

*This opinion is nonprecedential except as provided by  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  
A20-0721**

R.P. AIR, INC., et al.,  
Respondents,

vs.

Great Gulf Corporation,  
Appellant,  
Jane Doe, et al.,  
Defendants.

**Filed March 15, 2021  
Affirmed in part, reversed in part, and remanded  
Reyes, Judge**

Anoka County District Court  
File No. 02-CV-19-2421

Jacob B. Sellers, Greenstein Sellers, PLLC, Minneapolis, Minnesota (for respondents)

Erik F. Hansen, Elizabeth M. Cadem, Burns & Hansen, PA, Minneapolis, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Reyes, Judge; and Jesson, Judge.

**NONPRECEDENTIAL OPINION**

**REYES, Judge**

Appellant argues that the district court erred by concluding that it is not a party to this lawsuit and therefore lacked standing to bring a motion to vacate the default judgment. Appellant alternatively argues that the district court erred by concluding that, as a nonparty,

appellant must intervene in the action in order to file its motion. Finally, appellant asks us to reverse the district court's denial of its motion to vacate because the default judgment is void, the *Finden* factors<sup>1</sup> support vacatur, and Minn. R. Civ. P. 55.01(d) requires reversal. We affirm the district court's determination that appellant is not a party, but reverse its denial of appellant's motion to vacate, and remand for further proceedings.

## FACTS

This lawsuit is about the ownership of and interests in a Grumman HU-16C aircraft. Appellant Great Gulf Corporation Delaware (GGC Delaware) asserts that it owns the aircraft. Respondents Randolph Pentel and RP AIR, Inc., a company Pentel owns, named and served a different entity, also named Great Gulf Corporation, with this lawsuit, seeking an adjudication that respondents have all right, title, and interest in the aircraft. The district court entered default judgment in favor of respondents. Upon learning of the judgment, GGC Delaware filed a motion to vacate, which the district court denied. The following facts describe the events leading to this lawsuit.

### *Background on GGC Delaware*

GGC Delaware was incorporated in Delaware in July 2011. A document dated October 17, 2012, which both parties agree is correct and authentic, states that William Talford Graham is the sole director, names him president, and appoints Troy Wilson as an “authorized representative and agent” of the corporation. A document of disputed validity,

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<sup>1</sup> The *Finden* factors are that the defendant: (1) “[has] a reasonable defense on the merits; (2) has a reasonable excuse for his failure or neglect to answer”; (3) “has acted with due diligence after notice of the entry of judgment”; and (4) shows absence of substantial prejudice to the opposing party. *Finden v. Klaas*, 128 N.W.2d 748, 750 (Minn. 1964).

dated February 25, 2013, purports to remove Graham from his roles and keep Wilson as an authorized representative of the corporation. Under either document, Wilson is an authorized agent of GGC Delaware; however, Graham purported to remove him during this litigation. In March 2017, GGC Delaware was administratively dissolved for failure to pay taxes or file a complete annual report. Wilson revived GGC Delaware in October 2019 after learning of this lawsuit.<sup>2</sup>

### *Background on the aircraft*

GGC Delaware purchased the aircraft for \$250,000 in September 2012. Wilson and Graham registered the aircraft with the Federal Aviation Administration (FAA) in late 2012 and listed GGC Delaware's address as 1717 McKinney Ave., Ste. 700, Dallas, TX 75202 (the Dallas address).

In June 2013, the aircraft flew from Anchorage, Alaska, to the Anoka County Airport for a stopover en route to Toronto, Ontario, Canada. However, for unknown reasons, the aircraft never made the second leg of the journey to Toronto and has remained at the Anoka County Airport since June 2013.

Key Aviation, which operated the Fixed Base Operation (FBO) facility at the Anoka County Airport, stored the aircraft in one of its hangars. In February 2017, it sold its interests to Lynx FBO Twin Cities (Lynx), which stored the aircraft outside on the tarmac. According to Lynx's general manager M.A., by the time of this lawsuit, outdoor storage had caused significant mechanical issues with the aircraft.

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<sup>2</sup> A Delaware corporation "whose certificate of incorporation has become forfeited or void" may be revived at any time. See Del. Code Ann. tit. 8, § 312 (2018).

