STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1556

In re the Marriage of:
Kelly Ann Rondeau, petitioner,
Respondent,

vs.

Dal Christian Rondeau,
Appellant.

Filed May 3, 2011
Affirmed
Randall, Judge[*]

Wabasha County District Court
File No. 79-FA-10-92

Kristine L. Dicke, Ryan & Grinde, Ltd., Rochester, Minnesota (for respondent)

Dal Christian Rondeau, Harris, Minnesota (pro se appellant)

Considered and decided by Johnson, Chief Judge; Shumaker, Judge; and Randall, Judge.

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

RANDALL, Judge

Appellant challenges the district court's order denying his motion for relief from a default judgment dissolving his marriage to respondent. We affirm.

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

FACTS

Appellant-husband Dal Rondeau and respondent-wife Kelly Rondeau were married on December 25, 1987. On December 2, 2009, husband was personally served with the summons, petition for dissolution of marriage, and verification.

On December 22, 2009, husband sent wife's attorney the summons, petition, and verification. The summons was marked with handwritten comments such as "Received 12/2/09," "'Timely Response,'" and "your offer to contract is refused." The comments are dated "12/18/2009" and appear to be signed by husband with the words "Grantor/Beneficiary Authorized representative" following the signature. Husband also sent a copy of the parties' application for a marriage license and their marriage certificate. On both documents, the following typed words appear: "Accepted for Assessed Value and Returned in Exchange for Closure and Settlement of this Accounting." The words are dated December 18, 2009, followed by husband's apparent signature and the words "Grantor/Beneficiary Authorized representative."

On January 13, 2010, wife filed the petition for dissolution of marriage with the district court.

On January 22, 2010, husband sent wife's attorney additional documents including: a "Counterclaim in Admiralty," and a copy of the summons, petition for dissolution, affidavit of service, verification, certificate of representation, and confidential information form. The pleadings were all marked with the following language: "Received 1-19-10," "'Timely Response,'" "Accepted for Value exempt from levy," husband's apparent signature dated January 21, 2010, and "Exemption ID No. . . .

Deposit to United States treasury and charge the same to [husband.]" In the "Counterclaim in Admiralty," husband alleged that he entered into a private marriage contract with wife and wife's attorney is interfering with the contract. Husband alleged damages of $100 million.

On March 10, 2010, wife moved for a default judgment arguing that husband "was personally served with the Summons and Petition on December 2, 2009"; "the documents sent to [wife's] attorney do not meet the requirements for a defense pleading"; and "50 days have elapsed since service and husband has not appeared in the action." Both wife and wife's attorney submitted affidavits in support of wife's motion. The record contains an affidavit of service indicating that on March 8, 2010, husband was served by mail with wife's motion, the affidavits in support of the motion, and a notice of intent to proceed to judgment on April 19, 2010.

On March 31, 2010, nearly four months after service and over two months after the case was filed, husband filed an "Answer and Counter-Petition" requesting dissolution of the marriage. Additionally, husband filed an "Answer to motion." In the "Answer to motion," husband argued that he "was never served a Summons from the court . . . with a court file on it"; that he "contacted the court to file an answer and they told me there was no action at that time"; that he tried to resolve the dispute with wife's attorney but was not allowed to speak to her; that he did not believe that he was in default; and that the motion should be denied. Husband submitted a letter addressed to him from the district court dated January 22, 2010, which stated that the court clerk was

returning his paperwork because "there is not a file open in this County." The letter also stated that a case will be opened and the paperwork filed upon receipt of the filing fee.

On April 14, 2010, husband filed another motion requesting that the district court deny wife's motion for default judgment. Husband argued that he tried to answer, but there was no case open and the court sent the answer back. Husband alleged that he "received the first court documents . . . on or around March 22, 2010," he "answered with a counter complaint on March 30, 2010," and therefore he "answered within the proper time." Husband also requested that the district court order wife to answer his "counter complaint."

On April 15, 2010, wife and wife's attorney submitted additional affidavits in support of wife's motion for default judgment addressing the issues raised by husband.

On April 19, 2010, the district court heard arguments regarding wife's motion for default judgment.[1] Both parties appeared.[2] In an order filed on April 21, 2010, the district court concluded that husband was in default because husband was personally served with the summons and petition for dissolution on December 2, 2009; husband failed to answer the petition and, thus, made no appearance; more than 50 days had passed since service of the summons and petition for dissolution; and husband was served with the notice of intent to proceed with judgment. The district court therefore dissolved

[1] The transcript from this hearing is not in the record. In an order dated December 27, 2010, this court ordered that this appeal will proceed without the April 19, 2010 transcript.

