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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-376**

Edward B. Chapman, et al.,
Respondents,

vs.

Renee C. Burton, et al.,
Appellants,
Kristopher C. Howard, et al.,
Defendants.

**Filed October 11, 2011
Affirmed
Stoneburner, Judge**

Washington County District Court
File No. 82CV091491

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Considered and decided by Kalitowski, Presiding Judge; Klaphake, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellants challenge denial of their motion to vacate a default summary judgment, arguing that (1) the judgment is void for lack of personal jurisdiction; (2) their failure to

participate in the action was due to excusable neglect; and (3) vacation of the judgment is necessary as a matter of equity to avoid an unconscionable result. We affirm.

FACTS

In October 2006, defendant Kristopher C. Howard, acting through defendant Mortgage Financing Planners, LLC (MFP), solicited appellant Renee C. Burton, wife of appellant Samuel E. Burton, North Carolina residents, to have the Burtons invest in Minnesota real property owned by respondents Edward B. and Gail A. Chapman. The Chapmans had sought Howard's assistance in preventing foreclosure of the Chapmans' residence and preserving the Chapmans' \$215,510 equity in the residence. Howard structured all transactions related to the proposed investment and prepared all of the documents involved in the transactions.

At the end of October 2006, Renee Burton executed a purchase agreement providing for the Chapmans to convey their home to the Burtons for \$571,500.¹ On the same day, the Chapmans and the Burtons entered into an agreement providing that, at the closing on the sale, the Chapmans would sign over their equity in the home to MFP and simultaneously repurchase their home from the Burtons for \$410,000 on a contract for deed with \$3,550.97 monthly payments, payable to "Wells Fargo Bank Loan #157651373." The Chapmans understood that the Burtons would obtain a \$410,000 mortgage on the property from Wells Fargo Bank to finance the Burtons' purchase, and the Chapmans' payments would be used to pay off this mortgage. Unbeknownst to the Chapmans, the loan and mortgage that Howard arranged between a Minnesota branch of

¹ Samuel Burton did not sign the purchase agreement.

Wells Fargo Bank and the Burtons was in the amount of \$514,350, not \$410,000 as represented to the Chapmans.

The Burtons assert that they signed all of the documents involved in the transactions in North Carolina, but the purchase agreement states that both parties signed it on October 30, 2006, and the signatures of all parties on the contract for deed are dated January 31, 2007, and witnessed by a Minnesota notary. Nonetheless, for purposes of default judgment, the district court accepted the Burtons' assertion that they signed the documents in North Carolina and did not travel to Minnesota.

At closing of the sale to Burtons, the Settlement Statement given to the Chapmans reflected the Burtons' tender of \$571,500 but did not reflect the Burtons' mortgage on the property. The Chapmans endorsed a check for their equity in the residence to MFP.

The Chapmans made payments on the contract for deed until the fall of 2007, when they learned that the mortgage debt was \$546,821.56 because the original mortgage was for \$514,350, and their payments had not been applied to the mortgage. The Burtons refused to pay the difference between the mortgage balance and the contract for deed price. The Chapmans sold the property in September 2007 but had to pay off the mortgage to do so.

In March 2009, the Chapmans sued the Burtons, Howard, MFP, Wells Fargo Bank, and Burnet Title,² asserting 12 claims arising out of what the Chapmans characterize as an "equity-stripping scheme." The Burtons were personally served in North Carolina. Renee and Samuel Burton each sent letters to the Chapmans' attorney,

² Wells Fargo Bank and Burnet Title were subsequently dismissed from the action.

but did not answer the complaint. Howard was also personally served and wrote to the Chapmans' attorney on his behalf and on behalf of MFP, but neither Howard nor MFP answered the complaint. The Burtons, Howard, and MFP failed to respond to discovery. The Chapmans moved for summary judgment on all counts. Neither the Burtons nor Howard, nor MFP responded to the motion or appeared at the hearing. On July 14, 2010, the district court entered judgment in favor of the Chapmans, awarding \$388,934.10, for which Howard, MFP, and the Burtons are jointly and severally liable.

