

*This opinion is nonprecedential except as provided by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
A22-0385**

Judith Barnes,
Respondent,

vs.

William Ordus Barnes,
Appellant.

**Filed October 31, 2022
Affirmed
Connolly, Judge**

Kandiyohi County District Court
File No. 34-CV-19-65

Thomas E. Kiernan, Kiernan Personal Injury Attorneys, P.A., Buffalo, Minnesota (for respondent)

William O. Barnes, Brooten, Minnesota (pro se appellant)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant, pro se, challenges the default judgment entered against him in this personal-injury action, arguing that the district court abused its discretion in denying his motion to vacate the default judgment under Minn. R. Civ. P. 60.02 and in determining the amount of the default judgment. Because we see no error in either decision, we affirm.

FACTS

Appellant William Barnes and respondent Judith Barnes were married in 2011. They separated in 2017, following a physical altercation between them. A warrant was issued for appellant, who was charged with felony strangulation and domestic assault.

Respondent filed a petition for the dissolution of the parties' marriage and for an order for protection (OFP) against appellant. In 2018, appellant entered an *Alford*¹ plea to misdemeanor domestic abuse; his adjudication was stayed. Later that year, respondent brought a personal-injury action against appellant, alleging civil assault and tortious battery. In 2019, appellant retained a personal-injury attorney and a family-law attorney from the same firm. In the personal-injury action, appellant filed an answer and counterclaims of assault, battery, conversion, unjust enrichment, and replevin. These attorneys withdrew from their representation of appellant about six months later, because appellant did not pay them. He then retained another attorney to handle both the personal-injury and the dissolution lawsuits.

In 2020, the district court granted respondent's motion to amend the pleadings to allow consideration of a punitive-damages award. The district court also issued an order staying appellant's counterclaims of conversion, unjust enrichment, and replevin (the property counterclaims), pending resolution of the dissolution action. In 2021, appellant's

¹ See *State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977) (relying on *North Carolina v. Alford*, 400 U.S. 25 (1970) to "hold that a trial court may accept a plea of guilty by an accused even though the accused claims he is innocent if the court, on the basis of its interrogation of the accused and its analysis of the factual basis offered in support of the plea, reasonably concludes that there is evidence which would support a jury verdict of guilty and that the plea is voluntarily, knowingly, and understandingly entered").

attorney withdrew because he had not paid her, and in March 2021 he was granted a continuance to seek other counsel. In July 2021, appellant was present, pro se, at a hearing, where the dates of the pre-trial hearing and the jury trial were announced.

Appellant did not attend and was not represented by counsel at either the pretrial hearing in October 2021 or the trial in November 2021. Respondent waived her right to a jury trial. At the bench trial, the district court announced that appellant's evidence would be received through in-person testimony, not affidavits. Respondent testified and offered exhibits.

The parties' marriage was dissolved in December 2021. In January 2022, the district court issued findings of fact, conclusions of law, an order for judgment, and a default judgment in the personal-injury action. Respondent was found to have suffered \$33,979.23 in past treatment expenses, \$75,000 in past wage loss, \$100,000 in past pain and suffering, \$0 in future treatment expenses, \$0 in future wage loss and loss of earning capacity, and \$50,000 in future pain and suffering; she was also awarded \$100,000 in punitive damages. Based on information provided to the district court by respondent, appellant was found to have assets of \$2.3 million as well as a home listed for sale at \$1,350,000, rendering the punitive-damages award commensurate with his assets. Appellant's counterclaims for assault and battery were dismissed as unproven, and judgment in the amount of \$358,979.23 was entered for respondent against appellant.

By letter, appellant submitted a motion to vacate the default judgment and a request for reconsideration that challenged the findings as to his assets. The district court denied both the motion and the request. The district court also issued an order dismissing the

property counterclaims, based on findings that appellant had indicated his property counterclaims were resolved in the dissolution and that he did not wish to pursue them.

Appellant now argues that the district court abused its discretion in denying his motion to vacate the default judgment and in setting the punitive damages award.

DECISION

1. Default Judgment

“This court will not overturn a ruling on a motion to vacate a default judgment unless the district court abused its discretion.” *Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004).

Appellant moved for vacation of the default judgment under Minn. R. Civ. P. 60.02 (a), providing that a showing of “mistake, inadvertence, surprise, or excusable neglect” may be a basis for relief. A party moving to vacate a judgment must show: (1) a reasonable claim on the merits; (2) a reasonable excuse for the party’s failure to act; (3) due diligence after notice of entry of judgment, and (4) the absence of substantial prejudice to the opponent caused by vacating the judgment (the *Finden* factors). *Finden v. Klaas*, 128 N.W.2d 748, 750 (Minn. 1964). The district court found that appellant showed due diligence after the entry of judgment but failed to show any of the other factors.

Appellant argued in his answer to the complaint (although not in his motion to vacate) that he was acting in self-defense during his altercation with respondent.

