DA 21-0507

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 44N

CURTIS B. HARRIS,

Plaintiff and Appellant,

v.

MIRABAI HENLEY, Individually,

Defendant and Appellee.

APPEAL FROM: District Court of the Nineteenth Judicial District,
In and For the County of Lincoln, Cause No. DV-20-235
Honorable Matthew J. Cuffe, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

S. Charles Sprinkle, Attorney at Law, Libby, Montana

For Appellee:

Mirabai Henley, Self-represented, Troy, Montana

Submitted on Briefs: January 26, 2022

Decided: March 1, 2022

Filed:

Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Plaintiff and Appellant Curtis B. Harris (Harris) appeals from the deemed denial of his Rule 60(b) Motion for Relief from Order Dismissing Defendant Henley. Harris filed the motion for relief after the Nineteenth Judicial District Court, Lincoln County, issued its July 1, 2021 Order Granting Motion to Dismiss Defendant Henley. The District Court did not issue a ruling on the motion for relief and it was deemed denied after 60 days pursuant to M. R. Civ. P. 60(c)(1) and M. R. Civ. P. 59(f). We reverse and remand.

¶3 On December 2, 2020, Harris filed a Complaint in the District Court, which alleged he was attacked and bitten by a large dog owned by Mike Brooks (Brooks) while staying at the Shameless Oasis campground on the Yaak River in Lincoln County. Shameless Oasis is owned and operated by Defendant and Appellee Mirabai Henley (Henley). Harris asserted both personal injury and premises liability causes of action against Henley.[1]

[1] Harris also named Shameless Oasis and Brooks as defendants in the action. Harris's claims against those defendants are not relevant to the present appeal.

Henley filed an Answer to Harris's Complaint on May 4, 2021, denying she was liable for the injuries caused by Brooks's dog.

¶4 On June 7, 2021, Henley filed a Motion for Dismissal, seeking to be dismissed as a defendant in the case because she was not liable for Brooks's dog. Henley's motion did not contain a supporting brief.[2] Harris did not file a response to Henley's motion. On July 1, 2021, the District Court issued an Order Granting Motion to Dismiss Defendant Henley, determining Harris's failure to respond to Henley's motion meant it was deemed well taken pursuant to MUDCR 2(b). On July 16, 2021, Harris filed a Rule 60(b) Motion for Relief from Order Dismissing Defendant Henley, along with a brief in support and the Affidavit of S. Charles Sprinkle, Harris's attorney. In his motion, Harris contended the order of dismissal should be set aside either pursuant to M. R. Civ. P. 60(b)(1) for "mistake, inadvertence, surprise, or excusable neglect," or under M. R. Civ. P. 60(b)(6) for "any other reason that justifies relief." In his affidavit, Sprinkle explained he was served with Henley's motion to dismiss, but set it aside expecting a brief in support to be filed within the next day or two and failed to calendar a due date for his response. Sprinkle further explained that the matter was ultimately overlooked after it had been set aside waiting for a brief in support of Henley's motion to arrive. Also on July 16, 2021, Harris filed an Answer Brief Opposing Defendant Henley's Motion for Dismissal, which, in relevant part, sought the District Court to vacate the order dismissing Henley as a defendant; to reinstate

[2] "The moving party shall file a supporting brief upon filing a motion." MUDCR 2(a).

Henley as a defendant; to allow Harris leave to file an answer brief opposing the motion to dismiss; and to allow Henley to file a reply brief to Harris's answer brief. Henley did not respond to Harris's motion. The District Court did not rule upon Harris's Rule 60(b) motion for relief from the order of dismissal and it was deemed denied by the operation of M. R. Civ. P. 60(c)(1) and M. R. Civ. P. 59(f) after 60 days.

¶5 Harris appeals. We restate the issue on appeal as follows: whether the District Court abused its discretion by failing to grant Harris's Rule 60(b) motion to set aside the order of dismissal.

¶6 Our review of a decision to grant or deny an M. R. Civ. P. 60(b) motion depends on the basis of the motion and the nature of the final judgment, order, or proceeding from which relief is sought. *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451 (citations omitted). "The standard of review for a district court's order on M. R. Civ. P. 60(b)(1) and (6) is abuse of discretion." *In re Marriage of Remitz*, 2018 MT 298, ¶ 8, 393 Mont. 423, 431 P.3d 338 (citing *Essex Ins. Co.*, ¶ 16).

¶7 Upon motion under M. R. Civ. P. 60(b), a district court may relieve a party from a final judgment, order, or proceeding under certain circumstances. As relevant here, M. R. Civ. P. 60 provides:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect; [or]
>
> . . .

(6) any other reason that justifies relief.

