

*This opinion is nonprecedential except as provided by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
A22-1388**

2913 29th Avenue South LLC,
Appellant,

vs.

Treaunna K. Martin,
Respondent,

John Doe, et al.,
Defendants.

**Filed July 3, 2023
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CV-HC-22-966

Douglass E. Turner, Christopher T. Kalla, Hanbery & Turner P.A., Minneapolis,
Minnesota (for appellant)

James A. Lee, Jr., Mid Minnesota Legal Aid, Minneapolis, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Smith, Tracy M., Judge; and
Bryan, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this eviction action based on nonpayment of rent, appellant-landlord 2913 29th Avenue South LLC challenges the district court's order (1) granting respondent-tenant Treanna Martin's motion to vacate the default judgment against her and (2) determining

that tenant had substantially complied with redemption requirements and allowing her an additional week to pay a remaining balance of \$88.20. Because the district court did not abuse its discretion by vacating the default judgment, we affirm in part. But because the district court erred by setting the redemption amount without receiving evidence of what tenant owed, we reverse in part and remand to the district court for further proceedings to determine the redemption amount.

FACTS

In March 2022, landlord served and filed a summons and an eviction complaint for nonpayment of rent against tenant, alleging that tenant had failed to pay rent for that month. After the parties informed the district court that tenant had a pending application for COVID-related rental assistance, the district court stayed the eviction action.

When the stay was lifted in June 2022, landlord filed an amended eviction complaint, asserting that tenant was still in possession of the apartment and owed rent for March through June. The district court scheduled a hearing for August 2 and mailed a hearing notice to tenant.

On July 22, 2022, landlord cashed a \$6,467.59 check from a Hennepin County rental-assistance program for tenant's March through July rent.

Tenant did not appear at the August 2 hearing. At the hearing, landlord orally moved to amend the complaint to include July and August rent. Landlord did not inform the district

court that it had cashed the check from the county's rental-assistance program for tenant's March through July rent.¹

On August 3, the district court entered default judgment for landlord. The order granted landlord an immediate writ of recovery and stated that it was granting landlord's motion to amend the complaint "to include June and July rent."

Tenant was served with a copy of the writ of recovery sometime between August 6 and 10, 2022. On August 16, the sheriff executed the writ of recovery, restoring the apartment to landlord.

On August 30, 2022, tenant filed a motion to vacate judgment pursuant to Minnesota Rule of Civil Procedure 60.02. The district court heard the parties' arguments on the motion on September 9, 2022. At the hearing, tenant focused on landlord's acceptance of the payment for March through July rent prior to the August 2 hearing, and landlord acknowledged that it accepted that payment. However, landlord asserted that tenant still owed \$88.20 of July rent, as well as court costs, and that tenant had not paid August rent. As a result, landlord contended that tenant needed to pay \$3,311.20 to redeem her tenancy.

By written order filed on September 27, 2022, the district court vacated the default judgment and quashed the writ of recovery. The district court ordered landlord to reinstate tenant to the apartment as soon as possible and ordered tenant to pay \$88.20 to landlord by October 3.

Landlord appeals.

¹ Landlord asserts that its counsel was unaware of the county's rental-assistance payment.

DECISION

Landlord argues that the district court erred by granting tenant's motion to vacate the default judgment. In the alternative, landlord argues that the district court erred by setting the amount of redemption—the amount of money tenant must pay to be reinstated to her tenancy.

I. The district court did not abuse its discretion by vacating the judgment.

Landlord argues that the district court abused its discretion by granting tenant's motion to vacate the default judgment because the district court failed to make findings on the four required factors to vacate a judgment under Minnesota Rule of Civil Procedure 60.02(a) and the record does not support findings in favor of vacating.²

A court may vacate a judgment based on “[m]istake, inadvertence, surprise, or excusable neglect.” Minn. R. Civ. P. 60.02(a). The decision whether to vacate a judgment under rule 60.02(a) is “based on all the surrounding facts of each specific case, and is committed to the sound discretion of the district court. As such, a district court will not be reversed on appeal except for a clear abuse of discretion.” *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016) (citations and quotations omitted). A district court abuses its

² The district court relied on rule 60.02(a) in vacating the default judgment. Tenant asserts that, in addition to rule 60.02(a), the district court's decision to vacate the judgment could be affirmed under rule 60.02(c), (e), and (f). Tenant did not assert rule 60.02(e) or (f) in district court, and thus those arguments are waived. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). As for rule 60.02(c), tenant did cite that provision in her motion to vacate, although the district court did not address it in its order. We need not address it because rule 60.02(a) suffices to affirm the district court's decision.

discretion “when it acts under a misapprehension of the law” or if “its factual findings are clearly erroneous.” *Id.* (quotations omitted).

A party moving for relief under rule 60.02(a) must establish the four *Finden* factors. *Id.* at 619; see *Finden v. Klaas*, 128 N.W.2d 748 (Minn. 1964). These four factors are (1) “a reasonable defense on the merits,” (2) “a reasonable excuse” for the movant’s failure or neglect to act, (3) that the movant acted “with due diligence after learning of the error or omission,” and (4) “that no substantial prejudice will result to the other party.” *Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016) (citations and quotations omitted).