[2] The district court's order states that husband "was/was not present." But the minutes indicate that husband was present. And wife concedes that husband was present on page three of her brief stating "[t]he [d]istrict [c]ourt heard *both* parties' arguments at the motion hearing." (Emphasis added.)

the marriage. The court awarded wife the parties' real property in Arizona, timeshare property in Onamia, Minnesota, and timeshare property in Arizona, all of which were purchased on credit in wife's name.

On May 24, 2010, husband moved the district court for "Modification of decree and new trial." Husband requested that the court modify the default judgment by awarding him the Arizona property and the two timeshare properties. Husband argued that he was not evading service as wife claimed. Husband also argued that wife misrepresented in her affidavit that money from a 401k was used to pay house payments because she was writing large checks out to her father.

On July 6, 2010, the district court held a hearing regarding whether the dissolution should be reopened. Wife responded to husband's allegation as follows:

> "Actually, the 401k was cashed out in January of 2006, which was prior to the house being into foreclosure. [Husband] had cashed off his IRAs, and we cashed off our joint stocks in 2007 to save the house from foreclosure the first time. The $10,000 check that he had mentioned in his motion, . . . belonged to my dad to pay for taxes. That came from my 401k prior to the house being in foreclosure. We had a couple of checks that I wrote out from our home equity line of credit that went to the business to help pay for—they were supposed to be short term loans for my dad's business for payroll. Those were prior to the house going into foreclosure. Those were written in 2005. And, now the business is closed. And I noticed that he had mentioned a check for $20,000. That one . . . I'm honestly not aware of. I don't know. I don't remember.

On July 7, 2010, the district court denied husband's motion to reopen the dissolution file. This appeal follows.

D E C I S I O N

Jurisdiction

Husband argues that a "question of jurisdiction over the property located in AZ or parties involved" exists under Minn. R. Civ. P. 12.02(a). In the context of marriage dissolution, the Minnesota Supreme Court has stated:

> [T]he fact that real estate is situated beyond the jurisdiction of the court does not prevent it from acting in personam, and commanding, with reference thereto, its own citizens, of whom it has jurisdiction, whenever it is necessary to enable the court to do justice between the parties before it. It may in such cases compel a conveyance of real estate situated in another state.

Pavelka v. Pavelka, 116 Minn. 75, 78, 133 N.W. 176, 177 (1911); *see also Thompson v. Nesheim*, 280 Minn. 407, 421, 159 N.W.2d 910, 920 (1968) (holding that the district court had jurisdiction to determine the ownership and interest in farmland located in the state of Iowa). Husband's subject-matter-jurisdiction argument therefore lacks merit.

Husband's personal-jurisdiction argument also fails. Husband failed to challenge the district court's personal jurisdiction over him until this appeal. Husband therefore waived this defense. *See Reed v. Albaaj*, 723 N.W.2d 50, 56 (Minn. App. 2006). Moreover, husband was personally served in Minnesota and had an address in Minnesota throughout the proceedings in district court.

Motion for Relief from Default Judgment

A dissolution decree is final when entered, subject to the right to appeal. Minn. Stat. § 518.145, subd. 1 (2010). "The appropriate method to seek review of a default judgment in a marriage dissolution proceeding is to move the trial court for relief under

Minn. Stat. § 518.145." *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 493 (Minn. App. 1995). The court may relieve a party from a judgment and decree due to, among other grounds, excusable neglect or fraud. Minn. Stat. § 518.145, subd. 2(1), (3) (2010). The party seeking relief from a judgment bears the burden of proof. *Haefele v. Haefele*, 621 N.W.2d 758, 765 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001). This court reviews the district court's decision on a motion to reopen a judgment for an abuse of discretion. *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996).

Fraud

Husband argues that wife misrepresented in her affidavit that money from a 401k was used to pay house payments because she actually used the money to write large checks out to her father. Husband also argues that wife misrepresented the value of the Arizona property.

"[A] motion to reopen a dissolution judgment for fraud requires the moving party to meet a lesser threshold than that required to reopen a judgment for fraud on the court." *Doering v. Doering*, 629 N.W.2d 124, 129 (Minn. App. 2001), *review denied* (Minn. Sept. 11, 2001). Ordinary fraud in the context of a dissolution does not require intentional misrepresentation or nondisclosure; rather, "failure of a party . . . to make a full and complete disclosure constitutes sufficient reason to reopen the dissolution judgment." *Id.* at 129.

