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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0795**

In re the Matter of:
David Allen Engh, petitioner,
Respondent,

vs.

Jennifer Culver,
Appellant,

Ramsey County,
Intervenor.

**Filed July 1, 2019
Affirmed
Slieter, Judge**

Ramsey County District Court
File No. 62-FA-13-3062

Patricia J. Stotzheim, Stotzheim Law Office & Mediation, St. Paul, Minnesota (for respondent)

Jennifer Culver, Minneapolis, Minnesota (*pro se* appellant)

Considered and decided by Connolly, Presiding Judge; Slieter, Judge; and Smith,
John P., Judge.*

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

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Jennifer Culver challenges the district court's denial of her motion to vacate default judgment resulting from her failure to appear on the third day of a custody evidentiary hearing. We affirm.

FACTS

Appellant and respondent David Engh have one joint child, L.C. The parties were never married. Initial custody and parenting time was established by a stipulated judgment and decree (J&D) filed December 3, 2014. The J&D awarded appellant sole physical custody of L.C. and joint legal custody of L.C. to the parties. The J&D also established parenting time for respondent—respondent's parenting time was to gradually increase until the parties equally shared parenting time.

Respondent alleged that, following the entry of the J&D, appellant denied him parenting time for some months. In 2015, respondent brought a motion to modify custody based on endangerment and deprivation of parental rights.

The district court did not, at that time, rule on respondent's motion for modification—this appears to be due to, among other things, multiple order-for-protection hearings and child-in-need-of-protective-services investigations involving these parties. In August 2016, the state charged appellant with one count of deprivation of parental rights, in violation of Minn. Stat. § 609.26, subd. 1(3) (2016). Due to appellant's criminal charges, respondent brought an emergency *ex parte* motion seeking sole legal and physical custody;

the district court granted the motion and awarded respondent temporary sole legal and physical custody.

Following the district court's grant of temporary sole legal and physical custody to respondent, appellant filed a responsive motion to deny respondent's motion. An evidentiary hearing on custody and parenting time, among other issues, was set for May 2017. After a number of continuances and the recusal of a judge, the case was scheduled for a hearing on October 16 and 17, 2017.

During the first two days of the evidentiary hearing, respondent testified and was cross-examined by appellant. At the end of the second day, a third day of testimony was scheduled for November 7, 2017 at 8:30 a.m.

On November 6, 2017, appellant requested via email, a continuance of the November 7 hearing. The district court denied the continuance and informed appellant by email that if appellant did not appear for the hearing, the district court would proceed without her.

On November 7, 2017, at about 8:15 a.m., appellant contacted the district court and indicated that she was unable to appear because she had a flat tire. The district court informed her that she had one hour to appear in court. Appellant subsequently called the district court "multiple times" and claimed it was "physically impossible" for her to appear. The district court informed her that she was expected to arrive at 9:30 a.m.

The hearing commenced at 9:36 a.m. Appellant failed to appear. The district court then entered a default judgment against appellant that granted respondent sole legal and physical custody of L.C. The district court found that appellant's "request for continuance

on the date of the hearing on November 7, 2017, was part of a pattern to delay the proceedings and to interfere with the judicial process.”

Appellant filed a motion pursuant to Minn. R. Civ. P. 60.02 to vacate the default judgment. The district court denied the motion.

This appeal follows.

D E C I S I O N

Appellant contends that the district court abused its discretion in denying her motion to vacate the default judgment. Appellant moved to vacate under Minn. R. Civ. P. 60.02(a), (f). Rule 60.02, however, does not apply to “a marriage dissolution decree.” Generally, parties seeking relief from rulings made under chapter 518, seek relief under Minn. Stat. § 518.145, subd. 2 (2018). Although Minn. Stat. § 518.145, subd. 2, and rule 60.02 are similar, they are not identical. Rule 60.02 lists various grounds for relief, concluding with clause (f), which allows relief for “[a]ny other reason justifying relief.” While Minn. Stat. § 518.145, subd. 2, lists grounds for relief that parallel most of the reasons listed in rule 60.02, Minn. Stat. § 518.145, subd. 2, lacks a provision paralleling rule 60.02(f)’s “[a]ny other reason justifying relief.” *Compare* Minn. R. Civ. P. 60.02, *with* Minn. Stat. § 518.145, subd. 2; *see Harding v. Harding*, 620 N.W.2d 920, 922-23 (Minn. App. 2001) (stating that Minn. Stat. § 518.145, subd. 2, “is virtually identical to rule 60.02 except that it does not contain a provision giving the court the open-ended power to grant relief as justice requires”). The supreme court calls this difference between the statute and the rule “significant[.]” *Shirk v. Shirk*, 561 N.W.2d 519, 522 n.3 (Minn. 1997).

