

*This opinion is nonprecedential except as provided by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
A23-0984**

Kieu Oanh T. Nguyen,
Appellant,

vs.

Frank Knapper, et al.,
Respondents.

**Filed February 5, 2024
Reversed
Smith, Tracy M., Judge**

Kanabec County District Court
File No. 33-CV-22-249

John G. Westrick, Savage Westrick, P.L.L.P., Bloomington, Minnesota (for appellant)

John A. Abress, Franz Hultgren Evenson, P.A., St. Cloud, Minnesota (for respondents)

Considered and decided by Gaïtas, Presiding Judge; Smith, Tracy M., Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal arising from a dispute over the construction of a pole shed, appellant argues that the district court abused its discretion by granting respondents' motion to vacate a default judgment under Minnesota Rule of Civil Procedure 60.02(f). Because clause (f) is a residual clause and because respondents could have argued to vacate the default judgment under rule 60.02(a), we reverse.

FACTS

Appellant Kieu Oanh T. Nguyen challenges the district court's order vacating a default judgment against respondents Frank Knapper and his son Wayne Knapper.¹ In August 2022, Nguyen filed a "consumer assistance request" with the Minnesota Attorney General's Office against Frank and Wayne. She asserted that she had hired Frank and Wayne to build a pole shed on her property and that they had not completed any work on the project. On October 3, the attorney general's office sent the consumer assistance request to Frank, requesting a response.

In the meantime, Nguyen also pursued a district court action. She served a civil complaint on Frank and Wayne on September 26 and September 30, respectively. On October 8, Nguyen served and filed an amended complaint. In her amended complaint, Nguyen alleged as follows. Nguyen entered into a contract with Frank and Wayne to build a pole shed for a total cost of \$43,920. Under the contract, Frank and Wayne were to remove trees from the property. Nguyen paid \$22,000 to Frank as a down payment so that Frank could purchase materials and begin performing work. Frank and Wayne did not start work on the job site for several weeks after the written contract was signed. Frank and Wayne removed the trees, but they left the stumps for Nguyen to remove. Nguyen hired a septic company to remove the stumps and level the ground for Frank and Wayne to construct the building. Frank and Wayne did not show up after the septic company removed

¹ Because respondents share the same last name, we use their first names in this opinion.

the stumps. Nguyen sought the return of the \$22,000 she had paid to Frank and Wayne, reimbursement of \$1,000 for materials and other costs, and reimbursement for court costs.

At some point before October 17, Frank sent the attorney general's office a response to Nguyen's consumer complaint. On October 20, Frank filed a letter with the district court, enclosing a copy of the response that he had sent to the attorney general's office. On October 24, the district court issued a deficiency notice to Frank and Wayne informing them that the documents had been rejected for failure to pay the filing fee.

The district court notified the parties of a scheduling hearing to be held on January 10, 2023. Nguyen, Frank, and Wayne all appeared before the district court on that date, and Frank and Wayne were informed of the deficiency in filing an answer.

On January 17, Nguyen filed a notice of motion and motion for default judgment based on Frank and Wayne's failure to file an answer. The district court held a hearing on Nguyen's motion on March 31. Frank and Wayne did not attend the default judgment hearing, and Nguyen appeared pro se. At the hearing, the district court reviewed the procedural history of the case, observing that Frank and Wayne were notified of the deficiency in filing an answer, that they had not paid a filing fee to date, that they were served with notice of Nguyen's motion for default judgment, and that they had not appeared for the hearing. The district court then swore in Nguyen as a witness. She testified that she paid \$22,000 to Frank and Wayne but they did not perform the work listed in the contract. She also testified to other costs she had incurred to pursue the lawsuit. The district court granted Nguyen's motion and entered judgment against Frank and Wayne in the amount

of \$23,300.² In April, when Frank and Wayne had not satisfied the judgment, Nguyen pursued garnishment proceedings against them both.

On May 23, following about a month of garnishment proceedings, Frank and Wayne filed a motion to vacate the default judgment under Minnesota Rule of Civil Procedure 60.02(f). Frank submitted an affidavit describing the work that he claimed to have performed. In a memorandum of law accompanying his motion, Frank argued that the evidence in the record did not support Nguyen's claim that Frank had not performed any work because his supporting affidavit provided detailed information on the work that was performed. Frank also argued that he was justified in stopping performance under the contract, claiming that Nguyen anticipatorily breached the contract and had made performance impossible. As for his failure to properly participate in the civil action, Frank admitted to "dropping the ball" with his answer and gave no reason for not attending the default-judgment hearing.

Wayne also provided an affidavit showing the work that he had done and stating that he "did not sign the contract." In his memorandum of law accompanying his motion, Wayne argued that he could not be liable because the record shows that he was not a party to the contract. Wayne did not address his failure to properly participate in the civil action.

² This amount is the total of the \$22,000 down payment, \$800 for sand that Nguyen had purchased for the building, and \$500 in court costs.

