

*This opinion is nonprecedential except as provided by  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  
A21-1215**

Advantage Financial, LLC,  
Appellant,

vs.

Janice C. Marschel as Trustee for the Janice C. Marschel Revocable Trust, et al.,  
Respondents.

**Filed May 16, 2022  
Reversed and remanded  
Reilly, Judge**

Wright County District Court  
File No. 86-CV-20-5885

Ryan J. Hatton, Gurstel Law Firm, P.C., Golden Valley, Minnesota (for appellant)

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respondents)

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

**NONPRECEDENTIAL OPINION**

**REILLY**, Judge

In this appeal, appellant challenges the district court's order granting respondents' motion to vacate the judgment against them. Appellant also argues that remand is necessary to consider a motion for judgment against garnishee. Because the district court

abused its discretion in granting relief under Minn. R. Civ. P. 60.02(f), we reverse and remand.

## FACTS

In 2016, respondents Janice C. Marschel, as trustee for the Janice C. Marschel revocable trust, and Kevin Schmidt, individually and as trustee for the trust, opened commodity trading accounts with appellant Advantage Financial LLC. In 2018, respondents' accounts fell below the minimum margin requirements, and respondents failed to pay the negative balance. Appellant sued respondents in Illinois federal district court for breach of contract, seeking repayment of a negative margin balance well over two million dollars.

On November 19, 2020, the parties reached a settlement agreement. Under the settlement agreement, respondents agreed to pay appellant \$50,000 by December 1, 2020, and execute a promissory note in the amount of \$307,500. Respondents also agreed that if they failed to make the initial payment, appellant “will be immediately entitled to entry of judgment . . . for all amounts due and owing to [appellant] from [respondents].” The settlement agreement referenced three confessions of judgment that were executed around the same time as the agreement. In the first confession of judgment, respondents agreed to the following: (1) respondents confess to judgment for \$50,000 plus all amounts owed to appellant under the note plus fees; (2) if respondents fail to pay \$50,000 by December 1, appellant may file the confession with the affidavit setting forth the amount due; (3) the district court is allowed to immediately enter judgment for appellant; and (4) no circumstances will prevent appellant from obtaining judgment. The signature page of the

confession was signed by both respondents, but some dates were not completed.<sup>1</sup> The second and third confessions of judgment included additional terms that are not at issue in this appeal.

Respondents did not deliver the \$50,000 initial payment to appellant by December 1, 2020. Respondents tried to renegotiate the agreement, but appellant declined. Appellant filed the first confession of judgment with the district court on December 22, 2020, but mistakenly attached the verification page for the third confession of judgment. The district court administrator sent appellant a deficiency notice, and appellant filed the correct verification page for the first confession of judgment. On December 31, 2020, the district court administratively entered judgment against respondents in the amount of \$362,587.92.

In mid-January 2021, respondent Schmidt wired \$25,000 to his attorney. Appellant sent a garnishment notice to the law firm and later filed a motion for judgment against garnishee. Respondents moved to quash the garnishment and vacate the judgment against them under Minn. R. Civ. P. 60.02(a) and 60.02(f). Respondents argued that Schmidt suffered serious medical issues during and following settlement negotiations and his failure to pay the \$50,000 constituted excusable neglect under rule 60.02(a).<sup>2</sup> Respondents also

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<sup>1</sup> On the signature page of the first confession, respondent Marschel's signature was dated "November, 2020" and her signature was notarized on November 25, 2020. Respondent Schmidt's signature is dated November 25, 2020, and his signature was notarized on "this \_\_\_ day of November, 2020." The corresponding verification page was signed by both respondents and dated "November, 2020."

<sup>2</sup> During settlement negotiations in mid-October 2020, respondent Schmidt was in the hospital for two weeks, being treated for a serious medical condition while in the intensive care unit. Schmidt was released from the hospital on October 27, 2020 and signed the settlement agreement weeks later on November 19, 2020.

argued that the first confession of judgment did not comply with the law and should be vacated under rule 60.02(f).

The district court granted respondents' motion to vacate judgment under Minn. R. Civ. P. 60.02(f). The district court reasoned that "the equities weigh heavily in favor of [respondents] for relief from the judgment entered on December 31, [2020]. The Confession of Judgment did not meet the statutory requirements for administrative entry of judgment." Because the district court vacated the judgment, the district court declined to address appellant's motion for judgment against garnishee.

This appeal follows.

## **DECISION**

Appellant challenges the district court's decision to vacate the judgment against respondents under Minn. R. Civ. P. 60.02(f). Under this rule, a district court may relieve a party from a final judgment for "[a]ny other reason justifying relief from the operation of judgment." Minn. R. Civ. P. 60.02(f). "The decision to vacate judgment under rule 60.02 rests within the district court's discretion and will not be reversed absent an abuse of that discretion." *Meyer v. Best W. Seville Plaza Hotel*, 562 N.W.2d 690, 694 (Minn. App. 1997), *rev. denied* (Minn. June 26, 1997). The district court abuses its discretion if it "acts under a misapprehension of the law or when its factual findings are clearly erroneous." *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016) (quotations omitted).

