

*This opinion is nonprecedential except as provided by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
A25-0589**

Timothy S. Christenson, et al.,
Respondents,

vs.

Jason H. Roue, et al.,
Defendants,

William J. Bachman,
Respondent,

Daniel G. Mujwid, et al.,
Respondents,

Daniel T. Borg,
as Trustee of the Borg Family Trust dated February 12, 2014,
Appellant.

**Filed December 22, 2025
Affirmed
Florey, Judge***

Cass County District Court
File No. 11-CV-21-1573

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

Blake D. Lubinus, Ed Shaw Law, Brainerd, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Wheelock, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this appeal from a district court’s order denying appellant’s motion brought under Minn. R. Civ. P. 60.02(a), appellant argues that the district court abused its discretion by failing to apply the rules governing default judgments, determining that he failed to meet all the *Finden* factors, and concluding that he was not entitled to relief under the doctrine of unclean hands. We affirm.

FACTS

The dispute giving rise to this appeal originated when respondents Timothy and Judith Christenson sued 11 named defendants, including appellant Daniel T. Borg in his capacity as trustee to the Borg Family Trust dated February 12, 2014, to quiet title and establish an easement on lakefront property in Cass County. The property, and many of the surrounding lots, is accessed by a gravel driveway over a portion of which the Christensons sought to establish a prescriptive easement.

In July 2021, the Christensons’ complaint was mailed to Borg’s lakefront property, and Borg returned a signed waiver of personal service, indicating that he had read the complaint and understood that “a judgment may be entered against [him]” if a responsive

pleading was not filed within the required timeframe¹. Borg did not file any responsive pleading.

Defendants and married couple Daniel and Tammi Mujwid (the Mujwids) filed and served an answer, counterclaim, and cross-claim. The Mujwids sought, in part, a similar prescriptive easement and a further implied easement over portions of the driveway that crossed over four neighbors' properties, including Borg's. Borg did not respond to the Mujwids' cross-claim. Over the next two years, six responding parties² engaged in discovery and meetings to address the contested issues. In April 2024, the responding parties informed the district court that they had stipulated to terms and requested that judgment be entered consistent with the stipulation.

By order dated April 15, 2024, the district court found that the Mujwids had successfully established easements over the driveway, including a portion that extended over Borg's property. The district court described the Mujwids' property, including the easements, and stated: "Title to said property shall be quieted absolutely as and against . . . Daniel T. Borg . . . and any other persons claiming an interest through them." Judgment was entered pursuant to the April 15, 2024 order. Notice of the entry of judgment was sent to Borg's address, and it was returned to sender.

Under Minn. R. Civ. P. 4.05(d), "[w]hen a plaintiff files a waiver of service, proof of service is not required and these rules apply as if a summons and complaint had been served on the date of signing of the waiver."

² These parties included married couple Daniel and Tammi Mujwid, married couple Jay and Jessica Johnson, Jason Roue, and Willam Bachman.

Around July 2024, Borg learned of the entry of judgment from the Mujwids, who had erected a barrier across a portion of the driveway. Borg retained counsel on July 30, 2024, to assess the matter. On November 4, 2024, Borg filed a motion for relief pursuant to Minn. R. Civ. P. 60.02(a). Specifically, he claimed that he was entitled to relief due to (1) “mistake, inadvertence, surprise, or excusable neglect,” (2) “ineffective, faulty, or otherwise deficient service of process of the cross-claim of [the Mujwids]³,” (3) insufficient notice that the benefited litigants received more relief than requested, and (4) the “doctrines of unconscionability and unclean hands.”

By order dated February 12, 2025, the district court denied Borg’s motion in its entirety.

Borg appeals.

DECISION

I. The district court did not abuse its discretion in denying Borg’s motion to vacate judgment pursuant to Minn. R. Civ. P. 60.02(a).