*Respondents attempt to locate the aircraft's owner*

Pentel became interested in the aircraft, so he looked up its registration number in the FAA database and found that the record owner is a “Great Gulf Corp” at the Dallas address. Property managers at the Dallas address said Great Gulf Corp no longer used that property. Pentel found another Great Gulf Corporation in Texas (GGC Texas) with a Corpus Christi address and registered agent M.B. Significantly, M.B. told Pentel that GGC Texas never owned the aircraft or any other aircraft and that GGC Texas had been dissolved.

In January 2019, Pentel met with M.A., who told him that Wilson had been the contact person who paid the storage fees, but that fees had not been paid since May 2018. M.A. told Pentel that Wilson did not own the aircraft, but managed it. Pentel emailed Wilson asking about the aircraft and its owner. Wilson responded that he did not own it, had managed it for a time, had been asked recently to return the aircraft to airworthiness and to sell it, and that the “same company” still owned the aircraft. Pentel again asked for the “name of the company and a telephone number for the person in charge.” Wilson responded “that would be me” and asked about Pentel’s interest in the aircraft. Pentel did not reveal his interest. Wilson and Pentel exchanged several additional emails, and Wilson confirmed that a “Great Gulf” owned the aircraft. Eventually, Wilson stated that he “need[ed] to know [Pentel’s] interest in the airplane before we can really continue.” Pentel again did not reveal his interest in the aircraft but asked for the contact information for the aircraft’s owner. Wilson did not respond.

After this exchange with Wilson, Pentel continued searching for the Great Gulf Corporation that owned the aircraft. His search confirmed the record owner as a Great Gulf Corporation at the Dallas address with Wilson as its authorized signing officer and Graham as president.

*Respondents purchase Lynx's storage lien*

Lynx obtained a statutory lien against the aircraft under Minn. Stat. § 345.10 (2018) for unpaid storage fees of approximately \$8,952.30. R.M. also had a mechanics lien in the amount of \$19,849.14 for maintenance performed on the aircraft in December 2013, but he waived the lien because GGC Delaware paid him for that work.<sup>3</sup> On or about May 1, 2019, Lynx assigned its lien to respondents.

*Respondents commence this lawsuit and obtain a default judgment*

In May 2019, respondents served GGC Texas at its Corpus Christi address. However, the complaint lists the Dallas address associated with GGC Delaware. Respondents sought adjudications that (1) GGC Texas abandoned the aircraft and it is unclaimed property under Minn. Stat. § 345.02 (2018); (2) respondents hold a valid lien against the aircraft; (3) the district court direct and authorize sale of the aircraft to respondents and declare them the rightful owners with all right, title, and interest in the aircraft. The district court granted the motion for default judgment on September 12, 2019, concluding that: (1) GGC Texas abandoned the aircraft; (2) respondents own a lien on the

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<sup>3</sup> R.M. also states that GGC Delaware owes him \$5,040 for work done after December 2013. However, our review of the record reveals no evidence of a second lien.

aircraft, and (3) respondents “are authorized to sell the Aircraft in a manner and price they deem reasonable without notice to Defendants or any other party.”

*GGC Delaware responds to the default judgment*

GGC Delaware first learned of the default judgment on September 30, 2019. It filed a motion to vacate on October 24, 2019. Respondents filed a memorandum opposing appellant’s motion to vacate along with an affidavit from Graham stating that (1) he remains president and director of GGC Delaware; (2) Wilson has no authority to act on behalf of GGC Delaware; and (3) GGC Delaware abandoned the aircraft. The district court denied GGC Delaware’s motion to vacate, finding that it is not a named or served party to the action. It determined that, although GGC Delaware “may have an interest in this lawsuit,” as a nonparty, it lacks standing to file a motion to vacate. This appeal follows.

**DECISION**

**I. The district court did not clearly err by finding that GGC Delaware is not a named or served party to this lawsuit.**

GGC Delaware argues that, even though respondents did not serve it in this lawsuit, it is named in the complaint, and the district court therefore clearly erred by finding that it is not a party. We disagree.