[Respondent] physically attacked [appellant] and a third party, striking both repeatedly with open hands and closed fists . . . [Respondent] struck [appellant] repeatedly in the upper body, neck, and face with open and closed hands . . . [Appellant] was repeatedly struck by [respondent], and [appellant] attempted to

defend himself and defend the third party from [respondent's] attack.

As to whether appellant could show a reasonable claim on the merits, the district court concluded that appellant's "charges that his physical actions were necessary to protect himself, [and] his friend" were not supported by the photographs and medical records, which rather "support[ed respondent's] version of the assault." The district court also concluded that:

[Appellant] did not act in self-defense during the July 17 battery [of respondent] because he responded disproportionately and was the aggressor during the encounter. [Appellant] grabbing [respondent] by the throat outside in response to her yelling at [appellant's] friend was an unreasonable, unnecessary, and disproportionate response. . . . [Appellant] pursued [respondent] inside and continued his attack on [her]. [He] first grabbed [her] by the arm so that it hurt [her], leaving bruises on her arms as shown in the pictures. [Respondent] struggled to get away and slapped [appellant]. [He] then grabbed [her] by the neck, choked her, and pinned her backwards on the kitchen island so that her back cracked . . . None of these actions by [appellant] were reasonable or necessary to protect himself.

Appellant does not refute the finding that his actions were not self-defense or offer any other support for the view that he would succeed on the merits.

Nor does he offer an excuse for his failure to act. As the district court noted, appellant "alleges that he suffers from personal challenges that have hinder[ed] his organizational skills all his life," but he "does not explain how this made him miss a known pretrial date, [not] open his mail, or [not] check on the status of his case"; moreover, appellant has "not sought any accommodation" for these problems in the past, and the case has been pending for more than two years.

Finally, appellant does not address the prejudice caused to respondent by vacating the default judgment; instead, he asserts that he has “not shown prejudice” to her because he and his former attorney attempted to “negotiate or settle globally” both the dissolution and the personal-injury cases, but respondent and her personal-injury attorney declined to cooperate and their “intentional delays contributed to a substantial part of the ongoing litigious nightmare of both cases.” Respondent’s personal-injury attorney stated that he does not have “the competence to practice family law” and that his contingency-fee agreement would not allow him to participate in the dissolution case. The district court found that “the many delays in this case have been occasion[ed] by [appellant’s] misconduct, request[s], lack of diligence and finally, failure to appear” and that requiring respondent “to testify a second time about the assault [would be] a substantial prejudice” to her.

Because appellant has satisfied only one of the four *Finden* factors, the district court did not abuse its discretion in denying the motion to vacate his default judgment.

2. The Punitive Damages Award

A district court’s decision on whether a damages award is excessive will be disturbed only for a clear abuse of discretion. *Myers v. Hearth Techs., Inc.*, 621 N.W.2d 787, 792 (Minn. App. 2001), *rev. denied* (Minn. Mar. 13, 2001).

Factors to be considered in an award of punitive damages include:

the financial condition of the defendant, . . . the total effect of other punishment likely to be imposed upon the defendant as a result of the misconduct, including compensatory and punitive damage awards to the plaintiff and other similarly situated

persons, and the severity of any criminal penalty to which the defendant may be subject.

Minn. Stat. § 549.20, subd. 3 (2020). In regard to these factors, the district court found:

29. The evidence suggests [appellant] has ample assets to satisfy the imposition of what would be to an average person onerous punitive damages [i.e., \$100,000]. [Appellant's] home was listed for sale for \$1,350,000.00. Additionally, a listing of assets (in [appellant's] own handwriting) totaled more than \$2.3 million dollars in addition to his listed home. Punitive damages sufficient to affect [appellant's] financial comfort should be commensurate with the amount of assets readily available to him.

30. [Appellant] has suffered no other serious punishment. The original felony strangulation charge was ultimately reduced to a misdemeanor and continued for dismissal. There is no criminal record of [its] occurrence. [Appellant] has no risk of other punishment.

31. [Appellant] is under no risk of the imposition of other compensatory or punitive damages to others similarly situated because no others are similarly situated.

32. [Appellant's] deliberate disregard for the rights and safety of [respondent], supported by the clear and convincing evidence, supports the imposition of punitive damages in the amount of \$100,000.00, an amount eminently moderate in light of the compensatory damages and in accordance with constitutional proportionality requirements.

Appellant argues that the information on his home and his other assets was provided to the district court by respondent, that the listing of his home dated from 2009 or 2010 during a housing boom, that a realtor's price history of the home from 2012 to 2021 shows prices ranging from \$875,000 to \$650,000, that the handwritten list of his assets was stolen when his business was vandalized in 2017, and that neither he nor respondent owned many of the items listed as assets. But there is no indication that any of this information was provided to the district court before the judgment, and therefore appellant's arguments are

not properly before us. We may not consider what was not presented to and considered by the district court. *See Thiele v. Stich*, 482 N.W.2d 580, 582 (Minn. 1988). The district court's punitive-damages award was made in light of the record before it at the time and was not an abuse of discretion.

Affirmed.