STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0525

Steve M. Johnson, et al.,
Appellants,

vs.

USL Products, Inc.,
Defendant,

Clam Corporation, Inc.,
Respondent.

Filed December 30, 2013
Affirmed and remanded
Hooten, Judge

Hennepin County District Court
File No. 27-CV-10-9077

J. Scott Andresen, Mark R. Bradford, Bassford Remele, Minneapolis, Minnesota (for appellants)

Michael T. Berger, Ashley M. DeMinck, Hinshaw & Culbertson LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Rodenberg, Judge; and Hooten, Judge.

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

HOOTEN, Judge

In this appeal after remand, appellants contest the district court's decision to vacate a default judgment against defendant that allegedly transferred assets to

respondent. Because the district court did not abuse its discretion in vacating the default judgment, we affirm and remand for trial.

FACTS

Many of the facts and the procedural history are set forth in our decision in appellants' first appeal, *Johnson v. USL Prods., Inc.*, No. A11-1774, 2012 WL 2078478 (Minn. App. June 11, 2012) (*Johnson I*), *review denied* (Minn. Aug. 21, 2012). Accordingly, we condense the background facts and provide the pertinent additional facts relevant to this appeal.

As a result of a December 2002 federal lawsuit brought in Tennessee against defendant USL Products, Inc., appellants JT&O Technologies, LLC and its managing member, Steve M. Johnson, were awarded a default judgment for three million dollars on February 2, 2005. Days later, appellants sued USL, respondent Clam Corporation, Inc., Ronald Randall (USL's majority shareholder and CEO), and David Osborne (the sole shareholder of Clam), alleging fraudulent transfer of assets in violation of the Minnesota Uniform Fraudulent Transfer Act (MUFTA), Minn. Stat. §§ 513.41–.51 (2012), breach of fiduciary duties, alter ego liability/piercing the corporate veil, and successor liability. Appellants claimed that USL fraudulently transferred assets to Clam in order to avoid paying the anticipated judgment in the federal court matter. USL did not answer the complaint.

After appellants settled with Randall and dismissed the claims against Osborne, Clam moved for summary judgment. In an order dated February 25, 2011, the district court denied Clam's motion, determining, without further explanation, that there were

"genuine issues of material fact." On April 25, 2011, the first day of trial, the district court sua sponte reconsidered Clam's summary-judgment motion. In addition, the district court heard Clam's motions in limine seeking to exclude appellants' evidence on assumption of liability, de facto merger, mere continuance, and intent and valuation evidence. After extensive oral arguments, the district court, determining that there were no genuine issues of material fact, orally granted summary judgment in favor of Clam on the MUFTA and successor-liability claims and, in the alternative, granted Clam's motions in limine. The district court made a record of its legal analysis and cancelled the trial, but it allowed the parties to supplement the record prior to the issuance of a written order for the purpose of an appeal. In a written order filed on May 3, 2011, the district court summarily granted Clam's motion for summary judgment and dismissed appellants' MUFTA and successor-liability claims with prejudice. The district court also, in the alternative, granted Clam's motions in limine.

On July 15, 2011, appellants moved for default judgment against USL, alleging by affidavit of their counsel that the complaint had been served on USL and that USL had failed to answer or otherwise respond. On August 12, 2011, without requiring any proof of the merits of appellants' claims, the district court signed appellants' proposed order granting default judgment against USL on the MUFTA claim. The record indicates that judgment was entered on August 17, 2011, and that notification of this entry of judgment was sent to USL on this date.

There was no appeal from the default judgment. In *Johnson I*, appellants challenged the May 3, 2011, summary-judgment order and September 8, 2011, amended-

judgment order in favor of Clam. We concluded that the district court erred by dismissing appellants' MUFTA claim against Clam because there were genuine issues of material fact, including issues regarding whether there was fraudulent intent and whether reasonably equivalent value was exchanged between USL and Clam. *Johnson I*, 2012 WL 2078478, at *8. Consistent with our view that these material issues of fact should have been presented to and resolved by a jury, we reversed the district court's order precluding appellants from presenting evidence regarding intent and valuation at trial. *Id.*