Minn. R. Civ. P. 4 governs service of process to commence a civil lawsuit. One is not made a party to an action until served under rule 4. *In re Skyline Materials, Ltd.*, 835 N.W.2d 472, 476 (Minn. 2013) (discussing in-state service under Minn. R. Civ. P. 4.03). “Whether service of process was effective, and personal jurisdiction therefore exists, is a question of law that we review de novo.” *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377,

382 (Minn. 2008) (citing *Roehrdanz v. Brill*, 682 N.W.2d 626, 629 (Minn. 2004)). However, whether a party is named in a complaint and served with process, apart from the question of whether service of process was *effective*, are questions of fact. We review the district court’s findings of fact for clear error. *Roehrdanz*, 682 N.W.2d at 631.

Here, the district court found that “while there are a myriad of disputed facts in this case, one fact remains clear; Great Gulf Corporation, Delaware, is not, and has never been a party to this lawsuit.” The district court did not clearly err by implicitly finding that listing an entity’s address does not make that entity a named party. And it is undisputed that respondents served GGC Texas but did not serve GGC Delaware. Quite simply, respondents served the wrong party and therefore failed to make GGC Delaware, the record owner of the aircraft, party to this lawsuit.<sup>4</sup>

GGC Delaware argues that, because respondents (1) listed its former Dallas address in the complaint; (2) knew Wilson handled matters related to the aircraft; and (3) should have known that GGC Delaware was the correct party, these facts make GGC Delaware a party to the action. But GGC Delaware cites no authority for its proposition. We therefore affirm the district court’s finding that GGC Delaware is not a party to this lawsuit.

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<sup>4</sup> To the extent the district court found that GGC Delaware did not exist, we note that a dissolved entity may be served within three years of its dissolution. *Benchmark Comput. Sys., Inc. v. London*, 417 N.W.2d 714, 716 (Minn. App. 1988) (citing Del. Code Ann. tit. 8, § 278, 279 (2018)). This lawsuit commenced within three years of GGC Delaware’s administrative dissolution on March 1, 2017; therefore, GGC Delaware could have and should have been served.

**II. GGC Delaware has standing to file a motion to vacate as an interested nonparty and without having to intervene.**

GGC Delaware argues that, even if it is not a party, it has standing to file a motion to vacate because the default judgment affects its property interest. It argues that the district court therefore erred by determining that it first had to intervene in the lawsuit in order to file its motion to vacate. We agree.

**A. GGC Delaware has standing because it had an interest in the aircraft.**

“We review de novo whether a party has standing.” *Fed. Home Loan Mort. Corp. v. Mitchell*, 862 N.W.2d 67, 70 (Minn. App. 2015), *review denied* (Minn. June 30, 2015). “Standing is a legal requirement that a party have a sufficient stake in a justiciable controversy to seek relief from a court.” *Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007). A party has standing if it suffers an injury-in-fact, which is “a concrete and particularized invasion of a legally protected interest.” *Id.* (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136 (1992)).

Here, GGC Delaware purchased the aircraft in 2012, and it is undisputed that it therefore had an interest in the aircraft. The default judgment gives respondents the right to sell the aircraft “in a manner and price they deem reasonable without notice to . . . any other party,” and therefore impairs GGC Delaware’s property interest. This constitutes a concrete and particularized injury and confers standing on GGC Delaware to challenge the default judgment as an interested nonparty.

**B. An interested nonparty need not intervene in a lawsuit in order to file a motion to vacate a judgment that affects its interests.**

Respondents concede that an interested nonparty need not intervene in order to bring a motion to vacate a judgment that affects its interests, and we agree.

“[O]ne who is injured by the judgment, or who will be benefited by its reversal” may appeal the judgment. *Sammons v. Sammons*, 642 N.W.2d 450, 456 (Minn. App. 2002) (quoting 4 C.J.S. *Appeal and Error* § 156 (2002)<sup>5</sup>). An interested nonparty “[is] under no obligation to intervene” and its failure to do so does not mean the district court may enter a judgment against it. *Id.* at 457. Just as a party may appeal a judgment affecting its interests, it may also bring a motion to vacate that judgment under Minn. R. Civ. P. 60.02. *Cf. Sammons*, 642 N.W.2d at 456.

Here, the district court denied GGC Delaware’s motion to vacate, concluding that, as a nonparty, it lacked standing to file the motion and implicitly concluding that GGC Delaware must intervene in order to do so. But under *Sammons*, as an interested nonparty, GGC Delaware need not have intervened to file a motion to vacate the default judgment. We therefore reverse the district court’s denial of GGC Delaware’s motion to vacate.