As an initial matter, we reject landlord’s argument that the district court failed to make findings on all of the *Finden* factors. To grant relief under rule 60.02(a), a “district court must consider, and expressly find that a party satisfied, all four of the *Finden* factors.” *Gams*, 884 N.W.2d at 619 (quotation omitted). Landlord contends that a district court must therefore make separate, explicit findings for each of the four *Finden* factors and that the district court’s failure to do so here requires reversal. We disagree. The district court’s order identifies tenant’s arguments on the four factors, accurately recites the factors, and correctly states that the moving party “bears the burden of proving all four of the elements.” Immediately thereafter, the order states “that the Court finds that Tenant has demonstrated that the Default Judgment should be vacated.” The order makes clear that the district court “consider[ed], and expressly [found]” that tenant satisfied all four *Finden* factors. *Id.*

We turn now to the analysis of the *Finden* factors themselves. Landlord asserts that the district court abused its discretion in finding any of the factors satisfied. For the reasons that follow, we disagree.

Reasonable Defense on the Merits

Landlord argues that tenant had no reasonable defense on the merits at the time of the default judgment. “A reasonable defense on the merits is one that, if established, provides a defense to the plaintiff’s claim.” *Northland Temps., Inc. v. Turpin*, 744 N.W.2d 398, 403 (Minn. App. 2008), *rev. denied* (Minn. Apr. 29, 2008). “Specific information that clearly demonstrates the existence of a debatably meritorious defense satisfies this factor.” *Id.*

Because this is an eviction action, landlord’s cause of action and tenant’s defenses are governed by chapter 504B of the Minnesota Statutes. *See SVAP III Riverdale Commons LLC v. Coon Rapids Gyms, LLC*, 967 N.W.2d 81, 85 (Minn. App. 2021). Under Minnesota Statutes section 504B.291 (2022), “[a] landlord may bring an eviction action for nonpayment of rent.” This statute provides an avenue for a tenant to “defend against such an action by proving that rent actually has been paid.” *Id.* (citing Minn. Stat. § 504B.291, subd.1 (a)).

Section 504B.291 also grants tenants the opportunity to return to their tenancy even if they failed to pay rent. In those cases, the tenant may “redeem the tenancy” by paying “the amount of the rent that is in arrears, with interest, costs of the action, and an attorney’s fee not to exceed \$5, and by performing any other covenants of the lease.” Minn. Stat. § 504B.291, subd. 1(a). If a tenant pays the rent owed, the district court may grant a tenant additional time³ to pay interest, costs, and attorney fees. *See id.*, subd. 1(b).

³ The tenant’s right to redeem extends until the time that “possession has been delivered.” Minn. Stat. § 504B.291, subd. 1(b). Possession is delivered when the court issues “an order

The district court found that landlord cashed a rent payment check in the amount of \$6,467.49 on July 22, 2022, and that, “though a balance of \$88.20 remain[ed],” tenant “substantially performed to redeem the tenancy” before the writ of recovery was issued. Landlord contends that “substantial redemption” is not a reasonable defense to an eviction action because section 504B.291 imposes strict requirements for redemption. *See* Minn. Stat. § 504B.291, subd. 1(a).

We are unpersuaded that the district court abused its discretion. Tenant’s “debatably meritorious defense” is that she in fact paid the rent due through July when the landlord cashed the rent check for March through July. *See Northland Temps., Inc.*, 744 N.W.2d at 403. Moreover, even if \$88.20 were still owing for July, landlord concedes that a redemption period with respect to July rent “might have been appropriate” under section 504B.291, subdivision 1(b)—which allows a tenant to be restored even without fully paying all interest, costs, and attorney fees.

Landlord argues, though, that tenant still lacked a reasonable defense on the merits as of the August 3 judgment because August rent was due and unpaid. But the district court approved landlord’s motion to amend the eviction complaint to include rent only through July. Moreover, the eviction hearing that tenant missed took place on August 2—immediately after August rent was due. In these circumstances, the district court did not abuse its discretion by not considering August rent when concluding that tenant had a reasonable defense to the eviction action.

dispossessing the tenant and permitting reentry by the landlord.” *Paul McCusker & Assoc., Inc. v. Omodt*, 359 N.W.2d 747, 748 (Minn. App. 1985), *rev. denied* (Minn. Mar. 29, 1985).

Reasonable Excuse for Failure to Appear

Landlord argues that tenant's excuse for missing the August 2 eviction hearing—her lack of actual knowledge of the hearing—is not a valid excuse. Relying on *Koski v. Johnson*, landlord asserts that lack of actual knowledge cannot be a reasonable excuse for missing an eviction hearing when, as here, a party was properly served with a summons and complaint. 837 N.W.2d 739 (Minn. App. 2013), *rev. denied* (Minn. Dec. 17, 2013).

