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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1238**

Cyrus E. Olson,
Appellant,

vs.

Todd Jackson Trucking, LLC, et al.,
Respondents.

**Filed March 20, 2017
Reversed and remanded
Schellhas, Judge**

Olmsted County District Court
File No. 55-CV-16-2528

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appellant)

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Considered and decided by Schellhas, Presiding Judge; Kirk, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court’s order denying his motion for rule 60.02
relief. We reverse and remand.

FACTS

This case arises from a car accident involving appellant Cyrus Olson and respondents Justin Marshman and Todd Jackson Trucking (TJT). At the time of the accident Olson was a passenger in a vehicle that was struck from behind by a commercial vehicle driven by Marshman in the course and scope of his employment with TJT. On May 30, 2014, Olson commenced the present action by service of a summons and complaint. *See* Minn. R. Civ. P. 3.01(a). TJT acknowledged service and receipt of the summons and complaint by U.S. mail on June 4, 2014. In the complaint, Olson alleged that Marshman negligently caused the car accident that severely injured Olson because Marshman lost control of the commercial vehicle and because the commercial vehicle's brakes were not properly maintained. Counsel initially agreed to focus their efforts on discovery about causation and damages. From June 2014 through April 2015, the parties exchanged discovery requests and responses and attempted to schedule depositions.

On October 13, 2015, counsel discussed the case by telephone and Olson's counsel admitted to missing the rule 5.04 filing deadline. TJT's counsel asked Olson's counsel for an e-mail, outlining Olson's position on the rule 5.04 dismissal, but TJT's counsel never received such an e-mail. On December 8, 2015, TJT's counsel told Olson's counsel that he thought the case had been automatically dismissed by operation of Minn. R. Civ. P. 5.04(a).

On April 8, 2016, Olson filed the action in Olmsted County District Court. On April 12, 2016, Olson filed a rule 60.02 motion, asking the district court for an order excusing compliance with Minn. R. Civ. P. 5.04(a), and arguing that he was entitled to rule 60.02 relief because the facts of this case supported his request for relief on all four *Finden*

factors, and also that he was entitled to relief under the theory of equitable estoppel. TJT filed a letter with the district court stating its belief that the action was deemed dismissed with prejudice under Minn. R. Civ. P. 5.04(a).

On May 4, 2016, the district court ordered dismissal of the action with prejudice under Minn. R. Civ. P. 5.04(a) and entered judgment, noting that the action was filed more than one year after commencement against TJT and that a stipulation to extend the filing period had not been entered. The court scheduled a hearing on July 15, 2016, to hear Olson's rule 60.02 motion, but neither Olson nor his counsel appeared. The court therefore denied Olson's rule 60.02 motion, stating:

Based on the record, the Court finds that the plaintiff is not entitled to Rule 60.02 Relief because he cannot make a showing: 1) that he had a reasonable excuse for neglecting to file the case in a timely manner; and 2) that he acted diligently upon discovery of his mistake which led to judgment being entered. Thus, plaintiff is not entitled to Rule 60.02 relief.

The district court did not address Olson's equitable estoppel argument. This appeal follows.

D E C I S I O N

I

Minnesota Rule of Civil Procedure 5.04(a) provides that “[a]ny action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period.” Olson argues that the district court abused its discretion by denying his rule 60.02 motion for relief from the judgment entered under Minn. R. Civ. P. 5.04(a) because the record reflects that he met all four *Finden* factors.

“Rule 60.02 is applicable to a Rule 5.04(a) ‘deemed’ dismissal.” *Gams v. Houghton*, 884 N.W.2d 611, 617–18 (Minn. 2016). Rule 60.02(a) provides relief from “a final judgment . . . order, or proceeding” for, among other reasons, “[m]istake, inadvertence, surprise, or excusable neglect.” Minn. R. Civ. P. 60.02(a); *see also Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016). “[T]he district court must consider, and expressly find that a party satisfied, all four of the *Finden* factors in order to grant relief under Rule 60.02(a).” *Gams*, 884 N.W.2d at 619 (quotation omitted); *Cole*, 884 N.W.2d at 637. The four *Finden* factors are: “(1) a debatably meritorious claim; (2) a reasonable excuse for the movant’s failure or neglect to act; (3) the movant acted with due diligence after learning of the error or omission; and (4) no substantial prejudice will result to the other party if relief is granted.” *Gams*, 884 N.W.2d at 620 (quotations omitted).

