

*This opinion is nonprecedential except as provided by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
A24-0108**

Nathan Adams Busch, et al.,
Appellants,

vs.

Terry Lee Fredin, et al.,
Respondents.

**Filed July 22, 2024
Affirmed
Klaphake, Judge***

Cottonwood County District Court
File No. 17-CV-21-401

Nathan A. Busch, Anovus, L.L.C., Windom, Minnesota (for appellants)

Robert E. Kuderer, Gregory E. Kuderer, Erickson, Zierke, Kuderer & Madsen, P.A.,
Minneapolis, Minnesota (for respondents)

Considered and decided by Wheelock, Presiding Judge; Harris, Judge; and
Klaphake, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellants challenge the district court's denial of their motion for relief from a mediated settlement agreement, which resulted from respondents' alleged breach of a home-improvement contract. We affirm.

FACTS

Appellants' Deborah R. Coen and Nathan Adams Busch contract claims were settled during mediation with respondents Terry Lee Fredin, Fredin Construction/Cabinetry, and Terry L. Fredin Construction. The district court denied appellants' request for relief under Minn. R. Civ. P. 60.02(a), (c), (f), determining that appellants' motion: (1) failed on the merits, (2) must be denied because granting the motion would be unjust, (3) must be denied because claims were required by the settlement agreement to be decided by the mediator, and (4) was untimely.¹ This appeal followed.

DECISION

In Minnesota, contract law applies to mediated settlement agreements. Minn. Stat. § 572.35 (2022); *see Voicestream Minneapolis, Inc. v. RPC Props., Inc.*, 743 N.W.2d 267, 271 (Minn. 2008) ("An agreement entered into as compromise and settlement of a dispute is contractual in nature."). Appellate courts review questions of law de novo. *See Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 601 (Minn. 2014). "The interpretation of the Minnesota Rules of Civil Procedure is a question of law." *Gams v. Houghton*, 884 N.W.2d

¹ On appeal, appellants do not put forth an argument based on rule 60.02(a).

611, 616 (Minn. 2016). When a district court denies a plaintiff’s request for relief under rule 60.02, this court reviews that decision for an abuse of discretion. *See id.* at 620. A district court abuses its discretion if it “acts under a misapprehension of the law or when its factual findings are clearly erroneous.” *Id.* (quotations omitted).

Appellants’ appeal pursuant to rule 60.02 includes arguments under paragraphs (c) and (f). Because paragraph (f) is considered a residual clause—only available when paragraphs (a)-(e) do not apply—appellants’ argument will be divided into two parts, first considering paragraph (c) and then considering paragraph (f) separately. *See Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 924 (Minn. 1990) (rejecting plaintiff’s argument that later discovery of dismissal should trigger rule 60.02 one-year limitations period, in favor of district court’s entry of dismissal triggering limitations period).²

Pursuant to Minn. R. Civ. P. 60.02,

the court may relieve a party . . . from a final judgment (other than a marriage dissolution decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons:

....

(c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

....

(f) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than [one] year after the judgment, order, or proceeding was entered or taken.

² For the purposes of timeliness of the motions, paragraphs (c) and (f) also have different limitation periods. Minn. R. Civ. P. 60.02.

Fraud

For appellants' rule 60.02(c) motion to be granted, appellants must establish by clear and convincing evidence that respondent "engaged in fraud or other misconduct which prevented [appellants] from fully and fairly presenting [their] case." *See Regents of Univ. of Minn. v. Med. Inc.*, 405 N.W.2d 474, 480 (Minn. App. 1987), *rev. denied* (Minn. July 15, 1987). To meet the clear-and-convincing-evidence standard, appellants' evidence must be "unequivocal and uncontradicted, and intrinsically probable and credible." *Deli v. Univ. of Minn.*, 511 N.W.2d 46, 52 (Minn. App. 1994), *rev. denied* (Minn. Mar. 23, 1994). "Whether a party has committed fraud or misconduct is within the district court's discretion as the fact[-]finder and evaluator of the weight and credibility of the evidence." *Turner v. Suggs*, 653 N.W.2d 458, 465 (Minn. 2002). And respondent's fraud or misconduct must "have gone to the ultimate issue of the case." *See Regents of Univ. of Minn.*, 405 N.W.2d at 480.

The district court determined that appellants' motion based on rule 60.02(c) failed on the merits. The district court noted that the mediated settlement agreement "set forth all of the terms and was signed by [appellants]—one of whom is a licensed attorney." And that because Busch is a licensed attorney, "his claims of confusion, lack of understanding of the agreement terms, and being unduly influenced or pressured during the mediation process" were undercut "significantly." We agree. Therefore, the district court did not abuse its discretion when it denied appellants' motion based on rule 60.02(c).

