

*This opinion is nonprecedential except as provided by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
A24-1356**

Alliant Ventures IX, LLC,
Respondent,

vs.

Jason Bebeau,
Appellant.

**Filed March 17, 2025
Affirmed
Larkin, Judge**

Anoka County District Court
File No. 02-CV-24-3058

Brian N. Niemczyk, Nicklaus A. Johnson, Hellmuth & Johnson, PLLC, Edina, Minnesota
(for respondent)

Jason Bebeau, Andover, Minnesota (pro se appellant)

Considered and decided by Larkin, Presiding Judge; Frisch, Chief Judge; and
Schmidt, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the district court's grant of default judgment against him. We
affirm.

FACTS

On April 5, 2024, respondent Alliant Ventures IX, LLC (Alliant) served appellant Jason Bebeau with a summons and complaint, alleging that Bebeau, without authorization, collected rent payments from tenants at an Alliant-owned property. Alliant requested \$30,400 “plus double damages” under Minn. Stat. § 604.14, subd. 1 (2024). On June 3, Alliant moved for default judgment, asserting that Bebeau’s answer to the complaint was due on April 26, that Bebeau failed to serve an answer, and that Bebeau therefore failed to plead or otherwise defend within the time allowed.

On June 13, Bebeau filed an answer in the district court, but he did not serve it on Alliant until June 17. In his answer, Bebeau claimed that he was told he was entitled to collect rent payments. Bebeau also filed a memorandum in opposition to Alliant’s motion for default judgment. In his memorandum, Bebeau asserted, in part, that Alliant was “involved in preparing several separate cases against [Bebeau], so [he] has not had the time to organize a response to [Alliant’s] statements, and thus has not filed another pleading in this case due to excusable neglect.”

The district court held a hearing on Alliant’s motion. Alliant appeared with counsel. Bebeau appeared pro se. On July 11, the district court filed an order granting Alliant a \$60,800 default judgment against Bebeau. The court concluded that Bebeau “did not comply with Minn. R. Gen. Prac. 109” concerning “application for leave to answer or reply after the time limited by statute or rule,” and failed to satisfy the factors that allow a defendant to avoid a default judgment. Judgment was entered the following day, and this appeal followed.

DECISION

Bebeau challenges the district court's grant of default judgment, arguing that he satisfied the procedural requirements to serve his late answer and that he satisfied the requirements necessary to avoid a default judgment.

Procedural Requirements

Under Minnesota law, a defendant generally must serve an answer within 21 days after being served with the summons. Minn. R. Civ. P. 12.01. If a defendant fails to plead or defend within the time allowed, "and that fact is made to appear by affidavit," judgment by default shall be entered against the defendant, as set forth in Minn. R. Civ. P. 55.01.

Bebeau does not dispute that he failed to timely serve his answer, but he argues that he complied with Minn. R. Gen. Prac. 109.01 and 109.02, which permit a party to request leave from the district court to serve an untimely answer. Under Minn. R. Gen. Prac. 109.01, "Any application for leave to answer or reply after the time limited by statute or rule . . . shall be accompanied by a copy of the answer . . . and an affidavit of merits and be served on the opposite party." And under Minn. R. Gen. Prac. 109.02:

In an affidavit of merits made by the party, the affiant shall state with particularity the facts relied upon as a defense or claim for relief, that the affiant has fully and fairly stated the facts in the case to counsel, and that the affiant has a good and substantial defense or claim for relief on the merits, as the affiant is advised by counsel after such statement and believes true, and the affiant shall also give the name and address of such counsel.

An affidavit shall also be made by a lawyer who shall state that from the showing of the facts made by the party[,] the lawyer believes that such party has a good and substantial defense or claim for relief on the merits.

The district court concluded that Bebeau did not comply with the requirements of these rules because he failed to supply the required affidavits. Bebeau argues that he “was unrepresented by counsel at the time, so he was unable to get an affidavit from an attorney, and instead submitted an affidavit from a paralegal.”¹ He further argues that he “stated clearly the facts relied on for a claim for relief and that he had a good claim for relief on the merits.”

Under a strict reading of the rules, Bebeau’s filings were deficient. Bebeau did not set forth his defense in an affidavit, and, as Bebeau acknowledges, he did not obtain an affidavit from an attorney. Nonetheless, in granting Alliant’s motion for default, the district court ultimately reasoned that “[e]ven if this [c]ourt could consider [Bebeau’s] late [a]nswer, [Bebeau] failed to satisfy his burden” under the factors that allow a defendant to avoid a default judgment. We therefore base our decision on the district court’s application of those factors.

The Finden Factors

[D]enial of a motion for a default judgment is proper when four requirements are met: defendant has a reasonable defense on the merits; defendant has a reasonable excuse for his failure to answer; defendant acted with due diligence after notice of the entry of judgment; and no substantial prejudice will result to other parties.

¹ The paralegal’s affidavit did not satisfy the requirements of Minn. R. Gen. Prac. 109.02

Coller v. Guardian Angels Roman Cath. Church of Chaska, 294 N.W.2d 712, 715 (Minn. 1980). These factors are referred to as the *Finden* factors. See *Finden v. Klaas*, 128 N.W.2d 748, 750 (Minn. 1964) (establishing factors).

