STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0028

Bradley Lewis, et al.,
Respondents,

vs.

Alpine Homes, Inc.,
Appellant.

Filed October 9, 2023
Reversed; judgment vacated
Hooten, Judge[*]

Wright County District Court
File No. 86-CV-20-261

Janice S. Jude, Jan Jude Law, Milaca, Minnesota (for respondents)

Kenneth H. Bayliss, Franz J. Vancura, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

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

NONPRECEDENTIAL OPINION

HOOTEN, Judge

Appellant Alpine Homes Inc. appeals the district court's denial of its motion to vacate a renewed judgment under Minn. R. Civ. P. 60.02(d), arguing that (1) its motion to vacate was brought within a reasonable time; (2) the initial judgment had expired; (3) it had standing to bring its motion to vacate; and (4) collateral estoppel did not apply. Because Alpine Homes has standing, because the district court misapplied the law in determining that the motion to vacate was untimely and renewing a judgment that had expired, and because collateral estoppel does not apply, we reverse and vacate the renewed judgment.

FACTS

On January 21, 2010, respondents Bradley Lewis, et al., obtained a monetary judgment against Alpine Homes. The judgment was entered and docketed. None of the parties dispute the initial judgment. Respondents assigned their rights in the initial judgment to Family One Homes, Inc. (Family One). In August 2012, Alpine Homes was administratively dissolved. But, in January 2017, Alpine Homes reinstated its business to execute a quitclaim deed to Norin Landing Homeowners Association (Norin Landing) for the transfer of real estate—only to dissolve again in March 2017.

Because Alpine Homes had not satisfied the initial judgment as of January 2020, Family One filed a summons and complaint for a judgment-renewal action against Alpine Homes on January 14, 2020—about one week before the statute of limitations expired for actions on the initial judgment. *See* Minn. Stat. § 541.04 (2022) (stating that actions upon

judgments shall not "be maintained . . . unless begun within ten years after the entry of such judgment"). Family One listed itself as the plaintiff in the action and sent the summons and complaint to Alpine Homes's address via U.S. Mail on that same day. The district court issued a deficiency notice because the caption on the complaint did not match the original judgment caption, which listed the respondents as the plaintiffs. An amended summons and complaint with the corrected caption were sent to Alpine Homes's address again by U.S. Mail on January 21, 2020—the last day before the statute of limitations expired on the initial judgment. But the summons and complaint were returned to sender. Respondents claim that once they realized that Alpine Homes had dissolved, the amended summons and complaint were served on the Minnesota Secretary of State via U.S. Mail on March 26, 2020. But the record contains no affidavit of service on the secretary, and Alpine Homes denies ever receiving service.

The district court issued two more deficiency notices stating that the renewed judgment could not be docketed without an "Affidavit of Identification of Judgment Debtor." Respondents filed an affidavit listing Alpine Homes as the judgment debtor. On May 15, 2020, the district court found Alpine Homes in default and entered and docketed a renewed judgment, thus extending the initial judgment for another ten years. Notice of the entry of the renewed judgment was sent to Alpine Homes and was subsequently returned to sender.

In September 2021, Norin Landing filed a motion to intervene in the judgment-renewal action, seeking relief from the judgment on the ground that it was void for ineffective service of the summons and complaint on Alpine Homes. In March 2022,

the district court denied Norin Landing's motion to intervene on the basis that its motion was untimely. Norin Landing requested reconsideration, but the district court denied its request. Norin Landing did not appeal the denial of its motion to intervene.

In July 2022, after becoming aware of the renewed judgment in May 2022—according to an affidavit from the former CEO of Alpine Homes—Alpine Homes filed a motion to vacate the judgment under Minn. R. Civ. P. 60.02(d). Specifically, Alpine Homes argued that the statute of limitations for renewing the initial judgment had expired and respondents never effectuated service. Respondents countered that (1) Alpine Homes did not have standing to bring the motion because it conveyed its interest in the real property at issue to Norin Landing, (2) Alpine Homes's motion to vacate was untimely because it was not brought within a reasonable time from the date the judgment was renewed, and (3) collateral estoppel barred Alpine Homes from challenging the judgment because the service-of-process issue was already fully litigated in Norin Landing's motion to intervene.