But *Koski* holds that a district court lacks personal jurisdiction over a defendant in an eviction proceeding if the landlord does not strictly comply with the statute governing service, even if the defendant has actual notice of the proceeding. 837 N.W.2d at 745. Thus, that case does not preclude a finding that lack of actual knowledge is a reasonable excuse under rule 60.02(a) for failing to appear for a hearing.

As the supreme court has made clear, “there 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.” *Cole*, 884 N.W.2d at 639. Instead, “[t]he decision whether relief is warranted under Rule 60.02 is committed to the sound discretion of the district court and is based upon all the surrounding circumstances of each case.” *Id.* at 637. Here, it is undisputed that landlord cashed tenant's rent check in July, for her March through July rent, before the August 2 hearing on landlord's eviction complaint. And tenant asserted that she did not have actual notice of the August 2 hearing. Under these circumstances, it was not an abuse of discretion for the district court to determine that tenant had a reasonable excuse for failing to appear.

Due Diligence

Landlord contends that tenant did not act with due diligence after learning of the default judgment. Minnesota Rule of Civil Procedure 60.02 requires that a motion to vacate be brought within a reasonable time. What constitutes a reasonable time is determined on a case-by-case basis. *Palladium Holdings, LLC v. Zuni Mortg. Loan Tr.* 2006-0A1, 775 N.W.2d 168, 177 (Minn. App. 2009), *rev. denied* (Minn. Jan 27, 2010). Due diligence in bringing the motion to vacate is “assessed from the time that the movant learns of his or her error or omission.” *Cole*, 884 N.W.2d at 639.

Landlord argues that, given the summary nature of eviction actions, tenant waited an unreasonably long time to vacate judgment because she did not contact legal counsel until five to nine days after discovering the writ of recovery and she did not file her motion to vacate judgment for another two weeks. We are unconvinced. After learning of the writ of recovery, tenant contacted legal counsel, who investigated what had happened with the rental-assistance payment and, upon learning it had been cashed, filed a motion to vacate within approximately three weeks of tenant’s learning about the writ. Even though proceedings are summary, we are not persuaded on this record that the district court abused its discretion by finding that tenant acted with due diligence.

No Substantial Prejudice

Landlord contends that it was substantially prejudiced because the district court directed tenant to pay only the balance of unpaid rent for July in its order to vacate judgment. Prejudice is inherent when a case is delayed. *Finden*, 128 N.W.2d at 751. But when the prejudice claimed is limited to delay and added expense, that prejudice is not

considered substantial. *Id.* Substantial prejudice to the other party may exist if that party lost witnesses or evidence due to delay or if that party detrimentally relied on the dismissal. *See Cole*, 884 N.W.2d at 639.

Landlord's argument conflates prejudice arising from the amount that the district court ordered for redemption with the prejudice related to the district court's reopening of the default judgment. Tenant alleged, and landlord does not dispute, that no other tenant had occupied the premise following the issuance of the default judgment. Furthermore, landlord does not identify any real or particular harm that it suffered as a result of a delay in this case or how it detrimentally relied on the default judgment. Thus, landlord has not established that the district court abused its discretion in finding that landlord was not substantially prejudiced by vacatur of the default judgment.

In sum, landlord has not established that the district court abused its discretion by vacating the default judgement.

II. The district court erred by setting the redemption amount without receiving evidence of how much tenant owed.

Landlord argues that the district court erred by setting a redemption amount of \$88.20 and effectively dismissing landlord's case when there were disputed material facts about whether tenant had redeemed and how much tenant owed to redeem.⁴ As discussed above, the redemption amount includes "the amount of the rent that is in arrears, with

⁴ Landlord does not contest the portion of the district court's order directing it to reinstate tenant.

interest, costs of the action, and an attorney's fee not to exceed \$5." Minn. Stat. § 504B.291, subd. 1(a).

"On review of a district court order in an eviction action, we defer to the district court's findings of fact, and those findings will be upheld unless they are clearly erroneous." *NY Properties, LLC v. Schuette*, 977 N.W.2d 862, 864-65 (Minn. App. 2022), *rev. granted* (Minn. Apr. 27, 2022) *and appeal dismissed* (Minn. Aug. 24, 2022).

The district court's order followed a September 9 hearing about whether to vacate the default judgment. That hearing did not involve the presentation of evidence. No exhibits were offered or received, no sworn testimony was obtained, and the parties did not stipulate to any facts related to the redemption amount. Counsel for landlord and tenant discussed whether \$88.20 was the amount of rent still due after July's rent payment. Tenant's counsel indicated a willingness to take landlord's "word on the amount," but we do not read this exchange as a stipulation to \$88.20 as the amount of rent owed or the total redemption amount. Because there is no evidence in the record of what tenant actually owed in rent, the district court clearly erred in setting tenant's redemption amount at \$88.20. *See id.* (concluding that the district court erred by making factual findings and legal conclusions without first receiving evidence and explaining that "[a] party has a right to a trial when there are genuine issues of material facts").

As a result, we affirm the portion of the district court's order vacating the default judgment, reverse the portion of the district court's order directing tenant to pay \$88.20, and remand for further proceedings.

Affirmed in part, reversed in part, and remanded.