STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0561

Kirby Lee Hanson,
Respondent,

vs.

1950 Desoto, License Plate 749079, Vin: 6237251,
Appellant.

Filed December 16, 2013
Reversed and remanded
Halbrooks, Judge

Anoka County District Court
File No. 02-CV-11-2157

Paul P. Sarratori, Mesenbourg & Sarratori Law Offices, P.A., Coon Rapids, Minnesota (for respondent)

Karen K. Kurth, Barna, Guzy & Steffen, Ltd., Coon Rapids, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Ross, Judge.

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

HALBROOKS, Judge

In a vehicle-forfeiture case, the district court denied the city's motion to vacate a default judgment entered in favor of the vehicle owner. Because the district court erred

in its determination that the city failed to make a strong showing regarding excusable neglect or mistake, we reverse and remand.

FACTS

On March 21, 2011, respondent Kirby Hanson was stopped in his 1950 DeSoto by the St. Francis Police Department, arrested for second-degree driving while impaired (DWI), and served with a notice of seizure and intent to forfeit vehicle. Hanson had two prior DWI convictions within ten years. He timely requested a judicial determination of the forfeiture under Minn. Stat. § 169A.63, subd. 8(f) (2012), alleging that the vehicle was not used to commit a "designated offense" or a "designated license revocation."

On May 16, 2011, Hanson pleaded guilty to third-degree DWI under Minn. Stat. § 169A.20, subd. 1(5) (2010), under the conditions described in Minn. Stat. § 169A.26, subd. 1 (2010). Hanson challenged his March 28, 2011 license revocation in a separate implied-consent proceeding, which was delayed pending the outcome of the "source code" litigation. *See In Re Source Code Evidentiary Hearings*, 816 N.W.2d 525 (Minn. 2012) (affirming the district court's ruling in statewide challenges to the reliability of Intoxilyzer 5000EN test results based on alleged defects in the Intoxilyzer 5000EN source code).

On October 24, 2011, the city moved for summary judgment on the vehicle forfeiture under the "designated offense" provision of Minn. Stat. § 169A.63 (2012). One week later, we decided *Patino v. One 2007 Chevrolet, VIN No. 1GNFC16017J255427, Texas License Plate No. 578VYH*, 805 N.W.2d 906 (Minn. App. 2011), concluding that for vehicle forfeitures under Minn. Stat. § 169A.63, subds. 6, 9(f),

it is not sufficient that the driving behavior constituted the commission of a designated offense. *Patino*, 805 N.W.2d at 909. We held that if a vehicle forfeiture is premised on a designated offense, the forfeited vehicle must be returned if the party is not convicted of a designated offense. *Id*. Second-degree DWI is a "designated offense" under the statute, but third-degree DWI is not. Minn. Stat. § 169A.63, subd. 1(e).

In light of our decision in *Patino*, the city moved for a continuance until Hanson's implied-consent challenge was resolved. The city argued that although the focus of its summary-judgment motion had been the "designated offense" provision, the "designated license revocation" provision also supported forfeiture. A "designated license revocation" includes a license revocation for test failure within ten years of two or more DWI convictions. Minn. Stat. §§ 169A.63, subd. 1(d), .03, subd. 22 (2012). The district court requested additional briefing on the issue and, on January 4, 2012, continued the forfeiture matter because the implied-consent matter "must be resolved in order for a just adjudication of the present forfeiture matter." The district court's order notes that the city agreed to accept a $12,500 bond for return of the vehicle.

In late August 2012, the license-revocation matter was still pending, and the next implied-consent hearing was scheduled for October 26. Hanson and the city stipulated to a continuance of the forfeiture case "to a date after October 26, 2012 or until the implied-consent matter has been resolved." The stipulation references the January 4, 2012 order. The August 29 order states that "[u]pon stipulation of the parties, it is hereby ordered that the above-entitled matter be continued until October 29, 2012." The parties agree that counsel jointly requested that the trial be put on the calendar for October 29. But

assistant city attorney Karen Kurth denies under oath having received the August 29 order or a September 5 e-mail confirming the October 29 trial date.

