STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0502

Minnwest Bank,
Respondent,

vs.

Beth Ann Kalass, et al.,
Appellants,

Estate of Henry G Petersen, Decedent, et al.,
Defendants.

Filed December 12, 2022
Reversed and remanded
Smith, Tracy M., Judge

Rock County District Court
File No. 67-CV-20-163

Greg J. Bucher, Stoneberg, Giles & Stroup, P.A., Marshall, Minnesota (for respondent)

Krystal M. Lynne, Stermer & Sellner, Chtd., Montevideo, Minnesota (for appellants)

Considered and decided by Larson, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellants challenge the grant of default judgment in favor of respondent-lender on the lender's claims against appellants under the Minnesota Uniform Voidable Transactions Act, Minn. Stat. §§ 513.41-.51 (2020) (MUVTA). Because we conclude that the district

court abused its discretion in granting default judgment and denying appellants' motion to vacate judgment, we reverse and remand.

FACTS

This case involves real property that decedent Henry G. Petersen conveyed to his daughters, appellants Beth Ann Kalass and Hope Lorraine Schelhaas, via a transfer-on-death deed (TODD).[1] Respondent Minnwest Bank sued Kalass and Schelhaas and their respective spouses, appellants Terry Kalass and Lowell Schelhaas, seeking to void the transfer under the MUVTA.

Respondent loaned Peterson money in exchange for a promissory note signed by Peterson in favor of respondent. Peterson provided respondent with a personal financial statement, dated the same day as the promissory note, which identified amongst his assets the real property at issue here.[2]

In February 2020, respondent brought suit against Peterson, alleging default on the promissory note (loan-dispute litigation). Peterson answered respondent's complaint and contested the debt.

In the beginning of June 2020, while the loan-dispute litigation was pending, Peterson executed and filed a TODD designating his daughters as grantee beneficiaries. On

[1] A TODD is "[a] deed that conveys or assigns an interest in real property[] to a grantee beneficiary and . . . transfers the interest to the grantee beneficiary upon the death of the grantor owner." Minn. Stat. § 507.071, subd. 2 (2020).

[2] There is no allegation that the real property secured the promissory note.

June 7, 2020, Peterson died. As of the events relevant to this appeal, the loan-dispute litigation was ongoing against Peterson's estate.[3]

Soon after Peterson's death, respondent sued appellants, seeking to void the transfer of the property as fraudulent under MUVTA. Respondent filed its complaint on July 1, 2020, and appellants were personally served on July 6, 2020. Respondent's counsel received no answer from appellants, and no answer was filed with the district court.

The same counsel who represented Peterson (and later his estate) in the loan-dispute litigation took on the representation of appellants here. Respondent's counsel also remained the same. From July until September 2020, the parties' counsel engaged in settlement discussions about this case and the case regarding Peterson's alleged debt to respondent. During this time, respondent did not inform appellants or appellants' counsel that respondent had not received an answer to the complaint.

On September 11, 2020, the district court administrator sent a deficiency notice to respondent's counsel indicating there had been no activity since July 9 and inquiring about the case's status. In a letter dated October 12, 2020, respondent's counsel responded that appellants had failed to serve and file an answer to the complaint and that respondent intended to move for default judgment. Neither appellants nor appellants' counsel were copied on this response letter to the district court administrator.

Respondent filed a motion for default judgment on February 19, 2021. On March 1, appellants filed and served their answer, which was dated July 14, 2020. On March 8, 2021,

[3] At oral argument, appellants' counsel stated that trial was set for June 2023.

appellants submitted a response to respondent's motion for default judgment, including an affidavit from appellants' counsel. Appellants' counsel asserted that her file records indicated that the answer had been timely served by mail on July 15, 2020, and she provided her file copy of a signed service letter. Appellants' counsel further asserted that she first learned that respondent had not received an answer when her clients forwarded to her the motion for default judgment and that she then learned the file number and promptly filed the answer. Appellants argued that default judgment was inappropriate because they had timely served an answer or, alternatively, because (1) appellants had reasonable defenses on the merits; (2) appellants had a reasonable excuse for failing to answer; (3) appellants had acted with due diligence; and (4) respondent would not be prejudiced.

