

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0923**

City of Minneapolis,
Respondent,

vs.

Leo A. Daly Company,
Appellant,

and

Leo A. Daly Company,
Appellant,

vs.

Ice Builders, Inc., a New York Corporation,
Respondent,

Golden Industrial Refrigeration, LLC, a Wisconsin limited liability company,
Respondent,

ISG Professional, LLC, a Minnesota limited liability company,
Third-Party Defendant,

Generator Studio, LLC, a Missouri limited liability company,
Appellant,

Stantec Consulting Services Inc., a New York corporation,
Respondent.

**Filed October 24, 2022
Appeal dismissed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CV-21-14450

Peter W. Ginder, Acting Minneapolis City Attorney, Brian S. Carter, Heather Robertson,
Assistant City Attorneys, Minneapolis, Minnesota (for respondent City of Minneapolis)

Mark R. Becker, Alexander B. Athmann, Fabyanske, Westra, Hart & Thomson, P.A., Minneapolis, Minnesota (for appellant Leo A. Daly Company)

Ice Builders, Inc., Liverpool, New York (respondent)

Elizabeth S. Poeschl, Meagher & Geer, P.L.L.P, Minneapolis, Minnesota (for respondent Golden Industrial Refrigeration, LLC)

Randi J. Winter, Luke J. Wolf, Spencer Fane LLP, Minneapolis, Minnesota (for appellant Generator Studio, LLC)

Jason R. Asmus, Andrew S. Dosdall, Taft Stettinius & Hollister LLP, Minneapolis, Minnesota (for respondent Stantec Consulting Services Inc.)

Considered and decided by Bratvold, Presiding Judge; Johnson, Judge; and Cochran, Judge.

SYLLABUS

An order granting relief under Minn. R. Civ. P. 60.02(a) and vacating the deemed dismissal of an action under Minn. R. Civ. P. 5.04(a) is not appealable as of right.

SPECIAL TERM OPINION

BRATVOLD, Judge

This appeal arises from a lawsuit begun by respondent City of Minneapolis (the city) against appellant Leo A. Daly Company (LAD). LAD and appellant Generator Studio LLC seek review of a district court’s order vacating the “automatic dismissal” of the city’s action under Minn. R. Civ. P. 5.04(a) for failure to file the lawsuit. This court questioned jurisdiction, and the parties filed informal memoranda. We issued an order dismissing the appeal and stating that this special term opinion would set out our analysis of the jurisdictional issue.

FACTS

On August 1, 2019, the city served a complaint on LAD, alleging damages caused by a design flaw in the ice slab at Target Center. In July 2020, LAD and the city stipulated that the time to file the city's complaint under rule 5.04 be extended until May 3, 2021. In April 2021, LAD and the city stipulated that the time to file the complaint under rule 5.04 be extended until October 1, 2021.

On November 29, 2021, the city filed the complaint in district court. In December 2021, LAD filed a third-party complaint asserting claims against subcontractors Ice Builders Inc., Golden Industrial Refrigeration LLC, I&S Group Inc., ISG Professional LLC, Generator Studio, and Stantec Consulting Services Inc.

LAD and Generator Studio moved for judgment on the pleadings, arguing that the city's action had been automatically dismissed under rule 5.04(a). The city filed a response acknowledging that it failed to file the action before the October 1, 2021 deadline, conceding the action was deemed dismissed under rule 5.04, and asking the district court to find excusable neglect and vacate the dismissal under Minn. R. Civ. P. 60.02. LAD and Generator Studio opposed granting relief to the city. After a hearing, the city filed a separate motion for relief under rule 60.02, which LAD and Generator Studio opposed.

In a June 2, 2022 order, the district court granted LAD's and Generator Studio's motions for judgment on the pleadings after concluding that the city's action was deemed dismissed with prejudice because "the city did not file its complaint on or before October 1, 2021." In the same order, the district court granted the city's motion for relief under rule 60.02 and vacated the "automatic dismissal" under rule 5.04(a). The district court

determined, among other things, that the city had a “debatably meritorious” claim, had a reasonable excuse for missing the filing deadline “due to COVID-19 and the civil unrest in Minneapolis,” and acted with due diligence and that no substantial prejudice would result from vacating the dismissal.

LAD and Generator Studio appeal.