On August 18, 2010, the Chapmans served a garnishment summons on Wells Fargo Bank and the Burtons. On September 7, 2010, the Burtons claimed that their money, held by Wells Fargo Bank, is exempt. On September 21, 2010, the Chapmans filed a Creditor's Notice of Objection and Notice of Hearing on Exemption Claim, noticing a hearing for September 22, 2010. The Burtons appeared at the hearing through counsel and informed the district court that they intended to move to vacate the judgment in addition to claiming that the funds are exempt.

On October 15, 2010, the Burtons moved to vacate the judgment under Minn. R. Civ. P. 60.02, asserting lack of personal jurisdiction, excusable neglect, and that vacation of the judgment was necessary to avoid an unconscionable result. The district court denied the Burtons' motion to vacate but granted their exemption claim to all but \$5,083.96 of their funds held by Wells Fargo Bank. The Burtons now appeal denial of their motion to vacate the judgment.

DECISION

I. The district court did not err by concluding that it had personal jurisdiction over the Burtons.

The Burtons claim that the judgment is void for lack of personal jurisdiction and that the district court erred as a matter of law by failing to vacate the judgment under Minn. R. Civ. P. 60.02(d). Whether personal jurisdiction exists is a question of law, which an appellate court reviews de novo. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004).

Minnesota's "long-arm" statute provides, in relevant part, that

[a]s to a cause of action arising from any acts enumerated in this subdivision, a court of this state . . . may exercise personal jurisdiction over any . . . nonresident individual . . . in the same manner as if . . . the individual were a resident of this state. This section applies if . . . the . . . nonresident individual:

.....

(2) transacts any business within the state

Minn. Stat. § 543.19, subd. 1 (2010). "Minnesota's long-arm statute and the federal Due Process Clause are co-extensive, meaning that if the federal constitution's due process requirements are met, the long-arm statute's requirements are also satisfied. Minnesota courts therefore may simply apply federal law to ascertain whether personal jurisdiction exists." *JL Schwieters Const., Inc. v. Goldridge Const., Inc.*, 788 N.W.2d 529, 534 (Minn. App. 2010) (citation omitted). Minnesota's jurisdiction over out-of-state defendants extends to the full extent of constitutional due process, and any doubts should be resolved in favor of retaining jurisdiction. *Hardrives, Inc. v. City of La Crosse*, 307 Minn. 290, 296, 240 N.W.2d 814, 818 (1976).

“For personal jurisdiction over a defendant to exist, the defendant’s contact with the forum state must be sufficient to ensure that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.” *Schwieters*, 788 N.W.2d at 534 (quotation omitted). The defendant must have “purposefully avail[ed] [him]self of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.” *Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 674 (Minn. App. 2000) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958)). Due process requires that a defendant be able to “reasonably anticipate” the exercise of personal jurisdiction. *Id.*

Personal jurisdiction may be established by general or specific contact. General personal jurisdiction exists when a party’s contacts with the forum state are “continuous and systematic.” *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 30 (Minn. 1995) (quotation omitted). Specific jurisdiction exists when the alleged injury arises out of or relates to the nature of the defendant’s contact with the forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182 (1985). In their briefing on appeal, the parties appeared to agree with the district court that this case involves specific jurisdiction, but, at oral argument on appeal, the Chapmans asserted that, due to the number of transactions in Minnesota, which included the purchase, sale and mortgaging of real property, and due to the Burtons’ ongoing status as contract-for-deed vendees of Minnesota property, personal jurisdiction is established by the Burtons general contacts with Minnesota. There may be merit in the Chapmans’ assertion, but because the parties

briefed specific jurisdiction, as analyzed by the district court, our analysis focuses on specific jurisdiction.