Following a hearing on March 22, 2021, the district court granted respondent's motion for default judgment. In its order, the district court found that no answer had been served. The district court did not address appellants' alternative argument that default judgment was nevertheless not appropriate. Judgment was entered against appellants on June 14, 2021.

Appellants filed a motion to vacate the judgment pursuant to Minnesota Rule of Civil Procedure 60.02(a).[4] Appellants again argued the four factors discussed in their response to the motion for default judgment. Appellants' counsel also submitted a second affidavit, describing the bases on which Peterson's debt was being challenged in the loan-dispute litigation, providing more details about the contents of appellants' counsel's case

[4] Appellants also moved for amended findings pursuant to Minnesota Rule of Civil Procedure 52.02, which the district court denied, but that ruling is not at issue here.

file to explain why she believed an answer had been timely served, and attaching correspondence between the parties' counsel from July and August 2020 discussing settlement of this case. Following a hearing, the district court denied appellants' motion to vacate judgment.

This appeal follows.

DECISION

Appellants argue that the district court abused its discretion by granting default judgment against them and denying their motion to vacate judgment.

Scope of Review

As an initial matter, we address a dispute about the scope of our review. Respondent argues that our review is limited to the district court's grant of default judgment and that we may not consider the part of the record related to appellants' later motion to vacate judgment. They base their argument on this court's order clarifying that this appeal is construed to be from the district court's June 14, 2021 judgment.

Respondent confuses the appealability of a judgment with the scope of our review. Minnesota Rule of Civil Appellate Procedure 103.03 identifies the orders or judgments from which appeals to this court may be taken. Relevant here, the rule permits an appeal from a final judgment. Minn. R. Civ. App. P. 103.03(a). But our scope of review is not limited to the appealable judgment. Minnesota Rule of Civil Appellate Procedure 103.04 provides that, on appeal from a judgment, "appellate courts . . . may review any order involving the merits or affecting the judgment." And we have previously held, "[b]ecause a motion to vacate by its nature asks the trial court to reassess its final judgment, an order

denying the motion will, thus, involve the merits or affect the judgment entered." *Bush Terrace Homeowners, Assoc., Inc., v. Ridgeway*, 437 N.W.2d 765, 770 (Minn. App. 1989), *rev. denied* (Minn. June 9, 1989). Thus, both the district court's grant of default judgment and its denial of appellants' motion to vacate judgment are within our scope of review in this appeal.

Standard of Review and Legal Standard

Both the decision to grant default judgment and the decision to open a default judgment lie within the discretion of the district court. *Northland Temps., Inc. v. Turpin*, 744 N.W.2d 398, 402 (Minn. App. 2008), *rev. denied* (Minn. Apr. 29, 2008). A district court abuses its discretion if its ruling relies on "a misapprehension of the law" or if "its factual findings are clearly erroneous." *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016) (quotations omitted).

A party seeking default judgment "generally need do no more than aver that the defendant has failed to timely answer the complaint." *Laymon v. Minn. Premier Props. LLC*, 903 N.W.2d 6, 17-18 (Minn. App. 2017), *aff'd*, 913 N.W.2d 449 (Minn. 2018); *see* Minn. R. Civ. P. 55.01. But denial of a motion for default judgment based on a failure to answer is proper when four requirements are met: the defendant has a reasonable defense on the merits; the defendant has a reasonable excuse for failing to answer; the defendant acted with due diligence after becoming aware of the failure; and denial of the motion will not result in substantial prejudice to other parties. *Coller v. Guardian Angels Roman Cath. Church of Chaska*, 294 N.W.2d 712, 715 (Minn. 1980).

These are the same four requirements—called the *Finden* factors—that a party must establish to obtain relief from a default judgment for "[m]istake, inadvertence, surprise, or excusable neglect" under Minnesota Rule of Civil Procedure 60.02(a).[5] *Northland*, 744 N.W.2d at 402 (citing *Finden v. Klaas*, 128 N.W.2d 748 (Minn. 1964)); *see Coller*, 294 N.W.2d at 715. The moving party bears the burden of establishing all four factors. *Gams*, 884 N.W.2d at 619-20. "[A] district court abuses its discretion when a movant has met the burden of 'clearly demonstrating the existence of the four elements of the *Finden* analysis,' and the court nevertheless denies relief." *Id.* at 620.