The district court denied Alpine Homes's motion to vacate because it was untimely, and, alternatively, because Alpine Homes lacked standing to bring the motion and was collaterally estopped from having the service-of-process issue decided in light of its decision on Norin Landing's motion-to-intervene. The district court also stated that it had "already addressed the issue of service of process on several occasions." And it concluded that Alpine Homes's motion to vacate was merely "an attempt" by Norin Landing "to relitigate the previous motions challenging the judgment" because Alpine Homes and

Norin Landing were "utilizing the same law firm during this litigation" and "are intimately involved."

Alpine Homes appeals.

DECISION

Alpine Homes argues the district court's determinations that its motion to vacate was untimely, it lacked standing, and collateral estoppel applied were misapprehensions of the law and went against both logic and the facts in the record. It asserts that it had standing as a defendant to challenge renewal of the judgment, its motion to vacate was brought within a reasonable time, the initial judgment had expired, and collateral estoppel does not apply because Norin Landing's motion to intervene did not give Alpine Homes a full and fair opportunity to litigate the effectiveness of service of process.

We address each argument in turn.

I. Alpine Homes has standing.

Alpine Homes asserts that it has standing in the judgment-renewal action because of Minnesota Statutes section 302A.783 (2022), and because Minnesota caselaw does not support that a defendant is prevented from participating in a civil action for lack of standing. We agree.

"Standing is the requirement that a party have a sufficient stake in a justiciable controversy." *Sec. Bank & Tr. Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W.2d 491, 496 (Minn. 2018) (quotation omitted). "A party has standing when (1) the party has suffered an injury-in-fact, or (2) the party is the beneficiary of a legislative enactment granting standing." *Webb Golden Valley, LLC v. State*, 865 N.W.2d 689, 693 (Minn.

2015). "Standing focuses on whether the *plaintiff* is the proper party to bring a particular lawsuit." *Stone v. Invitation Homes, Inc.*, 986 N.W.2d 237, 245 (Minn. App. 2023) (quotation omitted and emphasis added), *rev. granted* (Minn. May 16, 2023). Generally, the existence of standing is reviewed de novo. *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011).

The district court's conclusion that "it is not clear to this court that [Alpine Homes] has sufficient standing in the judgment renewal matter" was error. Alpine Homes is the *defendant* in this matter and the money judgment was entered and docketed against it, so standing is not a proper basis to exclude Alpine Homes from contesting this judgment-renewal action. In fact, Minnesota Statutes section 302A.783 states that "[a]fter a corporation has been dissolved, any of its former officers, directors, or shareholders may assert or defend, in the name of the corporation, any claim by or against the corporation." Moreover, even though Alpine Homes is dissolved and conveyed real estate—to which the judgment was attached—to Norin Landing, that status does not remove Alpine Homes from being reached to satisfy the judgment. *See* Minn. Stat. § 550.02 (2022) (stating that "[w]here a judgment requires the payment of money, or the delivery of real or personal property, it may be enforced in those respects by execution").

Accordingly, the district court's conclusion regarding standing was in error, and Alpine Homes has standing to bring its motion to vacate the judgment.

II. The district court misapplied the law in determining that Alpine Homes's motion to vacate was untimely.

A district court's "decision whether to grant [r]ule 60.02 relief is based on all the surrounding facts of each specific case and is committed to" its sound discretion. *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016). Alpine Homes argues that the district court abused its discretion by denying its motion to vacate for being untimely. Alpine Homes contends that it brought its motion under rule 60.02(d) within a reasonable time—within two months of discovering that a judgment had been entered against it—as prescribed by the rule and Minnesota caselaw.

