STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0383

South Metro Federal Credit Union,
Respondent,

vs.

KeiJuan J. Brown,
Appellant.

Filed December 23, 2019
Affirmed
Florey, Judge

Dakota County District Court
File No. 19HA-CV-18-2220

Timothy M. Kelley, Andrew J. Glasnovich, Stinson, L.L.P., Minneapolis, Minnesota (for respondent)

KeiJuan J. Brown, Farmington, Minnesota (pro se appellant)

Considered and decided by Johnson, Presiding Judge; Florey, Judge; and John Smith, Judge.[*]

U N P U B L I S H E D O P I N I O N

FLOREY, Judge

In this appeal from a judgment for damages and repossession of collateral on an automobile loan, self-represented appellant asserts that: (1) he was never properly served

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

with the complaint and (2) the district court erred in denying his motion to vacate the default judgment. We affirm.

FACTS

In 2015, appellant KeiJuan J. Brown entered into an automobile-loan agreement (Loan 1) with respondent South Metro Federal Credit Union (South Metro). As part of Loan 1, Brown granted South Metro a security interest in the truck, which was perfected by notation on the title. In 2016, Brown entered into a new loan agreement (Loan 2) with South Metro which refinanced Loan 1.

In the fall of 2017, Brown failed to make payments on Loans 1 and 2. In December of that year, Brown and South Metro entered into a forbearance agreement. Brown acknowledged that he was indebted to South Metro and in default on Loans 1 and 2. South Metro agreed to delay enforcement of the loans through January 2018. Brown did not comply with the terms of the forbearance agreement, and on February 7, 2018, South Metro demanded pursuant to the loan and forbearance agreements that Brown surrender the collateral on or before February 9.

On February 21, 2018, South Metro notified Brown that it would not accept any amount less than full payment of the entire amount due under the agreements, a total of $16,205.09. Brown remained in default.

In May 2018, South Metro filed a summons and complaint. South Metro attempted personal service and service by mail on Brown at his mother's address, which was the address listed on the loan documents. Brown's mother contacted South Metro to inform them that Brown did not live there and that she did not know how to contact him. In June, South Metro filed an affidavit indicating that they had made two attempts to personally serve Brown. South Metro proceeded to serve Brown by publication, which was completed on June 7, 2018.

In August 2018, South Metro moved for default judgment, and Brown filed an untimely answer. After a hearing, the district court granted South Metro's motion for default judgment and ordered Brown to surrender the collateral. Judgment was entered against Brown in the amount of $29,681.89 on September 7. Brown requested reconsideration of the default judgment, which the district court denied. Brown filed a rule 60.02 motion to vacate the default judgment. After a hearing, the district court denied Brown's motion to vacate in a January 14, 2019 order. This appeal follows.[1]

D E C I S I O N

Whether service of process was effective is a question of law which we review de novo. *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). As an initial matter, the district court noted that in the answer and at the hearings, Brown admitted that he only has "one address . . . here with my mother" and that "even my Minnesota driver's license states my mother's address" and that "I have no other address besides my mother's address here in Minnesota." Based on the affidavits of Brown's mother and her husband,

[1] Orders denying a motion to vacate a default judgment are not independently appealable when the party appealing a default judgment appeared and participated in the underlying action. *Carlson v. Panuska*, 555 N.W.2d 745, 747 (Minn. 1996). In an April 9, 2019 special-term order, this court accepted jurisdiction over this appeal. The special-term order concluded that Brown's rule 60.02 motion was timely and proper, and extended the time to appeal the September 7, 2018 judgment under Minn. R. Civ. App. P. 104.01, subd. 2(e). The order also stated that the January 14 order is within the scope of our review.

and Brown's statements, the district court properly concluded that the Farmington address is Brown's address.

Brown contends that he was not properly served because he did not live at his mother's house where service was attempted. But even if personal service was ineffective, Brown was properly served by publication. Minn. R. Civ. P. 4.04(a)(2) states that service by publication is sufficient when "the plaintiff has acquired a lien upon property. . . within the state . . . and (A) The defendant is a resident individual who has departed from the state, or cannot be found therein." Here, South Metro had a lien upon the car, which was located in Minnesota. And Brown was a Minnesota resident who had departed or could not be found in the state. The record reflects that South Metro complied with all the other requirements of service by publication and that service was proper.

Brown asserts that the district court erred in its determination that he did not follow the proper procedure to submit an untimely answer. "The interpretation of the Minnesota Rules of Civil Procedure is a question of law that we review de novo." *Gams v. Houghton*, 884 N.W.2d 611, 616 (Minn. 2016). Minn. R. Civ. P. 4.043 allows a defendant served via publication the opportunity to defend the action before judgment is entered upon application to the court if he has no actual notice of the action. But the record unambiguously reflects that Brown did not file the application required, and Brown failed to establish that he did not receive actual notice of the lawsuit.

Brown contends that the district court impermissibly denied his motion to vacate the September 7 default judgment. On appeal, we review the entry of default judgment for an abuse of discretion. *Laymon v. Minn. Premier Props., LLC*, 903 N.W.2d 6, 17 (Minn.

App. 2017), *aff'd*, 913 N.W.2d 449 (Minn. 2018). "The decision whether to grant Rule 60.02 relief is based on all the surrounding facts of each specific case, and is committed to the sound discretion of the district court. . . . As such, a district court will not be reversed on appeal except for a clear abuse of discretion." *Gams*, 884 N.W.2d at 620 (citations and quotation omitted).

The moving party bears the burden of showing that all of the *Finden* factors are satisified in order to receive relief from a final judgment under Minn. R. Civ. P. 60. *Cole v. Wutzke*, 884 N.W.2d, 634, 637 (Minn. 2016). The *Finden* factors require Brown to establish that he has a reasonable defense on the merits, that he has a reasonable excuse for his failure to answer, that he acted with due diligence after notice of the judgment, and that no substantial prejudice will result to South Metro. *Finden v. Klass*, 128 N.W.2d 748, 750 (Minn. 1964).

Here, the district court concluded that Brown did not meet his burden because he did not satisfy the first factor. To establish a reasonable defense on the merits, Brown needed to "provide specific information" beyond "[c]onclusory allegations in moving papers." *Cole*, 884 N.W.2d at 638. Brown acknowledged that he was in default, that he had not been paying, and that he had signed and agreed to both the loans and the forbearance agreements. He does not present any new evidence or information beyond conclusory allegations to support his argument that the underlying contracts were somehow unconscionable or unenforceable. And the record evidence, including numerous emails between Brown and South Metro, show that Brown was aware of his obligations under the loans and forbearance agreements. Because Brown failed to establish a reasonable defense on the merits, the district court was well within its discretion in denying his rule 60.02 motion.

Affirmed.