Most significantly, for purposes of this appeal, we concluded that "[t]hrough the default judgment against USL," appellants "established USL's fraudulent transfer under Minn. Stat. § 513.44(a)(1), (2) and all of the factors from section 513.44(b) alleged in the complaint to establish actual intent under section 513.44(a)(1)." *Id.* at *4. We explained that the default judgment was a final judgment "determining that the transfer was made with actual intent to defraud [appellants] and was made without USL receiving a reasonably equivalent value in exchange for the transfer under the circumstances described in the statute." *Id.* Based primarily on this conclusion, we further held that the district court erred by granting summary judgment on appellants' successor-liability claim because the fraudulent transfer satisfied an exception to the general rule that a corporation which purchases or receives by transfer the assets of another corporation is not liable for the debts and liabilities of the seller or transferring corporation. *Id.* at *7. Accordingly, we remanded for trial on appellants' "entitlement under the MUFTA to relief against Clam for USL's fraudulent transfer of assets to Clam." *Id.* at *8.

On remand, appellants filed a motion on December 7, 2012, for entry of judgment against Clam on the successor-liability claim in the amount of $5,242,602.74 and to impose a constructive trust. Appellants argued that this court, in *Johnson I*, "determined that the default judgment against USL was a final judgment and had definitively established that the transfer of assets from USL to Clam Corporation was fraudulent and that [appellants] had therefore established all of the elements of their common-law successor-liability claim." Appellants further asserted that this court "reinstated both claims" such that Clam's liability had been established under the MUFTA and successor-liability claims, and that this court "remanded the case for trial only on [the MUFTA claim] and only to determine the scope of damages to which [appellants] are entitled under the MUFTA." The district court denied the motion on January 4, 2013, and scheduled a trial pursuant to this court's remand instructions.

On January 16, 2013, Clam moved to vacate the default judgment entered against USL under Minn. R. Civ. P. 60.02 because the default judgment was "counter to the first-final-judgment principle and ha[d] created an 'absurd' and illegal result." The district court agreed and vacated the default judgment. The district court concluded that USL and Clam were "jointly liable" under the MUFTA and the successor-liability claims; that the default judgment entered against USL, after the granting of summary judgment in favor of Clam, was contradictory under the first-final-judgment rule as set forth in *Reilly v. Bader*, 50 Minn. 199, 52 N.W. 522 (1892); and that appellants' claims against USL should have been dismissed. In responding to appellants' request for reconsideration, the

district court explained at a pretrial hearing that "the default should never have been entered because there was no proof taken" and that "it was wrongfully entered."

Appellants filed this appeal from the district court's order denying their motion for entry of judgment on the successor-liability claim against Clam and the order vacating the default judgment against USL.

D E C I S I O N

I. Law of the Case

Appellants argue that the district court erred in considering and ruling on Clam's motion to vacate the default judgment against USL. "Questions of civil procedure are issues of law, and an appellate court owes no deference to the district court's decision thereon." *Carter v. Anderson*, 554 N.W.2d 110, 112 (Minn. App. 1996), *review denied* (Minn. Dec. 23, 1996).

Appellants assert that this court in *Johnson I* had already addressed the effect of the default judgment against USL on appellants' MUFTA and successor-liability claims against Clam. Thus, they argue that once the supreme court denied review of *Johnson I*, those determinations became the "law of the case" which cannot be litigated on this second appeal. In support of their argument, appellants cite *Peterson v. BASF Corp*., 675 N.W.2d 57 (Minn. 2004), *vacated on other grounds*, 544 U.S. 1012, 125 S. Ct. 1968 (2005), and *McClelland v. McClelland*, 393 N.W.2d 224 (Minn. App. 1986), *review denied* (Minn. Nov. 17, 1986). But these cases, while generally supporting the law-of-the-case doctrine, do not apply to the facts and circumstances here.

The law-of-the-case doctrine has been defined as "a rule of practice that once an issue is considered and adjudicated, that issue should not be reexamined in that court or any lower court throughout the case." *Peterson*, 675 N.W.2d at 65. This rule of practice applies within the context of an appellate ruling and remand to the district court. *See Sigurdson v. Isanti Cnty.*, 448 N.W.2d 62, 66 (Minn. 1989) (holding that an appellate court ruling "may not be relitigated in the trial court or reexamined in a second appeal"). The law-of-the-case doctrine "applies only to litigated issues and does not reach issues which could have been but were not litigated." *Id.* (quoting *Lange v. Nelson-Ryan Flight Serv., Inc.*, 263 Minn. 152, 156, 116 N.W.2d 266, 269 (1962)).