To determine whether the exercise of personal jurisdiction is proper, Minnesota applies a five-factor test that considers (1) the quantity of contacts between the nonresident defendant and the forum state; (2) the nature and quality of the contacts; (3) the source and connection of the cause of action with these contacts; (4) the state's interest in providing a forum; and (5) the convenience of the parties. *Id.* The first three factors determine whether minimum contacts exist, and the last two determine whether the exercise of jurisdiction is reasonable, that is, whether it comports with traditional notions of fair play and substantial justice. *Juelich*, 682 N.W.2d at 570. “The first three factors carry the most weight in the court’s overall personal-jurisdiction determination.” *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 536 (Minn. App. 2009). The greater the showing on minimum contacts, the less a showing of reasonableness is needed. *Juelich*, 682 N.W.2d at 570–71. But a strong showing of reasonableness may fortify a borderline showing of minimum contacts. *Id.*

A. Quantity of contacts

This case arose out of contacts related to real estate transactions in which the Burtons bought property situated in Minnesota from Minnesota residents and conveyed the property back to the Minnesota residents under a contract for deed subject to a mortgage obtained in Minnesota. The Burtons assert that their contact with Minnesota involved only a single, isolated transaction, and, therefore, could not be the basis for a finding of personal jurisdiction. But “specific jurisdiction can arise from a single contact

with the forum if the cause of action arose out of that contact.” *Marshall*, 610 N.W.2d at 674. Here, the Burton’s contact with the forum unquestionably gave rise to the instant cause of action. When a nonresident has had only a single contact with Minnesota, “the nature and quality of the contact becomes dispositive” in determining personal jurisdiction. *Marquette Nat’l Bank of Minneapolis v. Norris*, 270 N.W.2d at 290, 295 (Minn. 1978).

B. Nature and quality of contacts

In cases involving contract disputes, “the contract must have a substantial connection with the state.” *Dent-Air, Inc. v. Beech Mountain Air Service, Inc.*, 332 N.W.2d 904, 907 (Minn. 1983). As stated above, the contract in this case has a substantial connection with the state.

In determining personal jurisdiction, Minnesota courts ask “whether the nonresidents ‘purposefully availed’ themselves of the benefits and protections of Minnesota law,” or whether instead “the defendant was brought into contact incidentally through the unilateral activity of the plaintiff.” *Dent-Air*, 332 N.W.2d at 907. The foreseeability critical to due process turns on whether the defendant would reasonably anticipate being haled into court in the forum. *Burger King Corp.*, 471 U.S. at 474, 105 S. Ct. at 2183. In this case, the Burtons purposefully availed themselves of the benefits and protection of Minnesota law when they voluntarily purchased, mortgaged and sold property in Minnesota. The purchase agreement and contract for deed explicitly provide that Minnesota statutes govern some aspects of the agreements. The closing occurred in Minnesota and the Burtons do not dispute that the overall transaction to buy the property,

the real estate itself, and the mortgage obtained were governed by Minnesota law. Under these circumstances, the Burtons should have reasonably anticipated that if these transactions generated litigation, they could be haled into a Minnesota court with regard to that those transactions.

And as stated above, the quality of the Burtons contacts with Minnesota specifically relate to the cause of action giving rise to the instant case; they were sued under the very contract asserted as the basis for personal jurisdiction. This fact supports a finding of personal jurisdiction over the Burtons, because but for their contact with the forum, there would be no cause of action. *Marshall*, 610 N.W.2d at 674. The nature and quality of the Burtons contact support a finding of personal jurisdiction.

