

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0513**

City of Shoreview,
Respondent,

vs.

Mohamad Amro, et al.,
Appellants.

**Filed March 1, 2021
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-CV-19-3568

Joseph A. Kelly, Kevin M. Beck, Kelly & Lemmons, PA, St. Paul, Minnesota (for respondent)

Ferdinand F. Peters, Benjamin P. Loetscher, Patrick M. Kennedy, Ferdinand F. Peters, Esq. Law Firm, St. Paul, Minnesota (for appellants Spring Lake Park Gardens, LLC and Mohamad Amro)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

The City of Shoreview commenced this action to abate a nuisance at Mohamad Amro's residence. Amro did not serve a proper answer to the summons and complaint. The district court granted the city's motion for default judgment and later denied Amro's

motion to vacate the default judgment. We conclude that the district court did not err by entering default judgment because Amro did not serve a valid answer or otherwise respond to the complaint. We also conclude that the district court did not abuse its discretion by denying the motion to vacate the default judgment. Therefore, we affirm.

FACTS

Amro and his family live in a home in the city of Shoreview that is owned by Spring Lake Park Gardens, LLC (SLPG), a company of which Amro is the registered manager. In 2018, Amro began performing significant landscaping work, including the construction of a berm. In 2018 and early 2019, the city and Ramsey County repeatedly informed Amro that he was not in compliance with various ordinances and codes due to the accumulation of refuse and debris, outdoor storage of construction material and construction equipment, outdoor storage of inoperable vehicles, and uncovered excavation. Amro did not resolve the issues to the city's satisfaction.

On March 1, 2019, the city sent Amro a letter stating that he must take action to resolve the issues on his property by March 15 and that the city council planned to discuss the matter at an upcoming March 18 meeting. At the meeting, the city council passed a resolution ordering Amro to abate the nuisance conditions on his property by April 30, 2019. The city sent Amro written notice of the resolution on March 20, 2019. The city inspected Amro's property on March 21, 2019, and May 2, 2019, but determined on each visit that the property still was not in compliance.

On May 15, 2019, the city commenced this action against Amro and SLPG to enforce the city council's resolution. In early June 2019, Amro faxed a one-page document

to an attorney representing the city. The document consists of a photocopy of the first page of the summons with two handwritten comments and a handwritten date. In the top margin, in printed letters, is the handwritten comment, “Attention Kevin M. Beck,” who is the attorney who signed the summons and the complaint on behalf of the city. Below the caption, also in printed letters, is the handwritten comment, “I’m contesting the charges.” No signature or printed name of the person responsible for the handwriting appears on the document.

In early July 2019, the city filed a motion for default judgment. The city sent the motion papers to Amro via U.S. Mail. The district court held a hearing on the motion in mid-July. Neither Amro nor SLPG appeared at the hearing. The district court granted the city’s motion. The district court’s order states that Amro and SLPG must abate the nuisance on the property by July 23, 2019; that the city could enter the property and abate the nuisance after that date if Amro and SLPG fail to do so; and that if the city needs to perform abatement work, “it may assess the costs of said abatement to the property taxes of the Property.” The district court administrator entered judgment on July 25, 2019, and the notice of judgment indicates that a copy was sent to Amro and SLPG. On July 30 and 31, 2019, the city entered Amro’s property and abated the nuisance.

In mid-August 2019, with the assistance of counsel, Amro and SLPG filed a motion to vacate the default judgment. The city opposed the motion. The district court held a hearing on the motion, at which it allowed Amro and SLPG to submit additional evidentiary materials. The district court held a second hearing on the motion in December

2019 after the case was reassigned to a different judge. The district court filed a one-page order denying the motion to vacate the default judgment.

Amro and SLPG appeal. For the sake of simplicity, we will refer to appellants collectively as Amro.

DECISION

Amro argues that the district court erred in two ways: first, by granting the city's motion for default judgment and, second, by denying his motion to vacate the default judgment. In response, the city argues that the district court did not err in either respect. In addition, the city argues that the appeal is moot because the city has abated the nuisance. We will begin by considering the city's mootness argument.

I. Mootness

As stated above, the city argues that the appeal is moot because the nuisance has been abated, which was the object of its lawsuit.

“An appeal is moot when ‘a decision on the merits is no longer necessary or an award of effective relief is no longer possible.’” *State ex rel. Ford v. Schnell*, 933 N.W.2d 393, 401 (Minn. 2019) (quoting *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015)). If an event occurs after the district court has made a decision or entered judgment that makes “a decision on the merits unnecessary or an award of effective relief impossible, the appeal will be dismissed as moot.” *In re Inspection of Minnesota Auto Specialties, Inc.*, 346 N.W.2d 657, 658 (Minn. 1984); *see also Housing & Redevelopment Auth. ex rel. City of Richfield v. Walser Auto Sales, Inc.*, 641 N.W.2d 885, 888 (Minn. 2002).

