STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1644

Jeffrey Rangel Perez, et al.,
Appellants,

vs.

Solomon Affa,
Respondent,

Raiser, LLC, et al.,
Respondents.

Filed August 8, 2022
Reversed and remanded
Bratvold, Judge

Washington County District Court
File No. 82-CV-21-2959

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Theodore J. Waldeck, Jason M. Stoffel, Waldeck & Woodrow P.A., Minneapolis, Minnesota (for respondents Raiser, LLC and Uber Technologies, Inc.)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellants seek review of the district court's judgment and order denying appellants' motion to vacate the dismissal of their personal-injury complaint. Appellants argue the district court abused its discretion in determining appellants did not have a reasonable excuse for failing to file the complaint within one year of commencement, as required by Minn. R. Civ. P. 5.04(a). Respondents urge affirmance and also argue alternative grounds. Because the district court's factual findings on this issue are clearly erroneous, and the alternative grounds for affirmance lack merit, we reverse and remand to reopen the case for further proceedings.

FACTS

On September 17, 2016, appellants Jeffrey Rangel Perez and Amanda Alvarez were visiting Minnesota from their home state of California. Appellants hired respondent Solomon Affa as a driver through a ride-sharing application operated and controlled by respondents Uber Technologies Inc. and Raiser LLC (collectively, Uber defendants). While driving in Oakdale and passing through an intersection controlled by a stoplight, Affa's car collided with a sport utility vehicle driven by defendant Elaine Clara Heidenreich. Appellants' amended complaint alleged that Affa and Heidenreich both drove negligently and contributed to the accident. The amended complaint also alleged that each appellant suffered permanent personal injuries in excess of $50,000 and loss of earnings in excess of $50,000.

Appellants served the Uber defendants with the summons and initial complaint on July 15, 2020, and served Affa and Heidenreich on October 7, 2020. Over the next year, appellants prepared and served an amended complaint, participated in settlement discussions, reached a settlement with Heidenreich, signed a joint discovery plan, and exchanged documents with the Uber defendants and Affa.

On July 20, 2021, Affa's attorney wrote to appellants' attorney and stated that one year had passed since appellants commenced the lawsuit, the case "still has not been filed," and appellants "no longer have a claim." The same day, appellants filed their summons, complaint, amended complaint, and affidavits of service in district court. A few days later, the district court issued an order admitting appellants' attorney pro hac vice. A week later, appellants filed a stipulation dismissing with prejudice their claims against Heidenreich based on the earlier settlement. On August 4, 2021, Affa's attorney wrote to the district court, stating that "this matter has already been dismissed with prejudice" because appellants "failed to file this case within one year of commencement."

Appellants moved for relief from dismissal under Minn. R. Civ. P. 60.02. Appellants' attorney took responsibility for failing to file the case within one year of the date of service on the Uber defendants and represented that appellants did not contribute to this neglect. The parties submitted memoranda addressing the four factors for determining whether relief was warranted under *Finden v. Klass*, 128 N.W.2d 748, 750 (Minn. 1964) (requiring each of four factors to be met to vacate a dismissal under rule 60.02). On the second requirement, appellants argued they had a reasonable excuse for their neglect: "Given the later date of service of process on [d]efendant Affa, that date was

placed on the calendar as the deadline to file the matter . . . coupled with the newfound remote working environment due to the COVID pandemic." Affa filed a memorandum in opposition, arguing that the calendaring error "is not enough to show excusable neglect, especially in light of the sparse action [the appellants] have taken in this matter over the last year." The Uber defendants filed a notice joining in Affa's memorandum and arguments.

After a hearing on appellants' motion, the district court issued an October 13, 2021 order denying appellants' motion to vacate. The district court applied the *Finden* analysis and determined appellants established three of the four *Finden* factors. On the second factor, the district court determined appellants failed. Although the district court found that appellants' attorney "mistakenly used the date of service for [d]efendant Affa rather than the one for [d]efendant Uber when scheduling the case filing date," the district court reasoned that appellants "might have a more persuasive argument if that were the only issue." The district court explained that "additionally, the issue exists whether [appellants] neglected to act over the past year in pursuing discovery." After summarizing appellants' discovery efforts, the district court found appellants "failed to engage in substantial discovery." The district court determined that appellants "failed to meet" the second *Finden* factor and, for this reason, denied their motion.