But the Burtons argue that the nature of their contact with Minnesota does not support a finding of personal jurisdiction because they did not initiate or induce the transaction. Minnesota courts have found that the party challenging jurisdiction is subject to personal jurisdiction when that party is the “aggressor” in the transaction giving rise to the cause of action. *Viking Eng’g & Dev., Inc. v. R.S.B. Enters., Inc.*, 608 N.W.2d 166, 169 (Minn. App. 2000), *review denied* (Minn. May 23, 2000). The Burtons argue that the determination of which party is the “aggressor-party” can be conclusive, particularly when the contact is a single sale. *See KSTP-FM, LLC v. Specialized Commc’ns, Inc.*, 602 N.W.2d 919, 924 (Minn. App. 1999) (stating that “[a] crucial factor in determining whether a single sale suffices to justify personal jurisdiction is whether the nonresident in some way solicited the sale or actively engaged in negotiating its terms”).

A nonresident party is not subject to jurisdiction when the resident party was the “dominant party,” who solicited the business of the nonresident, controlled the details of the transaction, and conducted the transaction at the nonresident’s location. *Dent-Air*, 332 N.W.2d at 906. Here, the Burtons argue that they did not solicit the transaction giving rise to this action. But, as the supreme court found in *Viking*, a nonresident’s eager participation in a business transaction may be equivalent to acting as the “aggressor” in analyzing contacts for purposes of personal jurisdiction. *Viking*, 608 N.W.2d at 170. The Burtons demonstrated an eagerness to enter into the transaction: they (1) cooperated in obtaining the required financing in Minnesota; (2) signed the necessary agreements; and (3) granted power of attorney to Renee Burton’s sister, a Minnesota resident, to enable her to attend the closing on the Burtons’ behalf. We conclude that there is no merit to the Burtons’ assertion that they were not the aggressor because, as in *Viking*, the Burtons’ actions are the equivalent of acting as the aggressor in this transaction. Even if they did not initiate the contact, the evidence supports the district court’s determination that the Burtons purposefully availed themselves of the benefits and protections of Minnesota law.

The Burtons also assert that “a choice of law provision [in a contract] is not a qualitative factor” to be considered in this case. *See Dent-Air*, 332 N.W.2d at 908 (stating that a “choice-of-law clause is not sufficient to confer jurisdiction”). While the assertion is correct, the argument is not relevant in this case because the district court plainly did not consider any choice-of-law provisions and the Chapmans do not assert that a choice-of-law provision confers jurisdiction.

Lastly, the Burtons, citing Howard's role in the transaction, liken this case to *Schuck v. Champs Food Sys., Ltd.*, 424 N.W.2d 567 (Minn. App. 1988), and *Bellboy Seafood Corp. v. Ken Trading Corp.*, 484 N.W.2d 796 (Minn. 1992). In both cases, defendants' contacts with the forum were held insufficient to permit the exercise of personal jurisdiction over the defendants. *Schuck*, 424 N.W.2d at 568; *Bellboy*, 484 N.W.2d at 797. But each case is factually distinguishable from this case.

The contacts addressed in *Schuck* resulted from the unilateral activity of another party. *Schuck*, 570 N.W.2d at 570. A contact with the forum state is insufficient to support personal jurisdiction if it resulted from the "unilateral activity of another party or third person." *Burger King*, 471 U.S. at 475, 105 S. Ct. at 2183 (quotation omitted). In the instant case, the transaction did not result from Howard's unilateral activity. The Burtons' decision to purchase the Chapmans' home was a voluntary "investment" transaction in which they actively participated.

Bellboy involved a dispute between a Minnesota seller and a New York buyer. 484 N.W.2d at 797. The New York buyer purchased fish from the Minnesota seller in a single transaction negotiated by a Florida broker. *Bellboy Seafood Corp. v. Kent Trading Corp.*, 473 N.W.2d 384, 385 (Minn. App. 1991), *reversed* 484 N.W.2d 796 (Minn. 1992). The seller eventually sued the buyer for the buyer's failure to pay for the fish delivered to New York. *Id.* at 386. *Bellboy* bears some similarity to the instant case because the nonresident buyer's only contact with Minnesota was a sales transaction between the buyer and a Minnesota seller that was negotiated by a third party. But *Bellboy* did not involve the purchase and sale of Minnesota real estate governed by Minnesota law.

