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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0623**

Phyllis Louise Luskey,
Appellant,

vs.

Nikki Dee Eggum, et al.,
Respondents.

**Filed January 14, 2019
Affirmed
Halbrooks, Judge**

Anoka County District Court
File No. 02-CV-17-2182

Paul P. Sarratori, Mesenbourg & Sarratori Law Offices, P.A., Coon Rapids, Minnesota;
and

MacKenzie Guptil, Bina and Guptil LLC, Pine City, Minnesota (for appellant)

Mark K. Hellie, Georgeanna M.H. Ihrke, Eden Prairie, Minnesota (for respondents)

Considered and decided by Halbrooks, Presiding Judge; Bratvold, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of her motion for relief under Minn. R. Civ. P. 60.02. We affirm.

FACTS

In 2011, appellant Phyllis Luskey and respondent Nikki Eggum were involved in a motor-vehicle accident. On February 1, 2016, appellant served respondents Nikki and Brian Eggum with a summons and complaint for a personal-injury claim arising out of the accident. The parties exchanged discovery requests and responses throughout 2016. On May 1, 2017, appellant filed the complaint in district court.

On August 21, 2017, based on Minn. R. Civ. P. 5.04(a) and appellant's failure to file the complaint within one year of commencing the action, respondents moved for summary judgment. Appellant filed a responsive motion to enlarge the deadline based on Minn. R. Civ. P. 6.02, arguing that she met the standard for excusable neglect under both rule 6.02 and Minn. R. Civ. P. 60.02. The district court determined that appellant's lawsuit was automatically dismissed with prejudice on February 1, 2017, based on the plain language of Minn. R. Civ. P. 5.04(a). This determination is not challenged on appeal. The district court analyzed appellant's enlargement motion under rule 60.02 and applied the *Finden* factors. *Finden v. Klaas*, 128 N.W.2d 748, 750 (Minn. 1964). Finding that appellant failed to satisfy two of the four *Finden* factors, the district court denied appellant's motion and granted summary judgment to respondents. This appeal follows.

DECISION

Appellant contends that the district court abused its discretion by denying her rule 6.02 motion to enlarge the time for filing the complaint based on excusable neglect. In addressing appellant's motion, the district court properly conducted a rule 60.02 analysis. *See Parker v. O'Phelan*, 414 N.W.2d 534, 537 (Minn. App. 1987) ("An analogous standard [to the excusable neglect analysis under rule 6.02] is used for finding excusable neglect in granting relief from a default judgment or denial of a motion for default judgment."), *aff'd mem.*, 428 N.W.2d 361 (Minn. 1988).

We review a district court's decision to grant or deny rule 60.02 relief for an abuse of discretion. *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016). The supreme court has held that rule 60.02(a) allows relief from a proceeding when the moving party makes an affirmative showing on the following factors: "(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). While some showings "may be stronger than others . . . the moving party must establish all four requirements for relief to be warranted." *Id.*

In its analysis, the district court determined that appellant established that her claim is debatably meritorious and that respondents would not be substantially prejudiced if the dismissal was vacated. But the district court found that appellant failed to satisfy the reasonable-excuse and due-diligence factors.

Appellant argues that she had a reasonable excuse for her failure to file before the one-year deadline: her attorney was unaware of rule 5.04 and, in addition, the case was ready for trial in September 2017, despite her failure to provide respondents with signed unrestricted medical authorizations.¹ As a consequence, an independent medical examination had not been done.

Mistakes of law and mistakes of fact can be grounds for relief. *Id.* at 638. Appellant’s attorney admitted “that he missed the deadline, but also admit[ted] that he was unaware that the deadline existed.” There is a “strong policy favoring the granting of relief when judgment is entered through no fault of the client.” *Id.* (quotation omitted). Generally, courts are “loath to ‘punish’ the innocent client for the counsel’s neglect” even when the neglect is “inexcusable.” *Charson v. Temple Israel*, 419 N.W.2d 488, 491 (Minn. 1988). But the district court noted appellant’s failure to provide unrestricted releases for her medical records even though she had not objected to the discovery request. The supreme court has long held that determining whether there was reasonable excuse is “a matter largely within the discretion of the trial court.” *Cole*, 884 N.W.2d at 638 (quotation omitted). Based on this record, we conclude that the district court acted within its discretion in determining that appellant has not met the reasonable-excuse factor.

Appellant contends that the due-diligence factor is met because “the parties [had] worked with due diligence on this case” since 2016. But due diligence “is assessed from the time that the movant learns of his or her error or omission.” *Id.* at 639. Appellant’s

¹ It was undisputed that an evaluation of appellant’s soft-tissue injuries related to the motor-vehicle accident was more complex due to her pre-existing condition of multiple sclerosis.

attorney conceded that he became aware of the rule 5.04(a) deadline when counsel for respondents filed their civil cover sheet on July 5, 2017—five months after the one-year deadline to file the complaint. In its analysis of this factor, the district court noted that, upon realizing his failure to meet the deadline, appellant’s attorney did not contact opposing counsel to request an extension or file any documents in district court. Appellant’s attorney took no action until responding to respondents’ motion for summary judgment. In his response to the summary-judgment motion, appellant’s attorney failed to adequately address the legal issue before the district court or provide any analysis of any *Finden* factors, with the exception of the reasonable-excuse factor. On this record, we conclude that the district court acted within its discretion in determining that the due-diligence factor was not satisfied. Because appellant did not satisfy the reasonable-excuse or due-diligence factors of the *Finden* analysis, the district court properly denied appellant’s rule 60.02 motion.

Affirmed.