

*This opinion is nonprecedential except as provided by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
A20-1377**

Life Clinic PA,
Respondent,

vs.

Sharon E. Anderson,
Appellant.

**Filed June 1, 2021
Affirmed
Connolly, Judge**

Carver County District Court
File No. 10-CV-19-865

Gregory E. Hanson, Lukas F. Belflower, D.S. Erickson & Associates, PLLC, Edina,
Minnesota (for respondent)

Sharon E. Anderson, St. Paul, Minnesota (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the district court's denial of her motion to vacate the summary judgment granted to respondent, a provider of medical services, for appellant's outstanding medical debt. Because we conclude that the district court did not abuse its discretion in denying appellant's motion to vacate the judgment, we affirm.

FACTS

Appellant Sharon Anderson and her minor child received services from respondent Life Clinic PA between November 2013 and February 2014, resulting in a charge of \$4,298.75. Respondent submitted the claims to appellant's auto insurer, which covered \$1,642. Appellant paid \$100, but did not pay the remaining \$2,556.75.

Respondent served appellant with a summons and complaint for breach of implied contract, then moved for summary judgment on the grounds that (1) it had indisputably provided services to appellant and (2) it was entitled to payment for those services. One day before the summary-judgment hearing, appellant filed a response asserting that, although she informed respondent of her health insurance, respondent did not submit a claim. Appellant did not provide or identify any supporting evidence for either of these assertions. After the summary-judgment hearing, the district court ordered appellant to file a response to respondent's original complaint. She filed an answer and counterclaim that essentially repeated the assertions made in her response to the summary-judgment motion.

On March 30, 2020, the district court granted respondent's summary-judgment motion, noting that "[w]hile [appellant] disputes liability to pay, [she] has provided no genuine evidence. Rather, [appellant] has made mere averments that cannot overcome an otherwise valid motion for summary judgment."

Appellant requested reconsideration in a letter stating that respondent's "only argument" at the summary-judgment hearing was that appellant "did not file an affidavit of her defense and claims" and claiming that an "[a]ffidavit was filed with [her] formal response" But the record indicates that only an answer and counterclaim were filed;

it does not indicate any filing of an affidavit. On April 13, 2020, the district court denied appellant's request for reconsideration.

On April 22, 2020, appellant began an exchange of emails with one of respondent's billing managers. Appellant told her that respondent had obtained a judgment against her for the amount remaining on appellant's account and that respondent had failed to submit a claim for that amount to appellant's health insurer. The billing manager replied in an email saying, "[W]e are willing to forgive these charges entirely since it is now past timely filing to your general insurance policy that we failed to acquire from the beginning of care. I'm not familiar with what the next steps are for you at this point in your case, but hopefully this email will suffice." In another email, appellant asked the billing manager to sign an affidavit as to the forgiveness of appellant's debt, but the billing manager replied that she lacked the authority to do so.

Relying on this exchange of emails as newly discovered evidence, appellant then filed a motion to vacate the judgment and dismiss the case. In opposition to her motion, respondent submitted the billing manager's affidavit retracting her statement of respondent's forgiveness of appellant's debt, stating she did not have the authority to forgive the debt on behalf of respondent, and stating she did not know when she sent the email forgiving the debt that appellant had sued respondent. The district court denied appellant's motion to vacate the judgment, stating that the newly discovered evidence she presented was not grounds to vacate "because the evidence did not exist at the time of the judgment."

Appellant challenges the denial, arguing that the district court should have vacated the judgment because of: (1) newly discovered evidence, *see* Minn. R. Civ. P. 60.02 (b); (2) respondent's fraud on the court, *see* Minn. R. Civ. P. 60.02 (c); or (3) circumstances that satisfied the four factors for relief from judgments set out in *Finden v. Klaas*, 128 N.W.2d 748, 750 (Minn. 1964) (listing (1) a reasonable defense on the merits, (2) a reasonable excuse for failure or neglect to answer, (3) that the party seeking relief acted with due diligence after notice of the entry of judgment, and (4) that no substantial prejudice will result to the other party).

DECISION

When reviewing a decision to vacate a judgment under rule 60.02, this court considers whether the district court abused its discretion. *Meyer v. Best Western Seville Plaza Hotel*, 562 N.W.2d 690, 693 (Minn. 1997). The district court abuses its discretion if it acts under a "misapprehension of the law," its factual findings are clearly erroneous, or it denies relief when the movant has satisfied the four *Finden* requirements. *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016).