But the law-of-the-case doctrine is not so inflexible so as to allow for absurd or inequitable results. As explained by Justice Gilbert in *Peterson*:

> The rule is not a limitation on the power of a court to reexamine an issue—it is a rule of practice, not of substantive law. While courts have the power to review and overrule their determination on a prior appeal in the same case, they typically do not do so as a matter of policy. There are, of course, exceptions. When there has been a change in the law by a judicial ruling entitled to deference between appeals of the case, law of the case does not typically apply. Similarly, when the evidence on which an appellate court based its prior decision is substantially different on the second appeal, law of the case does not preclude reconsideration.

675 N.W.2d at 65–66 (quotations and citations omitted).

Likewise, we have noted that the law-of-the-case doctrine must yield to an intervening change of controlling law and that "a court is to apply the law in effect at the time it renders its decision." *McClelland*, 393 N.W.2d at 226. While we recognized in *McClelland* that an appropriately litigated issue presented on an appeal may be the law of

the case relative to a remand to the district court or in a subsequent appeal, we explained that the doctrine is flexible, allowing the district court and this court to consider a change in the controlling law on remand or in connection with a second appeal. *Id.* at 226–27.

In both *Peterson* and *McClelland*, the parties had fully briefed and litigated the legal issues in prior appeals. *See* 675 N.W.2d at 63–65; 393 N.W.2d at 225–26. And in both cases, the applicability of the law-of-the-case doctrine was raised in a subsequent appeal. *Peterson*, 675 N.W.2d at 65–68; *McClelland*, 393 N.W.2d at 226. Unlike the instant case, neither *Peterson* nor *McClelland* involved the effect of a default judgment against one party on the liability of another party.

Here, the motion for a default judgment against USL was brought by appellants almost three months after Clam had been advised by the district court that summary judgment had been granted in its favor. Nothing in the record indicates Clam was aware of the motion for and entry of default judgment. Significantly, in *Johnson I*, appellants did not argue or raise the issue of the effect of the default judgment against USL on the liability of Clam. Indeed, there was no mention of the default judgment—much less the effect of the default judgment on Clam's liability—in any of appellants' submissions to this court in *Johnson I*. Likewise, Clam did not appeal the default judgment or otherwise address the effect of the default judgment in any of its submissions to this court. This issue was not addressed in *Johnson I* until we raised questions about it during oral arguments. Accordingly, there is no evidence that either the litigants or the district court recognized the significance of the default judgment against USL on Clam's liability, and,

as a result, the effect of the default judgment upon Clam's liability was never fully articulated until this court's decision in *Johnson I*.

Under these circumstances, we conclude that the parties did not previously litigate the issue of whether, in light of the summary-judgment order in favor of Clam, the district court erred in entering a default judgment against USL. This court in *Johnson I* merely accepted the record as it existed at the time and considered the issues before it: whether the district court erred in granting summary judgment and the motions in limine. Accordingly, we conclude that the law-of-the-case doctrine does not prohibit us from considering whether the district court erred in entering the default judgment and whether, on remand, it abused its discretion in vacating the default judgment.

II. First Final Judgment

Turning to the substance of the district court's vacation of the default judgment, "[w]here the trial court exercised no discretion but instead based its order upon an error of law, . . . a de novo standard of review applies." *Younggren v. Younggren*, 556 N.W.2d 228, 231 (Minn. App. 1996). The district court granted Clam's motion to vacate the default judgment against USL on the basis that the judgment was contradictory to the summary judgment previously granted in favor of Clam. The district court reasoned that because appellants claimed that (a) USL and Clam were jointly and severally liable under the MUFTA and successor-liability claims, and (b) summary judgment had been entered in favor of Clam, appellants' claims against USL should have been dismissed. We agree with the district court that the default judgment against USL should be vacated as a matter of law.

Under the "first final judgment" principle, the "first" judgment becomes final and conclusive and precludes further litigation on the same subject between the parties. *Reilly*, 50 Minn. at 203, 52 N.W. at 523. Similarly, "where judgment has been entered and the appeal has been taken therefrom . . . the judgment is not vacated or annulled but remains res judicata until, and unless, it is reversed." *Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 220 (Minn. 2007) (quotation omitted); *see also Schoonmaker v. St. Paul Title & Trust Co.*, 152 Minn. 94, 98, 188 N.W. 223, 224 (1922) (holding that "[e]ven where an appeal has been taken, the matters determined by the judgment remain res judicata until the judgment is reversed").