As an initial matter, we reiterate relief is only "available under M. R. Civ. P. 60(b)(6) 'for situations other than those enumerated in the first five subsections of the rule.'" *Mont. Prof'l Sports, LLC v. Nat'l Indoor Football League, LLC*, 2008 MT 98, ¶ 54, 342 Mont. 292, 180 P.3d 1142 (quoting *Matthews v. Don K Chevrolet*, 2005 MT 164, ¶ 17, 327 Mont. 456, 115 P.3d 201). As such, we need only address whether the District Court abused its discretion by not granting Harris's motion for relief under M. R. Civ. P. 60(b)(1) because by moving for relief under Rule 60(b)(1), "[r]elief under Rule 60(b)(6) is not and was not available to him." *Detienne v. Sandrock*, 2017 MT 181, ¶ 41, 388 Mont. 179, 400 P.3d 682.

¶8 The purpose of Rule 60 "is to achieve substantial justice." *In re Marriage of Remitz*, ¶ 11 (citing *Peterson v. Mont. Bank, N.A.*, 212 Mont. 37, 45-46, 687 P.2d 673, 678 (1984)) (footnote omitted). In accordance with this purpose, "[t]he degree of appellate scrutiny of a trial court's ruling on a Rule 60(b) motion depends on whether the trial court set aside the judgment. If the trial court refused to set aside the judgment, only a slight abuse of discretion need be shown to warrant reversal." *ECI Credit, LLC v. Diamond S Inc.*, 2018 MT 183, ¶ 14, 392 Mont. 178, 422 P.3d 691 (citing *Karlen v. Evans*, 276 Mont. 181, 185, 915 P.2d 232, 235 (1996)). This lesser degree of appellate scrutiny applies when a district court refuses to reopen an action under Rule 60 "because our policy is that litigated cases

are to be decided on the merits." *Whitefish Credit Union v. Sherman*, 2012 MT 267, ¶ 7, 367 Mont. 103, 289 P.3d 174.

¶9 Here, the District Court did not affirmatively rule on Harris's Rule 60 motion for relief and it was simply deemed denied due to the passage of time. We have previously noted that the "vast majority of Rule 60 motions deemed denied by the passage of time are clearly supported by the underlying record." *In re Marriage of Remitz*, ¶ 11. That is not the case here. The order Harris sought to have set aside in this case was the District Court's order dismissing Henley as a defendant. Motions to dismiss are "viewed with disfavor and rarely granted." *Fennessy v. Dorrington*, 2001 MT 204, ¶ 9, 306 Mont. 307, 32 P.3d 1250. "Dismissal of an action is justified only when the allegations of the complaint clearly demonstrate that the plaintiff does not have a claim." *Fennessy*, ¶ 9 (citing *Buttrell v. McBride Land & Livestock*, 170 Mont. 296, 298, 553 P.2d 407, 408 (1976)). Henley's motion to dismiss consisted of two sentences, no legal citations, and contained no supporting brief. After Harris did not respond to the motion, the District Court ordered Henley dismissed due to MUDCR 2(b), performing no analysis of the merits of her motion.

¶10 Once the District Court issued its order dismissing Henley as a defendant, Harris moved diligently to set aside that order. On July 16, 2021, Harris filed a Rule 60(b) motion for relief from the dismissal order and brief in support, an affidavit from his counsel explaining why Harris did not file a response to Henley's motion, and a response brief which substantively opposed Henley's motion to dismiss. Henley did not file a response

to Harris's motion and it was deemed denied by the operation of M. R. Civ. P. 60(c)(1) and M. R. Civ. P. 59(f) after the District Court did not issue a ruling within 60 days.

¶11 MUDCR 2 provides a district court with discretion "to either deny or grant unsupported or unanswered motions." *Chapman v. Maxwell*, 2014 MT 35, ¶ 10, 374 Mont. 12, 322 P.3d 1029 (citing *Moody v. Northland Royalty Co.*, 286 Mont. 89, 94, 951 P.2d 18, 22 (1997)). Here, Henley moved to dismiss, contending she had no liability to Harris, over a month after she had filed an answer to Harris's complaint—essentially asking for either a judgment on the pleadings or for summary judgment on the issue of liability. *See* M. R. Civ. P. 12(b), 12(c), and 56. We "look to the substance of a motion, not just its title, to identify what motion has been presented." *Miller v. Herbert*, 272 Mont. 132, 136, 900 P.2d 273, 275 (1995). In deciding a summary judgment motion, a district court must determine "'whether there exists a genuine issue of material fact. That inquiry does not admit of decision merely on a technical point, such as whether briefs have been filed on time.'" *Chapman*, ¶ 10 (quoting *Cole v. Flathead Cty.*, 236 Mont. 412, 416, 771 P.2d 97, 100 (1989)). A motion for judgment on the pleadings has the same no genuine issue of material fact standard, with the added assumption that all of the well-pleaded factual allegations in the nonmovant's pleadings must be taken as true. *Firelight Meadows, LLC v. 3 Rivers Telephone Coop., Inc.*, 2008 MT 202, ¶ 11, 344 Mont. 117, 186 P.3d 869.