Appellants argued that default judgment was inappropriate under the *Finden* factors in both their opposition to the motion for default judgment and their motion to vacate the judgment. Because their arguments were consistent, and the analysis is essentially equivalent for a motion for default judgment and a motion to vacate judgment, we consider, in a single analysis, whether the district court abused its discretion on the record as a whole.

Application of the *Finden* Factors

In denying appellants' motion to vacate the judgment, the district court determined that appellants had acted with due diligence, satisfying the third *Finden* factor, but failed to satisfy the remaining three.

[5] The moving party must establish: "(1) a reasonable defense on the merits; (2) a reasonable excuse for the failure or neglect to answer; (3) acted diligently after notice of entry of the judgment; and (4) demonstrated that no prejudice will occur to the judgment creditor." *Northland*, 744 N.W.2d at 402.

Due Diligence

We can quickly dispose of the dispute concerning the third *Finden* factor. Respondent argues that appellants did not act with due diligence because they were not "very prompt" in serving their answer after learning of the problem when respondent's motion for default judgment was filed. That motion was filed on February 19, 2021. Appellants served and filed their answer on March 1, 2021, and filed a response to the motion a week later. The record supports the district court's determination that appellants acted with due diligence once they learned of their mistake in not serving an answer.

We turn to the district court's determinations regarding the other three *Finden* factors—that appellants had not established a reasonable defense on the merits, that appellants had not established a reasonable excuse for their neglect, and that appellants failed to show there would be no substantial prejudice to respondent.

Reasonable Defense on the Merits

"A reasonable defense on the merits is one that, if established, provides a defense to the plaintiff's claim." *Northland*, 744 N.W.2d at 403. The moving party must provide "specific information" demonstrating the existence of a reasonable defense; "[c]onclusory allegations in moving papers are ordinarily insufficient." *Cole v. Wutzke*, 884 N.W.2d 634, 638 (Minn. 2016).

Appellants argue that they have a reasonable defense on the merits because, for three reasons, the transfer of Peterson's property falls outside MUVTA's scope. Under MUVTA, a creditor may void "[a] transfer made or obligation incurred by a debtor" in certain situations. Minn. Stat. §§ 513.44-.45. "'Transfer' means every mode . . . of disposing of or

parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance." Minn. Stat. § 513.41(16). "'Asset' means property of a debtor, but the term does not include . . . property to the extent it is generally exempt under nonbankruptcy law[.]" Minn. Stat. § 513.41(2). Appellants argue that (1) the property was Peterson's homestead and thus is "generally exempt" property that is not included as an "asset" within the scope of MUVTA, (2) respondent was not Peterson's creditor and thus does not have a MUVTA claim, and (3) a transfer of the real property has yet to even occur. The district court rejected all three arguments.

We conclude that appellants' argument regarding the homestead exemption presents a reasonable defense on the merits, and we thus begin and end our analysis there.[6] Minnesota law gives homesteads certain legal protections from creditors. *See* Minn. Stat. § 510.01 (2020). The district court relied on Minnesota Statutes section 510.06 (2020) to conclude that any homestead exemption for Peterson's property ended with his death. Under section 510.06, "[i]f the owner dies leaving a spouse or minor children constituting the owner's family surviving, the homestead exemption shall not be affected by the death." Because Peterson did not have a surviving spouse or minor children, the district court determined that a homestead exemption could not provide a reasonable defense on the merits to respondent's MUVTA claim.

But Peterson did not simply die, leaving no spouse or minor children. Rather, before his death, he executed a TODD to transfer the real property to his daughters. Under

[6] Although we do not decide whether appellants' other arguments may be reasonable defenses on the merits, appellants are free to bring those defenses when the default is lifted.

Minnesota law, an "owner may sell and convey the homestead without subjecting it . . . to any judgment or debt from which it was exempt in the owner's hands." Minn. Stat. § 510.07. That the transfer of Peterson's real property occurred upon his death rather than during his lifetime is immaterial—the protections of section 510.07, rather than section 510.06, control.[7] As the Minnesota Supreme Court has explained, Minnesota law "jealously protect[s] the rights of homesteaders," even in cases of fraudulent conveyance. *Nw. Holding Co. v. Evanson*, 122 N.W.2d 596, 600 (Minn. 1963) ("Even a conveyance fraudulent as to creditors does not deprive the property of its homestead exemption.").

