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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1079**

City of Vadnais Heights,
Respondent,

vs.

Cynthia C. Lemke,
Appellant.

**Filed March 6, 2017
Affirmed
Bjorkman, Judge**

Ramsey County District Court
File No. 62-CV-16-694

Caroline Bell Beckman, James C. Erickson, Jr., Vadnais Heights City Attorneys, Erickson, Bell, Beckman & Quinn, P.A., Roseville, Minnesota (for respondent)

Christopher L. Olson, Mark E. Duea, GDO LAW, White Bear Lake, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

In this hazardous-building abatement action, appellant property owner challenges the judgment enforcing respondent city's abatement order, arguing she did not have

adequate notice of the proceeding and that the district court abused its discretion in denying her motion to vacate under Minn. R. Civ. P. 60.02. We affirm.

FACTS

Appellant Cynthia C. Lemke owns real property located in Vadnais Heights. The property contains two structures: a house and a partially constructed building that lacks a roof and one exterior wall. On November 26, 2013, respondent City of Vadnais Heights notified Lemke that the property did not comply with the city code. Lemke responded that her business associate, Steve Scherrer, was cleaning up the property. In June and July 2014, the city sent additional notices informing Lemke that the condition of the property violated the city code. Lemke again responded that she was cleaning it up. In November, the city filed a criminal citation alleging numerous code violations. Lemke pleaded guilty to one count of storing junk on the property and was placed on probation. As a condition of her probation, Lemke was required to bring the property into compliance with the city code by July 15, 2015. Lemke failed to do so and subsequently admitted that she violated her probation.

On September 18, 2015, the city notified Lemke that the property's condition constituted a public nuisance. The notice identified five nuisance conditions: two inoperable vehicles stored on the property, excessive accumulation of trash and debris, a dilapidated roof on the house, rotting wood on the windows and doors of the house, and the existence of the partial building that was beyond repair. The notice advised Lemke of the steps she must take to abate the nuisance, stating that if she failed to do so the city council would consider the matter at its October 21 meeting. On October 12, the city

executed an administrative search warrant at the property during which city officials observed the listed nuisance conditions and an infestation of rats and other vermin.

Lemke and Scherrer attended the October 21 city council meeting. Scherrer told the council members that he was in the process of removing the junk from the property and fixing the siding on the house. The council authorized city staff to abate the exterior debris. On October 29, the city informed Lemke that the city council would be discussing the structures at its November 4 meeting. Lemke and Scherrer attended the meeting and the city council informed them the structures would be discussed again at the next council meeting on November 18. On November 10, the city sent an e-mail advising Lemke that the city attorney was preparing a resolution that would order her to repair or remove the structures within 30 days.

Both Lemke and Scherrer addressed the city council during the November 18 meeting, and the council members reviewed numerous photos and reports concerning the property. At the conclusion of this hearing, the city council determined that both structures are hazardous buildings within the meaning of Minn. Stat. § 463.15, subd. 3 (2016). The city council ordered Lemke to repair the house and raze the partial structure within 30 days.

On December 1, Lemke was personally served with an extract of the minutes from the November 18 meeting. The extract outlined the required repairs, and stated that the city would move for summary enforcement “unless corrective action is taken, or unless an answer is filed within the time specified in Minn. Stat. § 463.18, which is 20 days.” Lemke did not file an answer within 20 days and did not repair the property. She attempted to obtain building permits for plumbing, electrical, siding, and roof repairs, but her

applications were denied because they were not submitted by a licensed contractor as required by Minn. Stat. § 326B.85, subd. 1 (2016).

On March 7, 2016, the city moved the district court for summary enforcement of the abatement order. On March 20, the district court held a hearing and orally granted the motion. Lemke appeared 15 minutes after the hearing ended, advising the district court that she planned to hire counsel but did not have time to do so prior to the hearing. The district court stayed enforcement of the abatement order until April 8 to allow Lemke to respond. On April 6, Lemke filed a memorandum in opposition to the motion. On April 7, she interposed an answer and counterclaim, asserting that the case should be dismissed because the structures are not hazardous buildings. On April 20, the district court granted the city's motion for summary enforcement. On May 6, Lemke moved to vacate the order for judgment. The district court denied the motion. Lemke appeals.

