**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A10-1312**

Sally Hakala,
Respondent,

Cambrio Bush, LLC,
Respondent,

vs.

Rozella Boston, et al.,
Appellants.

**Filed March 15, 2011**
**Affirmed**
**Stoneburner, Judge**

Hennepin County District Court
File No. 27CV0922257

Sally Hakala, Hastings, Minnesota (pro se respondent)

Kenneth Hertz, Hertz Law Offices, P.A., Columbia Heights, Minnesota (for respondent Cambrio Bush)

Paul R. Rambow, Michael B. Padden, Rambow Law Firm, P.A., Bloomington, Minnesota (for appellants)

Considered and decided by Wright, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

## U N P U B L I S H E D  O P I N I O N

**STONEBURNER**, Judge

Appellant law firm challenges the district court's denial of a motion to vacate a default judgment holding law firm and two of its clients jointly and severally liable to clients' landlord for past-due rent that law firm had promised to pay landlord from proceeds of clients' personal-injury actions on condition that landlord did not evict clients. Because we conclude that the district court did not abuse its discretion in denying the motion to vacate, we affirm.

## FACTS

Appellant Paul R. Rambow, d/b/a Rambow Law Firm, P.A., (Rambow) represented Rozella Boston and Danae Smith[1] (the clients) in personal-injury actions that arose out of an automobile accident. At all relevant times, the clients were tenants under a written month-to-month residential lease signed by respondent Sally Hakala[2] on behalf of respondent Cambrio Bush, LLC (Hakala).

When the clients fell behind in their $1,000-per-month rent, Rambow made oral promises and, in March 2008, sent letters of protection to Hakala on behalf of each client, stating that Rambow would "pursue payment of all the past rent due and owing as a result

[1] The clients are named appellants in the caption of documents filed in this court, and Rambow's statement of the case asserts that Rambow represents them on appeal. But Rambow makes no factual or legal arguments on behalf of the clients on appeal. To the extent that the clients are, or were intended to be appellants, all arguments for relief on appeal have been waived. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating that issues not briefed on appeal are waived). This opinion addresses only the claims of Rambow.

[2] Hakala is identified in the record only as a member of Cambrio.

of this accident, and we will protect your interests out of any settlement received in these matter(s)." The letters of protection provided that the letters would be valid "as long as your facility does not commence eviction action" against either client. Rambow kept Hakala periodically advised about the status of the personal-injury actions.

When Boston's personal-injury action settled, Rambow issued a check, in an amount not disclosed on the record, payable to Boston and Hakala. Boston refused to endorse the check to Hakala. Because the past-due rent was not paid from the proceeds of Boston's settlement, Hakala initiated an eviction action against the clients. In the eviction proceeding, the housing court determined that the clients owed $16,010 in rent, late fees, and costs. The clients vacated the premises in June 2009. In August 2009, Rambow notified Hakala by letter that the letter of protection for Boston was no longer valid due to the eviction action.

Hakala sued the clients and Rambow, seeking to hold them jointly and severally liable for past-due rent. Hakala simultaneously moved for an order requiring Rambow to deposit with the district court all funds held for the clients. After two failed attempts at personal service on Rambow, Hakala served Rambow through the Minnesota Secretary of State on October 22, 2009.[3] None of the defendants answered the complaint.

In a series of letters between Hakala's attorney and Rambow, beginning on September 17, 2009, Rambow (1) demonstrates awareness of the lawsuit and the motion for deposit of funds; (2) denies that it represents the clients with regard to landlord-tenant

[3] The record does not reflect how or when the clients were served, but service on them is not an issue in this appeal.

matters; (3) acknowledges that allegations against Rambow necessitate Rambow's participation; and (4) seeks a continuance of the motion hearing due to Rambow's inability to attend the motion hearing on October 22, 2009. The motion was not continued, and the district court ordered Rambow to deposit with the district court any funds he was holding for the clients.[4] In compliance with the district court's order on the motion, Rambow deposited $5,848.71 with the district court, representing the funds remaining in trust on behalf of Boston, and Rambow notified the district court that it was not holding any funds for Smith, whose personal-injury claim was still pending.