This appeal follows.[1]

[1] Respondents jointly filed a notice of related appeal (NORA) seeking to challenge the district court's determination on the first *Finden* factor that appellants had shown a debatably meritorious claim. On December 23, 2021, this court issued an order stating that "[r]espondents may raise alternative arguments for affirmance of the district court's denial

DECISION

Under Minn. R. Civ. P. 60.02, a party may seek relief from a final judgment for excusable neglect, and relief "should be granted where the movant affirmatively satisfies four requirements": (1) a "debatably meritorious claim," (2) a reasonable excuse for failure or neglecting to act, (3) due diligence after "learning of the error or omission," and (4) "no substantial prejudice will result to the other party" (collectively, the *Finden* factors). *Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016) (quoting *Charson v. Temple Israel*, 419 N.W.2d 488, 491-92 (Minn. 1988)). "Although some showings may be stronger than others, the moving party must establish all four requirements for relief to be warranted." *Id.* (citations omitted). In any event, "[t]he relative weakness of one factor should be balanced against a strong showing on the other three." *Valley View, Inc. v. Schutte*, 399 N.W.2d 182, 185 (Minn. App. 1987), *rev. denied* (Minn. Mar. 18, 1987).

"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 review a district court's denial of a rule 60.02 motion for an abuse of discretion. *Safeco Ins. Co. v. Holmgren Bldg. Repair, Inc.*, 946 N.W.2d 638, 644 (Minn. App. 2020), *rev. denied* (Minn. Sept. 15, 2020). "A district court abuses its discretion when it acts under a misapprehension of the law, or when its factual findings are clearly erroneous." *Gams*, 884 N.W.2d at 620 (quotations omitted).

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of appellants' motion to vacate. However, respondents' NORA does not create a cross-appeal because respondents ultimately prevailed in the district court."

The district court denied appellants' motion to vacate the dismissal of their complaint after reviewing each of the *Finden* factors. On the first factor, the district court determined appellants established a debatably meritorious personal-injury claim based on evidence that Affa was an at-fault driver and email discussions among the attorneys about insurance coverage and settlement. The district court noted this factor was a "close call," but appellants showed they "have colorable personal injury claims, that they have met one of the requisite tort thresholds, and that [the Uber defendants] had some vicarious liability."

The district court's analysis of the third and fourth factors is brief. The district court found the parties agreed that appellants' attorney "acted diligently in filing this case after [d]efendant Affa's counsel apprised [p]laintiffs' counsel of his failure to timely do so." And the district court found Affa and the Uber defendants "failed to identify any particular circumstances that would result in substantial prejudice." Relying on caselaw, the district court reasoned that "mere delay" is not a showing of substantial prejudice.

In sum, the district court determined the first, third, and fourth *Finden* factors favored granting appellants' motion to vacate. The district court denied appellants' motion after determining that appellants failed on the second *Finden* factor because they did not "persuasively demonstrate[] reasonable excuses for their combined neglect in case filing and pursuing discovery."

Appellants challenge the district court's determination on the second *Finden* factor. Affa responds that the district court ruled correctly and that the district court's decision may be affirmed on the alternative ground that appellants "failed to establish a meritorious claim." *See Day Masonry v. Indep. Sch. Dist. 347*, 781 N.W.2d 321, 331 (Minn. 2010)

("[W]here a party litigated two separate grounds . . . and the district court made its decision based on one and not the other, that party can stress any sound reason for affirmance even if it is not the one assigned by the trial judge . . . ." (quotation omitted)).

Because the district court's key findings on appellants' neglect in discovery were not supported by the record, and the district court failed to make other findings supported by appellants' argument and the record, we conclude that the district court abused its discretion. We then address the district court's determination that appellants demonstrated a debatably meritorious claim on the merits based on the motor-vehicle-crash report and emails between the parties.

I. The district court abused its discretion by determining appellants did not establish a reasonable excuse for their late filing.

Appellants argue that "[r]ule 60.02 has been repeatedly applied to vacate judgments in cases where attorneys make mistakes relating to procedural requirements." Appellants rely on *Charson*, 419 N.W.2d at 491, which states that "ordinarily courts are loath to punish the innocent client for the counsel's neglect." Appellants also argue that they were not involved with the procedural aspects of the case and that "[t]he sole responsibility to comply with Minnesota's procedural rules and to timely file Appellants' action under Rule 5.04 fell [on] their attorneys, not Appellants."