On October 26, the implied-consent hearing was continued until December 21. Counsel for the city failed to appear in the forfeiture matter on October 29. On Hanson's request, the district court ordered the return of the vehicle, concluding that Hanson was not convicted of a "designated offense" and noting the city's failure to appear. On November 13, the city moved under Minn. R. Civ. P. 60.02 and 62.01 to stay enforcement and vacate the judgment. The city argued that (1) it has a reasonable defense on the merits based on a designated license revocation; (2) counsel's failure to appear was reasonable in light of the lack of formal notice; (3) the city acted with due diligence after receiving notice of entry of judgment; and (4) no prejudice would result to Hanson, as the parties had stipulated to continue the matter until resolution of the implied-consent matter. The district court heard the motion on January 3, 2013. Hanson's license revocation was judicially sustained on January 15, 2013. On January 25, the district court denied the motion to vacate the judgment, concluding that "there was not a strong showing regarding excusable neglect or mistake." Although the district court referenced the *Hinz* factors, it did not make findings for each of the four factors.

After the January 25, 2013 order was filed, upon learning that Hanson's license revocation had been judicially upheld, the city sought and received permission to file a motion to reconsider the January 25 order. The district court affirmed its decision on March 26, 2013, but granted the city's motion to stay enforcement pending appeal. This appeal follows.

D E C I S I O N

On motion, a district court may vacate a final judgment for reasons of "[m]istake, inadvertence, surprise, or excusable neglect" or "[a]ny other reason justifying relief from the operation of the judgment." Minn. R. Civ. P. 60.02(a), (f). Minnesota courts analyze motions seeking relief from orders and judgments under Minn. R. Civ. P. 60.02 by applying a four-factor test that was established in *Hinz v. Northland Milk & Ice Cream Co.*, 237 Minn. 28, 30, 53 N.W.2d 454, 456 (1952). The *Hinz* factors require consideration of whether the movant has (1) a reasonable defense on the merits, (2) a reasonable excuse for its neglect, (3) acted diligently after notice of the entry of judgment, and (4) demonstrated that no substantial prejudice will result to the other party. *Finden v. Klaas*, 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964) (quoting *Hinz*, 237 Minn. at 30, 53 N.W.2d at 456). The decision to vacate a default judgment is a matter largely within the discretion of the district court, and will not be reversed absent an abuse of discretion. *Rose v. Neubauer*, 407 N.W.2d 727, 728 (Minn. App. 1987), *review denied* (Minn. Aug. 19, 1987). But if all four *Hinz* factors are satisfied, the district court does not have discretion to deny relief. *Northland Temporaries, Inc. v. Turpin*, 744 N.W.2d 398, 402 (Minn. App. 2008).

Reasonable Defense on the Merits

A reasonable defense on the merits is one that, if established, provides a defense to the plaintiff's claim. *Id.* at 403. Specific information that clearly demonstrates the existence of a "debatably meritorious defense" satisfies this factor. *Palladium Holdings,*

LLC v. Zuni Mortg. Loan Trust 2006-OA1, 775 N.W.2d 168, 174 (Minn. App. 2009) (quotation omitted).

The city urges that it has a reasonable defense on the merits because the vehicle was used in conduct resulting in a "designated license revocation," which is a basis for forfeiture under Minn. Stat. § 169A.63, subd. 6. The city further argues that the district court's January 4 and August 29, 2012 orders continuing the case until resolution of the implied-consent challenge are grounded in the reasonableness of the city's defense on the merits. We agree.

In its January 4, 2012 order, the district court observed, "While the *Patino* decision may be fatal to a forfeiture proceeding which is dependent solely upon a defendant's conviction for a designated offense, the facts in this case provide an alternative basis for the forfeiture—a designated license revocation." The August 29, 2012 stipulation for continuance and order notes that "the Implied Consent matter . . . [is] not resolved and that matter must be resolved in order for a just adjudication of the present forfeiture matter" and continues the case "until the implied consent matter has been resolved."