On February 9, 2010, Hakala served Rambow and the clients with an application for default judgment, affidavit of no answer, affidavit of amount due, affidavit of identification, affidavit of Hakala, proposed findings of fact, conclusions of law and order, and exhibits. The application noticed a default-judgment hearing on February 16, 2010. Hakala served the clients by mail and served Rambow by fax. Rambow denies receiving the documents, but Boston informed Rambow of the default-judgment hearing approximately one hour before it was scheduled to begin. Rambow asserts that it promptly contacted the district court, but was advised that the default-judgment hearing would proceed as scheduled. No one appeared on behalf of the clients or Rambow at the default-judgment hearing. The district court granted default judgment, holding the clients and Rambow jointly and severally liable for past-due rent.

Rambow promptly moved to vacate the judgment, asserting that (1) it acted with due diligence; (2) it had a reasonable defense on the merits; (3) it had a reasonable excuse

[4] The record reflects that the clients appeared pro se at the October 22, 2009 hearing.

for failing to attend the hearing; (4) vacating the judgment would not unfairly prejudice Hakala; and (5) the interests of justice warrant vacating the judgment. The district court denied Rambow's motion to vacate the judgment, and this appeal followed.

## D E C I S I O N

### I. Standard of review

"On review of a motion to vacate a default judgment, this court will not disturb the trial court's decision absent a showing of an abuse of discretion." *Hovelson v. U.S. Swim & Fitness, Inc.*, 450 N.W.2d 137, 140 (Minn. App. 1990), *review denied* (Minn. Mar. 16, 1990).

### II. Bases for vacating a judgment under Rule 60.02(a)

A district court may vacate a final judgment for reasons of "[m]istake, inadvertence, surprise, or excusable neglect." Minn. R. Civ. P. 60.02(a). A Minnesota court deciding whether to grant relief under rule 60.02(a) must apply a four-part test established in *Hinz v. Northland Milk & Ice Cream Co.*, 237 Minn. 28, 53 N.W.2d 454 (1952). The *Hinz* factors require consideration of whether the party seeking relief has (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 substantial prejudice will occur to the judgment creditor. *Hinz*, 237 Minn. at 30, 53 N.W.2d at 456; *see also Northland Temporaries, Inc. v. Turpin*, 744 N.W.2d 398, 402 (Minn. App. 2008) (reaffirming *Hinz* test), *review denied* (Minn. Apr. 29, 2008). "[T]he relative weakness of one of these factors should be balanced against the strong showing

on the other three." *Gelco Corp. v. Crystal Leasing, Inc.*, 396 N.W.2d 672, 674 (Minn. App. 1986).

Rambow argues that the district court erred in determining that Rambow was properly served, has no reasonable excuse for the failure to answer, and has no reasonable defense on the merits.[5]

**A. Failure to answer**

Rambow asserts that it was never served and, for that reason, has a reasonable excuse for its failure to answer Hakala's complaint. But the district court found that, based on evidence in the record, Rambow was properly served through service on the Minnesota Secretary of State. And Rambow does not point to any evidence or provide any legal analysis to counter the evidence of service in the record or to support its conclusory assertion that it was not properly served. Rambow has therefore waived argument on this factor. *See Melina*, 327 N.W.2d at 19 (holding that issues not briefed on appeal are waived); *see also State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (holding that mere assertions not supported by argument or authority are waived unless prejudicial error is obvious on mere inspection).

Even if we addressed this issue, nothing in the record refutes the evidence that Hakala served Rambow through the Minnesota Secretary of State pursuant to Minn. Stat. §§ 5.25 and 302A.901 (2010). The district court plainly did not abuse its discretion by

[5] The district court found that the other two *Hinz* factors—acting diligently and demonstrating that no prejudice will occur—were met in this case, and Hakala does not dispute those findings.

concluding that lack of a reasonable excuse for failure to answer the complaint weighs against vacating the judgment.