**III. Because it lacked personal jurisdiction over GGC Delaware and therefore could not adjudicate GGC Delaware’s interest in the aircraft, the district court erred by failing to grant the motion to vacate the default judgment.**

GGC Delaware argues that the district court erred by denying the motion to vacate because the default judgment (1) is void under Minn. R. Civ. P. 60.02(d) for lack of

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<sup>5</sup> This quotation is now found in 4 C.J.S. *Appeal and Error* § 240 (2021). The language has not materially changed.

personal jurisdiction; (2) should be vacated under the *Finden* factors; and (3) should be vacated because the district court failed to require respondents to file a bond before obtaining default judgment under Minn. R. Civ. P. 55.01(d). GGC Delaware’s first argument has merit.<sup>6</sup>

We review the district court’s denial of a motion to vacate for an abuse of discretion. *Roehrdanz*, 682 N.W.2d at 631. However, we review the legal question of whether personal jurisdiction exists de novo. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2014). The Fourteenth Amendment of the United States Constitution and article I, section 7 of the Minnesota Constitution provide that “government action may not deprive individuals of liberty or property interests without due process.” *Sammons*, 642 N.W.2d at 457 (citing *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988) (stating that due-process guarantees are the same under both the state and federal constitutions)); *see also Grosjean v. Am. Press Co.*, 297 U.S. 233, 244, 56 S. Ct. 444, 447 (1936) (stating that corporation is “person” for purposes of due-process clause); *Thomas Oil, Inc. v. Onsgaard*, 215 N.W.2d 793, 796 (Minn. 1974) (stating that corporation is person in context of Fourteenth Amendment). Due process requires, among other things, notice, a hearing, and “an opportunity to present evidence and argument.” *Sammons*, 642 N.W.2d at 457. These requirements are satisfied if the plaintiff commencing a lawsuit “complies with an officially prescribed process for

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<sup>6</sup> Because we remand to the district court to vacate the default judgment on the basis of personal jurisdiction, we need not address appellant’s other two arguments. However, we note that rule 55.01(d) clearly requires respondents to file a bond in this case, and the failure to do so also merits vacatur.

invoking the district court's jurisdiction that . . . is reasonably likely to provide the defendant with actual notice of the action.” *Wick v. Wick*, 670 N.W.2d 599, 603 (Minn. App. 2003) (citing *Wuchter v. Pizzutti*, 276 U.S. 13, 18-19, 48 S. Ct. 259, 260 (1928)).

In Minnesota, the “officially prescribed process” is service of process under Minn. R. Civ. P. 4. A judgment obtained without service of process on a party is void for lack of personal jurisdiction and must be set aside regardless of the merits of the case. *Pugsley v. Magerfleisch*, 201 N.W. 323, 323-24 (Minn. 1924); *Beede v. Nides Fin. Corp.*, 296 N.W. 413, 414 (Minn. 1941) (“A judgment entered without [] service of process is absolutely void.”); *see also* Minn. R. Civ. P. 60.02(d) (stating that district court may relieve party of final judgment if judgment is void). Relatedly, “[t]he district court may not exercise jurisdiction over a nonparty.” *Sammons*, 642 N.W.2d at 457.

Here, the district court recognized that GGC Delaware had an interest in the aircraft but unequivocally concluded that respondents never served GGC Delaware, and it was not a party. It never acquired personal jurisdiction over GGC Delaware. The default judgment is therefore void. *See Beede*, 296 N.W. at 414. On remand, we direct the district court to vacate the default judgment.

#### **IV. Other issues raised by the parties on appeal must be resolved by the district court on remand.**

The parties also dispute whether GGC Delaware continues to have an interest in the aircraft, whether GGC Delaware abandoned its interest, and who has authority to act on behalf of GGC Delaware. The district court's findings are not clear on these issues, and we are therefore unable to adequately review them. *Rosenfeld v. Rosenfeld*, 249 N.W.2d

168, 171 (Minn. 1976) (noting that sufficient findings are necessary to facilitate appellate review). These issues are for the district court to resolve on remand after vacating the default judgment.

**Affirmed in part, reversed in part, and remanded.**