STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1233

Kimi Bragdon,
Respondent,

vs.

Anthony Allen Davis, Jr.,
Appellant.

Filed March 31, 2025
Affirmed
Reyes, Judge

Dakota County District Court
File No. 19HA-CV-23-3390

Ryan R. Dreyer, Scott A. Peitzer, Morrison Sund, PLLC, Minnetonka, Minnesota (for respondent)

Anthony Allen Davis, Jr., Minneapolis, Minnesota (self-represented appellant)

Considered and decided by Bjorkman, Presiding Judge; Frisch, Chief Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this partition action, appellant argues that the district court abused its discretion by (1) granting default judgment against him in favor of respondent and (2) setting off the entire property to respondent. We affirm.

FACTS

Appellant Anthony Allen Davis, Jr., and respondent Kimi Bragdon were in a long-term relationship for several years. In August 2021, the parties decided to purchase a home in Lakeville, Minnesota, for $330,000. To secure the home and deposit the earnest money, Bragdon provided the earnest money to Davis, and Davis wrote the check. Bragdon also paid the entire downpayment as well as all closing costs. The parties obtained a first mortgage on the property for $324,000, as well as a second mortgage on the property for $17,000.

Bragdon's daughter, who has special needs and receives disability compensation from the state, also lived at the property with the parties. Bragdon made all payments for the property, including the mortgage, utilities, and repairs. In March 2023, the parties had a domestic dispute which resulted in law enforcement removing Davis from the property. After this incident, Bragdon requested and obtained from the district court an order for protection against Davis. The parties' relationship ended following that incident, and Davis has not lived at the property since March 2023.

In August 2023, Bragdon filed a complaint for partition, requesting that the district court either (1) set aside Davis's ownership interests; (2) enter a judgment against Davis for contribution; or (3) assign appraisers to determine Davis's ownership interests in the property. Davis, as a self-represented litigant, filed an answer denying nearly all of Bragdon's allegations and requesting that the property be sold with the proceeds divided between him and Bragdon.

The district court set the trial for April 22, 2024. In October 2023, Bragdon served discovery requests on Davis. Davis never provided any responses to any of the discovery requests. In addition, Davis did not provide any exhibits, exhibit lists, or witness lists prior to the April trial date. Four days before trial, Davis sought a continuance, asserting that he was in the hospital. Davis claimed he was unable to provide any supporting documentation, claiming he was unable to do so because of "Hippaa laws."[1] The district court denied Davis's continuance request.

Davis did not appear at trial. Bragdon appeared with her counsel and sought to proceed with the trial. Due to Davis' absence, Bragdon asked that trial proceed without him, but the district court requested that she instead file a motion for default judgment under Minn. R. Civ. P. 55.01. Bragdon subsequently moved for default judgment and requested that the district court "exercise its equitable discretion under Minnesota [l]aw," find the property indivisible, and "set off the ownership interest to Bragdon without any need for payment to [Davis]." Davis did not file a response to Bragdon's motion. The district court set a hearing on Bragdon's default-judgment motion for May 30, 2024.

Both parties appeared in-person at the default hearing on May 30, 2024. Bragdon argued that she moved for default judgment because Davis did not participate in discovery, provide an exhibit list or witness list, or file a response to her motion for default judgment.

[1] This appears to reference HIPAA, the Health Insurance Portability and Accountability Act, which is a federal act that protects a patient's sensitive health information from disclosure without their consent. 45 C.F.R. § 164.502 (2024). It appears that the district court rejected Davis' argument based on its understanding of what HIPPA is intended to protect

In response, Davis argued that he could not attend trial because he had been in the hospital since the beginning of April 2024 and would not be discharged until July 25, 2024. The district court then gave Davis one week to provide it with proof of his hospitalization on the date of the trial and his expected discharge date from treatment. The district court cautioned Davis that if he did not submit proof of hospitalization by the deadline, it would grant Bragdon's default motion. Davis never provided proof of his hospitalization.

Two weeks after the default hearing, the district court issued its order. The district court granted default judgment to Bragdon because Davis did not provide "documentation or discovery of any kind" or "any exhibits, nor an exhibit list or witness list" prior to the trial date.