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). “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). A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or rendering a decision that

³ Borg does not make this argument on appeal.

is “against logic and the facts on record.” *Knapp v. Knapp*, 883 N.W.2d 838, 835 (Minn. App. 2016) (quotation omitted). Borg argues that the district court abused its discretion by mistakenly applying the incorrect rules and erroneously finding that relief was not warranted for excusable neglect. We address each argument in turn.

A. Mistake

Borg contends that the district court made a mistake by failing to apply the rules governing default judgments. He asserts that because the final judgment in this case “operates” as a default judgment, the parties were required to apply for such judgment as mandated by Minn. R. Civ. P. 55.01(b). Because the responding parties did not apply for a default judgment against any of the non-responding parties, Borg claims that the final judgment must be set aside.

As an initial matter, we are not persuaded that this challenge is properly brought under Minn. R. Civ. P. 60.02(a). *See Arzt v. Arzt*, 361 N.W.2d 135, 136 (Minn. App. 1985) (“Rule 60.02 is intended to correct mistake or inadvertence of a party, or to allow for newly discovered evidence, or for void or satisfied judgments, not to correct judicial error.”). Even so, Borg fails to articulate any legal authority, and we discern none, that the final judgment in this case must be treated as a default judgment subject to the requirements of Minn. R. Civ. P. 55.01(b). “An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived.” *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) (quotation omitted). Consequently, we deem that Borg has waived this argument.

B. Excusable neglect and the *Finden* factors

Borg next argues that the district court erroneously found that relief was not warranted for excusable neglect. Relief based on excusable neglect is appropriate when the moving party “(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 v. Klaas*, 128 N.W.2d 748, 750 (Minn. 1964) (quotation omitted); *see also Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016). “The moving party must establish all four requirements for relief to be warranted.”⁴ *Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016). The district court found that Borg failed to meet the first three *Finden* factors such that relief under Minn R. Civ. P. 60.02(a) was not warranted.

Regarding the second factor, the district court found that Borg’s excuse that “in hindsight he would have participated if he had known what the outcome of the judgment would be” was not a reasonable excuse for failing to participate in over three years of litigation. It reasoned that while a reasonable excuse may be a mistake of fact or law,

⁴ Borg argues that there is “no solid authority for saying that the district court may only grant relief under rule 60.02 when all four factors have been fully met,” citing our decision in *Northland Temporaries, Inc. v. Turpin*, 744 N.W.2d 398 (Minn. App. 2008). There, we expressed caution in requiring parties to establish all four *Finden* factors as these factors do not limit a district court’s discretion to grant relief, but to deny relief. *Id.* However, our supreme court later held that a “district court must consider, and expressly find that a party satisfied, all four of the *Finden* factors in order to grant relief under 60.02(a).” *Gams*, 884 N.W.2d at 619 (quotation omitted). The *Gams* court reversed our holding that “a party seeking relief from a judgment need not categorically establish all four of the [*Finden*] factors,” calling it “inconsistent with [supreme court] precedent.” *Id.* at 620 (quotation omitted). In light of the *Gams* holding, we reject Borg’s argument that all four *Finden* factors need not be met to merit relief.

Borg's proffered explanation did not constitute such an excuse. Borg challenges this finding as clearly erroneous because the initial complaint and the Mujwids' cross-claim did not "clearly request" any action adverse to him.

On review, the record reflects that Borg received the Christensons' complaint to quiet title and establish an easement over a portion of the driveway, and that the Mujwids' cross-claim sought easements by prescription and necessity "on and over the driveway situated on and over" Borg's property. The record establishes that after signing the waiver of personal service, Borg did not participate in any of the litigation that extended from July 2021 to April 2024, though notices were continually sent to the address listed in the complaint.⁵ Because we afford the district court broad discretion in analyzing the reasonableness of the excuse and its finding is supported by the record, we discern no abuse of discretion in the district court's determination that Borg failed to establish the second *Finden* factor. *See Cole*, 884 N.W.2d at 639 (holding that "it is generally for the district court to determine whether the excuse offered by the movant is true and reasonable under the circumstances").

