally undertaken so that disputes can be resolved on their merits." *Galatovich v. Watson*, 412 N.W.2d 758, 760 (Minn. App. 1987); *see also Sommers v. Thomas*, 88 N.W.2d 191, 196 (Minn. 1958) ("It must be remembered that the goal of all litigation is to bring about judgments after trials on the merits and for this reason courts should be liberal in opening default judgments."). While this caselaw reflects a bedrock principle, "[t]he legislature also has recognized the importance of finality in dissolution proceedings by setting forth

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[1] Husband briefly argues his request for relief should be granted because of the COVID-19 pandemic. We are not persuaded. While the pandemic was a concern between December 2019 and February 2020—when wife served the summons and petition, and she obtained a default judgment—the emergency executive order in which the governor declared a peacetime emergency, and the subsequent judicial-branch orders postponing litigation-related deadlines were not issued until March 2020. *See* Emerg. Exec. Order No. 20-01 (Mar. 13, 2020); *Continuing Operations of the Courts of the State of Minnesota Under a Statewide Peacetime Declaration of Emergency*, No. ADM20-8001 (Minn. Mar. 20, 2020). Husband contends the court first scheduled his motion to vacate in April 2020 but postponed to June because of the pandemic. This delay did not prejudice husband because the district court found he acted diligently after he received notice of entry of judgment.

specific circumstances that must be present to permit a party to be relieved of the terms of a judgment and decree" along with time limitations for pursuing relief. *Shirk v. Shirk*, 561 N.W.2d 519, 522 (Minn. 1997) (citing Minn. Stat. § 518.145, subd. 2 (2020)). A district court's "decision not to reopen the judgment and decree will not be disturbed absent an abuse of discretion." *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996). A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or rendering a decision that is "against logic and the facts on record." *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

Before we review husband's arguments, we begin by summarizing when a default judgment is appropriate in a dissolution proceeding and then examine the grounds for moving to vacate or reopen a dissolution judgment. In dissolution proceedings, "[i]f the respondent does not appear after service duly made and proved, the court may hear and determine the proceeding as a default matter." Minn. Stat. § 518.13, subd. 1 (2020). When a party has made no appearance or response to a dissolution petition, the petitioner may request a final default hearing or seek final approval without a hearing by filing the appropriate affidavits. Minn. R. Gen. Prac. 306.01.[2] The advisory-committee comment to rule 306.01 explains, "[a] party is not entitled to prevent entry of judgment if that party is

[2] In denying father's motion, the district court determined a hearing was not required because the marriage did not include minor children and at least 50 days had passed since husband was served with the petition. *See* Minn. Stat. § 518.13, subd. 5 (2020) ("[I]f there are no minor children of the marriage, and . . . the respondent has not appeared after service duly made and proved by affidavit and at least 20 days have elapsed since the time for answering under section 518.12 expired" the district court may approve of a proposed judgment without a final hearing). Husband does not challenge this aspect of the district court's decision.

in default by not serving and filing a timely written answer to the Petition." Minn. R. Gen. Prac. 306, 2012 advisory comm. cmt.

"A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal." Minn. Stat. § 518.145, subd. 1 (2020). "The sole relief from the judgment and decree lies in meeting the requirements of Minn. Stat. § 518.145, subd. 2." *Shirk*, 561 N.W.2d at 522. Minn. Stat. § 518.145, subd. 2, allows the district court to "relieve a party from a judgment and decree . . . as may be just" for any of five reasons, one of which is "mistake, inadvertence, surprise, or excusable neglect." *Id.*, subd. 2(1). Fraud "or other misconduct of an adverse party" is also a basis to reopen or vacate a dissolution judgment. *Id.*, subd. 2(3). A party seeking to overturn or reopen a judgment has the burden to prove at least one of the statutory grounds. *Haefele v. Haefele*, 621 N.W.2d 758, 765 (Minn. App. 2001), *rev. denied* (Minn. Feb. 21, 2001).

