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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0991**

Mary Larsen, et al.,
Appellants,

vs.

Paul Tessier,
Respondent.

**Filed March 5, 2018
Affirmed
Bjorkman, Judge**

St. Louis County District Court
File No. 69DU-CV-16-2444

Greg C. Gilbert, Gilbert Law Office, Duluth, Minnesota (for appellants)

Scott A. Witty, Jocelyn E. Bremer, Hanft Fride, A Professional Association, Duluth,
Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and
Smith, Tracy M., Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellants challenge the denial of their motion to vacate an order dismissing their breach-of-contract action under Minn. R. Civ. P. 5.04 for failure to file the complaint within one year of commencement by service. We affirm.

FACTS

On October 31, 2008, appellants Mary Larsen and Loren Allen Larsen entered into a two-year agreement with respondent Paul Tessier to lease property located at 5230 Fish Lake Road in Duluth. The lease agreement included a price-setting provision that would apply in the event the parties entered into a separate purchase agreement. The Larsens stayed on the property past the lease termination date and continued to make payments. In June 2013, they invoked what they describe as the purchase option under the lease. Tessier refused to sell the property to them.

On July 14, 2015, the Larsens served a summons and complaint on Tessier, seeking transfer of the property by warranty deed upon payment of the purchase price set forth in the lease, and an award of costs for expenses they paid for which Tessier was responsible under the lease. Tessier timely answered the complaint.

On October 5, 2016, the Larsens' attorney filed the summons and complaint in district court. After issuing case-management orders, the district court set the case for trial on April 11, 2017. But on February 10, Tessier asked the district court to dismiss the action because the Larsens did not file their complaint within one year after service. The district court did so in a February 17 order. The Larsens moved to vacate the dismissal order under Minn. R. Civ. P. 60.02. Tessier objected, averring in his affidavit that vacatur would prejudice him because he had a prospective buyer who was ready to purchase the property. The district court denied the motion. The Larsens appeal.

DECISION

Minn. R. Civ. P. 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 stipulate to extend this time. Dismissal under rule 5.04(a) is automatic; no motion or order for dismissal is required. *Gams v. Houghton*, 884 N.W.2d 611, 617 (Minn. 2016). Dismissal is final one year after a proceeding is commenced by service. *Johnson v. City of Duluth*, 903 N.W.2d 1, 4 (Minn. App. 2017), *review denied* (Minn. Dec. 19, 2017). Accordingly, the Larsens’ action was deemed dismissed with prejudice on July 15, 2016—one year after the complaint was served.

Minn. R. Civ. P. 60.02(a) permits a district court to relieve a party from a final order or judgment because of mistake, inadvertence, surprise, or excusable neglect. A court may grant relief under this rule if the moving party demonstrates “(1) a . . . debatably meritorious claim; (2) a reasonable excuse for his or her failure or neglect to act; (3) that he or she acted with due diligence after learning of the error or omission; and (4) that no substantial prejudice will result to the other party.” *Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016) (quotations omitted); *see Finden v. Klaas*, 268 Minn. 268, 271, 128 N.W.2d 748, 750 (1964) (establishing these requirements). The moving party must establish all four requirements to obtain relief. *Cornell v. Ripka*, 897 N.W.2d 801, 807 (Minn. App. 2017). We review a district court’s decision on a rule 60.02 motion for an abuse of discretion. *Johnson*, 903 N.W.2d at 3.

The Larsens argue that the district court abused its discretion by failing to fully consider the impact that their attorney’s inexcusable failure to timely file the complaint had

on them. And they assert Tessier was not substantially prejudiced by the failure to timely file the complaint because trial was scheduled to occur just two months after the district court dismissed the action.¹ We address each argument in turn.

First, the Larsens correctly observe that “our case law generally reflects a strong policy favoring the granting of relief when judgment is entered through no fault of the client.” *Cole*, 884 N.W.2d at 638 (quotation omitted). But the fact that an attorney committed the mistake leading to the adverse order or judgment is not legally dispositive. *Id.* at 639. Rather, a district court is required to make a fact-intensive analysis. The district court did so, finding that the Larsens and their attorney offered no reason at all for neglecting to timely file the complaint. The record supports this finding, and it defeats the Larsens’ contention that the neglect is excusable.

Second, the Larsens contend that the record does not support the district court’s findings that Tessier had another buyer for the property who wanted to proceed at once, he could lose the sale if he had to go to trial, and he had been looking for a buyer since the lease expired in 2010. We disagree. The Larsens had the burden of showing that Tessier would not suffer a real and particular harm if the case was reinstated. Although Tessier was “reluctant to provide much greater detail from private negotiations,” and declined to identify the prospective buyer by name during the motion hearing, he did not have the

¹ The district court concluded that the Larsens satisfied the first and third *Finden* requirements—a debatably meritorious claim and due diligence after discovery of the error. Tessier does not challenge these determinations on appeal.

burden of establishing prejudice.² And we are persuaded that the record, including Tessier's affidavit, provides ample support for the district court's findings.

In sum, because the Larsens did not establish all four prongs of the *Finden* analysis, we discern no abuse of discretion by the district court in denying their motion to vacate.

Affirmed.

² Both parties filed affidavits concerning prejudice following the motion hearing. Documents submitted after a district court's challenged decision are outside the scope of our appellate review, so we do not consider them. See *In re Estate of Riggle*, 654 N.W.2d 710, 717 (Minn. App. 2002) (striking documents submitted for the first time on appeal in support of a district court's decision as being outside appellate record).