In his motion to reopen the dissolution judgment, husband contended that he was defrauded by wife's failure to make full and complete disclosure of the assets. "[T]he appropriate legal standard is ordinary fraud." *Id.* at 130. By denying husband's motion

to reopen the judgment, the district court implicitly concluded that husband failed to show ordinary fraud. *See Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949) (stating that appellate courts cannot assume district court error); *Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999) (applying *Loth*).

The record contains no evidence that wife misrepresented the value of the Arizona property. Regarding the 401k, husband submitted a check to the district court at the hearing. The check is not part of the record, but is presumably the check marked Ex. A in husband's reply brief. The $10,000 check is payable to Spartan Protection, signed by wife, and designated as a "Loan for tax." Wife stated that the money came from her 401k, which was cashed out before the house went into foreclosure. Wife stated that husband's IRAs and their joint stock were the assets cashed in 2007 to pay house payments. The record contains no evidence of when the house went into foreclosure, how much money was in these various accounts, or how much money was used for house payments. Based on this record, the district court did not abuse its discretion by concluding that husband failed to show fraud.

Excusable Neglect

Though not explicitly stated, husband seems to raise an issue regarding excusable neglect. Husband makes multiple references to his attempts to timely answer the petition by responding to wife's attorney within the proper timeframe and later contacting the district court.

As an initial matter, husband did not raise this issue in his motion for relief. The issue is therefore waived. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that this court will not consider matters not argued and considered in the court below).

Husband's argument also lacks merit. The Minnesota courts have not interpreted section 518.145, subdivision 2(1), but the language of its operative provision is identical to Minn. R. Civ. P. 60.02(a). Rule 60.02 does not apply to dissolution proceedings. *See Lindsey v. Lindsey*, 388 N.W.2d 713, 716 n.1 (Minn. 1986) (stating that the district courts "lack jurisdiction" under rule 60.02 to reopen dissolution judgments); *see also Maranda v. Maranda*, 449 N.W.2d 158, 164 n.1 (Minn. 1989) (stating that motions to vacate a district court's ruling in a dissolution case should be made under Minn. Stat. § 518.145, subd. 2, not rule 60.02). But cases citing rule 60.02 have been used when applying Minn. Stat. § 518.145, subd. 2. *See, e.g.*, *Peterson v. Eishen*, 512 N.W.2d 338, 341 (Minn. 1994) (applying precedent interpreting rule 60.02(d) in construing functionally identical language in section 518.145, subdivision 2(4)), *superseded by rule on other grounds*, Minn. R. Civ. P. 12.02, *as recognized in Federal-Hoffman, Inc. v. Fackler*, 549 N.W.2d 93, 95 (Minn. app. 1996), *review denied* (Minn. Aug. 20, 1996).

To qualify for relief from a default judgment under rule 60.02, the moving party has the burden of demonstrating: (1) a reasonable defense on the merits; (2) a reasonable excuse for failure or neglect to act; (3) due diligence after notice of entry of judgment; and (4) absence of substantial prejudice to the opponent. *Finden v. Klaas*, 268 Minn. 268, 270-71, 128 N.W.2d 748, 750 (1964). All four *Finden* factors "must be proven, but

a weak showing on one factor may be offset by a strong showing on the others." *Reid v. Strodtman*, 631 N.W.2d 414, 419 (Minn. App. 2001).

Because Minn. Stat. § 518.145, subd. 2(1) was not argued to the district court, the district court did not explicitly address the factors that would permit the default judgment to be reopened due to excusable neglect. Because the district court did not specifically apply the *Finden* test, this court may address the factors de novo. *See Charson v. Temple Israel*, 419 N.W.2d 488, 491–92 (Minn. 1988) (analyzing *Finden* factors de novo when district court failed to apply test).

Reasonable Defense on the Merits

Though unclear, husband's defense on the merits appears to be that he should be awarded the real property in Arizona and the two timeshares instead of wife. Under Minnesota's marriage-dissolution laws, all marital property is subject to an equitable—though not necessarily equal—division between the former spouses. Minn. Stat. § 518.58, subd. 1 (2010); *White v. White*, 521 N.W.2d 874, 878 (Minn. App. 1994). Many factors are considered in determining how to equitably divide marital assets and debt. Minn. Stat. § 518.58, subd. 1. The court is required to consider "the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, opportunity for future acquisition of capital assets, and income of each party." *Id.* The court is also required to "consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker." *Id.*

The district court awarded wife the undeveloped Arizona property that wife valued at $3,000.[3] Wife stated that she has attempted to keep up the taxes on the property. The district court also awarded wife the parties' two timeshare properties. Wife stated that she was unable to keep up with the maintenance fees on either property. Wife also stated that she purchased the three properties in her name on credit. Husband provided no information regarding the value of any of the properties except stating in his counter-petition that the "[a]mount owed may exceed value." Based on these facts, husband does not have a meritorious claim that he should be awarded these near valueless properties with delinquent fees and taxes.