For three reasons, appellant's request for relief under Minn. R. Civ. P. 60.02(f)'s other-reason-justifying-relief clause is not properly before this court. First, as noted above, appellant should have sought relief under the statute rather than under the rule, and the statute does not allow relief on this basis. Second, even if appellant could have sought relief under the rule, her failure to make an argument actually addressing clause (f) means clause (f) is not properly before this court. *See State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an argument absent adequate briefing). Third, caselaw under rule 60.02(f) shows that clause (f) is a "residual clause, designed only to afford relief in those circumstances exclusive of the specific areas addressed by clauses (a) through (e)." *Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 924 (Minn. 1990). Thus, because the argument that appellant did make goes only to relief under clause (a), that argument cannot allow relief under clause (f).

Regarding appellant's challenge to the district court's denial of her request for relief under rule 60.02(a), we note that because Minn. Stat. § 518.145, subd. 2, contains a parallel provision, we can ignore the difference between the rule and the statute. *See Knapp v. Knapp*, 883 N.W.2d 833, 836 (Minn. App. 2016) (noting, in a different context, that the statute and the rule are functionally "identical"). Appellate courts "will not overturn a ruling on a motion to vacate a default judgment unless the district court abused its discretion." *Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004). "A district court abuses its discretion when it acts under a misapprehension of the law or when its factual findings are clearly erroneous." *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016) (quotation and citation omitted).

Under Minn. R. Civ. P. 60.02(a), a district court may vacate a final ruling for “[m]istake, inadvertence, surprise, or excusable neglect” if the moving party shows (a) she has a reasonable defense on the merits, (b) she has a reasonable excuse for not acting; (c) she acted with due diligence after the district court made its ruling, and (d) no substantial prejudice will result to the other party if relief is granted. *Hinz v. Northland Milk & Ice Cream Co.*, 53 N.W.2d 454, 456 (Minn. 1952). While all four of the factors must be satisfied, *Gams*, 884 N.W.2d at 619-20, “[a] strong showing on the other factors may offset relative weakness on one factor[.]” *Imperial Premium Fin., Inc. v. GK Cab Co.*, 603 N.W.2d 853, 857 (Minn. App. 2000). Generally, courts favor a liberal application of this test to further the policy of resolving cases on their merits. *Taylor v. Steinke*, 203 N.W.2d 859, 860 (Minn. 1973).

Reasonable Defense on the Merits

Appellant argues the district court erred by concluding that she did not have a reasonable defense on the merits. “A reasonable defense on the merits is one that, if established, provides a defense to the plaintiff’s claim.” *Northland Temps., Inc. v. Turpin*, 744 N.W.2d 398, 403 (Minn. App. 2008), *review denied* (Minn. Apr. 29, 2008). Ordinarily, the existence of a reasonable defense must “be demonstrated by more than conclusory allegations in moving papers.” *Charson v. Temple Israel*, 419 N.W.2d 488, 491 (Minn. 1988).

Appellant first argues that she had a reasonable defense on the merits because the best-interests factors support granting custody to her, seeming to base her argument on the fact she was the child’s primary caretaker. Although the district court did not include a

best-interests analysis pursuant to Minn. Stat. § 518.17, subd. 1 (2018), in its default order, it did include a best-interests analysis in its order denying appellant's rule 60.02 motion. This order clarified that it considered the best-interests factors in its custody decision granting respondent sole legal and physical custody of L.C. The district court's thorough best-interests analysis shows that it was deeply concerned about appellant's mental health and that appellant's conduct, in general, was problematic and unsupportive of the child's relationship with respondent. The district court found that "[appellant] has significant mental-health issues to address before she can be a consistent, healthy support to her child." The district court did not abuse its discretion in concluding appellant failed to show a reasonable defense on the merits.

Appellant alleges a number of procedural errors, appearing to argue that these give her a reasonable defense on the merits. Specifically, appellant contends that: the district court erroneously failed to make a *prima facie* finding of deprivation of parental rights or endangerment to support respondent's custody modification motion, the district court erroneously shifted the burden to appellant at the evidentiary hearing, the district court erroneously reduced her parenting time to less than 25%, and the district court erroneously failed to include a best-interests analysis in its default order.¹

¹ Appellant also argues that because her conviction for deprivation of parental rights was vacated by this court, we should reverse the district court. See *State v. Culver*, No. A17-1968, 2018 WL 6837735 (Minn. App. Dec. 31, 2018), review granted (Minn. Mar. 27, 2019). The district court issued its order denying appellant's motion to vacate before this court reversed her conviction. Because appellant's conviction was in place at the time of the evidentiary hearing and the motion to vacate, we do not address this argument.

