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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1126**

Sherry Baker,
Appellant,

vs.

Commissioner of Human Services,
Respondent,

Blue Earth County,
Respondent.

**Filed March 12, 2018
Affirmed
Connolly, Judge**

Blue Earth County District Court
File No. 07-CV-14-1097

Jennifer L. Thon, Steven Winkler, Jones Law Office, Mankato, Minnesota (for appellant)

Lori Swanson, Attorney General, Frederic J. Argir, Assistant Attorney General, St. Paul, Minnesota; and

Patrick R. McDermott, Blue Earth County Attorney, Mark A. Lindahl, Assistant County Attorney, Mankato, Minnesota (for respondent)

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

UNPUBLISHED OPINION

CONNOLLY, Judge

On appeal from the denial of her motion to reconsider and her request for leave to amend her rule 60.02(f) motion, appellant argues that the district court abused its discretion by denying her request for leave to amend to file her motion under rule 60.02(a). We affirm.

FACTS

On January 12, 2012, respondent Blue Earth County received a complaint alleging that appellant Sherry Baker had engaged in maltreatment of a vulnerable adult. Blue Earth County substantiated this complaint after conducting an investigation. The investigation revealed that appellant had her mother (M.D.)¹ cosign a loan for a car that appellant had purchased in June 2010. The investigation also showed that during the year of 2011, M.D. made monthly car-loan payments totaling \$3,858.80 from M.D.'s bank account. Appellant claimed that she had fully reimbursed M.D. for her car payments, but evidence provided by appellant showed that she had only reimbursed M.D. about 57% of the total payments.

In light of the substantiated accusations of maltreatment, respondent Commissioner of Human Services disqualified appellant from any position involving direct contact with people receiving services from programs licensed by the Minnesota Department of Human Services (DHS) or the Minnesota Department of Health. Appellant submitted a request to

¹ M.D. began receiving personal care assistance in February 2011, and because of these services M.D. was considered a vulnerable adult under Minn. Stat. § 626.5572, subd. 21(a)(3) (2016).

set aside her disqualification, which was denied by the Commissioner of Human Services. Appellant then requested an administrative hearing to challenge (1) the maltreatment determination, (2) the commissioner's order for a direct-care disqualification, and (3) the commissioner's denial of her request to set aside the disqualification. After the hearing, the human-services judge issued an order recommending that the commissioner affirm all of the appealed issues. Three days later, the commissioner adopted the judge's recommendation.

Appellant appealed the commissioner's order to the Blue Earth County District Court. On August 18, 2015, the district court issued an order affirming the commissioner's order, but the order was not entered as a judgment, and none of the parties filed a notice of filing of the order. On January 31, 2017, appellant filed a motion under Minn. R. Civ. P. 60.02(f) to vacate the district court's order because her attorney failed to submit all of the potential exhibits at the administrative hearing. The district court denied the motion on March 20 and determined that the motion should have been brought under rule 60.02(a) because appellant was alleging excusable neglect. Moreover, the court determined that even had the motion been brought under rule 60.02(a), it would still fail because it was procedurally barred due to the one-year time limitation that controls rule 60.02(a).

After the district court's denial of her January 31 motion, appellant filed a new motion to: (1) reconsider, (2) allow for leave to amend her rule 60.02(f) motion to a rule 60.02(a) motion, and (3) enter the August 18, 2015 order as a judgment. The court granted the latter request but rejected appellant's motion to reconsider and for leave to amend her rule 60.02 motion. This appeal follows.

DECISION

District courts have “broad discretion in deciding whether to grant or deny a rule 60.02 motion.” *Northland Temporaries, Inc. v. Turpin*, 744 N.W.2d 398, 402 (Minn. App. 2008), *review denied* (Minn. Apr. 29, 2008). We will not reverse a district court’s decision to grant or deny a rule 60.02 motion unless it has abused its discretion. *Bib Audio-Video Prods. v. Herold Mktg. Assocs.*, 517 N.W.2d 68, 73 (Minn. App. 1994). A district court has abused its discretion when: (1) it acted under a misapprehension of the law, (2) its factual findings are clearly erroneous, (3) it failed to sufficiently consider the *Finden* elements or it improperly denied relief “when a movant has met [their] burden” of showing the *Finden* elements. *Gams v. Houghton*, 884 N.W.2d 611, 620-21 (Minn. 2016). An interpretation of the Minnesota Rules of Civil Procedure is a question of law, which we review de novo. *Madson v. Minnesota Min. & Mfg. Co.*, 612 N.W.2d 168, 170 (Minn. 2000). “When interpreting court rules, we look first to the plain language.” *Gams*, 884 N.W.2d at 616 (quotation omitted). If we determine the language of the rule is plain and unambiguous, then we will follow the plain language of the rule. *Id.*

In her brief, appellant first argues that the district court abused its discretion when it denied her rule 60.02(f) motion. But at oral argument, appellant conceded that the rule 60.02 motion should have been brought under rule 60.02(a) because attorney misconduct is considered “excusable neglect” for purposes of the rule. *See Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 923 (Minn. 1990) (“attorney misconduct has been characterized as ‘excusable neglect’ under clause (a)”).

Appellant next argues that the district court erred when it denied her motion for leave to amend the rule 60.02 motion after concluding that a rule 60.02(a) motion would now be time-barred. Rule 60.02 requires that motions under subsection (a) be brought “not more than one year after the judgment, order, or proceeding was entered or taken.” Minn. R. Civ. P. 60.02. Appellant asserts that the August 18, 2015 order was neither entered nor taken prior to her rule 60.02 motion because the district court entered judgment of its August 18 order on May 22, 2017. In other words, appellant contends that the August 18 order was not “entered” on its filing date (August 18, 2015) but rather on the date that it was entered as a judgment (May 22, 2017). We disagree and conclude that this “order...was entered” for purposes of rule 60.02 when it was filed by the district court. *Id.*

In a recent opinion from this court, we were asked to interpret whether rule 60.02’s timing period was triggered as soon as an automatic dismissal of a complaint occurred as a matter of course under rule 5.04(a). *See Johnson v. City of Duluth*, 903 N.W.2d 1 (Minn. App. 2017), *review denied* (Minn. Dec. 19, 2017). We ultimately concluded that the one-year limitation under rule 60.02(a)-(c) did begin immediately after rule 5.04(a)’s one-year filing deadline because the rule 5.04 dismissal was a “proceeding” that “was taken” immediately after the filing deadline elapsed. *Id.* at 4-5.

Here, the August 18, 2015 order, much like the rule 5.04 dismissal in *Johnson*, required no more judicial action to make the order final and appealable on both parties.²

² The August 18, 2015 order was “a final order...affecting a substantial right made in an administrative or other special proceeding” and as such was immediately appealable when *filed* by the court. Minn. R. Civ. App. P. 103.03(g). Because the order was immediately appealable, the district court was not required to direct entry of judgment on the order.

See Johnson, 903 N.W.2d at 4; *see also Gams*, 884 N.W.2d at 617. Because the order was final and immediately appealable, the district court was not required to direct entry of judgment on the order or engage in any other judicial action in regards to the order. Thus, the district court was correct in denying appellant’s motion to amend her rule 60.02 motion because the nunc pro tunc entry of judgment on May 22, 2017 did not impact or alter the August 18, 2015 order’s finality or appealability on the date it was filed by the court. Moreover, appellant does not offer any support for disregarding the plain language of rule 60.02, which expressly includes “orders” and not just “judgments.” *See Minn. R. Civ. P. 60.02*. Since we conclude that the district court was correct in determining that a newly amended rule 60.02(a) motion would have been time-barred by the rule 60.02(a) time constraints, we also conclude that it was proper to deny appellant’s request for leave to amend a time-constrained motion. *See LaFee v. Winona Cty.*, 655 N.W.2d 662, 668 (Minn. App. 2003) (a district court’s denial of a motion to amend is proper when the “additional alleged claim cannot be maintained.”), *review denied* (Minn. Mar. 27, 2003).

Lastly, appellant argues that the district court abused its discretion by not analyzing the four *Finden* elements. *See Gams*, 884 N.W.2d at 621 (remanding to the district court because it did not make findings on all four *Finden* elements). We find appellant’s argument unpersuasive because rule 60.02(a) only provides a basis to vacate an order if the rule 60.02 motion is timely brought *and* a party qualifies for relief by showing all four *Finden* elements. *See Chapman*, 454 N.W.2d at 923-24 (the court did not conduct or

However, the district court did enter the order as a judgment 19 months later because appellant requested entry.

remand for a *Finden* inquiry after concluding that “[t]he motion based on excusable neglect is not timely if it is brought more than one year after entry of an order for dismissal even if the ground for the delay is reasonable.”). Because appellant’s rule 60.02(a) motion did not meet the separate requirement of timeliness, a remand for consideration of the *Finden* elements is not needed or required.

Affirmed.