As appellants argue, reviewing courts have often held that an attorney missing a filing deadline without client involvement satisfies the second *Finden* factor. *See Charson*, 419 N.W.2d at 491 (holding that the district court's failure to apply the *Finden* factors was an abuse of discretion and determining that the client was not at fault for the missed

deadline and therefore had a reasonable excuse under *Finden*); *Thomas v. Ross*, 412 N.W.2d 358, 360 (Minn. App. 1987) (holding that the district court abused its discretion by not granting rule 60.02 relief where clients were unaware of the attorney's failure to timely file); *Kurak v. Control Data Corp.*, 410 N.W.2d 34, 36 (Minn. App. 1987) (stating that while the attorney "should have taken appropriate steps to insure the case was not dismissed, we do not believe [appellant] should be penalized for his attorney's mistakes").

Here, the district court found appellants missed the one-year filing deadline because appellants' attorney "mistakenly" calendared the case filing for one year after Affa was served, i.e., October 7, 2021. It is undisputed that appellants were not involved in this neglect. Even though the district court acknowledged that courts "are loath to punish an innocent client for the inexcusable neglect purely attributable to the client's attorney," the district court's findings went further than counsel's calendaring error and included a year's worth of counsel's supposed failure to pursue discovery. The district court then declined to determine that appellants had shown a reasonable excuse because appellants' attorney "neglected to act over the past year in pursuing discovery," and there had been no "substantial discovery." The district court stated it was "unreasonable to expect that a case of this nature would proceed to meaningful resolution absent discovery beyond what [appellants had] so far propounded."

Appellants argue the district court abused its discretion because the record does not support the district court's finding that appellants had not conducted "substantial discovery." Appellants also argue the second *Finden* factor does not require "substantial

discovery," only a reasonable excuse for failure to timely file. Affa argues that appellants' "failure to pursue discovery contributed to the District Court's decision" on the second *Finden* factor because the court "found a pattern of neglect." We address each argument in turn.

First, regarding appellants' discovery, the district court made findings that are, themselves, clearly erroneous. The district court also failed to make findings that flow from the record and appellants' arguments. Finding for appellants, the district court noted they appropriately ascertained which of the Uber entities had insurance coverage and which entities "should properly be named as parties." This additional information led appellants to serve an amended complaint. The district court also found that appellants participated in "brief preliminary settlement negotiations" with Affa and settled with Heidenreich.

Finding against appellants, the district court stated appellants served initial disclosures "2 1/2 months late" and "failed to serve any additional formal discovery or disclose any expert medical witnesses." The district court then concluded appellants had not completed "substantial discovery."

The district court did not address other evidence of discovery that Affa and the Uber defendants readily acknowledged. While it is accurate that appellants served their initial disclosures after the deadline in the parties' discovery plan, they provided 300 pages of documents to Affa and the Uber defendants, including a motor-vehicle-crash report reflecting that Affa entered the intersection on a red light. Indeed, the district court relied on this report when it determined that appellants had a debatably meritorious claim. The district court also disregarded appellants' arguments about the effects of COVID and

adjusting to working remotely. We agree with appellants that they commenced this action shortly after pandemic restrictions were enacted and that adjusting to working remotely could impact the speed of civil discovery.

The district court also failed to discuss the parties' joint discovery conference and disregarded the actual discovery deadline in the parties' discovery plan. While the district court is correct that appellants did not serve formal discovery or take depositions, it erred in relying on this finding. Appellants need not undertake any of these forms of discovery. *See* Minn. R. Civ. P. 26.02(a) (stating "[p]arties *may* obtain discovery by one or more" of the listed methods (emphasis added)). Here, the parties allocated ample time to conduct discovery, and the deadline had not yet passed when appellants moved for relief from dismissal.