**B. Defense on the merits**

"A reasonable defense on the merits is one that, if established, provides a defense to the plaintiff's claim." *Turpin*, 744 N.W.2d at 403. A party seeking to vacate a default judgment must "in good faith, make a showing of facts, which if established will constitute a good defense." *Frontier Lumber & Hardware, Inc. v. Dickey*, 289 Minn. 162, 164, 183 N.W.2d 788, 790 (1971) (quotation omitted); *see also Wiethoff v. Williams*, 413 N.W.2d 533, 536 (Minn. App. 1987) (concluding that appellant failed to show a reasonable defense on the merits when his answer "allege[d] no facts and simply require[d] respondent to prove his case").

Rambow first asserts that it can only be liable to the extent that settlement funds are available, and, because all settlement funds have been disbursed, Rambow cannot be liable. But these assertions do not address Hakala's claim that Rambow failed to fulfill its promise to protect Hakala by paying all past-due rent from the settlement proceeds, including the portion of the proceeds that would typically be paid to Rambow. Disbursement of settlement funds other than to Hakala prior to the eviction does not constitute a reasonable defense to Hakala's claims on the merits.

The only other argument Rambow makes regarding a defense on the merits is that

> [i]t is questionable whether [Hakala] should have pursued this contract dispute as [Rambow] has not only a reasonable defense, but a potential claim against [Hakala] for the time and expenses incurred defending this matter.

> In addition, [Rambow] has reviewed the facts and concluded that fault likely does not rest with [Rambow]. . . .
>
> The facts surrounding this matter cast strong doubt on the conclusion that [the clients] caused this dispute. Moreover, [Rambow] strongly suggests that Hakala caused the contract dispute. In any event, this situation deserves resolution by a fact-finder. To fail to allow this to be heard by a fact-finder would make orderly procedure the end result of this case rather than the administration of justice.

Rambow does not reference affidavits or other evidence to support his assertions. *See Charson v. Temple Israel*, 419 N.W.2d 488, 492 (Minn. 1988) (stating that the reasonable-defense factor is satisfied by specific information that clearly demonstrates the existence of a debatably meritorious claim). Rambow's mere assertions that are not supported by argument or authority are waived unless prejudicial error is obvious on mere inspection. *Modern Recycling, Inc.*, 558 N.W.2d at 772. Even if the argument that Rambow has a reasonable defense on the merits is not waived on appeal due to inadequate briefing, Rambow has failed to assert a reasonable defense. The district court did not abuse its discretion by concluding that this factor weighs against vacating the judgment. Because Rambow failed to establish two of the four *Hinz* factors, we conclude that the district court did not abuse its discretion by denying Rambow's motion to vacate the judgment under rule 60.02(a).

## III. Basis for vacating judgment under Rule 60.02(f)

A party may be relieved from a judgment for "[a]ny other reason justifying relief from the operation of the judgment." Minn. R. Civ. P. 60.02(f). Such relief is appropriate when "the equities weigh heavily in favor of petitioner and clearly require

relief be granted to avoid an unconscionable result." *Wiethoff*, 413 N.W.2d at 536. Minnesota courts are to liberally reopen default judgments to promote the resolution of cases on the merits. *Hinz*, 237 Minn. at 30, 53 N.W.2d at 455–56. Rambow challenges the district court's conclusion that vacating the default judgment is not warranted in the interests of justice.

Rambow's argument that the judgment should be vacated in the interests of justice is based on the assertion that Rambow has a strong defense on the merits of the case. But we have affirmed the district court's rejection of that conclusory assertion, and it fares no better when recast as an argument under rule 60.02(f).

Rambow also asserts that "[t]his is a simple matter of a pro se litigant who was unfamiliar with the law and suffered a fundamental disadvantage in litigation." We disagree.

**Affirmed.**