“The decision whether to grant Rule 60.02 relief is based on all the surrounding facts of each specific case, and is committed to the sound discretion of the district court.” *Id.* “[A] district court will not be reversed on appeal except for a clear abuse of discretion.” *Id.* (quotation omitted). “[T]he district court is in the best position to evaluate the reasonableness of the excuse, the prejudice to the other party, and whether the party has a reasonable claim or defense.” *Id.* (quotation omitted). “A district court abuses its discretion when it acts under a misapprehension of the law or when its factual findings are clearly erroneous.” *Id.* (citation and quotations omitted).

In this case, the district court denied Olson’s rule 60.02 motion because the court found that Olson could not demonstrate that he had a reasonable excuse for neglecting to timely file the action and because he could not demonstrate that he acted diligently upon

discovering the mistake that led to judgment being entered. The district court did not address the first or fourth *Finden* factors.¹ The findings of fact merely recite the procedural history of the case and note that neither Olson nor his counsel was present for the July 15, 2016 hearing on the rule 60.02 motion.

In two recent decisions, the Minnesota Supreme Court held that the district court abused its discretion by denying relief under rule 60.02 without making findings on all four *Finden* factors. *Id.* at 621 (holding that “[t]he district court’s conclusory statement [wa]s not sufficient to determine whether the court properly considered and applied the *Finden* test” where the court “merely concluded that . . . Plaintiff did not prove all four [*Finden*] elements”); *Cole*, 884 N.W.2d at 639 (holding that “the district court abused its discretion in failing to consider all four *Finden* requirements, in light of the surrounding circumstances of the case,” where the district court only made findings on the reasonable-excuse requirement). The supreme court explained that “effective appellate review under an abuse-of-discretion standard is only possible when the district court has issued sufficiently detailed findings of fact or conclusions of law to demonstrate that it has considered all of the relevant factors.” *Gams*, 884 N.W.2d at 621. The district court is in the best position to assess the *Finden* factors, so the supreme court has “expressed serious doubts as to the utility of undertaking a Rule 60.02 analysis at the appellate level.” *Id.* at

¹ Both parties agree that only the second and third *Finden* factors are contested. Specifically, TJT concedes that Olson has a debatably meritorious claim and does not argue that TJT was prejudiced.

620. In both cases, the supreme court remanded to the district court for reconsideration and additional findings. *Id.* at 621; *Cole*, 884 N.W.2d at 639.

The record in this case precludes effective appellate review. The district court's limited findings only contain conclusory statements that are not sufficient for this court to determine whether the district court properly considered and applied the *Finden* test. Specifically, the order does not address whether the district court considered Olson's conduct and excuse separate from his attorney's conduct to determine whether it is fair to attribute the failures of Olson's counsel to Olson. We reverse and remand for the district court to provide sufficiently detailed findings of fact and conclusions of law to demonstrate that the court considered all of the *Finden* factors.

II

Olson also argues that "equitable estoppel precluded dismissal of this litigation." "Equitable estoppel is a doctrine addressed to the discretion of the court and is intended to prevent a party from taking unconscionable advantage of his own wrong by asserting his strict legal rights." *Brekke v. THM Biomedical, Inc.*, 683 N.W.2d 771, 777 (Minn. 2004) (quotation omitted). The district court did not address the estoppel argument in its order, and we therefore decline to consider it. *See Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988) (stating that "an undecided question is not usually amenable to appellate review").

Reversed and remanded.