We take as given the city’s representation that the object of its lawsuit has been achieved. But the relevant question is whether Amro may obtain any relief on his appeal. In his reply brief, Amro argues that the appeal is not moot because the default judgment allows the city to assess his property taxes in an amount equal to the costs of the city’s abatement work. Amro is correct that the default judgment allows the city to impose such an assessment. The record reflects that Shoreview incurred expenses of approximately \$15,000 on the abatement that it performed in late July 2019. If Amro were successful on either of his arguments for reversal of the district court’s orders, relief may be available to him with respect to the \$15,000 assessment on his property taxes. Thus, the appeal is not moot.

II. Motion for Default Judgment

Amro argues that, for two reasons, the district court erred by granting the city’s motion for default judgment.

A. Sufficiency of the Answer

Amro first contends that the district court erred by finding him to be in default. A district court may enter default judgment against a defendant who “has failed to plead or otherwise defend within the time allowed therefor.” Minn. R. Civ. P. 55.01. The appropriate responsive pleading in a civil action is “an answer.” Minn. R. Civ. P. 7.01. The form of pleadings is governed by rule 10 of the rules of civil procedure, and the content of an answer is governed by rule 8. Minn. R. Civ. P. 8.02-.06, 10.01-.04. In addition, every pleading “shall be signed by the party” if “the party is self-represented.” Minn. R. Civ. P. 11.01. This court applies a *de novo* standard of review to a district court’s

interpretation of the rules of civil procedure. *DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 266 (Minn. 2016).

At the July 2019 hearing, the district court stated that, even if the one-page document were liberally construed, it would not constitute a “proper response to the complaint.” In its subsequent order, the district court stated, “Defendants have failed to serve an Answer to the Complaint and are wholly in default.” Amro contends that the district court erred in making this determination, asserting that *pro se* pleadings should be liberally construed and that “there was sufficient indicia of appellants’ intent to contest the charges.” Amro acknowledges that, “[a]lthough some accommodations may be made for *pro se* litigants,” they “are generally held to the same standards as attorneys and must comply with court rules.” *See Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001).

Amro’s contention does not confront the requirement in rule 11 that every pleading be signed, either by an attorney or by a self-represented party.¹ It cannot be disputed that there is no signature on the one-page document that Amro faxed to the city’s attorney. Accordingly, the district court did not err by determining that Amro was in default because he did not serve a signed answer.

B. Notice of Default

Amro contends, in the alternative, that he was not given notice of the defect in his purported answer. He bases this contention on rule 11, which states, “An unsigned

¹We note the city’s argument that the one-page document also was defective with respect to SLPG because a company may not appear *pro se*. *See Save Our Creeks v. City of Brooklyn Park*, 699 N.W.2d 307, 309 (Minn. 2005). We need not consider that argument in light of our resolution of other issues and our ultimate decision to affirm.

document shall be stricken unless omission of the signature is corrected promptly *after being called to the attention of the attorney or party.*” Minn. R. Civ. P. 11.01 (emphasis added). He relies on the italicized text in contending that the city had a duty to call his attention to the defect in his answer. He further contends that, if the defect had been called to his attention, he could have sought to cure it. *See DeCook*, 875 N.W.2d at 267-69; *Save Our Creeks*, 699 N.W.2d at 310-11. In response, the city contends that rule 11 does not require a plaintiff to give notice to a defendant of a defective answer and that, even if such a duty exists, the city fulfilled the duty by sending Amro its motion papers via U.S. Mail.

Amro does not cite any caselaw for the proposition that rule 11 imposes a duty on a plaintiff to give a defendant notice of a deficient answer, and we are not aware of any such authority. The rule itself does not expressly state that a plaintiff must do so; the rule merely specifies a consequence in the event that a defendant is alerted to an unsigned answer and thereafter corrects it. The rule governing default judgments does not require that notice of a default be given in all cases; it requires a plaintiff to serve a default-judgment motion on a defendant only if the defendant previously has appeared. Minn. R. Civ. P. 55.01(b).

In any event, we need not decide whether rule 11 imposes a duty on a plaintiff to give notice to a defendant of a defective answer. Even if there is such a duty, the city satisfied the duty when it sent its default-judgment motion to Amro by U.S. Mail. The city submitted two affidavits stating that it did so, and the district court found that the city did so, and Amro has not challenged that finding on appeal. Notice of the default-judgment motion effectively called Amro’s attention to the lack of a signature on the document that he now claims was an answer.

Thus, the district court did not err by granting the city's motion for default judgment.

III. Motion to Vacate Default Judgment

Amro also argues that the district court erred by denying his motion to vacate the default judgment.