Reasonable Excuse

"Neglect of the party itself which leads to entry of a default judgment is inexcusable, and such neglect is a proper ground for refusing to reopen a judgment." *Black v. Rimmer*, 700 N.W.2d 521, 527 (Minn. App. 2005) (quotation omitted).

Husband argues that he responded to wife's attorney within the proper timeframe and when he contacted the district court, someone told him there was no open file. Husband attempts to excuse his failure to properly respond on his lack of legal training arguing that he "did not know how to proceed with the case."[4]

[3] Husband's assertion that the Arizona property is worth $6,800 is not supported by the record.

[4] As noted above, the record does not contain the transcript from the default hearing, so it is unclear what specific arguments were made. But none of the documents husband filed indicate that he attempted to obtain an attorney or that he was not represented because he could not afford an attorney.

"Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Upon receipt of a petition for dissolution of marriage, a respondent has 30 days to answer the petition. Minn. Stat. § 518.12 (2010). When responding to pleadings "[a] party shall state in short and plain terms any defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies." Minn. R. Civ. P. 8.02. "Each averment of a pleading shall be simple, concise, and direct." Minn. R. Civ. P. 8.05(a). Each pleading is required to include a caption stating the county name, title of the action, case type, and other particulars. Minn. R. Civ. P 10.01. "If the respondent does not appear after service duly made and proved, the court may hear and determine the proceeding as a default matter." Minn. Stat. § 518.13, subd. 1 (2010). "A party appears when that party serves or files any paper in the proceeding." Minn. R. Civ. P. 5.01.

Husband was served with the summons and petition on December 2, 2009. Husband was therefore required to answer by January 2, 2010. Husband states that he answered the summons on December 19, 2009, which was within the proper timeframe. Husband's "answer" consisted of the summons, the petition, the verification, the parties' marriage license application, and the parties' marriage certificate. The summons contained a handwritten note stating that "your offer to contract is refused." The marriage application and certificate both contained the typed words "Accepted for Assessed Value and Returned in Exchange For Closure and Settlement of this

Accounting." The district court concluded that husband failed to answer the petition within 30 days.

We note that the district court could have concluded that the documents husband sent to wife's attorney constituted a sufficient response and proceeded to trial. But examining the record under our standard of review, we cannot say that the district court erred by concluding that husband's response was not a sufficient answer.

Wife then filed the petition on January 13, 2010. On or around January 22, husband again returned the pleadings to wife's attorney with nonresponsive and unintelligible handwritten notes. Husband also sent a counterclaim in admiralty claiming $100 million damages caused by wife's attorney's interference with his private marriage contract. Husband attempted to file documents with the court, but the court returned the documents because he had not yet paid the filing fee. Husband did not file anything until March 31, 2010, nearly four months after service and over two months after the case was filed. Husband therefore failed to appear, and the district court did not err by proceeding to default under Minn. Stat. § 518.13, subd. 1. We conclude that husband did not have a reasonable excuse.

Due Diligence

Husband acted with due diligence after notice of entry of judgment by filing his motion to reopen within four weeks of filing of the default judgment and well before expiration of the one-year time period for filing the motion. *See* Minn. Stat. § 518.145, subd. 2 (stating that motion for excusable neglect must be made within a reasonable time

and not more than one year after the judgment and decree was entered); Minn. R. Civ. P. 60.02.

Substantial Prejudice

If the order denying husband's motion to reopen were to be reversed and remanded, wife would not likely be substantially prejudiced. Nothing indicates that wife would suffer any prejudice other than delay and added expense. When the only prejudicial effect of vacating a judgment is delay and added expense of litigation, substantial prejudice of the kind sufficient to prevent reopening a judgment is not established. *Finden*, 268 Minn. at 272, 128 N.W.2d at 751.

Because husband cannot meet two of the *Finden* factors, the district court did not abuse its discretion by denying husband's motion to reopen the default judgment.

Affirmed.