Husband's brief to this court focuses on excusable neglect and no longer argues wife committed fraud when obtaining the default judgment. Caselaw discussing excusable neglect under rule 60.02 has consistently applied four factors: whether the moving party has (1) "a reasonable defense on the merits"; (2) "a reasonable excuse for his failure or neglect to answer"; (3) acted diligently after notice of entry of the judgment; and (4) demonstrated "that no substantial prejudice will result to the other party." [3] *Hinz v.*

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[3] "Because of the similarities between [Minnesota] rule [of civil procedure] 60.02 and [Minn. Stat. § 518.145,] subdivision 2, cases citing to rule 60.02 are often used when addressing the application of the statute." *Harding v. Harding*, 620 N.W.2d 920, 923 (Minn. App. 2001), *rev. denied* (Minn. Apr. 17, 2001); *see also Knapp v. Knapp*, 883 N.W.2d 833, 837 (Minn. App. 2016) ("We conclude that a district court does not abuse

Northland Milk & Ice Cream Co., 53 N.W.2d 454, 456 (Minn. 1952); *see also Northland Temps., Inc. v. Turpin*, 744 N.W.2d 398, 402 (Minn. App. 2008), *rev. denied* (Minn. Apr. 29, 2008). All four factors "must be proven" to establish excusable neglect, "but a weak showing on one factor may be offset by a strong showing on the others." *Reid v. Strodtman*, 631 N.W.2d 414, 419 (Minn. App. 2001).

Husband challenges the district court's analysis of the first and second factors and argues the district court erred when it determined he had neither a reasonable defense on the merits nor a reasonable excuse for his failure to answer the petition.[4] We address husband's arguments in turn.

A. Reasonable defense on the merits

"A reasonable defense on the merits is one that, if established, provides a defense to the plaintiff's claim." *Turpin*, 744 N.W.2d at 403. During district court proceedings, husband argued he had a reasonable challenge to the division of marital property. A district court determines a "just and equitable division of the marital property . . . after making findings regarding the division of the property." Minn. Stat. § 518.58, subd. 1 (2020). "A trial court has broad discretion in evaluating and dividing property in a marital dissolution

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its discretion by not addressing rule 60.02 when considering a motion to vacate a dissolution judgment under Minn. Stat. § 518.145, subd. 2.").

[4] Wife argues the district court was "mistaken" she would not suffer substantial prejudice if the judgment was vacated. This court need not address wife's alternative argument for affirmance of the district court's decision because we affirm for other reasons.

and will not be overturned except for abuse of discretion." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002).

The district court determined husband did not have a reasonable defense on the merits to the property division because "the decree [is] fair and equitable." The district court found husband failed to "provide verification of [claimed] assets and liabilities" to support his claim that the dissolution judgment did not include all the parties' marital property.

Husband contends the district court's "finding defies all credulity" because he is entitled to a "greater" property award than he received in the dissolution judgment. Husband generally argues the property division is not fair and equitable because it awards wife "over $500,000 and awards [husband] less than $130,000." Wife disputes this characterization of the property division. Husband cites no caselaw in support of his general argument. Some caselaw militates against husband's position: "[W]hile the district court must make a just and equitable division of the marital property, an equitable division of marital property is not necessarily an equal division." *Sirek v. Sirek*, 693 N.W.2d 896, 900 (Minn. App. 2005) (quotation omitted). Thus, we are not persuaded that husband's general argument has stated a reasonable defense on the merits.

Next, husband argues the dissolution judgment does not address some marital property and points to his affidavit identifying assets, payments, and debts not mentioned in the judgment. Wife responds that husband's "statements are conclusory." Wife is correct that a reasonable defense on the merits must be supported by "more than conclusory statements." *In re Welfare of Children of Coats*, 633 N.W.2d 505, 511 (Minn. 2001).

