This opinion is nonprecedential except as provided by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
A24-0933

Realty Pros, LLC,
Respondent,

vs.

Lamphay Phetphrachanh,
Defendant,

American Investments L.L.C.,
Appellant.

Filed April 7, 2025
Affirmed
Reilly, Judge[*]

Hennepin County District Court
File No. 27-CV-21-11945

Jack E. Pierce, Matthew D. Goldfine, Bernick Lifson, P.A., Minneapolis, Minnesota (for respondent)

Jared M. Goerlitz, Goerlitz Law, PLLC, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Bratvold, Judge; and Reilly, Judge.

---

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

NONPRECEDENTIAL OPINION

REILLY, Judge

In this redemption dispute following a foreclosure by advertisement, appellant challenges the district court's denial of appellant's motion to vacate a five-week redemption order issued under Minn. Stat. § 582.032 (2024). Appellant argues that the district court abused its discretion by determining that appellant had not met the four factors required for relief under Minn. R. Civ. P. 60.02(a). Because the district court did not abuse its discretion by determining that appellant has not satisfied the second factor, and because all four factors must be satisfied to obtain relief, we affirm.

FACTS

The following summarizes the district court's written factual findings issued after a hearing and, when helpful to understand the issues, includes other record evidence.

Defendant Lamphay Phetphrachanh was the record owner of real property in Brooklyn Park. The property was part of a townhome association. In March 2019, Phetphrachanh granted appellant American Investments L.L.C. a first mortgage on the property for $25,000 and a second mortgage for $5,000. Later that month, American recorded both mortgages.

In July 2021, the townhome association recorded a lien statement against the property because Phetphrachanh defaulted on her association dues. By statute, American's first mortgage was senior to the townhome association's lien, and the lien was senior to American's second mortgage. *See* Minn. Stat. § 515B.3-116(b) (2024).

In August 2021, American received notice of a lien-foreclosure sale of the property. In September 2021, the townhome association foreclosed the lien by advertisement. Respondent Realty Pros, LLC was the highest bidder at the foreclosure sale.

On October 4, 2021, Realty Pros filed a complaint in district court seeking to reduce Phetphrachanh's statutory redemption period from six months to five weeks under Minn. Stat. § 582.032. The complaint alleged that the property was "vacant, unoccupied, and abandoned," and therefore eligible for a reduced redemption period. *See id.*, subds. 4, 7. The complaint alleged that no holders of junior liens and interests filed a certificate requesting notice of any postforeclosure action to reduce the redemption period. *See id.*, subd. 3. The complaint did not name American as a defendant. The same day, the summons and complaint were posted on the property.

On October 26, 2021, American recorded a notice of intention to redeem as a junior lienholder.

On October 28, 2021, the Hennepin County Examiner of Titles held a hearing on Realty Pros' reduction action. Realty Pros was the only party present at the hearing.

On November 1, 2021, the district court issued an order granting the reduction to five weeks (the reduction order). Phetphrachanh's right to redeem expired on December 6, 2021. American's right to redeem expired seven days later, on December 13, 2021. *See* Minn. Stat. § 580.24(a) (2024) ("If no redemption is made by the mortgagor, . . . the most senior creditor having a legal or equitable lien upon the mortgaged premises . . . may redeem within seven days after the expiration of the redemption period . . . ."). Neither Phetphrachanh nor American redeemed during these periods.

On January 27, 2022, American filed a "complaint in intervention." The complaint in intervention alleged that American first learned of the reduction action on January 21, 2022. It alleged that American "inspected the property on October 12, 2021, November 12, 2021, December 10, 2021[,] and January 12, 2022." It also alleged that the property was not "vacant and abandoned" as required under Minn. Stat. § 582.032, subds. 4, 7, and that Realty Pros should have named American as a party. American sought (1) to intervene as a matter of right under Minn. R. Civ. P. 24.01, (2) permissive intervention under Minn. R. Civ. P. 24.02, and (3) an order vacating the reduction order. Realty Pros objected to American's intervention.

In February 2022, American moved to intervene. Realty Pros opposed American's motion, arguing that American had no right to notice of the complaint seeking to reduce the redemption period and did not have the right to intervene under rules 24.01 or 24.02.