Despite these earlier orders, when ruling on the city's motion to vacate, the district court failed to make findings on the reasonableness of the city's defense on the merits. *See Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App. 1989) (holding that findings that simply recite the claims of the parties are not true findings by the district court). We agree with the district court's earlier conclusion that the facts in this case provide a

designated-license-revocation basis for forfeiture. Accordingly, we conclude that the city has a reasonable defense on the merits, and the first *Hinz* factor is satisfied.

Reasonable Excuse for Neglect

Neglect of a party, which leads to entry of a default judgment, is inexcusable. *Black v. Rimmer*, 700 N.W.2d 521, 527 (Minn. App. 2005). Under basic agency principles, an attorney's neglect is chargeable to the party. *Armstrong v. Heckman*, 409 N.W.2d 27, 29 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987). But if neglect has been purely that of counsel, ordinarily courts will not punish the innocent client. *Charson v. Temple Israel*, 419 N.W.2d 488, 491 (Minn. 1988).

Here, the parties appear to agree that the city and its counsel were diligent in defending the forfeiture matter up to the point where counsel failed to appear on October 29 or to request another continuance. Attorney Kurth asserts under oath that she did not receive a copy of the August 29, 2012 order or the September 5 e-mail confirming the October 29 trial date. Kurth is an officer of the court, and, in the absence of contrary evidence, we accept her assertion. *See Rose*, 407 N.W.2d at 728. Moreover, the record is devoid of any indication that the city itself neglected the forfeiture matter. In evaluating this *Hinz* factor, we specifically scrutinize the client's action apart from its attorney's omissions. *Charson*, 419 N.W.2d at 491. Accordingly, we conclude that the district court erred in finding that the failure of the city's counsel to appear on October 29 constitutes inexcusable neglect without considering the actions of the city itself. On this record, we conclude that the second *Hinz* factor is satisfied.

Diligence After Notice of Entry of Judgment

The third *Hinz* factor asks whether the defaulting party was diligent after notice of entry of judgment. *Hinz*, 237 Minn. at 30, 53 N.W.2d at 456. The district court found that the city was diligent in filing a motion to vacate the judgment less than two weeks after entry of default. Hanson does not dispute this. The record supports the district court's determination that this *Hinz* factor is satisfied.

Prejudice to Respondent

The fourth *Hinz* factor asks whether reopening the default judgment will result in substantial prejudice to the opponent. *Id.* The district court did not make any findings regarding this factor. Hanson argues that he would be substantially prejudiced by any extension of the already lengthy time period that he has been without his vehicle.

Some prejudice is inherent in every delay. *Vrooman Floor Covering Inc. v. Dorsey*, 267 Minn. 318, 320, 126 N.W.2d 377, 378 (1964). There must be more than the added expense and delay incurred by reason of the default proceedings and defense of the action to show substantial prejudice. *Black*, 700 N.W.2d at 528. Moreover, any prejudice to Hanson due to being without his vehicle pending the outcome is ameliorated by the opportunity to post a bond and retrieve it. *See* Minn. Stat. § 169A.63, subd. 4. The district court noted the amount of the bond in its January 4, 2012 order. Because Hanson may post a bond and obtain his vehicle pending the outcome on the merits, we are persuaded that he will suffer no substantial prejudice if the judgment is vacated. Thus, the fourth *Hinz* factor is also satisfied.

Because the record shows that all four *Hinz* factors are satisfied, relief from judgment must be granted. *Northland Temporaries, Inc.*, 744 N.W.2d at 402. On this record, the facts and the law establish that the city has a reasonable defense on the merits based on a designated license revocation, any neglect was unattributable to the city itself, and the right to post a bond and retrieve the vehicle ameliorates the prejudice to Hanson of reopening the judgment. The record and the law also support the district court's finding that the city acted diligently on learning of the default judgment. We hold, therefore, that the district court abused its discretion in denying the city's motion and we remand for entry of an order granting vacatur and for further proceedings consistent with this opinion.

Reversed and remanded.