Under rule 60.02 of the Minnesota Rules of Civil Procedure, district courts may "relieve a party . . . from a final judgment" "[o]n motion and upon such terms as are just" for the following reasons:

> (a) Mistake, inadvertence, surprise, or excusable neglect;
> (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial . . .
> (c) Fraud . . . misrepresentation, or other misconduct of an adverse party;
> (d) *The judgment is void*;
> (e) The judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
> (f) Any other reason for justifying relief from the operation of the judgment.

Minn. R. Civ. P. 60.02 (emphasis added). Motions to vacate for the reasons identified in subparts (a) through (c) must be brought within one year. *Id.*

In *Bode v. Department of Natural Resources*, 612 N.W.2d 862, 870 (Minn. 2000), the Minnesota Supreme Court held that a 60.02(d) motion to vacate must be brought within a reasonable time. "What constitutes a reasonable time varies from case to case and must be determined in each instance from the facts before the court because the very nature of the exercise of discretionary power in cases of this kind is such as to prevent any absolute rule being laid down." *Bode*, 612 N.W.2d at 870 (quotation omitted). The supreme court explained that "a reasonable time must be determined by considering all attendant circumstances" and other relevant factors, with an emphasis on four main factors: (1) intervening rights, (2) loss of proof by or prejudice to the adverse party, (3) the commanding equities of the case, and (4) the general desirability that judgments be final. *Id.*

Here, the initial judgment against Alpine Homes was entered and docketed on January 21, 2010, so the statute of limitations for respondents to commence an action to renew the judgment was January 21, 2020. *See* Minn. Stat. § 541.04. The district court renewed the judgment on May 15, 2020, apparently without proof that respondents had served the summons and complaint on the dissolved corporation within ten years. Then, Alpine Homes brought a motion to vacate under rule 60.02(d) for void judgments in July 2022—about two years from entry of the renewed judgment and about two months from when Alpine Homes claims it discovered the judgment was renewed.

In its order denying the motion to vacate, the district court listed the four *Bode* factors—(1) intervening rights, (2) loss of proof by or prejudice to the adverse party, (3) the commanding equities of the case, and (4) the general desirability that judgments be final—

but did not analyze any of these factors. *See id.* The district court stated that the "unique circumstances" and "the commanding equities" of the case supported its conclusion that Alpine Homes's motion to vacate was untimely. On the record before us, and without the benefit of any specific findings by the district court, we conclude that the district court abused its discretion in determining that the time period here was unreasonable.

In *Bode*, the supreme court held that a motion to vacate under rule 60.02 was untimely for being filed 12 years after the entry of the initial judgment and 18 years after the initial appeal of the judgment because to consider it timely would be "inequitable and contrary to the general desirability that judgments be final . . . after [the opposing party's] reliance over such a lengthy period of time." *Id.* (quotation omitted). The parties in *Bode* took actions in reliance on the judgment for many years before the motion to vacate was brought. *Id.* As a result, *Bode* is distinguishable from this case.

First, Alpine Homes directly attacked renewal of the initial judgment within two years of its entry and within two months from when it claimed to have discovered the renewed judgment. Second, unlike *Bode*, extraordinary circumstances do not exist here. And third, no litigation occurred between respondents and Alpine Homes between the entry of the renewed judgment and Alpine Homes's 60.02(d) motion to vacate. Accordingly, the district court abused its discretion in its application of *Bode* to Alpine Homes's motion to vacate under rule 60.02(d).