Res judicata precludes parties from raising subsequent claims after an earlier claim involved the same factual circumstances and the same parties when there was a final judgment on the merits and the estopped party had a full and fair opportunity to litigate the matter. *Brown-Wilbert, Inc.*, 732 N.W.2d at 220. Collateral estoppel is a related doctrine, but a "miniature" subset of the broader principle of res judicata, which prevents the relitigation of specific legal issues that have been adjudicated. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004) (quotation omitted). Collateral estoppel applies on satisfaction of a four-part test:

> (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 or was in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Id. (quotation omitted). The first-final-judgment rule is essentially the embodiment of res judicata and collateral estoppel.

In explaining its rationale for vacating the default judgment against USL, the district court was correct that it erred in granting the default judgment under the first-final-judgment rule. Appellants' MUFTA and successor-liability claims against Clam were dismissed with prejudice, with the district court necessarily finding that appellants had failed to show that Clam had not provided reasonably equivalent value in its purchase of USL's assets or that USL had fraudulently transferred its assets to Clam. The district court's subsequent entry of a default judgment against USL on appellants' MUFTA claim directly contradicted this earlier order because the default judgment functionally determined that the transfer from USL to Clam was made with actual intent to defraud appellants with no reasonably equivalent value exchanged in the transfer.

Essentially, the granting of a default judgment relitigated the identical issues that had already been determined by the district court in its summary-judgment ruling in favor of Clam. Appellants, therefore, were estopped from relitigating those issues under the guise of a default judgment. In light of its prior adjudicated ruling granting Clam summary judgment on appellants' MUFTA claims, and dismissing all of appellants' claims against Clam, the entry of default judgment against USL violated the first-final-judgment rule.

III. Minn. R. Civ. P. 54.02

In addition to the first-final-judgment rule, we find that the district court's vacation of the default judgment is also supported by Minn. R. Civ. P. 54.02,[1] which provides that:

> [T]he court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Here, the district court expressly struck the phrase "[t]here being no just reason for delay" from appellants' proposed default-judgment order. And, in *Johnson I*, with our reversal of the district court's summary judgment in favor of Clam, the default judgment adjudicated fewer than all of the claims, rights, and liabilities of fewer than all of the

[1] Clam also argues that the district court's vacation of the default judgment against USL was appropriate under the doctrine established in *Frow v. De La Vega*, in which the U.S. Supreme Court held that "[a] final decree on the merits cannot be made separately against one of several defendants upon a joint charge against all, where the case is still pending as to the others." 82 U.S. 552, 554 (1872). It is unclear whether the *Frow* doctrine has been adopted in Minnesota. But a number of federal courts have suggested that the *Frow* doctrine has either been superseded by or embodied in Fed. R. Civ. P. 54(b). *See In re Uranium Antitrust Litig.*, 617 F.2d 1248, 1258 (7th Cir. 1980) (noting that it is "most unlikely that *Frow* retains any force subsequent to the adoption of Rule 54(b)" (quoting *Int'l Controls Corp. v. Vesco*, 535 F.2d 742, 746–47 n.4 (2d Cir. 1976))); *Martin v. Coughlin*, 895 F.Supp. 39, 43 (N.D.N.Y. 1995) (same). Fed. R. Civ. P. 54(b) is essentially identical to Minn. R. Civ. P. 54.02, but because we conclude that other legal theories support the district court's vacation of the default judgment against USL, we decline to address Clam's argument based on the *Frow* doctrine.

parties. It was therefore within the district court's discretion under rule 54.02 to revise or vacate the default judgment before the entry of a judgment adjudicating all of the claims and all of the parties' liabilities. Such revision or vacation under rule 54.02 was not an abuse of discretion because of the prejudicial effect that the default judgment had on Clam's rights and liabilities.

IV. Minn. R. Civ. P. 60.02

Appellants argue that the district court erred in vacating the default judgment because Clam did not meet the criteria under Minn. R. Civ. P. 60.02. The district court has discretion to grant or deny a motion to vacate a final judgment under rule 60.02, and it will not be reversed absent an abuse of discretion. *Zaffke v. Wallestad*, 642 N.W.2d 757, 759 (Minn. App. 2002). "Default judgments are to be liberally reopened to promote resolution of cases on the merits." *Lyon Fin. Servs., Inc. v. Waddill*, 625 N.W.2d 155, 160 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. June 19, 2001).