The district court determined husband failed to verify his claims of omitted marital property, and our review of the record confirms that husband offered no evidence to support most of his claims of omitted marital property. For example, his brief to this court argues wife "has an entirely separate, additional employee benefit plan that was not allocated in the Decree." But husband submitted no evidence to support his claim about this benefit plan. Similarly, husband's affidavit attested he paid utility bills for the marital home, but the district court found he "provided no proof" of such payments. On appeal, a party cannot complain that the district court did not rule in his favor when he did not provide the district court with the evidence necessary to address the question. *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *rev. denied* (Minn. Nov. 25, 2003). Thus, we agree with wife that most of husband's purported defenses on the merits are conclusory statements without record evidence.

We note, however, that husband included with his affidavit a February 2020 statement showing a $27,000 balance owed on a home-equity line of credit for the marital home. The district court did not address this debt in its dissolution judgment. This omission does not end our inquiry because we must disregard harmless errors. *See* Minn. R. Civ. P. 61. Husband fails to argue or show any prejudice from the omission of this debt from the dissolution judgment, and no prejudice is apparent. The dissolution judgment ordered the sale of the homestead and that "net proceeds of the sale be split equally between the parties." The dissolution judgment included findings that the homestead's current market value is $254,000 with $90,000 still owed on the first mortgage. The record before us suggests a market-value sale of the homestead will satisfy the balance owed on the line of

credit as well as on the first mortgage. Thus, even if we assume the district court erred by omitting the balance owed on the line of credit, husband does not have a reasonable defense on the merits because any error was harmless.

Finally, husband argues that "perhaps more importantly" he had no discovery and "[t]he [district] court had no outside assurance nor any meaningful ability to adjudge whether or not there had been a full disclosure of assets, and in fact [husband] alleged in his proposed Answer and Counterpetition that there was not full disclosure." He contends generally "that the [district] court was not, and logically could not have been in a position" to conclude the default judgment was fair and equitable.

Husband cites no caselaw in support of this claim. We generally decline to consider issues advanced on appeal with no legal authority. *See, e.g.*, *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach an issue "in the absence of adequate briefing"). We decline to do so here, particularly because husband also fails to identify what discovery he would have sought, what it would have revealed, or how the lack of discovery prejudiced him. *See generally Chicago Greatwestern Off. Condo. Ass'n v. Brooks*, 427 N.W.2d 728, 732 (Minn. App. 1988) (stating that to overturn a default judgment imposed for failure to comply with a discovery order, the district court must evaluate "the needs" of the party seeking discovery along with "how the absence of such evidence not produced would impair the other party's ability to establish their case" (quoting *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 505 (4th Cir. 1977), *cert. denied*, 434 U.S. 1020 (1978))).

For these reasons, we conclude the district court did not abuse its discretion when it determined husband did not have a reasonable defense on the merits.

B. Reasonable excuse for failing to answer

Husband argues the district court erred when it determined he had no reasonable excuse for failing to answer, citing four reasons. First, husband points out he "is originally from Uganda and presumably has no inherent or learned knowledge of the operation of the court system in this country." But as the district court noted, "[a]lthough some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001).

Minnesota law states a spouse's obligation to respond to a summons and petition for dissolution. "The respondent shall have 30 days in which to answer the [dissolution] petition." Minn. Stat. § 518.12 (2020). Husband received notice of his obligation to respond, as well as notice of the consequences if he failed to respond, when he was served with the summons and petition. The first page of the summons repeated the statutory requirement to answer within 30 days. The first page of the summons also stated: "**WARNING: . . . This summons is an official document from the court that affects your rights. Read this summons carefully. If you do not understand it, contact an attorney for legal advice.**" And the summons warned of the consequences if husband failed to answer: "If you do not serve and file your *Answer*, the Court may give your spouse everything he or she is asking for in the *Petition for Dissolution of Marriage*." While

husband may not have legal experience, the summons conveyed the important fact that he needed to respond to the petition.

