

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A06-1861

Roosevelt Hunter, Jr.,
Appellant,

vs.

1997 Pontiac, \$196.00 Cash, et al.,
Respondents.

Filed January 22, 2008

Affirmed

Wright, Judge

Ramsey County District Court
File No. C1-04-010349

Roosevelt Hunter, Jr., Minnesota Correctional Facility, 1000 Lake Shore Drive, Moose Lake, MN 55767 (pro se appellant)

Susan Gaertner, Ramsey County Attorney, Thomas E. Ring, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 560, St. Paul, MN 55102 (for respondents)

Considered and decided by Peterson, Presiding Judge; Willis, Judge; and Wright,
Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

In this asset-forfeiture case, appellant argues that the district court abused its discretion by denying his motion to vacate the default judgment. We affirm.

FACTS

In August 2004, following the seizure of property during the execution of a valid search warrant, appellant Roosevelt Hunter and his former wife were served a Notice of Seizure and Intent to Forfeit Property.¹ Hunter subsequently initiated a challenge to the forfeiture by filing a Demand for Judicial Determination of Forfeiture of Property on October 12, 2004. Hunter's former wife initiated a separate action challenging the forfeiture of the same property.

In its December 17, 2004 scheduling order, the district court set the pretrial hearing for June 1, 2005. On January 10, 2005, Hunter's counsel filed an informational statement and requested a continuance. Hunter's counsel also withdrew from representation that same day. The district court reiterated the dates set forth in the scheduling order and advised Hunter that the withdrawal of his counsel did not entitle him to a continuance of any scheduled hearing or trial.

¹ In a separate proceeding, Hunter was convicted of a third-degree controlled-substance offense, Minn. Stat. § 152.023, subd. 1(5) (2004), which was the underlying conduct justifying the search and administrative forfeiture. Hunter's conviction was affirmed on appeal. *State v. Hunter*, No. A05-2375, 2006 WL 2348507 (Minn. App. Aug. 15, 2006), review denied (Minn. Oct. 25, 2006).

On June 1, 2005, neither the state nor Hunter appeared for the pretrial conference, and neither submitted any subsequent justification for their failure to appear. Consequently, on June 6, the district court dismissed the case with prejudice and entered a default judgment. Although Hunter was served a notice of the entry of judgment, he did not appeal the default judgment. The seized property was distributed in April 2006 following the resolution of the forfeiture case involving Hunter's former wife.

On June 16, 2006, Hunter moved the district court for relief from the forfeiture default judgment on grounds of mistake, inadvertence, or excusable neglect. Minn. R. Civ. P. 60.02(a). Hunter appeared pro se at the hearing on the motion. The district court observed during the hearing that Hunter had made several prior unsuccessful attempts to bring his motion, but Hunter's materials had been returned to him as improperly filed.

Citing *Finden v. Klaas*, 268 Minn. 268, 128 N.W.2d 748 (1964), the state argued that the standard for vacating the default judgment had not been met because (1) Hunter's conviction of the underlying criminal conduct and the absence of any proof that Hunter owned the property established that Hunter did not have a reasonable likelihood of success on the merits, and (2) substantial prejudice would result if the forfeiture judgment were vacated because the subject property had been disposed of. Although the district court specifically directed Hunter to address the *Finden* factors, he failed to do so. Rather, Hunter argued repeatedly that he had not been aware of the pretrial hearing and advised that he would address the merits of the case at a later hearing.

The district court denied Hunter's motion to vacate the judgment and subsequently denied Hunter's motion to reconsider. This appeal followed.

DECISION

Within one year after judgment is entered, Minn. R. Civ. P. 60.02(a) permits a party to seek relief from a final judgment for mistake, inadvertence, surprise, or excusable neglect. Hunter's motion was served and filed on June 16, 2006, more than one year after the entry of the June 6, 2005 default judgment. Because the motion to vacate was not made within one year of the entry of judgment, the relief sought by Hunter was not available under rule 60.02. *Gould v. Johnson*, 379 N.W.2d 643, 647 (Minn. App. 1986), *review denied* (Minn. Mar. 14, 1986). Although the untimeliness of Hunter's motion was neither raised by the state nor addressed by the district court, the district court was without discretion to extend the time limit set by rule 60.02. Minn. R. Civ. P. 6.02 (prohibiting district court from "extend[ing] the time for taking any action" under rule 60.02); *see also Ferraro v. Ferraro*, 364 N.W.2d 821, 822 (Minn. App. 1985) (construing rule 6.02 as precluding district court from hearing untimely new-trial motion). However, because the district court's decision on the merits was a correct application of law, any error in hearing the matter was harmless.

We review a district court's decision to grant or deny a motion to vacate judgment under rule 60.02 for an abuse of discretion. *Carter v. Anderson*, 554 N.W.2d 110, 115 (Minn. App. 1996), *review denied* (Minn. Dec. 23, 1996). 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). Although all four elements must be

established, a strong showing on one factor may offset a weaker showing on another. *Reid v. Strodtman*, 631 N.W.2d 414, 419 (Minn. App. 2001).

At the hearing on the motion, the district court repeatedly reminded Hunter, who was pro se, of the requisite proof. But Hunter failed to present any evidence as to the merits of his forfeiture case. And he did not address the issue of prejudice to the state as a result of the property disbursement.

The record supports the district court's conclusion that Hunter failed to meet his burden for relief under Minn. R. Civ. P. 60.02. Accordingly, the district court's decision to deny Hunter's motion to vacate the default judgment is legally sound.

Affirmed.