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 Borg did not meet the second factor, we need not separately address the district court's decision on the other *Finden* factors. *See id.* The district court

⁵ Under Minn. R. Gen. Prac. 13.01, Borg was responsible for providing notice of his current address, and "[f]ailure to provide this notice constitutes waiver of the right to notice until a current address is provided."

did not abuse its discretion by denying Borg's motion for relief for excusable neglect under Minn. R. Civ. P. 60.02(a).

II. Borg has waived the argument that the judgment conveyed more relief than requested.

In the alternative, Borg argues that the final judgment must be set aside because it conveyed more relief than the pleadings requested. He relies on Minn. R. Civ. P. 54.03 which provides that “a *judgment by default* shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.” (Emphasis added). We decline to consider this argument on the merits for the same reason as previously discussed. Borg fails to provide any legal authority that the final judgment must be treated as a default judgment and analyzed under Minn. R. Civ. P. 54.03. *See Bartylla*, 755 N.W.2d at 22 (holding that such assertions are waived); *see also Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (“[O]n 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.”). Accordingly, we deem this argument waived.

III. The district court did not abuse its discretion when it denied Borg's motion for relief due to the doctrine of unclean hands.

Alternatively, Borg contends that the stipulated agreement reached between the responding parties is unconscionable and the result of unclean hands such that the final judgment must be vacated. Under the doctrine of unclean hands, “he who seeks equity must do equity, and he who comes into equity must come with clean hands.” *Brown v. Lee*, 859 N.W.2d 836, 843 (Minn. App. 2015) (quotation omitted), *rev. denied* (Minn. May 19, 2015). This equitable defense is “premised on withholding judicial assistance from a party

guilty of illegal or unconscionable conduct.” *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 450 (Minn. App. 2001). It will only be invoked against a “party whose conduct has been unconscionable by reason of a bad motive, or where the result induced by his conduct will be unconscionable.” *Id.* (quotation omitted). Whether to grant equitable relief under the unclean-hands doctrine is within the sound discretion of the district court such that we will not reverse absent clear abuse of that discretion. *Id.*

The district court found that the result in this case was achieved through a stipulated agreement reached through “a lengthy negotiation process” in which Borg had “ample opportunity to participate.” Because Borg had not been singled out by the parties or shown that he had no meaningful choice but to accept an unreasonably unfavorable contract term, the district court concluded his arguments pursuant to the doctrine of unconscionability or unclean hands failed.

Borg challenges this finding as erroneous, arguing that the Mujwids entered the stipulated agreement dishonestly. He relies on *Johnson v. Freberg* in support, but the circumstances are distinguishable. 228 N.W. 159 (Minn. 1929). In *Johnson*, the supreme court held that unconscionable conduct need not be actually fraudulent, as one may still be entitled to relief when a party’s conduct is unconscionable in the benefit to himself or the injury to others. *Id.* at 160. There, a party was knowingly induced into purchasing property which was to their great disadvantage, and the supreme court determined that since the seller was in a “much superior position in the way of knowledge of the situation, experience, and business ability,” such conduct was unconscionable. *Id.* at 161.

We acknowledge that the record indicates that after the final judgment was entered, the Mujwids offered to sell Borg a parcel of land that would give Borg his desired access. However, we discern no evidence that the Mujwids knowingly induced Borg into an agreement that was to his great disadvantage. *See id.* Moreover, the Mujwids sought easements against several other neighbors such that there is no indication that they entered the agreement with a “bad motive” related to Borg. *See Medtronic*, 630 N.W.2d at 450 (quotation omitted). While Borg asserts that “given that for at least sixteen years [the Mujwids] knew that Borg crossed [the Mujwid’s] parcel to get to Borg’s own cabin, [the Mujwids] would have understood that [their] rights and Borg’s rights were adverse to one another,” he does not cite to any facts in the record to support this assertion and we discern none.

Accordingly, the district court acted well within its discretion in concluding that Borg was not entitled to relief under the doctrine of unclean hands. *See id.*

Affirmed.