### **I. The district court misapplied the law of judgments.**

The district court vacated the judgment under Minn. R. Civ. P. 60.02(f) after finding that the confession submitted by appellant was invalid because it was not properly verified

by respondents. Appellant argues that the district court erred in vacating the judgment against respondents because the district court misapplied the law of judgments.

The statute governing confessions of judgment reads:

A judgment for money due or to become due, or to secure any person against a contingent liability on behalf of the defendant, or for both, may be entered in the district court by confession and without action, upon filing with the court *administrator a statement, signed and verified by the defendant, authorizing the entry of judgment for a specified sum*. If the judgment be for money due or to become due, the writing shall state concisely the facts out of which the debt arose, and show that the sum confessed is justly due or to become due.

Minn. Stat. § 548.22 (2020) (emphasis added). A judgment is valid when it “compl[ies] with the provisions of Minn. Stat. § 548.22 . . . , which requires a verified statement by the defendant debtor setting out facts concisely showing the sum confessed is justly due or to become due.” *Miller v. Shugart*, 316 N.W.2d 729, 735 n.6 (Minn. 1982).

The district court found that the confession was not properly verified because the signature page of the first confession of judgment did not have complete dates and because appellant initially submitted mismatched documents. The district court found that the judgment against respondents should not have been entered administratively, but instead required a hearing because of the improper verification.

Appellant argues that the statute governing confessions requires only a signed and verified statement to obtain a judgment and that the signed and verified statement need not be dated or notarized to be valid. We agree. The sole statutory requirements for a confession of judgment include “a statement, signed and verified by the defendant, authorizing the entry of judgment for a specified sum.” Minn. Stat. § 548.22. The statute

does not require the signed and verified statement to have a complete date, or even be dated at all—although complete dates would be a best practice.

Here, appellant filed the confession of judgment laying out the facts leading to the settlement agreement. The confession stated that the settlement agreement was dated November 19, 2020 and required respondents to execute and deliver a secured promissory note to pay appellant \$307,500. The confession also stated that respondents agreed to pay appellant an initial sum of \$50,000 by December 1, 2020, and that if respondents failed to pay \$50,000 by that date, appellant “shall immediately be entitled to file this First Confession with a court.” The confession included a separate page titled “verification,” which included the county in which the confession was signed, both respondents’ signatures, and the date of “November, 2020.” While the verification page did not specify the exact date that respondents signed it, the verification page and confession met all necessary statutory requirements: statement of facts, signed and verified by the respondents, authorizing judgment for a specified sum.

Additionally, while appellant at first submitted mismatched documentation to the district court when filing the confession, appellant quickly corrected the mistake by filing the correct verification page. The revised filing satisfied all necessary statutory requirements, and the verification pages matched the confession of judgment. The district court administrator accepted the amended filing and properly entered judgment against respondents.

Relief under Minn. R. Civ. P. 60.02(f) is available only in “exceptional circumstances.” *Buck Blacktop, Inc. v. Gary Contracting and Trucking Co.*, 929 N.W.2d

12, 20 (Minn. App. 2019) (quotation omitted). The facts here do not present extraordinary circumstances. Instead, the parties entered into a settlement agreement after years of litigation and the agreement outlined the amount owed and when the amounts were due and included signatures of both respondents. Respondents failed to make the initial payment on December 1, thus authorizing appellant to file the first confession with the district court.

Respondents argue that Schmidt’s hospitalization coupled with the failure to file the correct verification page with the confession of judgment amounted to extraordinary circumstances. But respondent Schmidt signed the settlement agreement weeks after his hospitalization, and as stated above, the confession of judgment was properly verified. “The burden of proof in a proceeding under Rule 60.02 is on the party seeking relief.” *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. App. 2003). Respondents presented the district court with no extraordinary facts, nor could they show that the agreement violated the law of confessions. Thus, because the district court abused its discretion in vacating the judgment against respondents under rule 60.02(f), we reverse and remand to the district court to enter judgment for appellant.<sup>3</sup>

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<sup>3</sup> Appellant also argues that the district court erred in granting relief under rule 60.02(f) because respondents failed to establish a meritorious defense. Because we conclude the district court abused its discretion by misapplying the law of judgments, appellant’s remaining argument is moot.

**II. Remand is also appropriate for the district court to consider appellant's pending motion for judgment against garnishee.**

Because the district court vacated the judgment against respondents under rule 60.02(f), the district court did not address appellant's cross-motion for judgment against garnishee. On remand, the district court shall address appellant's motion. Whether to reopen the record for purposes of this motion shall be discretionary with the district court.

**Reversed and remanded.**