“On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment . . . and may order a new trial or grant such other relief as may be just” for any one of six reasons, including “[m]istake, inadvertence, surprise, or excusable neglect.” Minn. R. Civ. P. 60.02, 60.02(a). In *Finden v. Klass*, 128 N.W.2d 748 (Minn. 1964), the district court entered a default judgment after the defendant's attorney neglected to serve and file an answer. *Id.* at 749-50. The defendant moved to vacate the default judgment pursuant to rule 60.02, and the district court denied the motion. *Id.* at 750. On appeal, the supreme court stated that a district court should grant relief under rule 60.02(a) if the defendant “(a) is possessed of a reasonable defense on the merits, (b) has a reasonable excuse for his failure or neglect to answer, (c) has acted with due diligence . . . after notice of the entry of judgment, and (d) [shows] that no substantial prejudice will result to the other party.” *Id.* (quotations and footnote omitted); *see also Buck Blacktop, Inc. v. Gary Contracting & Trucking Co.*, 929 N.W.2d 12, 16 (Minn. App. 2019). This court applies an abuse-of-discretion standard of review to a district court's denial of a motion for relief under rule 60.02(a). *See, e.g., Gams v. Houghton*, 884 N.W.2d 611, 619 (Minn. 2016).

In this case, the district court filed a one-page order without an accompanying memorandum. The district court's order did not discuss the four requirements of the *Finden* test. On appeal, Amro contends that he satisfied each of the four requirements. In

response, the city contends that Amro satisfied none of them. We will consider the parties' arguments with respect to each of the four requirements, assuming that the district court made an implicit finding against Amro on each requirement.

A. Reasonable Defense

Amro first contends that he has a reasonable defense on the merits. A reasonable defense on the merits must be supported by "more than conclusory statements." *In re Welfare of Children of Coats*, 633 N.W.2d 505, 511 (Minn. 2001) (quotation omitted). The party seeking relief must "in good faith, make a showing of facts, which if established will constitute a good defense." *Frontier Lumber & Hardware, Inc. v. Dickey*, 183 N.W.2d 788, 790 (Minn. 1971) (quotation omitted). The requisite showing must be more than an "unverified statement." *Id.* (quotation omitted).

Amro contends that he has a reasonable defense on the merits because there was no nuisance on his property. But Amro's brief does not explain why the condition of the property was not in violation of city ordinances, and his oral argument was lacking in specifics. On the other hand, the city submitted numerous photographs showing the refuse, construction materials, inoperable vehicles, and other debris on the property. The city also submitted correspondence from the city to Amro describing specific code violations that created a nuisance. Amro's general denials do not establish a reasonable defense on the merits. Accordingly, the district court did not abuse its discretion by making an implicit finding that Amro did not satisfy the first requirement of the *Finden* test.

B. Reasonable Excuse

Amro next contends that he has a reasonable excuse for not properly responding to the complaint: the city did not give him notice that his one-page fax was unsigned. As explained above in part II.B., the city sent its default-judgment motion to Amro by U.S. Mail. After the city did so, Amro did not seek to cure the defective answer and did not attend the hearing on the motion for default judgment. Accordingly, the district court did not abuse its discretion by making an implicit finding that Amro did not satisfy the second requirement of the *Finden* test.

C. Due Diligence

Amro next contends that he acted promptly after receiving notice of the default judgment. Specifically, he asserts that he retained an attorney and filed a rule 60.02 motion within 16 days. But, more importantly in the circumstances of this case, Amro did not take any action between the date on which he received notice of the default judgment and the date on which the city was authorized to enter the property and abate the nuisance. To be sure, that period of time was short. The district court reasonably could have found that Amro did not lack due diligence by not taking any immediate action. But the district court also could reasonably find that Amro should have taken immediate action after learning of the order and judgment in light of the likelihood that the city would promptly enter his property and make physical changes to it. Accordingly, the district court did not abuse its discretion by making an implicit finding that Amro did not satisfy the third requirement of the *Finden* test.

D. Prejudice

Amro last contends that the city would not have been substantially prejudiced if the district court had granted his rule 60.02 motion. He asserts that all witnesses are still available. In response, the city asserts that it relied in good faith on the default judgment by entering the property and abating the nuisance. As a consequence, the physical evidence of the alleged nuisance is no longer available. If the city were required to prove that a nuisance existed in early 2019, it would need to rely solely on its documentation of the prior condition of the property, which likely would limit its ability to prepare for a trial on the merits. Accordingly, the district court did not abuse its discretion by making an implicit finding that Amro did not satisfy the fourth requirement of the *Finden* test.

In sum, the district court did not abuse its discretion by implicitly finding that Amro did not satisfy any of the four requirements of the *Finden* test. Thus, the district court did not err by denying Amro's motion to vacate the default judgment.

Affirmed.

A handwritten signature in cursive script, appearing to read "Matthew E. Johnson".