Next, other caselaw support that the motion was brought within a reasonable time. In *Sommers v. Thomas*, the Minnesota Supreme Court held that a motion to vacate a judgment under 60.02 was timely when it was brought over a year after judgment was

entered. 88 N.W.2d 191, 196 (Minn. 1958). Likewise, this court held in *Lyon Fin. Servs., Inc. v. Waddill*, that a motion to vacate a judgment filed two years after entry of that judgment was timely because "[d]efault judgments are to be liberally reopened to promote resolution of cases on the merits." 625 N.W.2d 155, 160 (Minn. App. 2001) (quotation omitted), *rev. denied* (Minn. June 19, 2001). This case included a sister judgment in California, and we relied on that sister judgment to conclude that, since the motion to vacate was filed "within two months of the denial of [the] appellant's motion to vacate in California," the motion was timely. *Id.* But it is important to note that none of these cases involve the renewal of a judgment under Minnesota Statutes section 541.04.

Still, respondents rely on the language in *Bode* that, "if a judgment remains indefinitely subject to attack for a defect in jurisdiction, then the principle of finality is compromised," to support that the renewed judgment should remain. *See* 612 N.W.2d at 868 (quotation omitted). We are not persuaded. On this record, vacating the renewed judgment does not compromise the desirability that judgments be final—rather, it enforces it. Unlike *Bode*, this case is not concerning 12 to 18 years passing before challenging an initial judgment. It involves two months to two years before challenging renewal of a judgment.

Furthermore, by applying Minnesota Statutes section 541.04's statute of limitations for judgments, we are also supporting the principle of finality. We are required to enforce the statutes as written. *State v. Enyeart*, 676 N.W.2d 311, 318-19 (Minn. App. 2004) ("Courts have a duty to uphold legislative enactments as reasonably certain when possible and should resort to all acceptable rules of construction to discover a competent and

efficient expression of the legislative will." (quotation omitted)), *rev. denied* (Minn. May 18, 2004). And the legislature, by enacting this statute, intended finality to judgments by creating such a limitation. *See* Minn. Stat. § 645.17(2) (2022) (stating that there is presumption when ascertaining the intention of the legislature that "the legislature intends the entire statute to be effective and certain"). Judgments do not extend for an indefinite period. And parties should not be concerned that an otherwise expired judgment *may* extend past the ten-year period without adherence to procedural requirements. It is the responsibility of the party seeking enforcement of the judgment to properly initiate an action to renew, and if that is not done, the judgment expires and cannot be enforced. Accordingly, we would neither be applying the plain language of the statute nor enforcing the principle of finality if we permitted the district court's extension of the ten-year statute of limitations and allowed renewal of an expired judgment.

In sum, the district court abused its discretion when it ruled that Alpine Homes's motion to vacate the renewed judgment was untimely because it misapplied *Bode*, Minnesota caselaw supports that such motion was brought within a reasonable timeframe, and the finality of judgments should be upheld.

III. Respondents did not properly effectuate service of the judgment-renewal action within ten years, so the district court lacked authority to extend the initial judgment.

Alpine Homes also asserts that respondents failed to effectively serve the judgment-renewal action within the ten-year statute of limitations to renew the initial judgment. "Whether service of process was effective, and personal jurisdiction therefore exists, is a

question of law that [this court] review[s] de novo." *Melillo v. Heitland*, 880 N.W.2d 862, 864 (Minn. 2016) (quotation omitted).

With this de novo standard of review in mind, we look to Minnesota Statutes section 541.04, which states that "[n]o action shall be maintained upon a judgment or decree of a court of the United States, or of any state or territory thereof, unless begun within ten years after the entry of such judgment." This statute is clear and unambiguous. *See In re Individual 35W Bridge Litig.*, 787 N.W.2d 643, 647 (Minn. App. 2010) (explaining that if the text in a statute is clear, this court applies the statute's plain meaning), *aff'd*, 806 N.W.2d 820 (Minn. 2011).