The district court's conclusion that section 510.06 must apply for the homestead exemption to survive the owner's death in the context of a TODD was a misapprehension of law. And because appellants provided an affidavit claiming that the property was Peterson's residence and thus his homestead, appellants satisfied their burden to provide specific information beyond conclusory allegations in moving papers. The district court

[7] The reasoning follows our reasoning in a nonprecedential decision of this court, *Kesanen v. Strope-Robinson*, No. A18-1060, 2019 WL 510800 (Minn. App. Feb. 11, 2019). In *Kesanen*, the debtor transferred his property to his niece via a TODD. The creditor sought to void the transfer under MUVTA. This court concluded that, "if debtor's property was homestead property at the time of his death, the transfer of his property falls within the protections of section 510.07 and MUVTA does not apply." *Kesanen*, 2019 WL 510800, at *2-3. As this court explained, "[b]esides the lack of authority for excepting a TODD from section 510.07, we cannot see why the full protection of homesteaders' rights under section 510.07 would not apply to debtor's conveyance by a TODD when those rights would have applied had debtor conveyed the property to his niece the day before his death." *Id.* at *3.

abused its discretion by determining that appellants did not establish a reasonable defense on the merits.[8]

Reasonable Excuse for the Neglect

Appellants argue that they had a reasonable excuse for failing to serve an answer because they believed that an answer had been served by mail even if respondent did not receive it. Appellants also highlight that respondent did not inform appellants that no answer had been served despite settlement communications between the parties' counsel.

"[E]ven in those cases where a court has held the neglect of a client's attorney to be inexcusable, if such neglect has been purely that of counsel, ordinarily courts are loath to 'punish' the innocent client for the counsel's neglect." *Cole*, 884 N.W.2d at 638 (quoting *Charson v. Temple Israel*, 419 N.W.2d 488, 491 (Minn. 1988)). But the supreme court has made it clear that "there are no per se rules requiring either the grant or denial of a Rule 60.02(a) motion under the 'reasonable excuse' requirement." *Id.* at 639. Rather, "[t]he 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*, 884 N.W.2d at 620.

Here, the district court determined that appellants and appellants' counsel did not have a reasonable excuse for the neglect. It explained that "with no Affidavit of Service

[8] Whether some or all of the property was in fact Peterson's homestead is a question for the district court. "A reasonable defense on the merits is one that, *if established*, provides a defense to the plaintiff's claim." *Northland*, 744 N.W.2d at 403 (emphasis added); *see also Cole*, 884 N.W.2d at 638 ("[A] debatably meritorious claim is one that, *if established at trial*, presents a cognizable claim for relief." (emphasis added)).

memorializing the sending of the Answer and no specific recollection or such certainties there is little to base the belief that the Answer was previously served on Plaintiff." But, as appellants' counsel explained in an unchallenged affidavit, her office generally makes yellow copies of outgoing letters when mailed. Appellants' counsel had in her file a yellow copy indicating that an answer was served by mail on respondent's attorney within the requisite 21 days. In addition, in the other lawsuit adjudicating Peterson's debt, appellants' counsel had served the answer via mail upon respondent and respondent's counsel without issue. Thus, even if the answer was not in fact served, appellants had timely prepared an answer and had a reasonable basis for believing that it had been served.

The district court also appears to have misinterpreted appellants' contentions about settlement discussions. The district court stated that "a defendant does not 'otherwise defend himself' within the requirements of Rule 55.01 by having telephone conversations with the plaintiff's attorney." A defendant may avoid default judgment by "otherwise defend[ing] within the time allowed" instead of answering. Minn. R. Civ. Pro. 55.01; *Black v. Rimmer*, 700 N.W.2d 521, 525-26 (Minn. App. 2005) (explaining that defendant's "cooperation" with plaintiff "does not satisfy the requirements of 'otherwise defend'"), *rev. dismissed* (Minn. Sept. 28, 2005). But appellants did not assert that they "otherwise defend[ed]" themselves because they engaged in settlement discussions. Rather, they raise the settlement discussions to show that respondent knew they were represented by counsel and did not inform either appellants' counsel or appellants that no answer had been served or that the case had been filed.