Timeliness of claims for fraud

A rule 60.02(c) motion is considered timely if the moving party submits the motion “not more than [one] year after the judgment, order, or proceeding was entered or taken.” Minn. R. Civ. P. 60.02. The district court determined that appellants’ rule 60.02(c) motion was untimely. The district court noted that the mediated settlement agreement took effect on April 22, 2022, and appellants’ rule 60.02(c) motion was submitted on June 16, 2023—after the one-year limitation period expired.

The district court’s decision to have the one-year limitation period begin upon the effective date of the mediated settlement agreement is supported by Minnesota statutes and caselaw. *See* Minn. Stat. §§ 572.35, subd. 1; 481.08 (2022); *see also Rhodes v. Stockwell Homes, L.L.C.*, 4 N.W.3d 370, 374 (Minn. App. 2024).

Minn. Stat. § 572.35, subd. 1, states that:

The effect of a mediated settlement agreement shall be determined under principles of law applicable to contract. A mediated settlement agreement is not binding unless:

(1) it contains a provision stating that it is binding and a provision stating substantially that the parties were advised in writing that (a) the mediator has no duty to protect their interests or provide them with information about their legal rights; (b) signing a mediated settlement agreement may adversely affect their legal rights; and (c) they should consult an attorney before signing a mediated settlement agreement if they are uncertain of their rights; or

(2) the parties were otherwise advised of the conditions in clause (1).

In *Rhodes*, this court reasoned that a party’s “authorized attorney may sign a mediated settlement agreement on behalf of a party,” citing section 481.08 as supporting authority. 4 N.W.3d at 374. Section 481.08, states that “[a]n attorney may bind a client,

at any stage of an action or proceeding.” This court’s reasoning in *Rhodes* suggests that a mediation settlement agreement constitutes a “proceeding” that could be considered the triggering date for the one-year limitations period under rule 60.02(c).³

In addition, the mediated settlement agreement states that: “[t]he [m]ediator has no duty to protect their interests or provide . . . [p]arties with information about their legal rights; [s]igning a mediated settlement agreement may adversely affect . . . [p]arties’ legal rights; and [p]arties should consult an attorney before signing a mediated settlement agreement if they are uncertain about their rights.” The language of the mediated settlement agreement meets the statutory requirements established to make such an agreement binding on the parties. *See* Minn. Stat. § 572.35, subd. 1(1). Because the effective date of the mediated settlement agreement was in April 2022, for the purposes of rule 60.02, the mediated settlement agreement constitutes a “proceeding.” Therefore, the district court did not abuse its discretion when it determined that appellants’ June 2023 motion was barred by the one-year limitations period.

Any other reason justifying relief

A plaintiff may also seek relief from a final judgment under rule 60.02(f), for “[a]ny other reason justifying relief from the operation of the judgment.” Minn. R. Civ. P. 60.02(f). This rule “has been designated as a residual clause, designed only to afford relief

³ *See Rhodes*, 4 N.W.3d at 374 (“Our conclusion is also consistent with well-settled public policy encouraging the settlement of claims.”); *see also Voicestream*, 743 N.W.2d at 271 (stating that “[s]ettlement of claims is encouraged as a matter of public policy”).

in those circumstances exclusive of the specific areas addressed by clauses (a) through (e).” *Chapman*, 454 N.W.2d at 924.

A rule 60.02(f) motion must assert: (1) “exceptional circumstances” that are not provided for by rule 60.02(a)-(e), and (2) “establish a meritorious claim.” *Buck Blacktop, Inc. v. Gary Contracting & Trucking Co.*, 929 N.W.2d 12, 20 (Minn. App. 2019) (quotations omitted). In its extraordinary-circumstances decision, a district court “may consider a wide range of factors, including the risk of injustice to the parties and the risk of undermining the public’s confidence in the judicial process.” *Id.* at 21 n.3 (quotations omitted). Relief under rule 60.02(f) 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).

The district court determined that the motion failed on the merits. And a meritorious claim is required before a district court may grant relief under rule 60.02(f). *See Buck Blacktop*, 929 N.W.2d at 20. Therefore, the district court did not abuse its discretion when it denied appellants’ motion based on rule 60.02(f).

Timeliness of a claim for any other reason

A plaintiff’s rule 60.02(f) motion, however, must “be made within a reasonable time.” Minn. R. Civ. P. 60.02. “Whether a motion is made within a reasonable time depends upon all of the facts and circumstances involved, and the district court may consider whether any prejudice will result to the other party if the motion is granted.” *Buck Blacktop*, 929 N.W.2d at 20 (quotation omitted). Given the circumstances surrounding the

mediated settlement agreement, we conclude that appellants' motion pursuant to rule 60.02(f) was not made within a reasonable time.

Affirmed.