Therefore the nature and quality of the Burtons' contact with Minnesota is distinguishable from the contact at issue in *Bellboy*. Under the circumstances of this case, the Burtons should have been reasonably able to anticipate being haled into court in Minnesota if litigation arose from these transactions, and the district court did not err by concluding that the nature and quality of the Burtons' contact with Minnesota favors the exercise of personal jurisdiction by Minnesota courts.

C. Source and connection of the cause of action with these contacts

Specific personal jurisdiction requires that there be a "connection of the cause of action with [appellants'] contacts." *Juelich*, 682 N.W.2d at 570. As stated above, the contacts in this case gave rise to the Chapmans' causes of action. The Burtons do not dispute that this factor favors a determination of personal jurisdiction.

D. State's interest in providing a forum

Concerning the fourth factor, "Minnesota does have an interest in providing a forum for its residents who have allegedly been wronged." *Dent-Air*, 332 N.W.2d at 908. As the Burtons note, this factor is secondary to the first three factors, and an inability to establish jurisdiction under the first three factors requires a conclusion that personal jurisdiction does not exist. *Id.*; *Walker Mgmt., Inc. v. FHC Enters., Inc.*, 446 N.W.2d 913, 916 (Minn. App. 1989), *review denied*, (Minn. Dec. 15, 1989). But the first three factors support personal jurisdiction in this case, and Minnesota's interest in providing a forum further supports the exercise of personal jurisdiction over the Burtons. *See Trident Enters. Intern., Inc. v. Kemp & George, Inc.*, 502 N.W.2d 411, 416 (Minn. App. 1993) (viewing Minnesota's interest in providing a forum in light of other factors that favored

exercising jurisdiction to determine that Minnesota's interest in providing a forum supported the exercise of jurisdiction).

E. Convenience of parties

The final factor to be considered is the convenience of the parties. Like the fourth factor, this factor is secondary to the first three factors. *Walker*, 446 N.W.2d at 916. In this case, all of the original parties except the Burtons resided in or physically conducted business in Minnesota.

In support of their argument that the district court's analysis of this factor was one-sided, the Burtons highlight that defendants Wells Fargo Bank and Burnet Title were dismissed from the suit relatively early in the litigation and defendants Howard and MFP have not challenged the judgment against them, such that the Burtons and the Chapmans are the only active parties. But the existence of personal jurisdiction is not determined at the end of a case based on which parties remain. *See Mich. Trust Co. v. Ferry*, 228 U.S. 346, 353, 33 S. Ct. 550, 552 (1912) (stating that personal jurisdiction is determined at the outset of litigation and is not affected by subsequent events). The district court correctly determined that this factor favors the exercise of personal jurisdiction.

Because the majority of the factors weigh in favor of the exercise of personal jurisdiction, and no factor weighs against the exercise of personal jurisdiction, the district court did not err in exercising jurisdiction over the Burtons.

II. The Burtons did not establish excusable neglect.

Under Minn. R. Civ. P. 60.02(a), the district court may relieve a party from a final judgment, for "[m]istake, inadvertence, surprise, or excusable neglect." Whether to grant

a motion for relief under rule 60.02(a) is discretionary with the district court, and its decision will not be reversed unless the district court clearly abused its discretion.

Riemer v. Zahn, 420 N.W.2d 659, 661 (Minn. App. 1988) (involving a prior version of rule 60.02 that is the same, in relevant part, as the current version of the rule).

