STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0045

Jane Doe 126, by and through her Guardian, Father Doe 126,
Appellants,

vs.

Minneapolis Public Schools - Special School District No. 1,
Respondent,

Septran, Inc.,
Respondent,

Antonio Javier Baltazar-Hernandez,
Respondent.

Filed August 8, 2022
Affirmed
Slieter, Judge

Hennepin County District Court
File No. 27-CV-20-13901

Patrick Noaker, Noaker Law Firm, LLC, St. Louis Park, Minnesota (for appellants)

Margaret A. Skelton, Christian R. Shafer, Frank E. Langan, Jonathan G. Finck, Ratwik, Roszak & Maloney, P.A., St. Paul, Minnesota (for respondent Minneapolis Public Schools - Special School District No. 1)

Sarah E. Bushnell, Jeffrey M. Markowitz, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota (for respondent Septran, Inc.)

Antonio Javier Baltazar-Hernandez, Minneapolis, Minnesota (*pro se* respondent)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant commenced this civil action by serving a summons and complaint on two of three separate named defendants. However, because appellant's counsel did not file the summons and complaint regarding those same two defendants with the district court within the one-year deadline pursuant to rule 5.04(a) of the rules of civil procedure, the action was deemed dismissed with prejudice by operation of the rule. The district court denied appellant's motion for relief pursuant to rule 60.02(a). Because the district court is in the best position to evaluate the reasonableness of the excuse, we defer to its sound discretion, and the district court acted within its discretion in denying appellant relief from dismissal. Therefore, we affirm.

FACTS

The following facts are undisputed. In April 2017, respondent Antonio Javier Baltazar-Hernandez, a school bus driver, sexually assaulted a student, six-year-old appellant Jane Doe 126 (Doe), after he "arranged for [her] to be the last person to be dropped off," "left the normal bus route and stopped the bus in a place where he did not normally stop." In July 2018, Baltazar-Hernandez was convicted of second-degree criminal sexual conduct.

Baltazar-Hernandez was employed by respondent Septran Inc. Septran contracted with respondent Minneapolis Public Schools – Special School District No. 1 (MPS) to provide transportation services for MPS.

On January 11 and 17, 2019, Doe, through her father, commenced this action by serving upon Septran and MPS a summons and complaint. The complaint alleged three causes of action: assault and battery against Baltazar-Hernandez; vicarious liability against MPS and Septran; and negligence against MPS and Septran. Doe did not immediately file the summons and complaint with the district court.

Shortly after Doe served Septran and MPS, the attorneys for Doe and Septran began informal settlement discussions. The following communications between the attorneys occurred:

- January 28, 2019: Septran's attorney sent an email to Doe's attorney expressing interest in "an early resolution" and asked whether Doe would "be willing to provide a demand[.]" Doe's attorney responded by recommending mediation.

- January 31, 2019: Septran's attorney responded by email indicating a preference for informal settlement rather than mediation and requested a time extension to answer the complaint. Doe's attorney agreed to a 30-day extension and was open to further extension if the parties would schedule mediation or put "some substantial process in place."

- February 6, 2019: Septran's attorney emailed Doe's attorney "to explore settlement informally" and again asked if Doe was "interested in making a demand[.]"

No communication between Doe's attorney and MPS occurred until July 26, 2019, when MPS served its first set of interrogatories on Doe. As of the date of the rule 60.02 motion, Doe had not answered the interrogatories. And no further communication occurred between the Doe's attorney, MPS, or Septran until after the complaint was filed in October 2020.

On October 27, 2020, after realizing the previous day that the complaint had not been timely filed, Doe's attorney filed the complaint with the district court. On October

30, Doe served and filed a motion seeking relief from the rule 5.04 dismissal for failing to file the complaint within one year of service.

The district court, construing the motion as a request for relief pursuant to rule 60.02(a), denied relief from the dismissal.[1] Doe appeals.