In June, the district court held a hearing on Frank and Wayne’s motion to vacate default judgment. Frank and Wayne appeared with their attorney,³ and Nguyen appeared pro se. Following arguments from the parties, the district court confirmed with respondents that they were not making a claim of “excusable neglect,” which is governed by Minnesota Rule of Civil Procedure 60.02(a), but rather were relying only upon an “equitable argument” under rule 60.02(f)—the residual clause. The district court stated that it was going to grant Frank and Wayne’s motion under rule 60.02(f). It explained, “[W]ith the law not favoring default judgments, with the issue about whether Mr. Wayne Knapper’s actually part of this contract, I’m going to grant the defense motion and vacate the judgment.” The district court thereafter issued a one-page order, stating that the motion to vacate default judgment was granted and that the judgment was vacated. The order contained no findings of fact or conclusions of law.

Nguyen appeals.

DECISION

Nguyen contends that the district court abused its discretion by granting Frank and Wayne’s motion to vacate under rule 60.02(f).

“The decision to vacate judgment under rule 60.02 rests within the district court’s discretion and will not be reversed absent an abuse of that discretion.” *Meyer v. Best W. Seville Plaza Hotel*, 562 N.W.2d 690, 694 (Minn. App. 1997), *rev. denied* (Minn. June 26, 1997). The district court abuses its discretion if it “acts under a misapprehension of the law

³ Frank and Wayne are jointly represented in this appeal and were jointly represented in the district court as well.

or when its factual findings are clearly erroneous.” *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016) (quotations and citations omitted).

The Minnesota Rules of Civil Procedure grant district courts the authority to vacate judgments in a variety of circumstances. Rule 60.02 lists six:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule 59.03;
- (c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (d) The judgment is void;
- (e) The judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (f) Any other reason justifying relief from the operation of the judgment.

Frank and Wayne moved to vacate the judgment under only clause (f). Nguyen argues that vacating the judgment under that clause was an abuse of discretion.

Clause (f) is “a residual clause, designed only to afford relief in those circumstances exclusive of the specific areas addressed by clauses (a) through (e).” *Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 924 (Minn. 1990). Relief is available under clause (f) only in “exceptional circumstances and then, only if the basis for the motion is other than that specified under clauses (a) and (e).” *Id.* When a motion is properly brought under clause (f), relief “is appropriate when the equities weigh heavily in favor of the party seeking relief and relief is required to avoid an unconscionable result.” *Hovelson v. U.S.*

Swim & Fitness, Inc., 450 N.W.2d 137, 142-43 (Minn. App. 1990), *rev. denied* (Minn. Mar. 16, 1990).

Clause (a) addresses the “specific area” here. *See Chapman*, 454 N.W.2d at 924. The district court granted default judgment for Nguyen because Frank and Wayne had not properly participated in the lawsuit: they failed to pay the filing fee for their answer; they were informed of the deficiency; and they did not attend the default judgment hearing, even though they knew the lawsuit was ongoing. And, between the two of them, the only explanation offered was that Frank “dropp[ed] the ball.” Under these circumstances, clause (a)—specifically, “excusable neglect”—was the proper analytical framework for Frank and Wayne’s motion to vacate. *See, e.g., Northland Temps., Inc. v. Turpin*, 744 N.W.2d 398, 405 (Minn. App. 2008) (applying clause (a) to default judgment granted following failure to answer).⁴

But, rather than trying to establish that relief was warranted under clause (a), Frank and Wayne argued that vacating the judgment would be “equitable” and therefore was warranted under clause (f). Frank asserted in his motion to vacate that the record did not support the damages awarded to Nguyen. He claimed that he had completed \$22,000 worth of work and stopped work only because he learned that Nguyen would be unable to pay for further work under the contract. And Wayne asserted in his motion to vacate that, because

⁴ A four-part test governs when relief is available for excusable neglect under clause (a). *Finden v. Klass*, 128 N.W.2d 748, 750 (Minn. 1964) (explaining that the defendant must establish (1) a reasonable defense on the merits, (2) a reasonable excuse for failure to answer, (3) due diligence, and (4) absence of prejudice to the other party). The four-part *Finden* test does not apply to motions to vacate under clause (f). *Buck Blacktop, Inc. v. Gary Contracting & Trucking Co.*, 929 N.W.2d 12, 19 (Minn. App. 2019).

he did not sign the contract, he was not a party to it and therefore could not be found liable. In other words, both Frank and Wayne both argued that judgment should be vacated because they have a defense on the merits. But having a possible defense on the merits is not an “exceptional circumstance” that falls outside the “specific area” of clause (a) when default judgment is granted based on failure to properly respond to a lawsuit. *See Chapman*, 454 N.W.2d at 924.

Clause (a) addresses the circumstance leading to the default judgment here; accordingly, clause (f) does not apply. The district court abused its discretion by granting Frank and Wayne’s motion to vacate the default judgment.

Reversed.