In March 2022, American moved to amend its complaint in intervention to "clarify that vacating the judgment entered reducing the redemption period should revive [American's] right to redeem and that such right should provide [American] a reasonable time after the vacation of the judgment to redeem."[1] Realty Pros opposed the motion to amend.

---

[1] The record on appeal does not show that judgment was entered on the reduction order. The order does not include a required certification from the district court administrator and was not entered on the judgment roll in the register of actions. *See City of Minneapolis v. Leo A. Daly Co.*, 981 N.W.2d 785, 789 (Minn. App. 2022) (explaining that "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"). For this opinion, we understand all references to a "judgment" to mean the reduction order.

In August 2022, after a motion hearing, the district court issued an order denying American's motion to intervene and denying its motion to amend the complaint in intervention as moot. American then appealed the denial of its motions.

In March 2023, this court reversed the district court's order and remanded, with instructions to add American as an intervening party to the action and to consider American's motion to amend the complaint in intervention. *Realty Pros, LLC v. Phetphrachanh*, No. A22-1169, 2023 WL 2746939, at *3 (Minn. App. Mar. 29, 2023). This court declined to address the merits of American's anticipated motion to vacate. *Id.*

On September 21, 2023, American moved to vacate the reduction order. American argued that its interest and right to redeem "should be viewed at the time the [reduction] action was filed and when [American] sought to intervene," which was before the original six-month redemption period would have expired. American also argued that it was entitled to relief from the reduction order for "excusable neglect" under Minn. R. Civ. P. 60.02(a). American maintained that it satisfied the requirements of rule 60.02(a) because (1) it had a reasonable defense on the merits that the property was not abandoned; (2) it had a reasonable excuse to not oppose Realty Pros' complaint because "it was not a party to this action and did not have any notice of this action"; (3) it acted with due diligence by attempting to intervene shortly after learning about the action so it could move to vacate; and (4) Realty Pros would not be prejudiced by vacation of the reduction order.

Realty Pros opposed American's motion to vacate. Realty Pros argued that American did not have an interest in the property because the redemption period had "long expired" and the district court had no "authority to extend an expired redemption period." Realty Pros argued that American did not satisfy rule 60.02(a) because (1) there was no claim in controversy after the redemption period expired; (2) American "did not request notice of any post-foreclosure redemption attempts as it is legally required to do in order to be provided notice" (emphasis omitted) and should have seen the posted summons in 2021; (3) American did not act with due diligence based on these facts; and (4) Realty Pros "continue[s] to suffer prejudice" by paying costs associated with the property and losing potential buyers.

On April 5, 2024, after a motion hearing, the district court issued an order denying American's motion to vacate the reduction order. The district court concluded that "[a]lthough American has shown Realty Pros will not suffer substantial prejudice if the [r]ule 60.02 motion is granted, American has not shown a reasonable case on the merits, a reasonable excuse for failing to act, or that it acted with due diligence after notice of the entry of judgment."

American appeals.

DECISION

A district court "may relieve a party" from a final judgment, order, or proceeding because of "[m]istake, inadvertence, surprise, or excusable neglect." Minn R. Civ. P. 60.02(a). Relief based on excusable neglect is appropriate when the movant "(a) is possessed of a reasonable defense on the merits, (b) has a reasonable excuse for his failure or neglect to answer, (c) has acted with due diligence after notice of the entry of judgment, and (d) shows that no substantial prejudice will result to the other party."

Finden by Finden v. Klaas, 128 N.W.2d 748, 750 (Minn. 1964) (quotation omitted); *see also Palladium Holdings, LLC v. Zuni Mortg. Loan Tr. 2006-OA1*, 775 N.W.2d 168, 173-77 (Minn. App. 2009) (applying the four "*Finden* factors" to a rule 60.02 motion), *rev. denied* (Minn. Jan. 27, 2010). The district court "must consider, and expressly find that a party satisfied all four of the *Finden* factors . . . in order to grant relief under [r]ule 60.02(a)." *Gams v. Houghton*, 884 N.W.2d 611, 619-20 (Minn. 2016) (quotation omitted).