¶12 In this case, the District Court performed no legal analysis of the merits of Henley's motion to dismiss, but simply granted the motion pursuant to MUDCR 2(b) after Harris

failed to respond.[3] Based on the nature of the motion, which required the District Court to determine whether a genuine issue of material fact regarding Henley's potential liability existed, and our repeated reiteration of our policy "that litigated cases are to be decided on the merits," *Whitefish Credit Union*, ¶ 7, it is clear the underlying Order for Dismissal was improvidently granted. After the Order for Dismissal was granted, Harris then diligently set about attempting to set it aside by filing his Rule 60(b) motion two weeks after the order was issued—well within the one-year time limit provided by the Rules of Civil Procedure for a motion made under Rule 60(b)(1). M. R. Civ. P. 60(c)(1). Henley did not respond to Harris's motion to set aside.[4] The District Court did not address the merits of Harris's Rule 60(b) motion as it was deemed denied by the operation of M. R. Civ. P. 60(c)(1) and M. R. Civ. P. 59(f) after the District Court did not issue a ruling within 60 days.

¶13 Harris's motion was made pursuant to M. R. Civ. P. 60(b)(1), which provides that a court may set aside an order based on a showing of mistake, inadvertence, surprise, or excusable neglect. "A 'mistake' is defined for Rule 60(b) purposes, as 'some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence.'" *Tschida v. Rowe*, 2003 MT 192, ¶ 14, 316 Mont. 503, 74 P.3d 1043 (quoting

[3] On appeal, Harris does not contend the District Court abused its discretion by not denying Henley's original motion to dismiss pursuant to MUDCR 2(b) for failing to file a brief in support, so we need not address that issue here.

[4] On appeal, Harris does not contend the District Court abused its discretion by not granting his Rule 60(b) motion for relief pursuant to MUDCR 2(b) because Henley failed to file a response, so we need not address that issue here.

In re Marriage of Winckler, 2000 MT 116, ¶ 22, 299 Mont. 428, 2 P.3d 229). We conclude Harris's failure to respond to Henley's motion to dismiss was unintentional, based upon his attorney's mistaken belief a brief in support of the motion was forthcoming, and, as the Order for Dismissal was improvidently granted in any case, the District Court abused its discretion through its deemed denial of Harris's Rule 60(b) motion to set aside.[5] In addition, there is no prejudice to setting aside Henley's dismissal as no discovery had yet occurred in the case, no deadlines had been set, and Harris, in his motion to set aside, specifically requested Henley be allowed to file a reply brief in support of her motion to dismiss.[6] The District Court will have full opportunity to determine if her dismissal is warranted under the facts of the case and set forth its reasoning after briefing on the issue is completed.

¶14 The District Court abused its discretion by not granting Harris's Rule 60(b) motion for relief from the order dismissing Henley as a defendant. The deemed denial of Harris's

[5] In his brief, Harris asserts he meets the standard for setting aside a default under the four-part test as set forth in *Blume v. Metropolitan Life Ins. Co.*, 242 Mont. 465, 791 P.2d 784 (1990), *overruled in part by JAS, Inc. v. Eisele*, 2014 MT 77, ¶ 34, 374 Mont. 312, 321 P.3d 113 (determining the court in *Blume* erred to the extent that it imported the Rule 55(c) good cause standard into its analysis of a default judgment). Under the *Blume* test, a default should be set aside under Rule 60(b)(1) "when: (1) the defaulting party proceeded with diligence; (2) the defaulting party's neglect was excusable; (3) the judgment, if permitted to stand, will affect the defaulting party injuriously, and (4) the defaulting party has a meritorious defense to plaintiff's cause of action." *JAS, Inc.*, ¶ 34 (citation omitted). As Harris is not appealing from a default, and we have already determined he is entitled to relief under Rule 60(b)(1)'s "mistake" portion, we need not address Harris's arguments under the four-part *Blume* test.

[6] We briefly note Henley did not file an answer brief to Harris's appeal in this Court.

Rule 60(b) motion for relief is reversed and this matter is remanded to the District Court for further proceedings in accordance with this Opinion.

¶15 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶16 Reversed and remanded.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR