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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1360**

Charlie Siegle,
Appellant,

vs.

Vern Karst,
Respondent.

**Filed June 18, 2018
Affirmed
Randall, Judge***

Scott County District Court
File No. 70-CV-16-13465

Richard L. Swanson, Chaska, Minnesota (for appellant)

Bradley John Haddy, Minnesota Esquire, LLC, Mendota Heights, Minnesota (for
respondent)

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Randall,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

RANDALL, Judge

On appeal from the district court's order denying his motion for Minn. R. Civ. P. 60.02 relief, appellant contends the district court abused its discretion in applying the *Finden* elements. He argues that the district court incorrectly concluded that appellant failed to establish excusable neglect for filing a complaint more than one year after serving the same on respondent. We affirm.

FACTS

On February 3, 2015, appellant Charlie Siegle served a summons and complaint on respondent Vern Karst, alleging that he had paid Karst \$23,000 to complete body work on his 1970 Dodge Challenger, but that Karst had failed to complete the work "in a workable like manner." Karst served an answer denying the allegation and stating that all repairs "were done properly." On July 11, 2016, Siegle filed the summons and complaint in district court. On September 15, 2016, Karst moved to dismiss the complaint as being filed untimely under Minn. R. Civ. P. 5.04(a). The district court granted Karst's motion the next day. The district court administrator, however, did not enter judgment.

Without leave, Siegle moved the district court in November 2016 to reconsider the motion to dismiss, explaining that he and Karst had been engaging in discovery and he did not timely file the complaint because his attorney was suspended from the practice of law when Karst filed the motion to dismiss. He did not bring the motion under Minn. R. Civ. P. 60.02. The district court scheduled a hearing. For reasons "unclear" to the district court, Siegle cancelled that hearing and withdrew his motion.

On April 5, 2017, nearly four months after bringing his first motion to reconsider, Siegle filed a second motion to reconsider, again without leave. Although he did not move under rule 60.02, he cited rule 60.02 in a supporting legal memorandum as grounds for relief from the rule 5.04(a) dismissal.

In May 2017, the district court denied Siegle's second motion to reconsider. In doing so, the district court acknowledged that Siegle had not complied with the rules of general practice in filing a motion to reconsider without leave, but because Siegle cited Minn. R. Civ. P. 60.02 in his supporting legal memorandum, the district court treated the second motion as one to vacate. After analyzing the four *Finden* elements under rule 60.02, the district court concluded that Siegle had failed to meet his rule 60.02 burden.

Siegle appealed the May 2017 order denying his second motion to reconsider. We dismissed the appeal in a special-term order because the district court administrator had not yet entered judgment on the September 2016 order dismissing Siegle's complaint. The district court administrator subsequently entered judgment on August 2, 2017. This appeal follows.

D E C I S I O N

Siegle argues that the district court abused its discretion in denying him rule 60.02 relief, reasoning that the district court incorrectly concluded that he had not established a reasonable excuse and had not acted with due diligence in missing the rule 5.04(a) one-year complaint-filing deadline. He maintains that his attorney being suspended from the practice of law constitutes a reasonable excuse to miss the one-year complaint-filing

deadline and that the district court administrator's failure to timely enter judgment constitutes "excusable neglect" under rule 60.02.

We will not reverse a district court's rule 60.02 decision except for a clear abuse of discretion. *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016). A district court abuses its discretion within the rule 60.02 context when it acts under a misapprehension of law, when its findings are clearly erroneous, or "when a movant has met the burden of clearly demonstrating the existence of the four elements of the *Finden* analysis, and the court nevertheless denies relief." *Id.* (quotations omitted).

Any complaint that is not filed with the district court within one year of serving the complaint 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." Minn. R. Civ. P. 5.04(a). The district court may relieve a party from a final judgment, order, or proceeding for "[m]istake, inadvertence, surprise, or excusable neglect." Minn. R. Civ. P. 60.02(a). Rule 60.02 applies to rule 5.04(a) dismissals. *Gams*, 884 N.W.2d at 619.

Before granting rule 60.02 relief from a rule 5.04(a) dismissal, the district court must consider and expressly find that all four *Finden* elements are satisfied. *Id.* The four *Finden* elements 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.

Id. at 620 (quotations omitted). The party moving for rule 60.02 relief carries the burden to establish that all four elements are satisfied. *Id.*

Here, the district court analyzed the *Finden* elements. For the first element, the district court determined that, based on the complaint, Siegle “may have a reasonable claim on the merits.” For the second, the district court determined that Siegle had offered “no reasonable excuse” for failing to file the complaint within one year after serving it on Karst. For the third, the district court determined that whether Siegle acted with due diligence in bringing the April 2017 motion to reconsider was “questionable” because Siegle filed his first motion to reconsider in November 2016 and subsequently withdrew it. For the fourth, the district court determined that Karst “would certainly incur additional expenses should [Siegle’s] [m]otion be granted.” The district court concluded on those bases that Siegle had failed to meet his burden under rule 60.02.

Siegle argues that his attorney’s failure to file the complaint while he was suspended during the one-year complaint-filing window is a mistake of law that constitutes a reasonable excuse. The Minnesota Supreme Court has “long said that mistakes of law, as well as mistakes of fact, may afford grounds for relief.” *Cole v. Wutzke*, 884 N.W.2d 634, 638 (Minn. 2016) (quotations and alterations omitted). The supreme court has also determined, however, that there are no per se rules of law that require a district court to grant or deny relief under rule 60.02. *Id.* at 639. Rather, determining what constitutes a reasonable excuse is “fact intensive.” *Id.* It is, therefore, within the district court’s discretion to determine if the moving party’s excuse is “true and reasonable under the circumstances.” *Id.* In the order denying Siegle’s motion, the district court found that Siegle’s attorney was suspended on March 10, 2015, and was reinstated on June 18, 2015.

The district court also found that he was suspended again on March 10, 2016, and was reinstated on October 4, 2016.

On March 10, 2015, the Minnesota Supreme Court suspended Siegle's attorney for 90 days for a laundry list of violations, including mishandling client funds, failing to appear for hearings, and failing to communicate with clients. *In re Disciplinary Action against Swanson*, 860 N.W.2d 677-678 (Minn. 2015). The supreme court conditionally reinstated Swanson on June 18, 2015, provided that he complete "the professional responsibility portion of the state bar examination by March 10, 2016." *In re Disciplinary Action against Swanson*, 885 N.W.2d 668-669 (Minn. 2016). Swanson did not provide proof of completing the exam. The supreme court revoked his conditional reinstatement on March 21, 2016. *Id.* On October 4, 2016, the supreme court reinstated him after proof of completion was provided. Siegle contends that his attorney being suspended constitutes a reasonable excuse to miss the one-year complaint-filing deadline. We disagree.

Siegle's attorney was suspended for 90 days within the 365-day window, not the entire year. Siegle's attorney could have filed the complaint at any time during the 275 days in which he was not suspended. Siegle has offered no excuse, let alone a reasonable one, explaining why his attorney did not file the complaint during those 275 days. What is more, in an affidavit filed with his second motion to reconsider, Siegle swore under oath that "[o]n April 1, 2015, Swanson properly advised [Karst's attorney] of the suspension and indicated to [Karst's attorney] that all settlement offers should be directed to attorney *Tory Langemo*." (Emphasis added). Siegle, therefore, had an attorney who could have

filed the complaint during Swanson’s suspension. Siegel has offered no excuse as to why his other attorney did not file the complaint within the one-year filing deadline.