I. Newly Discovered Evidence

A party may be relieved from a final judgment if the party presents "[n]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule 59.03." Minn. R. Civ. P. 60.02(b). The newly discovered evidence must have been in existence at the time of the underlying proceeding, but not have been known to the party at that time. *Swanson v. Williams*, 228 N.W.2d 860, 862 (Minn. 1975) (concluding that a physician's testimony about a consultation that

occurred after trial was not newly discovered evidence within the meaning of Minn. R. Civ. P. 60.02(b)).

The only “newly discovered evidence” appellant presented in support of her motion to vacate the judgment was the exchange of emails between herself and respondent’s billing manager. That exchange did not begin until April 22, 2020, after judgment had been granted on March 30, 2020, and appellant’s request for reconsideration had been denied on April 13, 2020. Thus, under *Swanson*, the email exchange was not newly discovered evidence. Appellant presented no evidence before judgment was granted that respondent knew about appellant’s health insurance.

The district court did not abuse its discretion in determining that the email exchange did not meet the definition of newly discovered evidence under Minn. R. Civ. P. 60.02(b).

II. Fraud

The district court may relieve a party from a final judgment for fraud, misrepresentation, or misconduct by an adverse party. Minn. R. Civ. P. 60.02(c). “[T]he moving party must establish by clear and convincing evidence that the adverse party engaged in fraud or other misconduct which prevented it from fully and fairly presenting its case.” *Regents of Univ. of Minn. v. Medical Inc.*, 405 N.W.2d 474, 480 (Minn. 1987). “Whether a party has committed fraud or misconduct is within the district court’s discretion as the fact finder and evaluator of the weight and credibility of the evidence.” *Turner v. Suggs*, 653 N.W.2d 458, 465 (Minn. 2002). The misconduct required by rule 60.02(c) must have a direct impact on the ultimate issues of the case. *Id.*

At the hearing on her motion to vacate, appellant stated that respondent's attorney had "tried to manipulate an affidavit and construe the evidence" and been "very, very difficult to deal with." However, appellant presented no evidence of fraud or misconduct on the part of respondent's attorney, and her written motion to vacate did not actually request relief under rule 60.02(c).

Appellant argues on appeal that respondent engaged in fraud upon the court because appellant told the billing manager in an email on April 22, 2020, that respondent had received a judgment against her and the billing manager said in her affidavit on September 1, 2020, that she was not aware that appellant had brought an action against respondent. Thus, it appears that there was an inaccuracy in the billing manager's affidavit.

But the billing manager's affidavit was made after summary judgment had been granted. Its accuracy or inaccuracy was therefore irrelevant to the ultimate issues of the summary judgment, i.e., whether there was a contract between appellant and respondent under which appellant was required to pay for the services respondent provided and whether that contract was breached. The billing manager's affidavit had no impact on these issues and therefore was not misconduct within the meaning of Minn. R. Civ. P. 60.02(c). *See Turner*, 653 N.W.2d at 465.¹

¹ Insofar as appellant argues that respondent misrepresented appellant's debt to the court because respondent had been informed of appellant's health care insurance but failed to submit a claim, that argument fails because, as noted above, appellant provided no evidence to support it when she raised it in opposition to respondent's summary-judgment motion.

III. *Finden* Factors

Anderson also argues that she is entitled to relief from the judgment because her circumstances satisfy the *Finden* factors for relief, among which is a moving party's reasonable excuse for the failure or neglect to answer or otherwise prevent the judgment. *See Finden*, 128 N.W.2d at 750.

Appellant has not raised any concern, before either the district court or this court, that she failed or was unable to act in some way that could have avoided the summary judgment. Rather, she states in her appellate brief that she has “acted with due diligence and timely filings” while representing herself throughout these proceedings. The record supports this statement: appellant filed an answer and counterclaim, filed a response to the summary-judgment motion, and presented argument before the district court. Without some alleged failure or neglect to act of the party seeking relief, the *Finden* factors do not provide a basis for vacating the judgment.

The district court did not abuse its discretion in deciding that neither newly discovered evidence, nor respondent's alleged fraud on the court, nor the *Finden* factors would support vacation of the summary judgment.

Affirmed.