The moving party bears the burden of proving (1) a reasonable likelihood of success on the merits; (2) a reasonable excuse for failing to act; (3) the exercise of due diligence after notice of entry of judgment; and (4) lack of substantial prejudice to the opposing party. *Finden v. Klaas*, 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964). All four factors must be established to obtain relief from a judgment, but a strong showing on one factor may offset a weaker showing on another factor. *Reid v. Strodman*, 631 N.W.2d 414, 419 (Minn. App. 2001). Here, the district court analyzed each of the *Finden* factors and, based on its analysis of the factors, denied the Burtons' motion to vacate the judgment under Rule 60.02(a). The factors will be addressed in the order they were addressed by the district court.

A. Reasonable excuse for failing to act

The Burtons claimed, in district court, as they do on appeal, that they reasonably believed that Howard was attending to the litigation on their behalf. They argue that their belief was reasonable because Howard told them that he was “taking care of all matters and would go so far as to appear in court.” But the district court found that the Burtons did not have a reasonable excuse for failing to participate in the district court action before garnishment was eminent, stating

[t]his Court finds it unreasonable that the Burtons trusted or relied on Howard after receiving a complaint which alleged that he had committed illegal acts. The Burtons were well aware that they were being sued for a transaction which Howard had suggested to them and orchestrated for them. Their mistaken belief that Howard was taking care of the matter and their complete delegation to him of their own responsibilities was not a sensible excuse to justify their failure and neglect to answer.

In support of their argument that their reliance on Howard was reasonable, the Burtons cite *Havemeier v. Karlstad Equip. & Farms*, 406 N.W.2d 581 (Minn. App. 1987), *review denied* (Minn. July 22, 1987) and *Meehan v. Mitchell Battery Co.*, 191 Minn. 412, 254 N.W. 584 (1934). In each case, orders vacating district court judgments were affirmed based, in part, on the conclusion that it was excusable for the moving party to neglect the underlying litigation and leave the matter entirely to another person or entity. *Meehan*, 191 Minn. at 413, 254 N.W. at 585; *Havemeier*, 406 N.W.2d at 584. But in *Meehan* and *Havemeier*, the interests of the parties moving to vacate the judgments were aligned with those of the persons or entities to whom the parties delegated responsibility. *See Meehan*, 191 Minn. at 412–13, 254 N.W. at 585 (employer-party delegated entire workers' compensation matter to its workers-compensation insurer); *Havemeier*, 406 N.W.2d at 582, 584 (joint and several answers to the complaint were served on behalf of all defendants, who had been partners in a partnership; defendants failed to further participate in the litigation due to each defendant's belief other defendants or their attorneys were attending to the litigation). In this case, as the Burtons' appellate brief amply demonstrates, their interests and Howard's interests do not align.

The district court did not abuse its discretion by concluding that the Burtons' reliance on Howard was an unreasonable excuse for their failure to participate in the litigation.

B. Exercise of due diligence after notice of entry of judgment

The district court concluded that the due-diligence factor did not favor vacating its judgment, noting that the Burtons failed to take action in July 2010, after receiving notice of entry of a money judgment against them for more than \$380,000, and did not move to vacate the judgment until October 15, 2010, almost two months after the Chapmans pursued garnishment of the Burtons' assets to satisfy the judgment.

The Burtons argue that they acted diligently as soon as they realized the significance of the judgment against them and assert that it is of no legal consequence that they moved to vacate after the issuance of a garnishment summons, citing *Reardon Office Equip. v. Nelson*, 409 N.W.2d 222, 224 (Minn. App. 1987) (stating that due diligence in that case must be considered in light of the speed with which respondent moved in obtaining the judgment and garnished appellants' bank account, and the appellants lack of understanding of the significance of events while acting pro se).

