

*This opinion is nonprecedential except as provided by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
A24-0055**

Lavern Allen Harris,
Appellant,

vs.

Reno Lindell,
Respondent.

**Filed August 5, 2024
Affirmed
Reyes, Judge**

Mille Lacs County District Court
File No. 48-CV-23-1118

Stephanie J. Schommer, Schmidt Salita Law Team, Minnetonka, Minnesota (for appellant)

Paul A. Rajkowski, Melaina N. Mrozek, RGP Law, Ltd., St. Cloud, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges the dismissal of his complaint for failure to comply with the one-year filing requirement of Minn. R. Civ. P. 5.04(a), arguing that the district court abused its discretion by determining that he had not met the *Finden* factors for relief from

judgment under Minn. R. Civ. P. 60.02. Because appellant has not satisfied the second factor, and because all four factors must be satisfied to obtain relief, we affirm.

FACTS

In March 2019, appellant Lavern Allen Harris was allegedly injured after slipping and falling on a snowy ramp at a house owned by respondent Reno Lindell. Harris hired a first attorney who drafted a complaint against Lindell. The complaint was served on Lindell on June 9, 2022. Lindell served an answer on Harris that same day.

In early July 2022, Harris and Lindell agreed to a joint discovery plan, which their attorneys signed. On July 5, Lindell served interrogatories and requests for production of documents on Harris. Harris did not respond to the discovery requests, and the first attorney did not respond to letters from Lindell's counsel sent in August, September, and November.

In April 2023, Harris contacted a second attorney to potentially handle his claim because of pending disciplinary proceedings against the first attorney. Harris gave the second attorney a copy of the file from the first attorney, which did not contain the affidavit of service for Harris's complaint but included the complaint with a signature date of May 25, 2022. On April 21, 2023, the second attorney emailed Lindell's attorney asking if he would "discuss the status of the case" with her but did not receive a response. On April 25, the Minnesota Supreme Court suspended the first attorney from the practice of law. *In re Disciplinary Action Against Richard W. Curott*, 989 N.W.2d 291 (Minn. 2023).

On June 6, the second attorney sent a follow-up email to Lindell's attorney, again asking to discuss the status of the case. The second attorney and Lindell's attorney spoke

over the phone on June 8, at which time they discussed the one-year deadline to file the case and that the deadline was either rapidly approaching or had already passed. At some point, the second attorney requested a copy of the affidavit of service from the Mille Lacs County Sheriff's Office.

On June 9, 2023, under Minn. R. Civ. P. 5.04, the one-year deadline to file an action that had been served on a party passed.

On June 15, Harris formally retained the second attorney as counsel. That same day, the second attorney filed the action in district court after receiving a copy of the affidavit of service from the sheriff's office, which stated that the complaint had been served on June 9, 2022.

On June 21, Lindell moved to dismiss the case under Minn. R. Civ. P. 5.04. On July 24, Harris moved for relief under Minn. R. Civ. P. 60.02(a) on the basis of "mistake, inadvertence, surprise, or excusable neglect."

Following a motion hearing, the district court dismissed the case under rule 5.04 and denied Harris's motion for relief under rule 60.02, determining that Harris failed to meet any of the four *Finden* factors. *See Finden v. Klaas*, 128 N.W.2d 748 (Minn. 1964). This appeal follows.

DECISION

Harris argues that the district court abused its discretion by denying his motion for relief, contending that it erroneously assessed each of the four *Finden* factors. We disagree.

A civil case commences when a defendant is served with a summons. Minn. R. Civ. P. 3.01. The action must be filed with the district court within one year of the

commencement of the action. Minn. R. Civ. P. 5.04(a). If the action is not filed with the district court by that time, the action is “deemed dismissed with prejudice against all parties.” *Id.* The dismissal is automatic, and a defendant need not take action for the dismissal to occur. *Gams v. Houghton*, 884 N.W.2d 611, 617 (Minn. 2016).

The Minnesota Rules of Civil Procedure give district courts the authority to grant relief from a final judgment, order, or proceeding based on a variety of circumstances. Minn. R. Civ. P. 60.02. One basis is for “[m]istake, inadvertence, surprise, or excusable neglect.” *Id.*, 60.02(a). District courts may grant relief under rule 60.02 for dismissals under rule 5.04. *Gams*, 884 N.W.2d at 616.