When determining whether to grant a motion for default judgment or a motion to vacate a default judgment, the factors are substantially the same. *Guillaume & Assocs., Inc. v. Don-John Co.*, 371 N.W.2d 15, 18 (Minn. App. 1985). The party seeking to avoid a default judgment must satisfy all four factors. See *Gams v. Houghton*, 884 N.W.2d 611, 619-20 (Minn. 2016) (stating that to grant relief, “the district court must consider, and expressly find that a party satisfied, all four of the *Finden* factors” (quotation omitted)); *Pedersen v. Daly*, 238 N.W.2d 620, 622 (Minn. 1976) (stating that the party seeking relief “is obliged to affirmatively establish” all four factors); see also *Black v. Rimmer*, 700 N.W.2d 521, 526 (Minn. App. 2005) (stating that to obtain relief, “all four of the factors must be present”), *petition for rev. dismissed* (Minn. Sept. 28, 2005).

Whether a default judgment should be reopened “is a matter largely within the discretion of the [district] court, and that court’s decision will not be reversed unless such discretion is abused.” *Kosloski v. Jones*, 203 N.W.2d 401, 403 (Minn. 1973); see also *Cole v. Wutzke*, 884 N.W.2d 634, 639 (Minn. 2016) (“[W]e conclude that the district court abused its discretion by failing to properly apply the *Finden* test in this case.”). Similarly, “[t]he decision to grant or deny a motion for a default judgment lies within the discretion of the district court, and this court will not reverse absent an abuse of that discretion.” *Black*, 700 N.W.2d at 525.

Here, the district court thoroughly addressed each of the *Finden* factors, and concluded that none of the factors favored denying default judgment:

[Bebeau] failed to offer any actual evidence supporting the unverified allegations in his memorandum, so he does not have a reasonable defense on the merits. [Bebeau] claims he was busy attending to other matters and neglected to serve his [a]nswer, but this is not a reasonable excuse for his failure to answer because forgetfulness is not excusable neglect. He did not act with due diligence because he waited until 73 days after service of the [c]omplaint to serve his [a]nswer, which was also 14 days after [Alliant] served its motion papers. [Alliant] will suffer prejudice in the form of additional delay and expense. While ordinarily this might not be enough to show substantial prejudice, here there was an intentional ignoring of process by [Bebeau], as evidenced by his admission that he neglected to answer [Alliant's] [c]omplaint to focus on other matters and his misrepresentation to the [c]ourt that he served his [a]nswer on April 9, 2024. [Bebeau] thus cannot satisfy his burden under any [of] the *Finden* factors, let alone all four.

(Quotations and citations omitted.)

As to the need to show a reasonable defense on the merits, a reasonable defense is one that, if established at trial, presents a complete defense on the merits. *See Cole*, 884 N.W.2d at 637 (equating a “reasonable defense on the merits” with a “debatably meritorious claim” (quotation omitted)); *see also Finden*, 128 N.W.2d at 750 (explaining that self-defense is a “reasonable defense” because, “if it is established,” it is a complete defense on the merits). “To satisfy this factor, the movant generally must provide specific information that clearly demonstrates the existence of [a reasonable defense on the merits].” *Cole*, 884 N.W.2d at 638 (quotation omitted). “Conclusory allegations in moving papers are ordinarily insufficient.” *Id.*

In his answer, Bebeau claimed he was told that he was entitled to collect rent from the tenants. And in his memorandum in opposition to default judgment, Bebeau stated that he previously owned the property, sold it to Alliant, “served as a landlord,” and in that capacity, “collected rent from the tenants who lived at that building” until September 2023. The district court determined that Bebeau’s defense was based on conclusory allegations and therefore deficient. We agree. Bebeau did not cite any evidence supporting his allegations. In addition, although Bebeau alleges that he was entitled to collect rent, he did not allege that he was entitled to keep the rents that he collected.

As to Bebeau’s reasonable excuse for failing to timely answer Alliant’s complaint, Bebeau generally alleged that he was busy with other cases and therefore “overlooked” serving his answer. But as the district court correctly reasoned, forgetfulness does not constitute excusable neglect. *Hill v. Tischer*, 385 N.W.2d 329, 332 (Minn. App. 1986). As to the requirement of due diligence, the district court noted that Bebeau “waited until 73 days after service of the [c]omplaint to serve his [a]nswer, which was also 14 days after [Alliant] served its motion papers.” We cannot say that the district court abused its discretion in determining that Bebeau “did not act with due diligence.”

Finally, as to prejudice to Alliant, “prejudice to the other party should not be presumed nor inferred from the mere fact of delay; instead, there must be some particular prejudice of such a character that some substantial right or advantage will be lost or endangered if relief is granted.” *Cole*, 884 N.W.2d at 639 (quotations omitted). Here, the district court concluded that Alliant’s additional expense and delay were sufficient to establish prejudice because Bebeau’s failure to timely serve an answer was, in effect,

intentional. The district court relied on *Hovelson v. United States Swim & Fitness, Inc.* in which we stated, “If it is perceived by the [district] court that there is intentional ignoring of process, the additional expense must be viewed in a different light.” 450 N.W.2d 137, 142 (Minn. App. 1990), *rev. denied* (Minn. Mar. 16, 1990). But we also recognized that “[o]rdinarily, added expense and delay alone are not sufficient to show prejudice.” *Id.*

Even if we assume, without deciding, that Bebeau met his burden to show that Alliant would not be sufficiently prejudiced to justify the grant of a default judgment, the error would be harmless because Bebeau failed to meet his burden on the first three *Finden* factors. *See Pedersen*, 238 N.W.2d at 621-22 (stating, in an appeal from default judgment, that all four criteria must be met). Harmless error must be ignored. Minn. R. Civ. P. 61.

In sum, “on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it.” *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (quotation omitted). Bebeau has not shown that the district court abused its discretion in determining that he did not satisfy the four *Finden* factors and therefore granting Alliant’s motion for default judgment.

Affirmed.