The district court also found that Bragdon paid all the "mortgage, taxes, insurance, utility payments[,] and necessary repairs" for the property whereas Davis did not have a legal interest in the property because he "provided no funds for payments toward the home, building materials or other improvements and failed to maintain the property." And the district court found that that he essentially "lived in the property rent free." As to remedy, the district court determined that "forcing sale of the [home], or forcing payment from Bragdon to [Davis] would [] prejudice [] Bragdon" because he is not entitled to any money from Bragdon and it would be "difficult for Bragdon to move her daughter, who has special needs, to a different home." It further found that the property is a single-family home "incapable of division", and that any division would harm the owners.

The district court also considered Bragdon's alternative relief for contribution as alternative relief but noted that if the property were to sell for approximately $360,000,

then the net proceeds of the sale would leave the parties with "just a few thousand dollars to divide between the two of them." It further reasoned that, even if it ordered the parties to split the proceeds of the sale, Bragdon's valid contribution claim of $38,477 would amount to "far more" than Davis's share under that scenario. The district court ultimately determined that it was appropriate to exercise its equitable powers to set aside the property to Bragdon "free and clear of any interest of claim from [Davis]" without payment to Davis because Davis did not have any financial interest in the property and that Davis be removed from the title of the property.

This appeal follows.

DECISION.

I. Davis timely filed his notice of appeal.

As an initial matter, Bragdon argues that this court does not have subject-matter jurisdiction to hear this appeal because Davis filed his notice of appeal 54 days after the district court's order. We are not persuaded.

Bragdon cites Minn. Stat. § 558.215 (2024) in support of her argument, which provides in part:

> Any party to any partition proceedings may appeal from any order or interlocutory judgment made and entered pursuant to section 558.04, 558.07, 558.14, or 558.21, to the court of appeals within 30 days after the making and filing of the order or interlocutory judgment. Any appeal shall be taken as in other civil cases.

Bragdon also cites to *Glenwood Investment Properties, L.L.C. v. Carroll A. Britton Family Trust*, 765 N.W.2d 112, 116 (Minn. App. 2009). In *Glenwood*, this court concluded that it

had been deprived of jurisdiction because the appellants failed to submit a timely appeal within the 30-day period prescribed by statute and because the district court's order was issued pursuant to Minn. Stat. § 558.04. *Id*. at 116-17. Unlike the district court in *Glenwood*, in the instant case, the district court issued its order under Minn. Stat. § 558.12 (2024), which is not subject to the 30-day deadline imposed by Minn. Stat. § 558.215. As a result, the appropriate timeline to file an appeal from the district court's June 12, 2024 judgment is 60 days from entry of the judgment under Minn. R. App. P. 104.01, subd. 1. Because Davis timely filed his notice of appeal, it is properly before this court.

II. The district court did not abuse its discretion by entering default judgment in favor of Bragdon.

Davis argues that the district court abused its discretion when it entered default judgment in favor of Bragdon because he could not appear at trial due to a hospitalization which began in April 2024. We disagree.

Default judgment is proper "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed." Minn. R. Civ. P. 55.01; *see also Cole v. Metro. Council HRA*, 686 N.W.2d 334, 337 (Minn. App. 2004). On appeal from a default judgment, the defaulting party may not deny facts alleged in the complaint when those facts were not disputed below. *Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990). "The 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 v. Rimmer*, 700 N.W.2d 521, 525 (Minn. 2005).

Here, the record reflects that, in August 2023, the district court set the trial date for April 2024. Even with eight months advance notice of the trial, Davis failed to appear or provide proof of his hospitalization. Davis also failed to disclose any exhibits, witness lists, or other documentation prior to trial. Similarly, Bragdon served Davis with discovery requests in October 2023, nearly six months before his hospitalization, but Davis never responded, despite Bragdon agreeing to accept discovery responses months after the deadline had passed. Davis did not respond to Bragdon's motion for default judgment, did not request additional time to respond to Bragdon's motion, or attempt to vacate the default judgment. Davis's lack of meaningful participation throughout the case constitutes a failure to plead or "otherwise defend" himself in the litigation. *Michaels v. First USA Title, LLC*, 844 N.W.2d 528, 531 (Minn. App. 2014) (affirming default judgment entered against defendant who failed to appear at trial) (quotations omitted).

Davis contends that reversal of the default judgment is appropriate based on *Hinz v. Northland Milk & Ice Cream Co*., 53 N.W.2d 454, 455-56 (Minn. 1952). Under *Hinz*, when deciding whether to grant a defendant's motion to open a default judgment, the district court must consider:

1) whether the defendant had a meritorious defense;
2) whether the default resulted from excusable neglect;
3) whether the defendant acted with due diligence after learning of the default judgment; and
4) whether granting relief from judgment would not substantially prejudice the plaintiff.