For a district court to grant relief under rule 60.02(a), the movant must satisfy four factors, commonly known as the *Finden* factors. *Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016) (citing *Finden*, 128 N.W.2d at 750). The four factors are (1) “a debatably meritorious claim,” (2) “a reasonable excuse for [their] failure or neglect to act,” (3) “that [they] acted with due diligence after learning of the error or omission,” and (4) “that no substantial prejudice will result to the other party.” *Cole*, 884 N.W.2d at 637 (quotations omitted). The district court must consider and expressly find that a party satisfied all four factors to grant relief under rule 60.02. *Gams*, 884 N.W.2d at 619.

A decision on whether relief is warranted under rule 60.02 lies within the sound discretion of the district court and is based on the specific circumstances of each case. *Cole*, 884 N.W.2d at 637. Appellate courts review the district court’s decision for an abuse of discretion. *Id.*

The district court did not abuse its discretion by determining that Harris did not provide a reasonable excuse for failure to act.

Harris argues that he provided a reasonable excuse for failing to act, contending that he should not be punished for the failure of both of his attorneys to file the complaint by June 9. We are not convinced.

The district court determined that Harris did not have a reasonable excuse for failing to file the complaint before June 9, 2023, because the second attorney should have been aware of the impending deadline when Harris first consulted her. The district court further determined that Harris “contributed to the delay” because he “ha[d] not followed through in a timely manner as he has proceeded with his claim.”

The Minnesota Supreme Court provided a thorough explanation of the second *Finden* factor in *Cole*: “As to ‘reasonable excuse,’ we have long said that mistakes of law, as well as mistakes of fact, may afford grounds for relief. Additionally, our case law generally reflects a strong policy favoring the granting of relief when judgment is entered through no fault of the client.” 884 N.W.2d at 638 (citations and quotations omitted). “[E]ven in those cases [when] a court has held the neglect of a client’s attorney to be inexcusable, if such neglect has been purely that of counsel, ordinarily courts are loath to punish the innocent client for the counsel’s neglect.” *Id.* (quotations omitted).

Conversely, “not all mistakes, whether of fact or of law, and whether committed by a party to an action or by his attorney, are . . . subject to relief. Indeed, the right to vacatur is not absolute; rather, it is a matter largely within the discretion of the [district] court.” *Id.* (citations and quotations omitted). As a result, “it is generally for the district court to

determine whether the excuse offered by the movant is true and reasonable under the circumstances. Accordingly, 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.” *Id.* at 639. Importantly, “the district court is in the best position to “evaluate the reasonableness of the excuse.” *Gams*, 884 N.W.2d at 620 (quotation omitted).

The district court determined that Harris’s substitution of counsel was not a reasonable excuse because the second attorney was involved in the case prior to the one-year deadline and “she did not make an inquiry regarding the filing deadline and seek a stipulation on an extension of the deadline.” This determination is supported by the record because Harris gave the second attorney a copy of the first attorney’s file in April, which included the complaint with a signature date of May 25, 2022. Although the second attorney emailed Lindell’s counsel in April asking about “the status of the case,” she did not ask specifically about the filing deadline, and she did not speak to Lindell’s counsel until June.

In addition, the district court’s determination that Harris contributed to the delay is supported by the record. The record shows that, although Lindell had been served with the complaint and the parties had agreed to a joint discovery plan, Harris had otherwise not actively litigated the case during the year. In addition, Harris did not promptly retain new counsel after the first attorney was disciplined. Nor did Harris actively litigate the case in a pro se capacity during the time between the first attorney’s suspension and when he formally retained the second attorney.

Based on the great discretion the district court has in evaluating the reasonableness of the excuse, we conclude that the district court did not abuse its discretion by determining that Harris did not meet the second *Finden* factor.

A plaintiff is not entitled to relief under rule 60.02 unless they “affirmatively satisf[y]” all four *Finden* factors. *Cole*, 884 N.W.2d at 637. Because Harris failed to meet the second *Finden* factor, we therefore conclude that the district court did not abuse its discretion by denying Harris’s motion for relief under rule 60.02.

Affirmed.