We discern no harmful error in any of the alleged procedural defects and “unless the error is prejudicial, no grounds exist for reversal.” *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987); see Minn. R. Civ. P. 61 (“The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.”). The district court noted that appellant’s conviction for deprivation of parental rights was sufficient for a *prima facie* case for modification of custody, included a best-interests analysis in its order denying appellant’s rule 60.02 motion, addressed its reasoning for reducing appellant’s parenting time, and did not improperly shift the burden to appellant. Further, our review of the record and order denying appellant’s rule 60.02 motion shows that remand to the district court would be futile because, if we were to remand the matter, the district court would reach the same result it has already reached. See *Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand and affirming the district court in a child-custody case when “from reading the files, the record, and the court’s findings, on remand the [district] court would undoubtedly make findings that comport with the statutory language” and reach the same result).

We have rejected appellant’s assertions that the district court erred in ruling that she failed to show a reasonable defense on the merits. Therefore, we affirm the district court’s denial of appellant’s motion to reopen. See *Gams*, 884 N.W.2d at 619-20 (noting that, to obtain relief, the moving party must show all four factors of the test), and we need not address her arguments on the other factors of the test. In the interests of completeness, however, we will briefly address those factors.

Reasonable Excuse for the Failure or Neglect to Act

“[I]t is generally for the district court to determine whether a litigant’s excuse for not having answered in time is a reasonable excuse.” *Northland Temps., Inc.*, 744 N.W.2d at 406. Neglect of the party itself leading to default judgment is inexcusable, and such neglect is a proper ground for refusing to vacate a judgment. *Thayer v. Am. Fin. Advisers, Inc.*, 322 N.W.2d 599, 602 (Minn. 1982).

Appellant claimed that she could not attend the evidentiary hearing due to car trouble. The district court did not find this explanation credible, noting “the only proof of car trouble that was provided to the [c]ourt was a receipt, which was not addressed or listed to [appellant], purporting to reflect repair of a tire that took place 45 minutes after the case was called.” The court also found that “[i]t is abundantly clear to this [c]ourt that [appellant’s] continued resistance to appear is a ploy to delay the proceedings and interfere with the judicial process and [respondent’s] ability to move on with his life.”

Appellate courts defer to a district court’s credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *Auer v. Scott*, 494 N.W.2d 54, 58 (Minn. App. 1992). Therefore, we reject appellant’s challenge to the district court’s determination that she lacked a reasonable excuse for not appearing.

Due Diligence after Notice of the Entry of Judgment

The district court found that appellant acted with due diligence following the entry of default judgment and respondent does not contest this finding.

No Substantial Prejudice to the Opposing Party

A party seeking relief under Minn. R. Civ. P. 60.02 must show “that no substantial prejudice will result to the opponent.” *Sand v. Sch. Serv. Emps. Union, Local 284*, 402 N.W.2d 183, 186 (Minn. App. 1987), *review denied* (Minn. Apr. 29, 1987). “In general, when the only prejudicial effect of vacating a judgment is additional expense and delay, substantial prejudice of the kind necessary to keep a judgment from being reopened does not exist.” *Black v. Rimmer*, 700 N.W.2d 521, 528 (Minn. App. 2005) (quotation omitted), *review dismissed* (Minn. Sept. 28, 2005). This court, however, has noted an exception to this general rule: where the delays in the proceeding were purposeful and there was an “intentional ignoring of process,” the “additional expense must be viewed in a different light.” *Id.* (quotation omitted) “To force a claimant to go to the expense of a hearing in court, to gather evidence and expert testimony and the concomitant preparation, all either by inexcusable neglect or by intent, colors the prejudice with a deeper hue.” *Id.* (quotation omitted).

Appellant argues that no substantial prejudice will result to respondent because he would “simply be required to litigate the matter on the merits as was already scheduled.” The district court found that “[appellant] has gone above and beyond to delay the proceedings in this matter.” The district court did not abuse its discretion in concluding that vacating the default judgment would substantially prejudice respondent.

Overall, the district court found that appellant failed to show she had a reasonable defense on the merits, failed to show that she had a reasonable excuse for her failure to act, and failed to show that respondent would not be substantially prejudiced if relief was

granted. Although weakness on one factor may be offset by a strong showing on the other factors, all four of the factors must be satisfied. *Gams*, 884 N.W.2d at 619-20. Appellant failed to show three of the four factors. We conclude that the district court did not abuse its discretion by denying appellant's motion to vacate default judgment, and therefore, affirm the district court.

Affirmed.