ANALYSIS

Minn. R. Civ. P. 5.04(a) provides that “[a]ny action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period.” The Minnesota Supreme Court has held that a defendant “does not need to take any action for Rule 5.04(a) to operate” and “a case is automatically ‘deemed’ dismissed with prejudice upon failure to file, or obtain a stipulation, within the 1-year deadline in the rule.” *Gams v. Houghton*, 884 N.W.2d 611, 617 (Minn. 2016) (footnote omitted) (quoting Minn. R. Civ. P. 5.04(a)). In a footnote, the supreme court expanded on the meaning of “deemed” and stated that the case is “considered, adjudged, or treated as if dismissed with prejudice.” *Id.* at 617 n.4. Although judicial action is “not needed” for dismissal under rule 5.04(a) to occur, rule 5.04 “does not foreclose judicial action following a belated filing and the absence of judicial action does not make Rule 60.02 inapplicable.” *Id.* at 617.

This appeal leads us to consider whether an order vacating a deemed dismissal under rule 5.04 is appealable. Parties may take an appeal from an appealable judgment or order. Minn. R. Civ. App. P. 103.03. While rule 103.03 has “a nearly exhaustive list of appealable orders and judgments, it is not the exclusive basis for appellate jurisdiction.” Minn. R. Civ.

App. P. 103.03 1998 advisory comm. note. Specifically, a party may take an appeal “from such other orders or decisions as may be appealable by statute or under the decisions of the Minnesota appellate courts.” Minn. R. Civ. App. P. 103.03(j). Whether an order is appealable raises a question of law subject to de novo review. *Kastner v. Star Trails Ass’n*, 646 N.W.2d 235, 238 (Minn. 2002).

LAD and Generator Studio assert that we have appellate jurisdiction for two reasons. First, they contend this court has jurisdiction because the district court entered judgment against the city, then vacated that judgment, and caselaw has recognized a right to appeal in this circumstance. Second, even if existing caselaw does not recognize a right to appeal, they argue that this court has appellate jurisdiction based on finality principles. We consider each reason in turn.

A. The district court has not entered judgment in this case.

LAD and Generator Studio contend that the district court’s June 2, 2022 order is appealable because it vacated an appealable final judgment. They rely on *In re State & Regents Building Asbestos Cases*, 435 N.W.2d 521, 522 (Minn. 1989), in which the supreme court held that “an order vacating an appealable final judgment is appealable itself.” LAD and Generator Studio argue that “this matter was fully resolved and a final judgment against the City was entered on October 2, 2021,” the day after the stipulated extension to file the complaint expired. In the alternative, they argue that they obtained a final judgment when the district court issued its June 2, 2022 order “confirming [the] dismissal and granting judgment.”

To resolve this issue, we consider whether a judgment was entered in this case. A district court “shall direct the appropriate judgment to be entered” on an “order for relief other than money or costs.” Minn. R. Civ. P. 58.01. “The judgment in all cases shall be entered and signed by the court administrator in the judgment roll; this entry constitutes the entry of the judgment; and the judgment is not effective before such entry.” *Id.*; *see also* Minn. Stat. § 485.07 (2020) (requiring “[e]very” court administrator to “procure and keep” records, including a judgment roll “for each judgment rendered”).

Entry of a judgment on the judgment roll is crucial; “a judgment is not effective until it is entered upon the judgment roll.” 3 Erica A. Holzer & Katherine S. Barrett Wiik, *Minnesota Practice* § 104.4 (2022 ed. 2022). “This happens when the administrator creates a document that indicates clearly that the judgment has been entered,” and this “may be a separate document, or may consist of the administrator’s certification on the order for judgment that ‘the foregoing constitutes the judgment of the court.’” *Id.* To sum up, judgment is not entered on an order for relief until a district court directs the entry of judgment *and* the court administrator creates a judgment document or certifies entry on the order and records the judgment on the judgment roll.

We turn to the two judgments postulated by LAD and Generator Studio. The district court administrator’s register of actions does not include a docket entry labeled “Judgment.” More importantly, this record lacks any order directing entry of judgment, lacks any document stating judgment was entered, and lacks any order with a certification from the district court administrator that it constitutes the court’s judgment. The district

court, therefore, did not enter judgment on October 2, 2021, or at any time before this appeal was filed.

Thus, we reject LAD and Generator Studio’s argument that the district court entered judgment on October 2, 2021, or on June 2, 2022. The June 2, 2022 order, therefore, did not vacate an appealable judgment and is not appealable under *Regents*, 435 N.W.2d at 522.

B. An order vacating a deemed dismissal with prejudice under rule 5.04(a) is not appealable.

LAD and Generator Studio argue that even if the deemed dismissal did not yield a final judgment, the “principles of finality still apply.” They assert that the June 2, 2022 order is appealable because the order “revived the action” and that “[i]t does not matter that the dismissal was not formally reduced to a court order or judgment.” They argue that “[a]n order vacating [a] Rule 5.04(a) dismissal disturbs the finality of the dismissal, revives a dead lawsuit, and undercuts the purpose of Rule 5.04(a),” to “provide a final end to an action.”