D E C I S I O N

I. The city is entitled to summary enforcement of the abatement order.

Lemke argues that the district court erred in granting default judgment because the city and the district court did not follow the provisions of Minn. R. Civ. P. 55.01. But the city's motion that resulted in the challenged judgment is more properly categorized as a motion seeking summary enforcement of the abatement order.¹ Minn. Stat. §§ 463.15-.261 (2016) governs hazardous and substandard buildings, and establishes a process by which a municipality may seek to abate hazardous buildings, which culminates in judgments

¹ In its order granting the city's motion, the district court observed the motion was made pursuant to the statutory scheme.

enforcing abatement orders. Accordingly, the dispositive issue is whether the enforcement judgment is valid under this statutory scheme. The application of a statute is a question of law that we review de novo. *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008).

Minn. Stat. § 463.161 permits a municipality to abate any hazardous building or property at the owner's expense. The municipality must serve an abatement order upon the property owner of record and specify the necessary repairs, provide time for compliance, and inform the owner that a motion for summary enforcement will be made unless corrective action is taken, or an answer is filed within 20 days from service. Minn. Stat. §§ 463.17, .18. If the owner does not file an answer, the municipality may move for summary enforcement of the abatement order. Minn. Stat. § 463.19. But “[i]f an answer is filed and served as provided in section 463.18, further proceedings in the action shall be governed by the Rules of Civil Procedure.” Minn. Stat. § 463.20.

We conclude the city complied with the procedure established in Minn. Stat. §§ 463.15-.261. It is undisputed that the city's abatement order satisfied the statutory requirements concerning content, service, and filing. See Minn. Stat. § 463.17. Lemke acknowledges that she was personally served with the abatement order on December 1, 2015. She did not file an answer until April 7, 2016, well after the 20-day limit to file an answer had passed. Because Lemke did not file an answer “as provided in section 463.18,” the district court was not required to treat the case as a contested case and apply the rules of civil procedure. Minn. Stat. § 463.20. Rather, the city was entitled to seek summary enforcement of its abatement order. Because the city complied with the statutory

requirements and presented evidence to the district court supporting its determination that Lemke's property constituted a nuisance, summary enforcement of the abatement order was proper.

II. The district court did not abuse its discretion in denying Lemke's motion to vacate.

A district court may vacate a final judgment based on mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief from the operation of the judgment. Minn. R. Civ. P. 60.02(a), (f). A party seeking vacation must show: (1) a reasonable claim on the merits, (2) a reasonable excuse for the party's failure or neglect to act, (3) the party acted with due diligence after receiving notice of the entry of judgment, and (4) that no substantial prejudice will result to the other party. *Finden v. Klaas*, 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964); *Northland Temps., Inc. v. Turpin*, 744 N.W.2d 398, 402 (Minn. App. 2008), *review denied* (Minn. Apr. 29, 2008). The moving party bears the burden of showing all four factors are satisfied. *Gams v. Houghton*, 884 N.W.2d 611, 619-20 (Minn. 2016). We review the decision to vacate a judgment under rule 60.02 for abuse of discretion. *Meyer v. Best W. Seville Plaza Hotel*, 562 N.W.2d 690, 694 (Minn. App. 1997), *review denied* (Minn. June 26, 1997).

The district court determined that Lemke failed to show that she had a reasonable claim on the merits, a reasonable excuse for her failure to act, and that the city would not be prejudiced if the enforcement judgment were vacated. Lemke challenges these findings. We address each in turn.