The district court also clearly erred in its analysis of expert-witness disclosures. The record supports the district court's finding that appellants had made no expert-witness disclosures. If medical-expert testimony is required to prove the permanency of appellants' personal injuries, that requirement must be satisfied if challenged at summary judgment, and disclosure may be required as provided in a stipulation or discovery order. *See, e.g.*, *Marose v. Hennameyer*, 347 N.W.2d 509, 511 (Minn. App. 1984) (affirming summary judgment against plaintiff based on a claim for future medical expenses because defendant submitted contrary evidence, and plaintiff relied on her own affidavit even though she was "not qualified to give her opinion on need for medical care"); *see generally* Minn. R. Civ. P. 26.01(a) (allowing parties to control the timing of expert and other disclosures by stipulation), (b)(4)(A) (providing that expert disclosure is due 90 days before trial in the

absence of a stipulation). Here, the parties' discovery plan did not require the disclosure of expert witnesses until September 1, 2021, months after appellants asked the district court to vacate the dismissal of their complaint.

Because the district court ignored the parties' informal discovery exchange, disregarded the parties' joint discovery conference, and found that appellants fell short for failing to conduct optional discovery and make disclosures even though the deadlines had not yet passed when appellants moved for relief, the record does not support the district court's finding that no "substantial discovery" had taken place. Given that the district court credited appellants' reason for filing late and rejected the second *Finden* factor based solely on its clearly erroneous finding that appellants failed to conduct substantial discovery, we conclude that the district court abused its discretion by concluding appellants did not have a reasonable excuse for failing to timely file their complaint.

Second, we need not reach appellants' argument that the second *Finden* factor does not require "substantial discovery" because we have concluded the district court clearly erred in finding no "substantial discovery" occurred.[2]

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[2] This issue appears to be one of first impression. In *Cole* and *Gams*, the Minnesota Supreme Court reviewed district court decisions on motions to vacate dismissals under rule 5.04. In both cases, the supreme court's factual recitation commented on the parties "actively litigating" the case during the year before the one-year deadline expired. *Cole*, 884 N.W.2d at 636; *Gams*, 884 N.W.2d at 615. Both decisions state that the second *Finden* factor is "fact intensive." *Cole*, 884 N.W.2d at 639; *Gams*, 884 N.W.2d at 620. *Cole* analyzes the second *Finden* factor and does not discuss discovery or active litigation in that context. 884 N.W.2d at 638.

Appellants contend that no precedential caselaw suggests that the second *Finden* factor requires a party to have completed "substantial discovery." Affa relies on two nonprecedential opinions from this court in arguing that the second *Finden* factor includes consideration of the movant's discovery efforts: *Jimenez-Moncayo v. Davis*, No. A20-1218

II. The district court did not abuse its discretion by determining appellants demonstrated a debatable claim on the merits.

To satisfy the first *Finden* factor, "the movant generally must provide 'specific information' that clearly demonstrates the existence of the debatably meritorious claim." *Cole*, 884 N.W.2d at 638 (quoting *Charson*, 419 N.W.2d at 492). "Conclusory allegations in moving papers are ordinarily insufficient." *Id.* We review the district court's determination for an abuse of discretion. *Safeco Ins. Co.*, 946 N.W.2d at 644.

Respondents argue the district court abused its discretion in concluding appellants satisfied the first *Finden* factor because "appellants have not put forth enough evidence to support their conclusory allegations and establish a meritorious claim." We are not persuaded. The district court's conclusion is supported by the motor-vehicle-crash report and emails produced by appellants. As the district court reasoned, these documents show the existence of a "debatably meritorious claim" because they show appellants' "possible injury," Affa's liability for running a red light, the Uber defendants' vicarious liability, and that appellants "have met one of the required tort thresholds." *See* Minn. Stat § 65B.51, subd. 3 (2020). Thus, the district court did not abuse its discretion by determining appellants demonstrated a debatable claim on the merits.

Because appellants established each of the four required *Finden* factors supporting their motion to vacate, the district court abused its discretion in denying their motion, and

(Minn. App. May 10, 2021), and *Curtin v. RS Eden*, No. A19-1205 (Minn. App. May 4, 2020). In both cases, this court affirmed a district court's decision to deny relief from a rule 5.04 dismissal where discovery neglect was one aspect of appellants' failure to satisfy more than one *Finden* requirement.

we reverse and remand to the district court to reopen the case for further proceedings. *See Charson*, 419 N.W.2d at 492 (holding that a district court abused its discretion by denying relief under rule 60.02 when the movant had "met the burden of clearly demonstrating the existence of the four elements of the *Finden* analysis").

Reversed and remanded.