Second, husband argues he did not receive any notices of the dissolution action besides the summons and petition. Even if we assume this is true, Minnesota law does not require notice "after service [of a petition] is duly made and proved" before a motion for default judgment is heard, unless the respondent has appeared by pleading or in person. Minn. Stat. § 518.13, subd. 1; Minn. R. Gen. Prac. 306.01(b) (providing a notice of a default motion is required when respondent "has appeared by a pleading other than an answer, or personally without a pleading"). Here, husband concedes he was properly served with the summons and petition, yet he did not appear or file any document with the district court until after entry of the default judgment. Thus, the lack of notice to husband is not a reasonable excuse under these circumstances.

Along with his argument about lack of notice, husband criticizes wife for claiming "she did not know where [husband] resided." We understand husband to be challenging wife's statement in the dissolution petition that he had no known address. In briefs submitted to the district court and to this court, the parties dispute whether husband resided at the marital home when he was served with the summons and petition and in the months following service.[5] Where husband lived, however, does not affect our analysis because

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[5] Husband argues wife "knew where [he] was at all time[s]," he slept in a van on the marital homestead, and he visited the marital home during the day while wife was at work. Wife asserts husband "moved out of the parties['] homestead" in February 2018, and she "did not know where [husband] went to live." The district court found wife's affidavit "describes a more believable narrative of the events," and we generally defer to the district

husband had to notify the district court of his current address. Husband ignores that he failed to notify the district court of his address until after it entered the default judgment. When husband finally filed a change-of-address form, he listed the same address at which he was served: the parties' marital home.

Third, husband argues "[t]here was no designation on the documents that [husband] received that indicate that they had ever been filed with the court, and no court file number." This is partially correct. Wife served husband with the summons and petition on December 3, 2019. The first full sentence of the summons reads: "**WARNING: Your spouse *has filed* a lawsuit against you for dissolution of your marriage.**" (Italics added.) The first numbered paragraph in the summons repeats that petitioner has filed the lawsuit. But wife did not actually file the petition until December 18, 2019, two weeks after service. Thus, husband received notice that wife filed the dissolution petition before she actually filed it. Husband does not explain why these circumstances provided a reasonable excuse for failing to answer wife's petition and we discern no reasonable excuse based on these circumstances.

Fourth, husband argues "it would be unprecedented for the court to hold that service of a Summons and Petition alone, with no subsequent opportunity to be heard, and in the face of not only a timely, but immediate motion to vacate, precludes" granting a motion to vacate a default judgment "without any meaningful review or determination of the merits of the case." We disagree. While, as discussed above, courts prefer to resolve legal disputes

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court's findings on credibility. *See Knapp*, 883 N.W.2d at 837 (noting appellate courts "defer to the district court's credibility determinations as to conflicting affidavits").

on the merits, a party may move the district court to enter a default dissolution judgment with the caveat that a party may also move to reopen or vacate a dissolution judgment. *See* Minn. Stat. §§ 518.13, subd. 1, .145, subd. 2.

In *Knapp*, for example, this court affirmed the denial of a motion to vacate a default dissolution judgment. 883 N.W.2d at 834. There, the respondent-wife served the appellant-husband with a petition and summons, notifying the husband he had 30 days to answer the petition. *Id.* The husband never answered the petition, the district court entered a dissolution judgment by default, and the district court denied husband's motion to vacate the default judgment. *Id.*

Husband argues "this case is distinguishable from *Knapp*" because there "the Respondent was served and/or notified of the Court's involvement on five occasions." While this describes the procedural history in *Knapp*, our decision to affirm did not rest on the notices the husband received. Rather, we concluded "the record amply supports the district court's findings and its conclusions that [the husband] failed to meet his burden to prove excusable neglect under Minn. Stat. § 518.145, subd. 2(1)." *Id.* at 838. Here, we also conclude the record supports the district court's determination that husband failed to prove excusable neglect.

On this record, we discern no abuse of discretion in the district court's decision to deny husband's motion to vacate the default dissolution judgment.

Affirmed.