A. Lemke failed to show a reasonable claim on the merits.

Lemke contends that she was not given sufficient notice of the enforcement hearing to prepare a defense and that she was not aware the city was considering razing the two structures. Neither argument is persuasive. She cites no legal authority to support her assertion that the city should have given more notice than the statute requires, and she never requested an extension. Moreover, the record shows Lemke was well aware of the city's specific concerns about the property. The city advised Lemke as early as November 2013 that if the conditions were not repaired, then the city would take further action, including pursuing "abatement, citations and/or administrative fees." She received subsequent notices from the city and a criminal citation as a result of her failure to correct the hazardous conditions. In short, the record defeats Lemke's assertion that she was not given adequate notice of the hazardous conditions and the abatement enforcement hearing.

Nor are we persuaded by Lemke's bald assertion that her property was not hazardous within the meaning of Minn. Stat. § 463.15, subd. 3. The statute defines "hazardous building" as "any building or property, which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment, constitutes a fire hazard or a hazard to public safety or health." Minn. Stat. § 463.15, subd. 3. The city offered extensive documentation of the dilapidated, damaged, and inadequately maintained condition of the structures. There was rotting wood throughout both structures, the house lacked adequate plumbing and wiring, there was water damage, the roof, siding, and windows were deteriorated, the partial structure was missing both a roof and one wall, there was mold in the structures, and the structures were infested with

vermin. Moreover, the city determined both the house and partial structure were attractive nuisances, which pose a danger to children. Contrary to Lemke's assertion, there is no evidence in the record that suggests the structures are anything but hazardous buildings.

Lemke's contentions that she was not given sufficient time to make the repairs and the city wrongfully denied the necessary permits likewise fail. Lemke was present at the November 18 meeting when the city council authorized abatement. The abatement order Lemke received on December 1 gave her 30 days to correct the conditions, many of which dated back to November 2013. And the city waited more than three months to proceed with its motion for summary enforcement. Lemke argues that the city impeded her repair efforts because the requirements that a licensed contractor submit permit applications does not apply to her as "an owner of residential real estate who builds or improves any structure on residential real estate, if the building or improving is performed by the owner's bona fide employees or by individual owners personally." Minn. Stat. § 326B.805, subd. 6(3) (2016). But the exemption to the license requirement does not apply to "an owner who constructs or improves property for purposes of speculation." *Id.* It is undisputed that Lemke was trying to sell the property at all relevant times. Accordingly, she was required to engage a licensed contractor.

B. Lemke failed to show a reasonable excuse for her failure to act.

Lemke argues that she had a reasonable excuse for failing to timely file an answer because she was not aware of the 20-day filing requirement and the abatement order did not state that the matter would proceed by default if she failed to answer. The record belies this assertion. The abatement order stated that the city would move for summary

enforcement “unless corrective action is taken, or unless an answer is filed within the time specified in Minn. Stat. § 463.18, which is 20 days.” And as the district court observed, a self-represented party’s misunderstanding of the litigation process is not a reasonable excuse for the failure to act. *See Heinsch v. Lot 27*, 399 N.W.2d 107, 109 (Minn. App. 1987) (stating “[u]nfamiliarity with procedural rules is not good cause to excuse untimely action”).

C. Lemke made, at best, a weak showing that the city would not be prejudiced.

Finally, Lemke asserts that the district court abused its discretion in determining the city would be prejudiced if the judgment were vacated. The delay and added expense of reopening a judgment, standing alone, do not establish substantial prejudice to the other party. *Riemer v. Zahn*, 420 N.W.2d 659, 662 (Minn. App. 1988). But the district court’s decision was not based on delay and cost alone. Rather, the district court determined that both the city and public would be prejudiced by reopening the judgment because “a hazardous property requires prompt remediation because it is unsafe.” And even if we conclude Lemke made a weak showing on the prejudice factor, she has not satisfied all four of the *Finden* factors. *Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016) (stating that some of the *Finden*-factor showings may be stronger than others, but “the moving party must establish all four requirements for relief to be warranted.”).

In sum, Lemke has not persuaded us that she has a reasonable claim on the merits or a reasonable excuse for her failure to act. On this record, we discern no abuse of

discretion by the district court in denying Lemke's motion to vacate the judgment enforcing the city's abatement order.

Affirmed.