A decision on whether relief is warranted under rule 60.02 "is committed to the sound discretion of the district court" and is based on the specific facts of each case. *Id*. at 620. Appellate courts, therefore, review the district court's denial of a rule 60.02 motion for an abuse of discretion. *Id.* A district court abuses its discretion when it misapprehends the law or when its factual findings are clearly erroneous. *Id.*

American argues that the district court abused its discretion by denying its rule 60.02(a) motion to vacate for excusable neglect. American maintains that the district court erroneously assessed the first three *Finden* factors. But because American does not satisfy the second factor—having a reasonable excuse—we address that factor first.

To succeed under rule 60.02(a), a movant must establish a reasonable excuse for their failure or neglect to act. *Id.* at 619-20. American failed to oppose Realty Pros' complaint requesting to reduce the redemption period from six months to five weeks before the relief was granted.

Under Minn. Stat. § 582.032, subd. 4, a party seeking to reduce a mortgagor's redemption period must name any "holders of junior liens and interests entitled to notice under subdivision 3" as defendants to the reduction action. Under subd. 3,

> a copy of the order must be sent by certified mail to any party holding a lien or interest of record junior to the foreclosed mortgage who has filed with the county recorder or registrar of titles a certificate . . . requesting notice of any postforeclosure sale reduction of the mortgagor's redemption period for any superior lien.

Minn. Stat. § 582.032, subd. 3. It is undisputed that American could have but did not file a certificate requesting notice of any reduction of Phetphrachanh's redemption period.

The district court determined that American did not have a reasonable excuse for its failure to oppose the reduction action because American did not explain its failure to request notice under section 582.032:

> Although American recorded a notice of intent to redeem the Property, it did not request notice of any reduction of the redemption period under Minnesota Statutes section 582.032. As a result, it did not get notice of the hearing to reduce the redemption period. American offers no excuse for its failure to request its statutory right to notice. Thus, American does not have a reasonable excuse for its failure to act.

American argues that it has a reasonable excuse for not responding to Realty Pros' reduction action "because it was not a party to the action and was not aware of the action" until after the five-week redemption period expired. American argues that the district court erroneously "created a standard that a nonparty could not have a reasonable excuse to answer a reduced redemption action because they did not choose an optional statutory right under Section 583.032." American maintains that "a non-party to an action (by not using an optional statutory right) can have a reasonable excuse" for its failure to act.

Realty Pros argues that American "was not a party to the action because it was not entitled to be a party to the action" under Minn. Stat. § 582.032, subds. 3-4. Realty Pros contends that American "offered no excuse for its failure to file" the certificate requesting notice of a reduction action.[2]

While we agree with American that a non-party can have a reasonable excuse for their failure to respond to an action, American does not provide any excuse for its failure to exercise its statutory right to notice. As a junior lienholder of the property, American received notice of the foreclosure sale in August 2021. At that point, it had the option to file a certificate requesting notice of a reduction action. *See id.*, subd. 3. If American had filed the certificate, it would have been a named defendant under Minn. Stat. § 582.032, subd. 4, received notice of the action under subd. 3, and had the opportunity to present evidence that the property was not abandoned at the reduction hearing. *See id.*, subds. 3-4, 7. American, however, chose not to exercise its statutory right to notice and, as a result, states that it did not learn about this action until two months after the reduction order was issued. Although American's decision not to file a certificate was optional, the consequences of that decision were not.

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 American did not establish a reasonable excuse for its failure to act.

---

[2] Realty Pros also argues that American should have been aware of the reduction action even without notice by certified mail. Realty Pros submitted affidavits stating that the property was posted with the summons and complaint on October 4, 2021, and was still posted on December 16, 2021. Realty Pros maintains that, had American "inspected the subject property in October and November 2021 as claimed, it would have been aware of this lawsuit." Because we affirm the district court's decision on other grounds, we need not address this argument.

A party is not entitled to relief under rule 60.02(a) unless it satisfies all four *Finden* factors. *Gams*, 884 N.W.2d at 619-20. Because the district court did not abuse its discretion by determining that American did not meet the second factor, we need not separately address the district court's decision on the other *Finden* factors. Thus, we affirm the district court's denial of American's motion to vacate.

Affirmed.