Minn. R. Civ. P. 60.02(f) provides that "[o]n motion and upon such terms as are just, the court may relieve a party . . . from a final judgment . . . and may order a new trial or grant such other relief as may be just for . . . [a]ny . . . reason justifying relief from the operation of the judgment." Rule 60.02(f) is "a residual clause to cover unforeseen contingenc[ies]," *Anderson v. Anderson*, 288 Minn. 514, 518, 179 N.W.2d 718, 722 (1970), or "extraordinary circumstances," *Regents of Univ. of Minn. v. Med. Inc.*, 405 N.W.2d 474, 481 (Minn. App. 1987) (quotation omitted), *review denied* (Minn. July 15, 1987). "[A] strong inference of irregularity concerning the entire proceeding" is

"precisely the type of case in which [the residual clause] was designed to operate." *Sommers v. Thomas*, 251 Minn. 461, 468, 88 N.W.2d 191, 196 (1958).

A party seeking to set aside a judgment under rule 60.02(f) must satisfy the four-prong test established in *Finden v. Klaas*: (1) it has a reasonable defense on the merits; (2) it has a reasonable excuse for failing to respond; (3) it has acted with due diligence; and (4) no substantial prejudice will result to the other party. 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964). If the district court fails to apply the *Finden* test, as is the case here, we may apply it de novo. *Carter v. Anderson*, 554 N.W.2d 110, 115 (Minn. App. 1996), *review denied* (Minn. Dec. 23, 1996). We "liberally apply these factors to further the policy of resolving cases on their merits." *Black v. Rimmer*, 700 N.W.2d 521, 529 (Minn. App. 2005). "All four elements 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). But two weak factors may not be overcome by two strong factors. *Wiethoff v. Williams*, 413 N.W.2d 533, 536 (Minn. App. 1987).

Applying the *Finden* test, Clam has made a strong showing on the first factor. The district court had previously ruled that Clam was entitled to summary judgment. While we reversed this prior ruling and remanded the matter for trial, this ruling is sufficient for us to conclude that Clam has at least shown that it has a reasonable defense on the merits.

Turning to the second *Finden* factor, we conclude that Clam has made a strong showing as well. Clam, as a separate corporation, had no duty or obligation to answer appellants' complaint against USL. Moreover, Clam had been advised by the district court almost three months prior to appellants' motion for a default judgment that

summary judgment had been granted in its favor, and it was unaware of the notice of entry of judgment against USL. For these reasons, Clam has a reasonable excuse for not contesting the district court's grant of the motion.

The third *Finden* factor is whether Clam acted with due diligence. There is no defined time limitation for bringing a motion to vacate under rule 60.02(f) other than to do so within a "reasonable time." Generally, what constitutes a reasonable time "varies based on the facts of each case." *Palladium Holdings, LLC v. Zuni Mortg. Loan Trust 2006-OA1*, 775 N.W.2d 168, 177 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010). Appellants argue that Clam did not act with due diligence because Clam did not move to vacate until 17 months after the entry of default judgment. We disagree.

We first note that appellants rely on cases that relate to motions to vacate brought by the party against whom default judgment was entered at the beginning of a case. *See, e.g., Zions First Nat'l. Bank v. World of Fitness, Inc.*, 280 N.W.2d 22, 23 (Minn. 1979); *Lyon Dev. Corp. v. Ricke's Inc.*, 296 Minn. 75, 77, 207 N.W.2d 273, 275 (1973). In these cases, there was no dispute that the moving party had received adequate service and notice of the complaint and the motion for default judgment against it, but had failed to respond to either. This case is distinguishable in that it involves the question of whether a party, on discovering that a default judgment against another party adversely affected its own liability, used due diligence in attempting to vacate the judgment.

Our examination of Clam's due diligence must account for the procedural posture at the time that the default judgment was entered against USL, which was that Clam had been absolved of all liability from appellants' claims. Because Clam was unaware of

appellants' motion for default judgment against USL, and neither appellants nor Clam raised in *Johnson I* the effect of the default judgment against USL on Clam's liability, we can reasonably conclude that neither the district court nor the parties fully understood the significance of the default judgment against USL on Clam's liability. And, because *Johnson I* involved the appeal of the grant of summary judgment in favor of Clam, the proceedings relative to Clam's liability were stayed and the district court was without "authority to make any order that affect[ed] the order or judgment appealed from."[2] *See* Minn. R. Civ. App. P. 108.01, subd. 2. Therefore, during *Johnson I*, the district court did not have the authority to vacate the default judgment or issue any order that would have affected Clam's liability. Even if Clam had been aware of the effect of that default judgment on its own liability, Clam would have been unable to invoke the authority of the district court to vacate the default judgment once appellants appealed from the summary-judgment order.

