STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1452

Tracy Nuthak,
Respondent,

vs.

Scott Nuthak,
Appellant.

Filed August 15, 2022
Affirmed
Hooten, Judge[*]

Koochiching County District Court
File No. 36-CV-20-466

Tracy Lynn Nuthak, International Falls, Minnesota (pro se respondent)

Scott E. Nuthak, Ray, Minnesota (pro se appellant)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Hooten, Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

Appellant Scott Nuthak appeals the district court's denial of his request for a hearing on the ex parte harassment restraining order (HRO) issued to protect respondent Tracy

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Nuthak. Because appellant failed to act with due diligence after learning of an alleged mistake by the court clerk, we affirm.

FACTS

These facts are undisputed. In July 2020, respondent petitioned for an HRO against appellant, her estranged husband. The district court granted an ex parte HRO later that month. The HRO expired in July 2022 and prevented appellant from being within one block of respondent's home, job, or the home of respondent's father.

Appellant alleges that he requested a hearing within the statutory 20-day timeframe. *See* Minn. Stat. § 609.748, subd. 4(f) (2020). He states that he went to the court clerk to file his request but, because of a problem with a copier or scanner, the court clerk did not properly file his request.

Appellant failed to follow up with the court clerk and believed that the COVID-19 pandemic caused the clerk's delay in scheduling his hearing. Appellant later filed a second request for a hearing in April 2021—just over nine months after the district court issued the HRO. Appellant admitted that he filed nothing in between his two requests for a hearing. In the meantime, the state charged appellant with two violations of the HRO.

The district court denied appellant's request for a hearing. The district court found that appellant's arguments were "less than compelling" and that appellant "either did not file his request for a hearing according to the statute or, even if the court accepts his assertion that he tried to, he waived his right to a hearing by waiting nearly nine months to

file the current request." Appellant then moved to vacate the district court's order under Minn. R. Civ. P. 60.02. The district court denied appellant's motion. Appellant appeals.[1]

DECISION

The only issue appellant raises on appeal is whether the district court abused its discretion by denying his request for reconsideration after the district court denied his request for a hearing. Appellant argues that the only reason he filed his request for a hearing outside the 20-day statutory deadline was a mistake by the court clerk. He therefore argues that the district court, relying on Minn. R. Civ. P. 60.02, should have excused the mistake and granted him a hearing.

After a district court issues an ex parte HRO, the party against whom the HRO is granted has 20 days to file a request for a hearing. Minn. Stat. § 609.748, subd. 4(f). If the party fails to do so, the HRO remains in effect for the period set forth in the HRO. *See Fiduciary Found., LLC ex rel. Rothfusz v. Brown*, 834 N.W.2d 756, 760 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013). But the non-protected party may still seek relief from the final HRO through Minn. R. Civ. P. 60.02. *See Northland Temps., Inc. v. Turpin*, 744 N.W.2d 398, 402 (Minn. App. 2008) (stating that rule 60.02 allows relief from orders and judgments), *rev. denied* (Minn. Apr. 29, 2008).[2]

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[1] Respondent did not file a brief in this case, and this court ordered the appeal to proceed per Minn. R. Civ. App. P. 142.03.

[2] While, generally, an order denying a motion to vacate an otherwise unappealable ex parte order is not appealable, an order denying a motion to vacate an ex parte HRO can be appealable if it finally determinates a party's right to a hearing. *Brown*, 834 N.W.2d at 760-61.

Under rule 60.02, a district court may relieve a party from a final judgment for "[m]istake, inadvertence, surprise or excusable neglect" as well as "any other reason justifying relief from the operation of the judgment." Minn. R. Civ. P. 60.02. However, the right to be relieved of a judgment is not absolute, and we review a district court's rule 60.02 decisions for an abuse of discretion. *Howard v. Frondell*, 387 N.W.2d 205, 207-208 (Minn. App. 1986), *rev. denied* (Minn. July 31, 1986).

When determining whether to reopen a judgment based on mistake, inadvertence, surprise, or excusable neglect, the district court determines whether the party satisfies each of the four requirements set forth in *Finden v. Klaas*, 128 N.W.2d 748 (Minn. 1964). *Cole v. Wutzke*, 884 N.W.2d 634, 636 (Minn. 2016). These requirements are whether: (1) the party has a reasonable defense on the merits, (2) the party has a reasonable excuse for the party's failure to act, (3) the party acted with due diligence after learning of the error or omission, and (4) the other party will not be substantially prejudiced. *Id.* at 637 (listing the four *Finden* requirements). For the district court to grant relief, the moving party must satisfy all four requirements. *Id.*; *see also Gams v. Houghton*, 884 N.W.2d 611, 619-20 (Minn. 2016).

Our review of the district court's analysis of whether appellant satisfied the *Finden* requirements begins, and ends, with the third requirement, whether appellant acted with due diligence after learning of the error or omission. We conclude that the record supports the district court's determination that appellant did not act with due diligence after he discovered the error. As the district court noted, appellant waited over nine months to file his second request for a hearing. Appellant says he told the court clerk's office about the

mistake "a[t] some point," but there is nothing in the record showing that appellant filed anything requesting a hearing before his April 2021 hearing request. And the state charged appellant with two criminal violations of the HRO for which he is now requesting a hearing. Thus, the district court did not abuse its discretion by determining that appellant failed to act with reasonable due diligence after learning of the error.

Appellant's arguments against this conclusion are unpersuasive. Appellant claims that he repeatedly brought up his request for a hearing to the district court. Assuming this is true, it appears that he made his complaints to the district court judge sitting in his criminal cases. For example, appellant told the district court of his alleged attempt to file the request for a hearing during the December 2020 arraignment for his violations of the HRO. Appellant later claimed that the district court in his criminal cases "just wouldn't hear the argument." In response, the district court in this case told appellant that those requests were made in a different proceeding and had no bearing on his HRO case. And save appellant's assertion that he contacted the court clerk "a[t] some point," appellant failed to follow up in the nine months between requests. While we afford some leeway to a self-represented party, we hold appellant to the same standards as we would attorneys. *Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976) (stating that court will not modify ordinary rules and procedures because a self-represented party lacks the skills and knowledge of an attorney); *State v. Fellegy*, 819 N.W.2d 700, 704 (Minn. App. 2012), *rev. denied* (Minn. Oct. 16, 2012). The record supports the district court's determination that appellant did not act with due diligence to correct the mistake. Because appellant fails to

meet this *Finden* requirement, we need not analyze the other three requirements. *See Gams*, 884 N.W.2d at 619-20.

Thus, the district court did not abuse its discretion by denying appellant's motion to vacate its order denying his request for a hearing on the ex parte HRO.

Affirmed.