An action begins with personal service of a summons and complaint on the defendant in the action. *See generally* Minn. R. Civ. P. 4. A voluntarily dissolved business entity is served through the secretary of state. Minn. Stat. § 5.25, subd. 3 (2022); *see* Minn. Stat. § 5.25, subd. 5(a)-(b) (2022) (explaining that service must be made on voluntarily dissolved business entities according to subdivision 3). Sending a summons and complaint to a defendant by U.S. Mail does not satisfy service requirements unless the party being served waives personal service of process. *See* Minn. R. Civ. P. 4.05(a)-(b) (stating that a corporation subject to service under rule 4.03 can waive service of a summons in writing that is sent by first-class mail, and if they fail to waive, the delivery of the waiver by U.S. Mail does not count as service); *see also Melillo*, 880 N.W.2d at 864-65 (explaining that service under rule 4.05 does not satisfy the personal-service requirements under rule 4.03, so service by mail is not allowed without the consent of the party to be served).

Because there is no evidentiary support in the record that respondents properly served Alpine Homes with the judgment-renewal summons and complaint within ten years, the renewed judgment is void. *See Zions First Nat. Bank v. World of Fitness, Inc.*, 280 N.W.2d 22, 26 (Minn. 1979) (stating that there is a fundamental policy that a judgment is void absent effective service of process). The initial entry of the judgment was made on January 21, 2010, so respondents had to bring an action to renew the judgment by January 21, 2020. *See* Minn. Stat. § 541.04; *see also Amica Mut. Ins. Co. v. Wartman*, 841 N.W.2d 637, 641 (Minn. App. 2014) (stating that "[i]f no renewal action is brought within that ten-year period, the original judgment lapses, and becomes unenforceable" (quotation omitted)), *rev. denied* (Minn. Mar. 18, 2014). Respondents mailed a summons and complaint to Alpine Homes's address on January 14, 2020, and January 21, 2020, which was ineffective on two counts: (1) there is no record that Alpine Homes waived personal service under rule 4.05 and (2) Alpine Homes, as a dissolved corporation, could only be properly served through the secretary of state. *See* Minn. Stat. § 5.25, subd. 5(b). Respondents, having access to this public record and knowing that the mailed summons and complaint had been returned to sender, should have been aware that Alpine Homes was dissolved and that it had to be served through the secretary of state.

Yet, respondents claim that proper service was made to the Minnesota Secretary of State on March 26, 2020, via U.S. Mail. But there is nothing in the record, such as an affidavit, providing that service of process was effectively made on the secretary of state, and we are confined to the record on appeal. *See Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977) (stating that "[i]t is well settled that an appellate court

may not base its decision on matters outside the record on appeal, and that matters not produced and received in evidence below may not be considered"). And even if this claimed March 26, 2020, mailing effectuated service, it was over two months past the statute of limitations to renew the judgment.

On the undisputed facts in this record, the judgment expired, and the renewal of the expired judgment by the district court was ineffective. Because respondents did not effectuate service on Alpine Homes by January 21, 2020, the initial judgment lapsed two months before respondents allegedly served the secretary of state. When the initial judgment lapsed, the district court lost the authority to renew it. Without any record of proper and timely service, the district court's determination that Alpine Homes was in default, and its ensuing renewal of the expired judgment, was done in error.

Minnesota's caselaw provides a foundation that supports this conclusion. It has long been held that "[a] judgment creditor, who has neglected to exercise reasonable diligence to enforce his judgment until it has expired by statutory limitation, is not entitled to equitable relief to enforce the satisfaction of the extinct judgment." *Dole v. Wilson*, 40 N.W 161, 161 (Minn. 1888). And *Pugsley v. Magerfleisch*, 201 N.W 323, 323-24 (Minn. 1924), held that a judgment entered against a defendant without due service of process is void for want of jurisdiction and will be vacated at any time on reasonable notice. Finally, *DeMars v. Robinson King Floors, Inc.*, held that "[n]either courts nor administrative agencies, in the exercise of their legal or equitable powers, possess the authority to extend or to modify the period of limitation prescribed by statute."

256 N.W.2d 501, 505 (Minn. 1977). Accordingly, the district court misapplied the law by extending the period of limitation prescribed by statute.