To the extent Siegel is arguing that Swanson misunderstood the rule 5.04(a) one-year complaint-filing deadline, or that Siegel relied on a misrepresentation by Swanson that the complaint would be filed, he cites to no record evidence establishing it. *Cf. Cole*, 884 N.W.2d at 636 (“At the hearing, [the movant] argued that his counsel’s neglect was ‘excusable’ because the online version of the rules, on which his counsel relied, did not state that rule 5.04(a) applied to actions pending before its effective date.”); *Conley v. Downing*, 321 N.W.2d 36, 41 (Minn. 1982) (determining that a client’s reliance on an attorney’s representation “that he was filing a brief in response to the summary judgment motion” constituted a reasonable excuse). Siegel provides no reasonable excuse for why he or his attorney did not file the complaint during the one-year window. The analysis for determining what constitutes a reasonable excuse is fact intensive, and the district court is afforded wide discretion in determining the truth and reasonableness of an excuse. *Cole*, 884 N.W.2d at 639. We conclude the district court did not abuse its discretion in determining that Siegel offered no reasonable excuse for missing the rule 5.04(a) one-year complaint-filing deadline. Siegel cannot establish all four *Finden* elements.

Siegel also argues that the district court incorrectly concluded that whether Siegel acted with due diligence in bringing the “rule 60.02(a) motion” was “questionable.”¹ He

¹ We put the “rule 60.02 motion” in quotes because Siegel did not move under rule 60.02; he instead moved the district court to reconsider the motion to dismiss. The district court treated the motion to reconsider as one to vacate under rule 60.02 because Siegel cited rule 60.02 in his legal memorandum supporting his motion to reconsider.

reasons that the timing of his April 2017 motion to reconsider is irrelevant because the district court administrator did not enter judgment on the order dismissing the complaint until August 2017.

Contrary to Siegle’s assertion, the timing of his April 2017 motion to reconsider is relevant. The third *Finden* element asks whether “the movant acted with due diligence *after learning of the error or omission.*” *Gams*, 884 N.W.2d at 620 (emphasis added) (quotation omitted). The one-year complaint-filing deadline under rule 5.04(a) fell on February 2, 2016. The district court dismissed the complaint in September 2016. Siegle, at the very latest, knew about the error in September 2016. Siegle brought his first motion to reconsider in November 2016, nearly two months after the district court dismissed the complaint. Bringing his first motion to reconsider within two months of learning of the error might be considered acting with due diligence, but Siegle withdrew his first motion to reconsider for reasons unclear to the district court. It was not until April 2017, nearly seven months after the district court dismissed the complaint, that Siegle brought his second motion to reconsider. We conclude the district court did not abuse its discretion in determining that Siegle’s due diligence was “questionable” because he brought one motion to reconsider, withdrew it, and filed another, seven months after learning that his complaint had been dismissed.

A motion brought under rule 60.02(a) must be made “not more than one year after the judgment, order, or proceeding was entered or taken.” Minn. R. Civ. P. 60.02(a). In *Johnson v. City of Duluth*, we determined that an automatic dismissal under the “deemed dismissed” provision of rule 5.04(a) is a “proceeding . . . taken” under rule 60.02 that

therefore triggers the rule 60.02 one-year motion-filing period. 903 N.W.2d 1, 5-6 (Minn. App. 2017), *review denied* (Minn. Dec. 19, 2017). In other words, the rule 60.02 one-year motion-filing period is triggered “the moment [the movant] misse[s] the one-year complaint-filing deadline” imposed by rule 5.04(a).

Here, the rule 5.04(a) one-year complaint-filing deadline was February 2, 2016. The complaint was deemed automatically dismissed on that date, and the automatic dismissal was a “proceeding . . . taken” under rule 60.02. *Id.* Siegle had one year from February 2, 2016, to timely file a rule 60.02(a) motion. *Id.* Siegle did not file his motion to reconsider, which the district court generously treated as a rule 60.02 motion, until April 5, 2017. The motion was not filed within the rule 60.02(a) one-year motion-filing deadline. *Johnson*, 903 N.W.2d at 5-6. Siegle did not file a timely motion under rule 60.02, if he filed one at all.

Affirmed.