The district court explained that "[t]he failure to properly proceed in a case caused by both the attorney and the party may well be considered an insufficient ground for relief." That is true. But the case cited by the district court for this proposition involved a plaintiff who asked for an answer several times and a defendant who did not satisfy two of the other *Finden* factors. *See Kosloski v. Jones*, 203 N.W.2d 401, 402-03 (Minn. 1973) (finding that district court did not abuse its discretion by finding defendant "personally guilty of inexcusable neglect" when plaintiff's attorney contacted defendant's lawyer on "numerous occasions" asking for an answer); *see also Standard Oil Co. v. King*, 55 N.W.2d 710, 712 (Minn. 1952) (explaining that, if defendant had received plaintiff's letter stating that default judgment would occur absent an answer, defendant's excuse would have been unreasonable, but, because there were conflicting affidavits, the district court did not abuse its discretion by finding defendant had a reasonable excuse). Here, respondent did not ask for an answer. In fact, respondent did not copy appellants or appellants' counsel on the response letter to the district court administrator's deficiency notice that asserted appellants' failure to serve and file an answer and respondent's intention to move for default judgment.

Although we are mindful of the deference that we must give the district court, we conclude that it abused its discretion. The failure to serve an answer—if counsel did fail to mail the answer—appears to be solely counsel's mistake. And respondent did not put appellants or appellants' counsel on notice that it had not received an answer, even though the parties' counsel were in settlement discussions, and respondent omitted appellants and appellants' counsel from a communication to the district court that would have alerted them

to the problem. Given these circumstances, we conclude that appellants had a reasonable excuse for the neglect.

Substantial Prejudice

Substantial prejudice does not exist when the only prejudicial effect of vacating a judgment is additional expense and delay. *Cole*, 884 N.W.2d at 639. Rather, "there must be some particular prejudice of such a character that some substantial right or advantage will be lost or endangered if relief is granted." *Id.* (quotation omitted). "[T]he movant bears the burden of demonstrating that the delay resulting from his or her error or omission has not resulted in a real and particular harm to the other party, such as the loss of witnesses or evidence, and that the other party has not otherwise detrimentally relied on the resulting dismissal or judgment." *Id.*

The district court determined that "[appellants] only state conclusory allegations that [respondent] has encountered little to no prejudice from the delay" and that "[t]he court is not satisfied that [appellants] have met their burden of proving there will be no substantial prejudice to [respondent] as they have failed to show that no substantial rights or advantages have not been prejudiced." But the district court did not address appellants' arguments that no action had taken place in the other case challenging Peterson's debt, on which the MUVTA claim is based, and that respondent contributed to the delay by failing to copy appellants and appellants' counsel on the response to the deficiency notice.

Appellants' arguments are persuasive. Respondent waited approximately six months from the end of the window to serve the answer to bring the motion for default judgment. Respondent did not refute that no action had been taken in the loan-dispute

litigation on which the MUVTA claim is based or that that case is ongoing. To claim prejudice, respondent identified only the typical costs and delays associated with litigation. The district court agreed that those costs constituted prejudice without considering whether such prejudice could be alleviated by awarding respondent its costs and attorney fees connected with its motions. *See Valley View, Inc. v. Schutte*, 399 N.W.2d 182, 185-86 (Minn. App. 1987) (holding that defendant made a strong showing that plaintiff would not suffer substantial prejudice where plaintiff could not "cite any prejudice other than the added expense," an action against other defendants was still pending, and defendant offered to file a bond), *rev. denied* (Minn. Mar. 18, 1987). Given the unresolved state of the loan-dispute litigation, as well as respondent's own contributions to the delay in this case, the district court's determination was an abuse of discretion.

On this record, appellants have established (1) a reasonable defense on the merits, (2) a reasonable excuse for the failure to answer, (3) that they acted with due diligence upon learning of the mistake, and (4) that respondent will not be substantially prejudiced. Therefore, the district court abused its discretion in granting respondent default judgment and denying appellants' motion to vacate the judgment. We reverse the district court's decision and remand to open the judgment.

Reversed and remanded.