Because respondents failed to properly serve Alpine Homes within ten years of the initial judgment, the renewed judgment was void. The district court abused its discretion by misapplying section 541.04's statute of limitations when it renewed an expired judgment.

IV. Collateral estoppel does not apply.

Finally, Alpine Homes argues that the doctrine of collateral estoppel does not bar it from challenging service of process for the judgment-renewal action. Specifically, it asserts that collateral estoppel cannot apply because it did not have a full and fair opportunity to litigate the issue of whether it was properly served within Norin Landing's motion to intervene because the motion to intervene was denied for being untimely. We review this issue de novo. *See Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004) ("Whether collateral estoppel precludes litigation of an issue is a mixed question of law and fact that we review de novo.").

Collateral estoppel does not apply when an issue has not been actually litigated and decided. *In re Tr. Created by Hill*, 499 N.W.2d 475, 484 (Minn. App. 1993), *rev. denied* (Minn. July 15, 1993); *see also Hauschildt*, 686 N.W.2d at 837 (explaining that collateral estoppel cannot apply if the issue was not "necessary and essential to the resulting judgment in that action"). The doctrine of collateral estoppel:

> prevents a party from relitigating issues if (1) the issue is identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party in

> the prior case; and (4) there was a full and fair opportunity to be heard on the issue.

Hill, 499 N.W.2d at 484.

The district court erred when it concluded that collateral estoppel barred Alpine Homes from contesting service of process.[1] The issue of whether respondents effectuated service on Alpine Homes was never decided by the district court. Rather, the district court, in its order denying Norin Landing's motion to intervene, stated that the motion was untimely. It made no conclusions of law on whether service of process by respondents was proper or timely. It included one finding of fact stating that the summons and complaint were "served on Defendant Alpine Homes, Inc. on or about January 21, 2021, via U.S. Mail. Due to the dissolution of Alpine Homes, [Family One Homes] served the Amended Summons and Complaint via U.S. Mail on the Minnesota Secretary of State." But this statement does not provide support that the effectiveness of service of process was actually litigated or decided. And the issue of service of process was not "necessary and essential to the resulting judgment in [the] action" on the motion to intervene. *See Hauschildt*, 686 N.W.2d at 837.[2]

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[1] Specifically, the district court stated the following: "The court has already addressed the issue of service of process on several occasions and has found [Norin Landing's] contentions to be untimely. Through [Alpine Homes], [Norin Landing] is attempting to untimely relitigate a matter which has been previously fully litigated and received a final judgment."

[2] In its reply brief, Alpine Homes argues that the district court should have granted its motion to vacate the judgment because all four *Finden* factors weighed in its favor. *See Finden v. Klaas*, 128 N.W.2d 268, 271 (Minn. 1964). This was in response to respondents arguing that Alpine Homes did not satisfy any of the *Finden* factors. But the *Finden* factors were not argued at the district court, the district court did not address them in its order, and Alpine Homes did not assert them in its principal brief. As such, we do not reach this

Therefore, collateral estoppel does not bar Alpine Homes's motion to vacate on the basis of improper service of process because the district court never decided this issue on the merits. Finally, we are not persuaded by the district court's conclusion that, because Norin Landing and Alpine Homes shared counsel during Norin Landing's motion to intervene and Alpine Homes's motion to vacate, they are in privity.

In sum, the district court erred and abused its discretion when it determined that (1) Alpine Homes did not have standing to bring a motion to vacate under rule 60.02(d), (2) its motion to vacate was untimely, and (3) collateral estoppel barred consideration of the service-of-process argument. And because the district court had no authority to renew the initial judgment after it expired, the renewed judgment is void.

Reversed; judgment vacated.

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argument. *See Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010) (explaining that, generally, issues not raised or argued in appellant's principal brief cannot be raised in a reply brief); *see also Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only those questions previously presented to and considered by the district court). Additionally, the *Finden* factors generally apply to motions to vacate under 60.02(a)—not 60.02(d). *Finden*, 128 N.W.2d at 270-71.