Hinz is not applicable. In *Hinz*, the supreme court analyzed whether the district court abused its discretion by denying the defendant's motion to set aside default judgment.

Id. at 455. But Davis never filed a motion to set aside the default judgment before the district court.

Although *Hinz* is not applicable to this case, we must nonetheless analyze the same factors per the Minnesota Supreme Court's decision set forth in *Black*, 700 N.W.2d at 526 (explaining that appellate courts review same factors district courts should consider when deciding whether to vacate default judgment). Even when analyzing Davis's argument under *Black*, the outcome is the same, as Davis has not provided any argument to support the first, third, or fourth factors, only conclusory statements that the remaining factors have been met. Davis's entire argument centers around his hospitalization as it relates to the second factor, but he provided no documentation to support this claim. Davis's failure to meet any one of the *Black* factors precludes him from relief from default judgment. *See Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016) (stating that all four factors must be satisfied for district court to grant relief from default judgment). We conclude that the district court did not abuse its discretion by entering default judgment in favor of Bragdon.

Davis next contends that the district court exceeded its authority under statute and its equitable powers by setting aside the entire property to Bragdon free and clear of his interest and by removing him from the title.[2] We are not persuaded.

[2] Davis also argues that the district court erred by setting aside the property to Bragdon while he remains on the mortgage. Because Davis did not raise this argument in the district court or present any evidence in the record to support this contention, he has forfeited this argument, and we do not analyze it here. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (concluding that appellate courts only consider issues presented to and considered by district court).

Partition actions of real property are governed by chapter 558 of the Minnesota Statutes. *Neumann v. Anderson*, 916 N.W.2d 41, 47 (Minn. App. 2018); *see* Minn. Stat. §§ 558.01-.32 (2024). The provisions of chapter 558 have changed "very little" since the 1905 revision to the statutes and provide multiple ways in which a partition action may be resolved. *Id*. In one such method, the district court may order partition by a set-off under Minn. Stat. § 558.12, which provides in part:

> When the premises consist of a mill or other tenement which cannot be divided without damage to the owners, or when any specified part is of greater value than either party's share, and cannot be divided without damage to the owners, the whole premises or the part so incapable of division may be set off to any party who will accept it, that party paying to one or more of the others such sums of money as the referees award to make the partition just and equal; or the referees may assign the exclusive occupancy and enjoyment of the whole or of such part to each of the parties alternately for specified times, in proportion to their respective interests.

In addition to the methods provided by statute, the Minnesota Supreme Court has also stated that a district court "may exercise its general equitable powers and resort to the most advantageous plans which the nature of the particular case admits in effecting, without great prejudice to any of the owners, . . . whether such partition be accomplished by a division in kind, by sale, or by any practical combination of both methods." *Swogger v. Taylor*, 68 N.W.2d 376, 383 (Minn. 1955).

Appellate courts review the district court's exercise of its equitable powers for an abuse of discretion. *Nadeau v. Cnty. of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979). A district court abuses its discretion when it misapplies the law or relies on findings of fact that are not supported by the record. *Matter of Otto v. Bremer Trust*, 984 N.W.2d 888, 896

(Minn. App. 2023). We review the district court's findings of fact for clear error. *Anderson v. Anderson*, 560 N.W.2d 729, 730 (Minn. App. 1997).

Davis did not raise this argument relating to the district court's authority to set aside the property below, even after receiving Bragdon's motion for default judgment and appearing at the default hearing. He has therefore forfeited this argument. *See Thiele v. Stich*, 425 N.W.2d at 582. Moreover, self-represented litigants are held to the same standards as attorneys and must comply with court rules. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). But even if we were to analyze this argument on the merits, it fails. Importantly, the record shows that Bragdon submitted substantial documentary evidence, including bank records, repair invoices, and loan documents, which supports her claim that she made all of the financial contributions to the property and has been solely responsible for the maintenance of the home to date. In contrast, Davis provided no evidence to show that he contributed to the property in any respect either financially or otherwise. The record supports the district court's findings that Davis had no legal interest in the property. The district court's order also reflects its thoughtful consideration of the challenges Bragdon would face if the property were sold, including finding a comparable home for her and her daughter who has special needs, obtaining a home loan with a similar interest rate, and whether contribution would have been an appropriate remedy when Davis did not make any contributions to the property. We conclude that the district court appropriately exercised its equitable powers by setting aside the property to Bragdon under these particular facts. *Swogger*, 68 N.W.2d at 383.

Affirmed.