The city responds that the June 2, 2022 order is not appealable as of right because this court has “distinguished *Regents* in the situation where the judgment was vacated before the time to appeal from the judgment had expired.” The city relies on *Erickson v. Erickson*, 506 N.W.2d 679, 680 (Minn. App. 1993).

We begin with precedent establishing that rule 5.04(a) “is not a legislatively enacted statute of limitations designed to provide repose to a defendant.” *Cole v. Wutzke*, 884 N.W.2d 634, 638 (Minn. 2016). Instead, rule 5.04(a) is a “procedural tool” that the

supreme court “promulgated to aid the orderly and efficient administration of justice.” *Id.* While *Cole* did not determine the appealability of an order vacating a deemed dismissal under rule 5.04, the supreme court’s analysis suggests that rule 5.04 does not give rise to a defendant’s expectation of finality.

The supreme court’s reasoning in *Regents* underscores this point. In *Regents*, the supreme court held that an order granting a motion to vacate a partial final judgment entered under Minn. R. Civ. P. 54.02 was appealable as of right because “an order vacating an appealable final judgment is appealable itself.” 435 N.W.2d at 522. The supreme court reasoned that the right of appeal derived from “fundamental principles attending the finality of judgments” rather than from a specific procedural rule. *Id.* The supreme court explained that an immediate appeal from an order granting a motion to vacate a judgment is critical where “the parties affected by the order had expected that the expiration of the time for appeal fully defined the parameters of the litigation.” *Id.*

Regents links the immediate appealability of an order vacating a judgment to the finality of the underlying judgment. *Regents* reflects the long-held principle that “[o]nce the time to appeal a decision of the district court expires, that ruling is final, even if it is wrong.” *Johnson v. Johnson*, 902 N.W.2d 79, 83 (Minn. App. 2017) (citing *Dieseth v. Calder Mfg. Co.*, 147 N.W.2d 100, 103 (Minn. 1966)).¹

¹ We reject LAD’s argument that *Erickson* conflicts with *Regents*. In *Erickson*, we distinguished *Regents*, noting that the judgment in *Erickson* “was vacated *before* the time to appeal the judgment expired,” and thus the order vacating judgment was not immediately appealable. 506 N.W.2d at 680-81. We reasoned that “[f]undamental principles attending the finality of judgments do not warrant immediate appeal of an order vacating a default judgment that is truly not ‘final’ because the time to appeal the judgment has not expired.”

The June 2, 2022 order does not implicate the finality principles discussed in *Regents*. The city’s action was deemed dismissed under rule 5.04(a) on October 2, 2021. The district court did not need to enter judgment for that dismissal to be effective. *See Gams*, 884 N.W.2d at 617 (explaining that judicial action is not needed for a rule 5.04(a) dismissal to occur). The deemed dismissal was not appealable as of right because the city had no order or judgment it could appeal. The city could only seek relief from the deemed dismissal in district court. *See id.* (providing that a deemed dismissal under rule 5.04 “does not foreclose judicial action” under rule 60.02).

Because the deemed dismissal was not independently appealable, the parties had no expectation that the time to appeal had expired or that the deemed dismissal was otherwise final. *See Cole*, 884 N.W.2d at 638 (noting that rule 5.04(a) is not “designed to provide repose to a defendant”); *Regents*, 435 N.W.2d at 522 (explaining that an immediate appeal from an order granting a motion to vacate a judgment is critical where “the parties affected by the order had expected that the expiration of the time for appeal fully defined the parameters of the litigation”). Simply put, the time to seek appellate review of the dismissal had not expired when the district court issued its June 2, 2022 order vacating the dismissal. Indeed, LAD and Generator Studio may seek review of the June 2, 2022 order in a timely appeal from a final judgment. Thus, the principles of finality do not require an immediate appeal of the June 2, 2022 order vacating the deemed dismissal.

Id. at 680. We also explained that an order vacating a default judgment was not immediately appealable when “[t]he vacation of the judgment did not defeat the parties’ expectation of finality.” *Id.* Similarly, an action deemed dismissed under rule 5.04(a) is “truly not ‘final’” because the time to appeal has not expired. *Id.*

DECISION

In sum, the June 2, 2022 order vacating the deemed dismissal of the city's action under rule 5.04 did not vacate a final judgment because the district court has not entered judgment in this case. Also, the order vacating the deemed dismissal does not implicate finality principles underlying the supreme court's decision in *Regents*. Thus, we conclude that an order vacating the deemed dismissal of an action under Minn. R. Civ. P. 5.04(a) is not appealable as of right.

Appeal dismissed.