What constitutes a reasonable time varies with the circumstances of each case and is determined by the district court in the exercise of its discretionary power. *Hovelson v. U.S. Swim & Fitness, Inc.*, 450 N.W.2d 137, 142 (Minn. App. 1990), *review denied* (Mar. 16, 1990). This court has previously held that a three-month delay between entry of a judgment and a motion to vacate constitutes due diligence. *Imperial Premium Fin., Inc. v. GK Cab Co.*, 603 N.W.2d 853, 858 (Minn. App. 2000). But this court has also held

that a showing of due diligence may be weakened by a party's overall course of conduct. *Hovelson*, 450 N.W.2d at 142 (involving party's utter failure to participate in the litigation, despite prior knowledge of the suit, until an attempt was made to levy on the resulting judgment against it). In this case, we conclude that the Burtons' unreasonable reliance on Howard to protect their interests and their utter failure to respond to the lawsuit or the judgment supports the district court's exercise of discretion to determine that they did not act with due diligence.

C. Lack of substantial prejudice to the opposing party

The district court determined that "the Burtons' behavior here was so egregious that the analysis of this factor is dictated by their total inaction." The district court found the Burtons' failure to answer inexcusable and found that the Chapmans would be prejudiced if they were required to start their case over again because the Burtons "utterly ignored the lawsuit." The district court relied, as it did with respect to the due-diligence factor, on *Hovelson*, 450 N.W.2d at 14–42.

In *Hovelson*, this court stated that, although added expense and delay alone are insufficient to show prejudice, "[where] there is intentional ignoring of process, the additional expense must be viewed in a different light." *Id.* In *Hovelson*, this court concluded that, while the moving party made some showing on the lack-of-prejudice factor, that showing was weakened by the party's intentional ignoring of process. *Id.*

The Burtons did not attempt to evade process as was the case in *Hovelson*, but they unreasonably relied on Howard to represent their interests without any evidence that Howard was participating in the litigation. The Burtons purposefully declined to

participate in the litigation until the Chapmans attempted to collect on the judgment. We conclude that the district court did not abuse its discretion by determining that the Burtons “made a weak, if any, showing on [this] factor.”

D. Reasonable likelihood of success on the merits

The Burtons assert that the district court conceded that they “arguably have a reasonable defense on the merits” of the case. The Burtons mischaracterize the district court’s discussion of this factor. The district court started its discussion of this factor by noting that “[t]he Burtons have already failed the [*Finden*] test as they have failed to satisfy two . . . of the four factors and made a weak, if any, showing on a third factor . . .” The district court went on to state that “[w]hile the Burtons may arguably have a reasonable defense on the merits, their unreasonable failure to participate in multiple stages of the litigation of this case and their failure to conclusively establish a showing on the remaining . . . factors dictates that the [district court] deny [their] motion to vacate the . . . summary judgment [o]rder.”

In their brief on appeal, the Burtons argue at length about the strength of their defense to each count of the Chapmans’ complaint. The Chapmans dispute that the Burtons have a strong defense to many of the counts. But even a strong showing on this factor would not overcome the Burtons failure to establish all four *Finden* factors as required to obtain the relief they seek. *See Reid*, 631 N.W.2d at 419. The district court did not abuse its discretion by refusing to vacate the judgment.

III. The Burtons failed to establish any other reason justifying relief from judgment.

Minn. R. Civ. P. 60.02(f) provides that the district court may relieve a party from a final judgment for “[a]ny other reason justifying relief from the operation of the judgment.” Whether to grant a motion for relief under rule 60.02(f) is discretionary with the district court, and its decision will not be reversed unless the district court clearly abused its discretion. *Riemer*, 420 N.W.2d at 661 (involving a prior but unchanged version of the rule). Rule 60.02(f) operates as a residual clause, affording relief only in “exceptional circumstances not addressed by clauses (a) through (e).” *City of Barnum v. Sabri*, 657 N.W.2d 201, 207 (Minn. App. 2003). The Burtons arguments under Rule 60.02(f) simply repeat their arguments under Rule 60.02(a) (permitting the district court to relieve a party of final judgment for “[m]istake, inadvertence, surprise, or excusable neglect”). The district court did not abuse its discretion by denying the Burtons’ motion to vacate the judgment under Rule 60.02(f).

Affirmed.