So the question, then, is whether Clam acted diligently in bringing a motion to vacate the default judgment against USL after August 21, 2012, when our ruling reversing the district court's summary-judgment order became final after the supreme court denied review and the stay on the district court proceedings expired. And to this question, Clam responds that it did, arguing that it was unaware of the full effect of the default judgment on its liability until December 7, 2012, when appellants filed their

[2] Because of the prejudicial effect that the default judgment had on Clam's liability, any order related to the default judgment made by the district court during *Johnson I* would have affected the summary-judgment order that was the subject of the appeal in *Johnson I.*

motion for entry of judgment against it based solely on the default judgment against USL. Clam maintains that this was the first time that it became aware that the default judgment against USL could be utilized to prove its own liability as a matter of law.

Although Clam certainly should have been aware of the impact of the default judgment on its potential liability after *Johnson I*, we cannot conclude that Clam failed to act with due diligence. Indeed, the record is replete with evidence that the parties and the district court were confused about the nature and scope of our prior decision and remand in *Johnson I*. Even in this current appeal, the parties disagreed as to what issues were to be tried after *Johnson I*.[3] When appellants brought their motion for entry of judgment and a constructive trust against Clam, there was no confusion at that point that appellants viewed the default judgment against USL as establishing Clam's liability. Just 12 days after the district court denied appellants' motion, Clam brought its motion to vacate the default judgment against USL. If the district court had granted the judgment, Clam could have appealed and, for the first time, briefed and litigated the issue of the legality of the default judgment against USL. But once the district court denied appellants' motion for entry of judgment and the matter was scheduled for trial, Clam was diligent in bringing a motion to vacate the default judgment.

[3] At the oral argument for this appeal, it was suggested that, after *Johnson I*, the jury could still determine appellants' damages and Clam's entitlement to its "good faith" defense under Minn. Stat. § 513.48(a) (2012). However, section 513.48 provides that "[a] transfer or obligation is not voidable under section 513.44(a)(1) against a person who took in good faith *and for a reasonably equivalent value* or against any subsequent transferee or obligee." (Emphasis added.) Accordingly, if the default judgment functionally determined that the transfer was fraudulent and was not for a reasonably equivalent value, then Clam would not be entitled to a defense of good faith.

Finally, Clam makes a strong showing on the fourth *Finden* factor. When this factor was addressed before the district court, appellants argued that they were prejudiced by the delay of the trial and the added expenses of litigation. But "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." *Palladium*, 775 N.W.2d at 177.[4]

Our consideration of the *Finden* factors and the unique procedural circumstances of this case compel us to conclude that the district court did not abuse its discretion in vacating the default judgment against USL on the basis of rule 60.02(f). And, regardless of whether the vacation of the default judgment is based on the first-final-judgment rule, rule 54.02, or rule 60.02(f), appellants have cited no case discussing any of these legal theories that stands for the proposition that, without any adjudicating of the underlying merits of the case, the liability of a non-defaulting defendant may be established solely on the basis of a judgment against a defaulting defendant in the action.

The vacation of the default judgment is consistent with our policy that default judgments are to be liberally reopened to promote the resolution of cases on the merits. Indeed, allowing appellants to obtain an entry of judgment in excess of $5.2 million

[4] Appellants argue for the first time on appeal that they are prejudiced by the vacation of the default judgment because Randall has died. But appellants have not explained how they are prejudiced by Randall's absence as a witness in light of the fact that they have settled their claims against Randall, and they have not shown that Randall's testimony would have been beneficial to appellants' claim that there was a fraudulent transfer. Regardless, this argument was not raised before the district court, so we will not consider it here. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." (quotation omitted)).

against Clam based on a default judgment against USL—one that was never proved up on the record—would be inconsistent with our policy of promoting the resolution of cases on the merits. This decision, moreover, addresses our concerns raised in *Johnson I* that the disputed material issues—whether USL had fraudulent intent in the sale of its assets to Clam and whether there was reasonably equivalent value exchanged in this sale—should be submitted to a jury.

Because the district court's proper vacation of the default judgment renders moot the district court's denial of appellants' motion for entry of judgment on the successor-liability claim, we decline to address this issue.

Affirmed and remanded.