DECISION

"Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties . . . ." Minn. R. Civ. P. 5.04(a). However, "[o]n 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 "excusable neglect." Minn. R. Civ. P. 60.02. A party seeking relief from a rule 5.04(a) dismissal may do so by filing a rule 60.02 motion. *See Gams v. Houghton*, 884 N.W.2d 611, 615-18 (Minn. 2016); *Cole v. Wutzke*, 884 N.W.2d 634, 336-39 (Minn. 2016). We review a district court's denial of a motion for relief pursuant to rule 60.02(a) for an abuse of discretion. *Gams*, 884 N.W.2d at 620; *Cole*, 884 N.W.2d at 637.

The district court should grant rule 60.02(a) relief if a party "satisfies four requirements." *Cole*, 884 N.W.2d at 637. These four requirements are:

> (1) a debatably meritorious claim; (2) a reasonable excuse for the movant's failure or neglect to act; (3) the movant acted with due diligence after learning of the error or omission; and (4) no substantial prejudice will result to the other party if relief is granted.

[1] Baltazar-Hernandez was also a named defendant but was not served until November 25, 2020, and his case remained open until December 14, 2021, when the district court granted default judgment for Doe against Baltazar-Hernandez.

Gams, 884 N.W.2d at 620 (quotations omitted); *see also Cole*, 884 N.W.2d at 637.

Doe argues that the district court abused its discretion by denying her motion for relief from dismissal. The district court determined that although Doe had satisfied requirements three and four, she failed to satisfy requirements one and two. We limit our analysis to the second requirement because we conclude that the district court properly determined that Doe failed to provide a reasonable excuse for failing to file the complaint.

The supreme court has explained that "mistakes of law, as well as mistakes of fact, may afford grounds for relief." *Cole*, 884 N.W.2d at 638 (quotation omitted). And supreme court caselaw "generally reflects a strong policy favoring the granting of relief when judgment is entered through no fault of the client." *Id.* (quotation omitted). "[T]here are no per se rules of law requiring either the grant or denial of a Rule 60.02(a) motion under the reasonable excuse requirement." *Id.* at 639. Thus, relief is not automatic and, instead, the district court must conduct a "fact intensive" inquiry. *Id.* "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." *Gams*, 884 N.W.2d at 620. And "the district court is in the best position to evaluate the reasonableness of the excuse." *Id.* (quotation omitted).

Doe contends that the mistake in not filing the summons and complaint is entirely attributable to her attorney, that appellate courts are ordinarily "loath to punish the innocent client for the counsel's neglect," and therefore, the district court abused its discretion. *See Cole*, 884 N.W.2d at 638 (quotation omitted). We are not persuaded.

The district court, in response to the claim by Doe's attorney that the transition to

remote work in March 2020 caused the filing delay, indicated that it "appreciat[ed]" counsel's predicament caused by the transition, but it considered "the argument to be unconvincing." It then found that Doe "never provided the requested [informal settlement] demand and [she] never indicated that [she was] rejecting Defendant Septran's invitation to engage in informal settlement negotiations - [she and her attorney] just stopped the line of communication." Lastly, the district court found that Doe herself "contributed to the delay by failing to respond to negotiation discussions and failing to respond to requests for discovery." The district court's findings are supported by the record.

There is no dispute that Doe's attorney knew of, but missed, the filing deadline because he "mistakenly overlooked" it. Additionally, the record supports the district court's finding that Doe's attorney simply stopped communicating with Septran's attorney regarding informal settlement negotiations. Lastly, the record supports the district court's finding that Doe's attorney "coordinated with [Doe via her father] in August of 2019 to work on responses to [MPS]'s discovery requests." And Doe did not attempt to explain to the district court why she failed to timely respond to the discovery requests.

Because the district court is in the best position to evaluate the reasonableness of the excuse, we defer to its sound discretion. *Gams*, 884 N.W.2d at 620. Based on this record, the district court properly determined that Doe did not have a reasonable excuse for untimely filing the complaint, and thus, the district court was within its discretion in denying Doe relief from dismissal.

Affirmed.